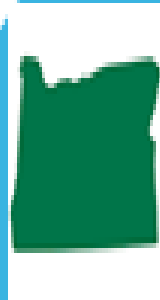


# HELPING JUSTICE-INVOLVED INDIVIDUALS WITH SUBSTANCE USE AND/OR MENTAL HEALTH DISORDERS: UNDERSTANDING HOW LAWS, REGULATIONS, & POLICIES AFFECT THEIR OPPORTUNITIES

## OREGON



**This material is based upon work supported by the SAMHSA/CSAT Contract Order No. HHSP233201600248A. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the Author(s) and do not necessarily reflect the view of the SAMHSA/CSAT.**

# Oregon

This section summarizes Oregon State laws, policies and practices that promote or hinder successful re-entry for justice-involved Oregon residents, particularly those with substance use or mental health disorders. Re-entry service providers, such as peer-support coaches, mentors and outreach workers will find that if they understand these laws and policies, they will be better equipped to help individuals successfully re-enter their communities.

Providers also should read [Section I](#) of this guide, which summarizes federal barriers to jobs, housing, and higher education for people with criminal records. Section I also summarizes federal legal protections and initiatives to help people overcome these barriers.

## EMPLOYMENT

A broad range of Oregon laws and policies restricts the ability of justice-involved individuals to work in specific jobs and industries. [Section I](#) highlighted the federal laws that limit employment in health care, commercial transportation, insurance, financial and other sectors. Oregon state law also imposes criminal record restrictions on certain jobs and occupational licenses. However, in general, Oregon occupational licensing agencies may not discriminate against applicants solely because of a criminal record but must consider both an applicant's fitness to work in a specific job or industry and whether an applicant's conviction history is "substantially related" to the duties of the job. [Section I](#) highlighted the federal laws that limit employment in health care, commercial transportation, insurance, financial and others.

- **Oregon Industry-Specific Restrictions on Employment**

Although Oregon State law and administrative rules do not impose mandatory criminal record restrictions for most jobs and occupational licenses and the state offers some legal protections against discrimination for individuals with criminal records, individuals with certain convictions or charges pending for certain offenses may be presumptively disqualified from working and volunteering in particular positions.

Education workers (employees or contractors) like teachers are one example. Oregon has enumerated a long list of crimes that warrant an automatic denial from licensure from the Teacher Standards and Practices Commission (TSPC). The law also states that the TSPC may refuse to issue a license or registration to any person who has been convicted of a crime involving the illegal use, sale or possession of controlled substances.

In general however, though most employers and occupational licensing agencies are not permitted to presumptively disqualify individuals due to a criminal record, they are permitted to consider all adult convictions except those that have been set aside or juvenile cases that have been expunged or set aside. However, occupational licensing authorities may not discriminate

against applicants solely because they have a criminal record, but must also consider both an applicant's fitness to work in a specific job or industry, as well as whether an applicant's conviction history is "substantially related" to the duties of the job. Some agencies set time limits on how far back they will review certain offenses. For example, the Department of Consumer and Business Services Regulation has review schedules – of five years, ten years or indefinitely - for specific offenses that require consideration. Therefore, applicants with older criminal histories may have a real opportunity to work in several industries where having a criminal record may not be a factor at all.

- **Background Screens**

Criminal history records in Oregon are maintained by the Oregon State Police Public Records Unit (OSP). The OSP permits limited public searches using name and date of birth information. Furthermore, upon request, the OSP may provide persons and agencies (other than criminal justice and law enforcement agencies) with information regarding any convictions, and any arrests less than one year old in which there has been no acquittal or dismissal.<sup>i</sup> But, OSP has to provide the individual who is the subject of the request both notice of the request and the identity of the person or agency making the request.<sup>ii</sup> Employers seeking criminal background information from OSP about an employee or prospective employee for employment purposes must state in their request (1) that they have advised the employee or prospective employee that such information may be requested and (2) how the employee or prospective employee was advised.<sup>iii</sup>

Oregon requires an in-home care agency to conduct criminal background checks of anyone who provides direct patient care.<sup>iv</sup> Oregon also provides designated agencies with further guidelines for background checks when considering criminal records for positions with direct access to any of the following: children, the elderly, persons with disabilities, persons with mental illnesses and the general public.<sup>v</sup>

The Department of Human Services, Oregon Health Authority, Employment Department and other agencies are authorized to conduct fingerprint criminal record screens for applicants, employees and volunteers.<sup>vi</sup> These agencies may obtain criminal history information to determine a person's fitness for the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities. The factors that are to be considered in making a fitness determination include:

- The nature of the crime;
- The facts that support the conviction or pending indictment or indicate the making of a false statement;
- The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position, services, employment, license, certification or registration; and

Agencies are also directed to consider intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification or registration, such as:

- The passage of time since the commission of the crime;
- The age of the person at the time of the crime;
- The likelihood of a repetition of offenses;
- The subsequent commission of another relevant crime; and
- The recommendation of an employer.<sup>vii</sup>

## **Legal Protections for Job-Seekers and Workers in Oregon**

- **Oregon Employment Laws**

In 2015, Oregon passed a “ban-the-box” law to prohibit most public and private employers from asking about criminal convictions on an initial job application or before an interview.<sup>viii</sup> If an interview is not conducted, then the employer may not inquire about criminal convictions until a conditional offer of employment is extended. Individuals may not sue employers for violating this law. However, they may file an administrative charge with the Oregon Bureau of Labor and Industries (BOLI).<sup>ix</sup> The “ban-the-box” law went into effect on January 1, 2016.

Portland, Oregon passed a stricter “ban-the-box” ordinance<sup>x</sup> in December 2015 prohibiting employers with more than six employees from asking about criminal convictions before a conditional offer of employment. Employers cannot ask about or obtain criminal history information from another source prior to making a conditional offer of employment. After making the offer and conducting a criminal record check, an employer may rescind the offer only if the criminal record is “job related.”

Additionally, in June 2016, the Portland City Attorney's Office published administrative rules that enhanced protections for applicants.<sup>xi</sup> The rules prohibit the consideration of all expunged records —convictions and non-convictions alike — and any criminal cases that have been resolved through diversion or deferral-of-judgment programs. Employers are also instructed to consider the “direct relationship” of the criminal history to the job instead of job-relatedness. Portland employers must consider the following factors during the individualized assessment:

- The nature and gravity of the applicant's offense or conduct;
- The time that has elapsed since the offense or conduct; and
- The position for which the applicant is being considered.<sup>xiii</sup>

The city also has a new adverse action process that requires employers to notify an applicant in writing if they will be rescinding a conditional offer of employment on the basis of the individual's criminal history. Employers are prohibited from using voicemail or text messaging for these notices.

The ordinance and rules provide exceptions for jobs where an individual will have:

- Direct access to, or provide services to, children under the age of 18, the elderly, or persons with disabilities; or
- Direct access to, or provide services to, persons with a mental illness, alcohol or drug dependence, or substance-abuse disorders.

Notably, the rules provide employers that screen applicants for these positions with a [Criminal History Matrix](#) that helps employer avoid enforcing indefinite blanket bans against workers with criminal records in the fields bulleted above.<sup>xiii</sup>

The BOLI investigates and enforces Portland’s ban-the-box ordinances as well as the state law. Individuals have 180 days after a job denial to file complaints with BOLI. In addition, the Portland City Attorney, City Commissioner, or Oregon’s Attorney General have authority to file a complaint with BOLI if there is reason to believe that an employer has violated the Ordinance or the administrative rules. The BOLI Commissioner may assess a civil penalty of up to \$5,000 for each violation.<sup>xiv</sup>

- **Expungement of Records**

Since 2012, Oregon has been expanding the eligibility criteria for what the state refers to as “set asides,” also known as expungement. Under the current law, sentencing courts are authorized to “set aside” misdemeanors, class C felonies, many class B felonies, class A racketeering felonies, many marijuana offenses, schedule I drug possession offenses, and “violations” under state law and local ordinance.<sup>xv</sup> Set-asides restore all rights, relieve all disabilities, and seal the record of the conviction from the public. Traffic offenses, most sex offenses, most violent offenses, and most offenses against vulnerable populations are ineligible for set asides.<sup>xvi</sup>

## Resource

- For information about obtaining an expungement see the Collateral Consequences Resource Center’s [Oregon Restoration of Rights, Pardon, Expungement & Sealing](http://ccresourcecenter.org/state-restoration-profiles/oregon-restoration-of-rights-pardon-expungement-sealing/), available at <http://ccresourcecenter.org/state-restoration-profiles/oregon-restoration-of-rights-pardon-expungement-sealing/>.

## How Providers Can Help

- **Advise clients to get copies of arrest and conviction records – “RAP sheets”—when possible.** It is critical for job seekers to know exactly what is on their RAP sheet so they can describe their criminal record accurately, when asked. People with criminal histories usually do not know the disposition of certain charges or have forgotten some arrests. Finding out the details will enable them to present their criminal record to employers in the most accurate and straightforward way possible. They also may need to correct errors, which are common, *before* the employer sees them.

- See Oregon State Police: *Copy of Your Oregon Record*, available at <https://www.oregon.gov/osp/ID/docs/Copy%20of%20Own%20Record%20Request.pdf>.
- **Help clients gather evidence of rehabilitation.** Useful suggestions for how to do this are in the Legal Action Center’s “*How to Gather Evidence of Rehabilitation*”
- **Refer to the Bureau of Labor and Industries Civil Rights Division, *Enforcing Civil Rights Law***, available at [https://www.oregon.gov/boli/CRD/Pages/C\\_Crprotoc.aspx](https://www.oregon.gov/boli/CRD/Pages/C_Crprotoc.aspx), for information that could help your client challenge an employment denial due to having a criminal record.

### Fair Credit Reporting Act

As described in [Section I](#), commercial background screening companies and the private-sector employers who use them must follow the federal Fair Credit Reporting Act (FCRA). FCRA requires procedures to ensure accuracy as well as timely communication with employees being screened.

In addition, Oregon law requires the Department of State Police to provide “prompt written notice” to the individual about whom a criminal records request has been made.<sup>xvii</sup> The notice must indicate the identity of the person or agency making the request, and the fact that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law.<sup>xviii</sup>

## HOUSING

People with criminal records in Oregon confront a wide variety of restrictions to housing. Some of the greatest hurdles are federal statutes that apply to public and federally-assisted housing; they are described in [Section I](#). These federal laws give the Department of Housing and Urban Development (HUD), public housing authorities (PHAs), and private landlords broad discretion to deny housing to people with criminal histories and their families.

As is the case across the country, Public Housing Authorities (PHAs) and private landlords are able to set their own screening criteria. Many have flat bans against leasing to individuals convicted of a felony or other offense, and do not consider evidence of rehabilitation or individually assess a housing applicant’s risk or threat to others’ safety.

Oregon’s Residential Landlord and Tenant Law was amended in 2013, however, to prohibit landlords from considering arrests that did not lead to conviction when conducting criminal

background screens.<sup>xix</sup> Landlords may consider arrest charge information in cases that resulted in a conviction and include the following types of offenses:

- a) A drug-related crime;
- b) A person crime;
- c) A sex offense;
- d) A crime involving financial fraud, including identity theft and forgery; or
- e) Any other crime if the conduct for which the applicant was convicted or charged and/or the nature of the offense would adversely affect: (1) the property of the landlord or a tenant; or (2) the health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent.<sup>xx</sup>

The new law went into effect in 2014.

## How Providers Can Help

When it comes to housing, those providing support to the formerly incarcerated and other justice-involved individuals should:

- **Advise clients to get copies of arrest and conviction records – “RAP sheets”— whenever possible.** See Oregon State Police: [Copy of Your Oregon Record](https://www.oregon.gov/osp/ID/docs/Copy%20of%20Own%20Record%20Request.pdf), available at <https://www.oregon.gov/osp/ID/docs/Copy%20of%20Own%20Record%20Request.pdf>. For information about obtaining an expungement see the Collateral Consequences Resource Center's [Oregon Restoration of Rights, Pardon, Expungement & Sealing](http://ccresourcecenter.org/state-restoration-profiles/oregon-restoration-of-rights-pardon-expungement-sealing/), available at <http://ccresourcecenter.org/state-restoration-profiles/oregon-restoration-of-rights-pardon-expungement-sealing/>.
- **Help clients gather evidence of rehabilitation.** Useful suggestions for how to do this are in the Legal Action Center's [“How to Gather Evidence of Rehabilitation”](#)

## EDUCATION

There are no laws in Oregon restricting public or private higher education institutions from asking applicants about their criminal history or denying admission on that basis. Moreover, questions about criminal records during the application process often discourage justice-involved people from following through with that process. For example, some college education programs require prospective students to obtain full clearance from the Teacher Standards and Practices Commission which includes a fingerprint-based criminal record check and a character fitness assess prior to placement into student teaching or internship experiences.<sup>xxi</sup>



- **Pell Grant**

In July 2015, the U.S. Department of Education announced that it would implement a Second Chance Pell Pilot program to test new models that allow incarcerated individuals to receive Pell Grants and pursue postsecondary education.

The U.S. Department of Education selected Chemeketa Community College (CCC) to participate in the Second Chance Pell pilot program. CCC is partnering with the Oregon State Correctional Institution to provide academic programs for prisoners at Oregon State Penitentiary and Santiam Correctional Institution.<sup>xxii</sup>

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<sup>i</sup> OR. REV. STAT. § 181A.245 (2016).

<sup>ii</sup> *Id.*

<sup>iii</sup> OR. REV. STAT. § 181A.230 (2016).

<sup>iv</sup> OR. REV. STAT. § 443.004 (2009).

<sup>v</sup> OR. REV. STAT. § 181A.215 (2016).

<sup>vi</sup> OR. REV. STAT. § 181A.200 (2016).

<sup>vii</sup> OR. REV. STAT. § 181A.200 (2016).

<sup>viii</sup> OR. REV. STAT. § 659A.360 (2009).

<sup>ix</sup> OR. REV. STAT. § 559; *see* BOLI's Civil Rights Complaint Process *available at* [http://www.oregon.gov/boli/CRD/Pages/C\\_Crcompl.aspx](http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx).

<sup>x</sup> City of Portland Code § 23.10.030.

<sup>xi</sup> *See* RBE Administrative Rules 1.-3.05 *available at* <https://www.portlandoregon.gov/attorney/article/589802>

<sup>xii</sup> City of Portland Admin. Rules Removing Barriers to Employment 1.-3.05, *available at* <https://www.portlandoregon.gov/attorney/article/589802>.

<sup>xiii</sup> *See* CITY OF OREGON, *Criminal History Matrix for Exceptions Under AR RBE 2.04 (4) (a) & (b)*, <https://www.portlandoregon.gov/attorney/article/589804>.

<sup>xiv</sup> *See* RBE Administrative Rule 3.04, *available at* <https://www.portlandoregon.gov/attorney/article/589802>

<sup>xv</sup> OR. REV. STAT. § 137.225 (2016).

<sup>xvi</sup> *Id.*

<sup>xvii</sup> OR. REV. STAT. § 181A.245 (2016).

<sup>xviii</sup> *Id.*

<sup>xix</sup> OR. REV. STAT. § 90.303(2) (2014).

<sup>xx</sup> OR. REV. STAT. § 90.303(3) (2014).

<sup>xxi</sup> *See* UNIVERSITY OF OREGON, COLLEGE OF EDUCATION, FINGERPRINTING AND BACKGROUND CHECKS, *available at* <https://education.uoregon.edu/student-academic-services/fingerprinting-background-checks>.

<sup>xxii</sup> Natalie Pate, *Chemeketa Picked for Second Chance Pell Program*, STATESMAN J., June 30, 2016, <http://www.statesmanjournal.com/story/news/education/2016/06/30/chemeketa-picked-second-chance-pell-program/86555002/>.