

House Bill 4085

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Human Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates crime of assault in third degree for intentionally or knowingly causing physical injury to elderly person. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Provides that prosecution of certain felonies committed against person 65 years of age or older may be commenced within six years.

Prohibits entry of order setting aside conviction for criminal mistreatment in first or second degree when victim was person 65 years of age or older.

Requires health care provider to permit inspection and copying of protected health information of person who is alleged victim in abuse investigation.

Requires financial institution, upon receipt of certification, to disclose and provide copies of financial records of person who is alleged victim in abuse investigation.

Permits Department of Human Services to make names of witnesses and vulnerable persons, and records and reports compiled in abuse investigations, available to certain entities.

Creates Resident Safety Review Council. Sunsets council on June 30, 2013.

Permits person convicted of certain crimes more than five years before employment to receive public funds in employment where person has contact with vulnerable person.

Clarifies that person whose employment cannot be supported by public funds is not entitled to determination of fitness or right of appeal of determination of unfitness.

Directs Department of Human Services to apply for federal grant under Patient Protection and Affordable Care Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vulnerable persons; creating new provisions; amending ORS 124.085, 124.090, 131.125,
3 137.225, 163.165, 181.534, 181.537, 411.990, 441.671 and 443.004; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 163.165 is amended to read:

6 163.165. (1) A person commits the crime of assault in the third degree if the person:

7 (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous
8 weapon;

9 (b) Recklessly causes serious physical injury to another under circumstances manifesting ex-
10 treme indifference to the value of human life;

11 (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon un-
12 der circumstances manifesting extreme indifference to the value of human life;

13 (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
14 injury to the operator of a public transit vehicle while the operator is in control of or operating the
15 vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS
16 166.116;

17 (e) While being aided by another person actually present, intentionally or knowingly causes
18 physical injury to another;

19 (f) While committed to a youth correction facility, intentionally or knowingly causes physical
20 injury to another knowing the other person is a staff member while the other person is acting in the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 course of official duty;

2 (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical ser-
 3 vices provider, as defined in ORS 682.025, while the emergency medical services provider is per-
 4 forming official duties;

5 (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child
 6 10 years of age or younger; [or]

7 (i) **Intentionally or knowingly causes physical injury to an elderly person as defined in**
 8 **ORS 163.205; or**

9 [(i)] (j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle,
 10 physical injury to the operator of a taxi while the operator is in control of the taxi.

11 (2)(a) Assault in the third degree is a Class C felony.

12 (b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under sub-
 13 section (1)(a) or (b) of this section is a Class B felony if:

14 (A) The assault resulted from the operation of a motor vehicle; and

15 (B) The defendant was the driver of the motor vehicle and was driving while under the influence
 16 of intoxicants.

17 (3) As used in this section:

18 (a) "Staff member" means:

19 (A) A corrections officer as defined in ORS 181.610, a youth correction officer, a youth cor-
 20 rection facility staff member, a Department of Corrections or Oregon Youth Authority staff member
 21 or a person employed pursuant to a contract with the department or youth authority to work with,
 22 or in the vicinity of, inmates, youth or youth offenders; and

23 (B) A volunteer authorized by the department, youth authority or other entity in charge of a
 24 corrections facility to work with, or in the vicinity of, inmates, youth or youth offenders.

25 (b) "Youth correction facility" has the meaning given that term in ORS 162.135.

26 **SECTION 2.** ORS 131.125 is amended to read:

27 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 28 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 29 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 30 solicitation to commit aggravated murder or murder, or the death of the person killed.

31 (2) A prosecution for any of the following felonies may be commenced within six years after the
 32 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
 33 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
 34 enforcement agency or the Department of Human Services, whichever occurs first:

35 (a) Strangulation under ORS 163.187 (4).

36 (b) Criminal mistreatment in the first degree under ORS 163.205.

37 (c) Rape in the third degree under ORS 163.355.

38 (d) Rape in the second degree under ORS 163.365.

39 (e) Rape in the first degree under ORS 163.375.

40 (f) Sodomy in the third degree under ORS 163.385.

41 (g) Sodomy in the second degree under ORS 163.395.

42 (h) Sodomy in the first degree under ORS 163.405.

43 (i) Unlawful sexual penetration in the second degree under ORS 163.408.

44 (j) Unlawful sexual penetration in the first degree under ORS 163.411.

45 (k) Sexual abuse in the second degree under ORS 163.425.

- 1 (L) Sexual abuse in the first degree under ORS 163.427.
- 2 (m) Using a child in a display of sexual conduct under ORS 163.670.
- 3 (n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 4 (o) Incest under ORS 163.525.
- 5 (p) Promoting prostitution under ORS 167.012.
- 6 (q) Compelling prostitution under ORS 167.017.
- 7 (r) Luring a minor under ORS 167.057.

8 (3) A prosecution for any of the following misdemeanors may be commenced within four years
 9 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
 10 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
 11 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 12 (a) Strangulation under ORS 163.187 (3).
- 13 (b) Sexual abuse in the third degree under ORS 163.415.
- 14 (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 15 (d) Displaying obscene materials to minors under ORS 167.080.

16 (4) In the case of crimes described in subsection (2)(m) of this section, the victim is the child
 17 engaged in sexual conduct. In the case of the crime described in subsection (2)(o) of this section,
 18 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
 19 described in subsection (2)(p) and (q) of this section, the victim is the child whose acts of
 20 prostitution are promoted or compelled.

21 (5) A prosecution for arson in any degree may be commenced within six years after the com-
 22 mission of the crime.

23 **(6) A prosecution for any of the following felonies may be commenced within six years**
 24 **after the commission of the crime if the victim at the time of the crime was 65 years of age**
 25 **or older:**

- 26 (a) **Theft in the first degree under ORS 164.055.**
- 27 (b) **Aggravated theft in the first degree under ORS 164.057.**
- 28 (c) **Theft by extortion under ORS 164.075.**
- 29 (d) **Robbery in the third degree under ORS 164.395.**
- 30 (e) **Robbery in the second degree under ORS 164.405.**
- 31 (f) **Robbery in the first degree under ORS 164.415.**
- 32 (g) **Forgery in the first degree under ORS 165.013.**
- 33 (h) **Fraudulent use of a credit card under ORS 165.055 (4)(b).**
- 34 (i) **Identity theft under ORS 165.800.**

35 [(6)] (7) Except as provided in subsection [(7)] (8) of this section or as otherwise expressly pro-
 36 vided by law, prosecutions for other offenses must be commenced within the following periods of
 37 limitations after their commission:

- 38 (a) For any other felony, three years.
- 39 (b) For any misdemeanor, two years.
- 40 (c) For a violation, six months.

41 [(7)] (8) If the period prescribed in subsection [(6)] (7) of this section has expired, a prosecution
 42 nevertheless may be commenced as follows:

43 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
 44 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
 45 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the

1 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
 2 three years;

3 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
 4 may be commenced at any time while the defendant is in public office or employment or within two
 5 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
 6 more than three years; or

7 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
 8 commenced within one year after discovery of the offense by the person aggrieved by the offense,
 9 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
 10 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended
 11 by more than three years.

12 [(8)] (9) Notwithstanding subsection (2) of this section, if the defendant is identified after the
 13 period described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample
 14 comparisons, a prosecution for:

15 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first
 16 degree or sexual abuse in the first degree may be commenced at any time after the commission of
 17 the crime.

18 (b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in
 19 the second degree may be commenced within 25 years after the commission of the crime.

20 [(9)] (10) Notwithstanding subsection [(8)] (9) of this section, if a prosecution for a felony listed
 21 in subsection [(8)] (9) of this section would otherwise be barred by subsection (2) of this section, the
 22 prosecution must be commenced within two years of the DNA-based identification of the defendant.

23 **SECTION 3.** ORS 411.990 is amended to read:

24 411.990. (1) Violation of ORS 411.320 or 411.335 is a Class C misdemeanor.

25 (2) Violation of any provision of ORS 411.630 or 411.840 is a Class C felony which may be re-
 26 duced to a Class A misdemeanor in accordance with ORS 161.705.

27 (3) Violation of ORS 411.675 is a Class C felony.

28 (4) Criminal prosecution of violators of ORS 411.675 shall be commenced in accordance with
 29 ORS 131.125 [(6) and (7)] (7) and (8).

30 **SECTION 4.** ORS 137.225 is amended to read:

31 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
 32 judgment, any defendant who has fully complied with and performed the sentence of the court and
 33 whose conviction is described in subsection (5) of this section by motion may apply to the court
 34 where the conviction was entered for entry of an order setting aside the conviction; or

35 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
 36 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
 37 son may apply to the court that would have jurisdiction over the crime for which the person was
 38 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing
 39 the one-year period, time during which the arrested person has secreted himself or herself within
 40 or without this state is not included.

41 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
 42 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
 43 to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given
 44 to contest the motion. The fingerprint card with the notation "motion for setting aside conviction,"
 45 or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department

1 of State Police. Information resulting from the fingerprint search along with the fingerprint card
 2 shall be returned to the prosecuting attorney.

3 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
 4 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
 5 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
 6 victim's last-known address.

7 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
 8 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
 9 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the
 10 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
 11 gerprint card to the Department of State Police.

12 (d) In addition to the fee established under paragraph (c) of this subsection, when a person
 13 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
 14 under ORS 21.135.

15 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
 16 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
 17 statement at the hearing. Except as otherwise provided in subsection [(13)] (14) of this section, if the
 18 court determines that the circumstances and behavior of the applicant from the date of conviction,
 19 or from the date of arrest as the case may be, to the date of the hearing on the motion warrant
 20 setting aside the conviction, or the arrest record as the case may be, the court shall enter an ap-
 21 propriate order that shall state the original arrest charge and the conviction charge, if any and if
 22 different from the original, date of charge, submitting agency and disposition. The order shall further
 23 state that positive identification has been established by the Department of State Police and further
 24 identified as to Department of State Police number or submitting agency number. Upon the entry
 25 of the order, the applicant for purposes of the law shall be deemed not to have been previously
 26 convicted, or arrested as the case may be, and the court shall issue an order sealing the record of
 27 conviction and other official records in the case, including the records of arrest whether or not the
 28 arrest resulted in a further criminal proceeding.

29 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
 30 by the court. A certified copy must be sent to the Department of Corrections when the person has
 31 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
 32 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-
 33 cordingly any questions relating to its occurrence.

34 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

35 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person
 36 felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

37 (b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
 38 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

39 (c) The crime of possession of the narcotic drug marijuana when that crime was punishable as
 40 a felony only.

41 (d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
 42 cept for:

43 (A) Any sex crime; or

44 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

45 (i) Criminal mistreatment in the first degree under ORS 163.205; and

- 1 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- 2 (e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
3 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
4 constitute child abuse as defined in ORS 419B.005 or any sex crime.
- 5 (f) A violation, whether under state law or local ordinance.
- 6 (g) An offense committed before January 1, 1972, that if committed after that date would be:
- 7 (A) A Class C felony, except for any sex crime or for the following crimes when they would
8 constitute child abuse as defined in ORS 419B.005:
- 9 (i) Criminal mistreatment in the first degree under ORS 163.205; and
- 10 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- 11 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
12 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
13 in ORS 419B.005:
- 14 (i) Criminal mistreatment in the first degree under ORS 163.205; and
- 15 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- 16 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
17 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.
- 18 (D) A violation.
- 19 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
20 do not apply to:
- 21 (a) A conviction for a state or municipal traffic offense.
- 22 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
23 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
24 whether or not the other conviction is for conduct associated with the same criminal episode that
25 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
26 section, a conviction that has been set aside under this section shall be considered for the purpose
27 of determining whether this paragraph is applicable.
- 28 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
29 before the court is under charge of commission of any crime.
- 30 **(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of**
31 **this section do not apply to:**
- 32 **(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the**
33 **time of the crime was 65 years of age or older; and**
- 34 **(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time**
35 **of the crime was 65 years of age or older.**
- 36 [(7)] **(8)** Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
37 section do not apply to criminally negligent homicide under ORS 163.145, when that offense was
38 punishable as a Class C felony.
- 39 [(8)] **(9)** Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
40 section apply to a conviction for a Class B felony described in subsection (5)(a) of this section only
41 if:
- 42 (a) Twenty years or more have elapsed from the date of the conviction sought to be set aside
43 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
44 ever is later; and
- 45 (b) The person has not been convicted of or arrested for any other offense, excluding motor ve-

1 hicle violations, after the date the person was convicted of the offense sought to be set aside.
 2 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
 3 this section shall be considered for the purpose of determining whether this paragraph is applicable.

4 [(9)] (10) The provisions of subsection (1)(b) of this section do not apply to:

5 (a) A person arrested within the three-year period immediately preceding the filing of the motion
 6 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
 7 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that
 8 has been set aside under this section may not be considered for the purpose of determining whether
 9 this paragraph is applicable.

10 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
 11 a result of the person’s successful completion of a diversion agreement described in ORS 813.200.

12 [(10)] (11) The provisions of subsection (1) of this section apply to convictions and arrests that
 13 occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for
 14 making an application.

15 [(11)] (12) For purposes of any civil action in which truth is an element of a claim for relief or
 16 affirmative defense, the provisions of subsection (3) of this section providing that the conviction,
 17 arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to
 18 the court for an order requiring disclosure of the official records in the case as may be necessary
 19 in the interest of justice.

20 [(12)] (13) Upon motion of any prosecutor or defendant in a case involving records sealed under
 21 this section, supported by affidavit showing good cause, the court with jurisdiction may order the
 22 reopening and disclosure of any records sealed under this section for the limited purpose of assisting
 23 the investigation of the movant. However, such an order has no other effect on the orders setting
 24 aside the conviction or the arrest record.

25 [(13)] (14) Unless the court makes written findings by clear and convincing evidence that
 26 granting the motion would not be in the best interests of justice, the court shall grant the motion
 27 and enter an order as provided in subsection (3) of this section if the defendant has been convicted
 28 of one of the following crimes and is otherwise eligible for relief under this section:

- 29 (a) Abandonment of a child, ORS 163.535.
- 30 (b) Attempted assault in the second degree, ORS 163.175.
- 31 (c) Assault in the third degree, ORS 163.165.
- 32 (d) Coercion, ORS 163.275.
- 33 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 34 (f) Attempted escape in the first degree, ORS 162.165.
- 35 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 36 (h) Intimidation in the first degree, ORS 166.165.
- 37 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 38 (j) Attempted robbery in the second degree, ORS 164.405.
- 39 (k) Robbery in the third degree, ORS 164.395.
- 40 (L) Supplying contraband, ORS 162.185.
- 41 (m) Unlawful use of a weapon, ORS 166.220.

42 [(14)] (15) As used in this section, “sex crime” has the meaning given that term in ORS 181.594.

43 **SECTION 5. Section 6 of this 2012 Act is added to and made a part of ORS 124.050 to**
 44 **124.095.**

45 **SECTION 6. (1) Upon notice by a law enforcement agency, the Department of Human**

1 Services or a designee of the Department of Human Services that an investigation into abuse
 2 is being conducted under ORS 124.070, a health care provider must permit the law enforce-
 3 ment agency, the department or the department's designee to inspect and copy protected
 4 health information of the named elderly person without the consent of the named elderly
 5 person or of the named elderly person's caretaker, fiduciary or other legal representative.

6 (2) A health care provider who in good faith discloses protected health information under
 7 this section is not civilly or criminally liable for the disclosure.

8 (3) For purposes of this section:

9 (a) "Health care provider" has the meaning given that term in ORS 192.519.

10 (b) "Protected health information" has the meaning given that term in ORS 192.556.

11 **SECTION 7.** Section 8 of this 2012 Act is added to and made a part of ORS 441.630 to
 12 441.680.

13 **SECTION 8.** (1) Upon notice by the Department of Human Services, a designee of the
 14 Department of Human Services or a law enforcement agency that an investigation into abuse
 15 is being conducted under ORS 441.650, a health care provider must permit the law enforce-
 16 ment agency, the department or the department's designee to inspect and copy protected
 17 health information of the named resident without the consent of the named resident or of
 18 the named resident's caretaker, fiduciary or other legal representative.

19 (2) A health care provider who in good faith discloses protected health information under
 20 this section is not civilly or criminally liable for the disclosure.

21 (3) For purposes of this section:

22 (a) "Health care provider" has the meaning given that term in ORS 192.519.

23 (b) "Protected health information" has the meaning given that term in ORS 192.556.

24 **SECTION 9.** Section 10 of this 2012 Act is added to and made a part of ORS 192.583 to
 25 192.607.

26 **SECTION 10.** (1) Upon the request of a law enforcement agency, the Department of Hu-
 27 man Services or a designee of the Department of Human Services, and the receipt of the
 28 certification required under subsection (2) of this section, a financial institution shall dis-
 29 close and provide copies of the financial records of the person who is the alleged victim in
 30 an investigation under ORS 124.070 or 441.650 to the law enforcement agency, the department
 31 or the department's designee without the consent of the person or of the person's caretaker,
 32 fiduciary or other legal representative.

33 (2) In requesting the copies of financial records under subsection (1) of this section, the
 34 law enforcement agency, the department or the department's designee shall specify the name
 35 and Social Security number of the person about whom the copies are sought, and shall cer-
 36 tify to the financial institution in writing, signed by an agent of the law enforcement agency
 37 or an agent of the department or the department's designee:

38 (a) That the person about whom copies of financial records are sought is the alleged
 39 victim in an abuse investigation under ORS 124.070 or 441.650;

40 (b) That the law enforcement agency, the department or the department's designee has
 41 a reasonable belief that abuse has occurred or is occurring; and

42 (c) That the requested copies of financial records are necessary for a determination in
 43 the investigation that abuse has occurred or is occurring.

44 (3) A financial institution that supplies copies of financial records under this section may,
 45 but is not required to, inform the person about whom copies of financial records have been

1 requested, or the person’s caretaker, fiduciary or other legal representative, about the re-
 2 quest and disclosure unless specifically directed by the law enforcement agency, the depart-
 3 ment or the department’s designee not to do so.

4 (4) A financial institution that supplies copies of financial records under this section shall
 5 be reimbursed for actual costs incurred.

6 (5) A financial institution that supplies copies of financial records under to this section
 7 is not liable to any person for any loss, damage or injury arising out of or in any way per-
 8 taining to the disclosure of the copies under this section.

9 (6) Each financial institution that is requested to supply copies of financial records under
 10 this section may specify that requests for copies from the financial institution under this
 11 section must be submitted in written, tape or electronic format. A reasonable time shall be
 12 provided the financial institution to comply with subsection (1) of this section.

13 (7) A law enforcement agency, the department or the department’s designee may seek
 14 disclosure and copies of financial records under this section only with respect to a person
 15 who is the alleged victim of abuse in an investigation under ORS 124.070 or 441.650.

16 **SECTION 11.** ORS 124.085 is amended to read:

17 124.085. A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained
 18 by the Department of Human Services. The department shall prepare reports in writing when in-
 19 vestigation has shown that the condition of the elderly person was the result of abuse even if the
 20 cause remains unknown. The complaints and investigative reports shall be cataloged under the name
 21 of the victim but shall be treated as confidential information **subject to ORS 124.090**, and shall be
 22 disclosed only with the consent of that person or by judicial process.

23 **SECTION 12.** ORS 124.090 is amended to read:

24 124.090. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public
 25 or private official **or any other person** who made the complaint, **the** witnesses and the elderly
 26 persons, **and the reports and records** compiled under the provisions of ORS 124.050 to 124.095, are
 27 confidential and are not accessible for public inspection. [*However, the Department of Human Ser-*
 28 *VICES shall make the information and any investigative report available to]*

29 (2) **Notwithstanding subsection (1) of this section, the Department of Human Services or**
 30 **the department’s designee may, if appropriate, make the names of the witnesses and the el-**
 31 **derly persons, and the reports and records compiled under ORS 124.050 to 124.095, available**
 32 **to:**

33 (a) [*Any*] A law enforcement agency[, to];

34 (b) [*Any*] A public agency that licenses or certifies residential facilities or licenses or certifies
 35 the persons practicing [*therein, to*] **in the facilities;**

36 (c) [*Any*] A public agency **or private nonprofit agency or organization** providing protective
 37 services for the elderly person [*and to*];

38 (d) The Long Term Care Ombudsman[, *if appropriate. The department shall also make the infor-*
 39 *mation and any investigative report available to any private nonprofit agency providing protective ser-*
 40 *VICES for the elderly person. When this information and any investigative report is made available to*
 41 *the private agency, ORS 124.050 to 124.095 relating to confidentiality apply to the private agency.];*

42 (e) **A public agency that licenses or certifies a person that has abused or is alleged to**
 43 **have abused an elderly person;**

44 (f) **A court pursuant to a court order or as provided in ORS 125.012; and**

45 (g) **An administrative law judge in an administrative proceeding when necessary to pro-**

1 **vide protective services as defined in ORS 410.040 to an elderly person, when in the best in-**
 2 **terests of the elderly person or when necessary to investigate, prevent or treat abuse of an**
 3 **elderly person.**

4 **(3) Information made available under subsection (2) of this section, and the recipient of**
 5 **the information, are otherwise subject to the confidentiality provisions of ORS 124.050 to**
 6 **124.095.**

7 **SECTION 13.** ORS 441.671 is amended to read:

8 441.671. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of
 9 complainants, **witnesses** and residents, **and the reports and records** compiled under the provisions
 10 of ORS [441.640 to 441.660] **441.630 to 441.680**, are confidential and are not accessible for public
 11 inspection. [*However, the Department of Human Services shall make the information available to any*]

12 **(2) Notwithstanding subsection (1) of this section, the Department of Human Services or**
 13 **the department's designee may, if appropriate, make the names of witnesses and residents,**
 14 **and the reports and records compiled under ORS 441.630 to 441.680, available to:**

15 **(a) A law enforcement agency**[, *to any*];

16 **(b) A public agency** [*which*] **that** licenses or certifies long term care facilities [*or*];

17 **(c) A public agency that** licenses or certifies the persons practicing the healing arts [*therein*
 18 *and to*] **in long term care facilities;**

19 **(d) The Long Term Care Ombudsman**[.];

20 **(e) A public agency that licenses or certifies a person that has abused or is alleged to**
 21 **have abused a resident;**

22 **(f) A court pursuant to a court order or as provided in ORS 125.012; and**

23 **(g) An administrative law judge in an administrative proceeding when necessary to pro-**
 24 **vide protective services as defined in ORS 410.040 to a resident, when in the best interests**
 25 **of the resident or when necessary to investigate, prevent or treat abuse of a resident.**

26 [*(2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505*
 27 *apply to all records and reports compiled under ORS 441.640 to 441.665.*]

28 **(3) Information made available under subsection (2) of this section, and the recipient of**
 29 **the information, are otherwise subject to the confidentiality provisions of ORS 441.630 to**
 30 **441.680.**

31 **SECTION 14.** (1) **The Resident Safety Review Council is created, consisting of six mem-**
 32 **bers as follows:**

33 **(a) The Long Term Care Ombudsman;**

34 **(b) A representative of the Oregon Patient Safety Commission established in ORS 442.820,**
 35 **to be appointed by the commission and to serve as the chairperson of the council;**

36 **(c) A person with expertise in the area of geriatrics who is licensed, registered or certi-**
 37 **fied to provide care or services to a person 65 years of age or older, to be appointed by the**
 38 **President of the Senate;**

39 **(d) A representative of the Oregon District Attorneys Association, to be appointed by the**
 40 **Speaker of the House of Representatives;**

41 **(e) A representative of a Medicare quality improvement organization in Oregon, to be**
 42 **appointed by the Speaker of the House of Representatives; and**

43 **(f) A representative of the Department of Human Services, to be appointed by the Gov-**
 44 **ernor.**

45 **(2) All appointments to the council under subsection (1) of this section must be completed**

1 on or before the date that is 30 days after the adjournment sine die of the 2012 regular ses-
 2 sion of the Seventy-sixth Legislative Assembly.

3 (3) Members of the council shall receive no compensation for their services but shall be
 4 allowed actual and necessary travel expenses incurred in the performance of their duties.

5 (4) The council shall:

6 (a) Hold the first meeting of the council no later than May 30, 2012;

7 (b) Review information and reports from investigations of abuse undertaken pursuant to
 8 ORS 124.070 or 441.650 that are provided under section 15 of this 2012 Act;

9 (c) Perform a root cause analysis of the information received under paragraph (b) of this
 10 subsection to determine whether the occurrences of abuse or alleged abuse should be clas-
 11 sified as acts of abuse or as adverse events; and

12 (d) Prepare a report on the review and findings of the council, together with recommen-
 13 dations for improvement to the processes of investigation and for corrective actions with
 14 respect to occurrences of abuse.

15 (5) The council shall submit the report prepared under subsection (4)(d) of this section,
 16 and may include recommendations for legislation, to the committees of the Legislative As-
 17 sembly related to the care, protection and provision of services to elderly persons over 65
 18 years of age and residents of long term care facilities no later than February 15, 2013.

19 (6) The Oregon Patient Safety Commission shall provide staff support to the council.

20 (7) The Department of Human Services and the Oregon Health Authority shall allocate
 21 funds from the Quality Care Fund established under ORS 443.001, not to exceed \$300,000 per
 22 biennium, for the purpose of providing technical support for data acquisition and analysis,
 23 staff support and other costs of the council incurred in the performance of the council's
 24 duties under subsection (4) of this section.

25 **SECTION 15.** (1) The Department of Human Services shall provide information and re-
 26 ports from investigations of abuse undertaken pursuant to ORS 124.070 or 441.650 to the
 27 Resident Safety Review Council created under section 14 of this 2012 Act no later than May
 28 1, 2012.

29 (2) Information and reports provided under subsection (1) of this section may not contain
 30 or reveal the name of or other identifiable information regarding an alleged victim, a resi-
 31 dent or any other person identified in the information or reports.

32 **SECTION 16.** Sections 14 and 15 of this 2012 Act are repealed on June 30, 2013.

33 **SECTION 17.** ORS 443.004 is amended to read:

34 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
 35 a criminal records check under ORS 181.534 on:

36 (a) An employee of a residential facility or an adult foster home;

37 (b) Any individual who is paid directly or indirectly with public funds who has or will have
 38 contact with a recipient of support services or a resident of an adult foster home or a residential
 39 facility; and

40 (c) A home care worker registering with the Home Care Commission or renewing a registration
 41 with the Home Care Commission.

42 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
 43 tracting with an individual and before allowing an individual to volunteer to provide services on
 44 behalf of the home health agency, if the individual will have direct contact with a patient of the
 45 home health agency.

1 (b) An in-home care agency shall conduct a criminal background check before hiring or con-
 2 tracting with an individual and before allowing an individual to volunteer to provide services on
 3 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-
 4 home care agency.

5 (c) The authority shall prescribe by rule the process for conducting a criminal background
 6 check.

7 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
 8 having contact with a recipient of support services or a resident of a residential facility or an adult
 9 foster home, of an individual, other than a mental health or substance abuse treatment provider,
 10 who has been convicted:

11 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
 12 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, [163.465,
 13 163.467,] 163.535, 163.537, **163.547**, 163.689, [163.700, 164.055,] 164.057, 164.098, [164.125 (5)(c) or (d),]
 14 164.215, 164.225, 164.325, [164.377 (2) or (3),] 164.405, 164.415, **165.013**, 165.022, 165.032, 165.800,
 15 165.803, 167.012, 167.017 [or], 167.057, **167.320 or 167.322**;

16 **(b) Of a crime described in ORS 163.465, 163.467, 163.700, 164.055, 164.125 or 164.377, the**
 17 **date of conviction for which was within the five years immediately preceding employment in**
 18 **any capacity of an individual, other than a mental health or substance abuse treatment**
 19 **provider, having contact with a recipient of support services, a resident of a residential fa-**
 20 **ility or a resident of an adult foster home, when the recipient or resident is 65 years of age**
 21 **or older;**

22 [(b)] (c) Of a crime listed in ORS 181.594;

23 [(c)] (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled
 24 substance;

25 [(d)] (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a)
 26 to [(c)] (d) of this subsection; or

27 [(e)] (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to
 28 a crime described in paragraphs (a) to [(d)] (e) of this subsection.

29 (4) If the criminal background check conducted by a home health agency or in-home care agency
 30 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
 31 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
 32 home health agency or in-home care agency may not employ the individual.

33 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
 34 pacity having contact with a recipient of support services or a resident of a residential facility or
 35 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
 36 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
 37 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

38 (6) Upon the request of a mental health or substance abuse treatment provider, the department
 39 or authority shall maintain a record of the results of any fitness determination made under ORS
 40 181.534 (11) and (12). The department or authority may disclose the record only to a person the
 41 provider specifically authorizes, by a written release, to receive the information.

42 (7) If the department or authority has a record of substantiated abuse committed by an employee
 43 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
 44 tial facility, regardless of whether criminal charges were filed, the department or authority shall
 45 notify, in writing, the employer and the employee or potential employee.

1 (8) As used in this section:

2 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

3 (b) "Home care worker" has the meaning given that term in ORS 410.600.

4 (c) "Home health agency" has the meaning given that term in ORS 443.005.

5 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

6 (e) "Mental health or substance abuse treatment provider" means:

7 (A) A peer support specialist;

8 (B) An employee of a residential treatment facility or a residential treatment home that is li-
9 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

10 (C) An individual who provides treatment or services for persons with substance use disorders;

11 or

12 (D) An individual who provides mental health treatment or services.

13 (f) "Peer support specialist" means a person who:

14 (A) Is providing peer support services as defined by the authority by rule;

15 (B) Is under the supervision of a qualified clinical supervisor;

16 (C) Has completed training required by the authority; and

17 (D) Is currently receiving or has formerly received mental health services, or is in recovery from
18 a substance use disorder and meets the abstinence requirements for staff providing services in al-
19 cohool or other drug treatment programs.

20 (g) "Residential facility" has the meaning given that term in ORS 443.400.

21 **SECTION 18.** ORS 181.534 is amended to read:

22 181.534. (1) As used in this section:

23 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
24 State Bar. "Authorized agency" does not include:

25 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

26 (B) A criminal justice agency, as defined in ORS 181.010, that is authorized by federal law to
27 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

28 (b) "Subject individual" means a person from whom an authorized agency may require finger-
29 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
30 nationwide criminal records check.

31 (2) An authorized agency may request that the Department of State Police conduct a criminal
32 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
33 records check of a subject individual is necessary, the authorized agency may request that the De-
34 partment of State Police conduct the check, including fingerprint identification, through the Federal
35 Bureau of Investigation.

36 (3) The Department of State Police shall provide the results of a criminal records check con-
37 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

38 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
39 conduct the criminal records check and may not keep any record of the fingerprints. If the federal
40 bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department
41 of State Police shall cease to send the cards to the federal bureau but shall continue to process the
42 information through other available resources.

43 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
44 State Police, the department shall destroy the fingerprint cards and shall retain no facsimiles or
45 other material from which a fingerprint can be reproduced.

1 (6) If only a state criminal records check is conducted, the Department of State Police shall
 2 destroy the fingerprint cards after the criminal records check is completed and the results of the
 3 criminal records check provided to the authorized agency and shall retain no facsimiles or other
 4 material from which a fingerprint can be reproduced.

5 (7) An authorized agency may conduct criminal records checks on subject individuals through
 6 the Law Enforcement Data System maintained by the Department of State Police in accordance with
 7 rules adopted, and procedures established, by the Department of State Police.

8 (8) An authorized agency and the Department of State Police shall permit a subject individual
 9 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
 10 state and national criminal offender records and, if requested by the subject individual, provide the
 11 individual with a copy of the individual's own state and national criminal offender records.

12 (9) Each authorized agency, in consultation with the Department of State Police, shall adopt
 13 rules to implement this section and other statutes relating to criminal offender information obtained
 14 through fingerprint-based criminal records checks. The rules shall include but need not be limited
 15 to:

16 (a) Specifying categories of subject individuals who are subject to criminal records checks.

17 (b) Specifying the information that may be required from a subject individual to permit a crim-
 18 inal records check.

19 (c) Specifying which programs or services are subject to this section.

20 (d) Specifying the types of crimes that may be considered in reviewing criminal offender infor-
 21 mation of a subject individual.

22 (e) Specifying when a nationwide fingerprint-based criminal records check must be conducted.
 23 An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based
 24 criminal records check when adopting rules under this subsection.

25 (f) If the authorized agency uses criminal records checks for agency employment purposes:

26 (A) Determining when and under what conditions a subject individual may be hired on a pre-
 27 liminary basis pending a criminal records check; and

28 (B) Defining the conditions under which a subject individual may participate in training, orien-
 29 tation and work activities pending completion of a criminal records check.

30 (g) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
 31 criminal offender information.

32 (10) The Department of State Police shall verify that an authorized agency has adopted the rules
 33 required by subsection (9) of this section.

34 (11)(a) Except as otherwise provided in ORS 181.612 **and paragraph (b) of this subsection**, an
 35 authorized agency, using the rules adopted under subsection (9) of this section, shall determine
 36 whether a subject individual is fit to hold a position, provide services, be employed or be granted
 37 a license, certification, registration or permit, based on the criminal records check obtained pursu-
 38 ant to this section, on any false statements made by the individual regarding the criminal history
 39 of the individual and on any refusal to submit or consent to a criminal records check including
 40 fingerprint identification. If a subject individual is determined to be unfit, then the individual may
 41 not hold the position, provide services, be employed or be granted a license, certification, registra-
 42 tion or permit.

43 **(b) An individual prohibited from receiving public funds for employment under ORS**
 44 **443.004 (3) is not entitled to a determination of fitness as a subject individual under para-**
 45 **graph (a) of this subsection.**

1 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under
 2 subsection (11) of this section, the authorized agency shall consider:

3 (a) The nature of the crime;

4 (b) The facts that support the conviction or pending indictment or that indicate the making of
 5 the false statement;

6 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
 7 subject individual's present or proposed position, services, employment, license, certification or reg-
 8 istration; and

9 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
 10 services, employment, license, certification, registration or permit. Intervening circumstances in-
 11 clude but are not limited to:

12 (A) The passage of time since the commission of the crime;

13 (B) The age of the subject individual at the time of the crime;

14 (C) The likelihood of a repetition of offenses or of the commission of another crime;

15 (D) The subsequent commission of another relevant crime;

16 (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

17 (F) A recommendation of an employer.

18 (13) An authorized agency and an employee of an authorized agency acting within the course
 19 and scope of employment are immune from any civil liability that might otherwise be incurred or
 20 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
 21 or not fit to hold a position, provide services, be employed or be granted a license, certification,
 22 registration or permit. An authorized agency and an employee of an authorized agency acting within
 23 the course and scope of employment who in good faith comply with this section are not liable for
 24 employment-related decisions based on determinations made under subsection (11) of this section.
 25 An authorized agency or an employee of an authorized agency acting within the course and scope
 26 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
 27 semination of information lawfully obtained under this section.

28 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
 29 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
 30 provide services, be employed or be granted a license, certification, registration or permit on the
 31 basis of information obtained as the result of a criminal records check conducted pursuant to this
 32 section. Challenges to the accuracy or completeness of information provided by the Department of
 33 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
 34 partment of State Police or Federal Bureau of Investigation must be made through the Department
 35 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
 36 case process required by this paragraph.

37 (b) A subject individual who is employed by an authorized agency and who is determined not to
 38 be fit for a position on the basis of information obtained as the result of a criminal records check
 39 conducted pursuant to this section may appeal the determination through the contested case process
 40 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-
 41 visions. An individual's decision to appeal a determination through personnel rules, policies and
 42 collective bargaining provisions is an election of remedies as to the rights of the individual with
 43 respect to the fitness determination and is a waiver of the contested case process.

44 (c) **An individual prohibited from receiving public funds for employment under ORS**
 45 **443.004 (3) is not entitled to appeal a determination under paragraph (a) or (b) of this sub-**

1 **section.**

2 (15) Criminal offender information is confidential. Authorized agencies and the Department of
 3 State Police shall adopt rules to restrict dissemination of information received under this section to
 4 persons with a demonstrated and legitimate need to know the information.

5 (16) If a subject individual refuses to consent to the criminal records check or refuses to be
 6 fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or deny
 7 any applicable position, authority to provide services, license, certification, registration or permit.

8 (17) If an authorized agency requires a criminal records check of employees, prospective em-
 9 ployees, contractors, vendors or volunteers or applicants for a license, certification, registration or
 10 permit, the application forms of the authorized agency must contain a notice that the person is
 11 subject to fingerprinting and a criminal records check.

12 **SECTION 19.** ORS 181.537 is amended to read:

13 181.537. (1) As used in this section:

14 (a) "Care" means the provision of care, treatment, education, training, instruction, supervision,
 15 placement services, recreation or support to children, the elderly or persons with disabilities.

16 (b) "Qualified entity" means a community mental health program, a community developmental
 17 disabilities program, a local health department or an individual or business or organization, whether
 18 public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organ-
 19 ization that licenses, certifies or registers others to provide care.

20 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
 21 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
 22 partment may require the fingerprints of a person:

23 (a) Who is employed by or is applying for employment with either department or the authority;

24 (b) Who provides or seeks to provide services to either department or the authority as a con-
 25 tractor, subcontractor, vendor or volunteer who:

26 (A) May have contact with recipients of care;

27 (B) Has access to personal information about employees of either department or the authority,
 28 recipients of care from either department or the authority or members of the public, including Social
 29 Security numbers, dates of birth, driver license numbers, medical information, personal financial in-
 30 formation or criminal background information;

31 (C) Has access to information the disclosure of which is prohibited by state or federal laws,
 32 rules or regulations, or information that is defined as confidential under state or federal laws, rules
 33 or regulations;

34 (D) Has access to property held in trust or to private property in the temporary custody of the
 35 state;

36 (E) Has payroll or fiscal functions or responsibility for:

37 (i) Receiving, receipting or depositing money or negotiable instruments;

38 (ii) Billing, collections, setting up financial accounts or other financial transactions; or

39 (iii) Purchasing or selling property;

40 (F) Provides security, design or construction services for government buildings, grounds or fa-
 41 cilities;

42 (G) Has access to critical infrastructure or secure facilities information; or

43 (H) Is providing information technology services and has control over or access to information
 44 technology systems;

45 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering

1 programs, persons or qualified entities that provide care;

2 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
 3 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
 4 thority and that provide care; or

5 (e) For the purposes of employment decisions made by a mass transit district or transportation
 6 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
 7 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
 8 ents.

9 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal
 10 records checks on a person through the Law Enforcement Data System maintained by the Depart-
 11 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon
 12 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable
 13 persons.

14 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-
 15 fied entities, in accordance with the rules of the Department of Human Services or the Oregon
 16 Health Authority and the rules of the Department of State Police, information received from the
 17 Law Enforcement Data System. However, any criminal offender records and information furnished
 18 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
 19 Investigation through the Department of State Police may not be disseminated to qualified entities.

20 (5)(a) A qualified entity, using rules adopted by the Department of Human Services or the
 21 Oregon Health Authority, shall determine under this section whether a person is fit to hold a posi-
 22 tion, provide services, be employed or, if the qualified entity has authority to make such a determi-
 23 nation, be licensed, certified or registered, based on the criminal records check obtained pursuant
 24 to ORS 181.534, any false statements made by the person regarding the criminal history of the per-
 25 son and any refusal to submit or consent to a criminal records check including fingerprint identifi-
 26 cation. If a person is determined to be unfit, then that person may not hold the position, provide
 27 services or be employed, licensed, certified or registered.

28 **(b) A person prohibited from receiving public funds for employment under ORS 443.004**
 29 **(3) is not entitled to a determination of fitness under paragraph (a) of this subsection.**

30 (6) In making the fitness determination under subsection (5) of this section, the qualified entity
 31 shall consider:

32 (a) The nature of the crime;

33 (b) The facts that support the conviction or pending indictment or indicate the making of the
 34 false statement;

35 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
 36 person's present or proposed position, services, employment, license, certification or registration;
 37 and

38 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
 39 services, employment, license, certification or registration. Intervening circumstances include but
 40 are not limited to the passage of time since the commission of the crime, the age of the person at
 41 the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of an-
 42 other relevant crime and a recommendation of an employer.

43 (7) The Department of Human Services, the Oregon Health Authority and the Employment De-
 44 partment may make fitness determinations based on criminal offender records and information fur-
 45 nished by the Federal Bureau of Investigation through the Department of State Police only as

1 provided in ORS 181.534.

2 (8) A qualified entity and an employee of a qualified entity acting within the course and scope
 3 of employment are immune from any civil liability that might otherwise be incurred or imposed for
 4 determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,
 5 provide services or be employed, licensed, certified or registered. A qualified entity, employee of a
 6 qualified entity acting within the course and scope of employment and an employer or employer's
 7 agent who in good faith comply with this section and the decision of the qualified entity or employee
 8 of the qualified entity acting within the course and scope of employment are not liable for the fail-
 9 ure to hire a prospective employee or the decision to discharge an employee on the basis of the
 10 qualified entity's decision. An employee of the state acting within the course and scope of employ-
 11 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination
 12 of information lawfully obtained under this section.

13 (9) The Department of Human Services and the Oregon Health Authority shall develop systems
 14 that maintain information regarding criminal records checks in order to minimize the administrative
 15 burden imposed by this section and ORS 181.534. Records maintained under this subsection are
 16 confidential and may not be disseminated except for the purposes of this section and in accordance
 17 with the rules of the Department of Human Services, the Oregon Health Authority and the Depart-
 18 ment of State Police. Nothing in this subsection permits the Department of Human Services to re-
 19 tain fingerprint cards obtained pursuant to this section.

20 (10) In addition to the rules required by ORS 181.534, the Department of Human Services and
 21 the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

22 (a) Specifying which qualified entities are subject to this section;

23 (b) Specifying which qualified entities may request criminal offender information;

24 (c) Specifying which qualified entities are responsible for deciding whether a subject individual
 25 is not fit for a position, service, license, certification, registration or employment; and

26 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
 27 check, may proceed to make a fitness determination under subsection (5) of this section using the
 28 information maintained by the Department of Human Services and the Oregon Health Authority
 29 pursuant to subsection (9) of this section.

30 (11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted,
 31 the qualified entity shall deny or terminate the employment of the person, or revoke or deny any
 32 applicable position, authority to provide services, employment, license, certification or registration.

33 (12) If the qualified entity requires a criminal records check of employees or other persons, the
 34 application forms of the qualified entity must contain a notice that employment is subject to fin-
 35 gerprinting and a criminal records check.

36 **SECTION 20. The Department of Human Services shall apply for a project grant under**
 37 **the Nationwide Program for National and State Background Checks on Direct Patient Access**
 38 **Employees of Long-term Care Facilities and Providers, administered by the Centers for**
 39 **Medicare and Medicaid Services in the United States Department of Health and Human Ser-**
 40 **VICES, as provided in P.L. 111-148, Title VI, Subtitle C, section 6201 (the Patient Protection**
 41 **and Affordable Care Act), on or before May 1, 2012.**

42 **SECTION 21. The amendments to ORS 131.125 and 411.990 by sections 2 and 3 of this 2012**
 43 **Act apply to offenses committed before, on or after the effective date of this 2012 Act, but**
 44 **do not operate to revive a prosecution barred by the operation of ORS 131.125 before the ef-**
 45 **fective date of this 2012 Act.**

1 **SECTION 22.** The amendments to ORS 137.225 by section 4 of this 2012 Act apply to
2 motions for entry of an order setting aside a conviction made on or after the effective date
3 of this 2012 Act that involve convictions that occurred before, on or after the effective date
4 of this 2012 Act.

5 **SECTION 23.** This 2012 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
7 on its passage.

8
