



BCU



The Weighing Test for Provider Background Checks

WHAT IS ASSESSED IN THE WEIGHING TEST

The Background Check Unit (BCU) conducts criminal history and abuse history checks on a variety of care providers and facility staff for Oregon Department of Human Services (ODHS) programs ranging from Aging and People with Disabilities and Child Care, to the Child Welfare Program and Developmental Disabilities.

In addition, BCU also conducts background checks on several Oregon Health Authority (OHA) providers such as Traditional Health Workers, mental health providers, and some public health providers.

The background check process begins with the **subject individual (SI)** providing the following information:

- *Identifying information, such as full name, aliases, date of birth, current residence, and residence history.*
- *Social Security Number is voluntary but may help in correctly identifying an SI.*
- *A list of all potentially disqualifying convictions and conditions. The SI may also provide a list of all arrests, charges, and convictions, regardless of how long ago or how old the SI was.*
- *If an SI doesn't recall his or her history, providing an estimate is best. The SI should list what is known and explain why s/he doesn't have all the details if there may be more.*
- *Other information from an SI is **very** helpful for the weighing test. Some of this information and how it is used by BCU is explained below.*

Potentially disqualifying convictions and conditions (PDQs) include certain crimes, crime-related conditions, and serious abuse. If an SI has PDQs, BCU must do a weighing test. BCU will weigh positive and negative aspects of PDQs and changes since the PDQs to determine if the SI poses a risk to vulnerable individuals, and make a fitness determination of approved, approved with restrictions, or denied. If denied or given a restricted approval, the SI does have hearing rights.

The list of potentially disqualifying convictions is in [OAR 407-007-0281](#); the list of potentially disqualifying conditions is in [OAR 407-007-0290](#).

IMPORTANT NOTE:

Certain jobs fall under federal or state statute or regulations requiring that convictions for specific crimes or other conditions make an applicant automatically ineligible. Consequently, BCU cannot conduct a weighing test because the SI cannot be legally considered for the position.

Individuals applying for positions falling under federal or state statutes or regulations and found to have these “mandatory exclusion” convictions or conditions do not have hearing rights.

- [S.1086 - Child Care and Development Block Grant Act of 2014](#) (45 USC 9858f) provides block grants to the states to help low-income parents find child care for their children. Convictions for certain crimes or conditions lead to mandatory exclusion from being a childcare provider.
- [H.R.4472 - Adam Walsh Child Protection and Safety Act of 2006](#) (42 U.S.C. §16911 et seq) and [42USC 671\(a\)\(20\)](#). Convictions for certain crimes lead to mandatory exclusion from being a child foster or adoptive parent, or living in a child foster or adoptive home.
- [H.R. 1892 - Family First Prevention Services Act of 2018](#) (42 U.S.C.) and 42USC 671(a)(20)(D). Convictions for certain crimes lead to mandatory exclusion from working in a child caring institution (these are called child caring agencies in Oregon).
- [42USC 1320a – 7\(a\)](#) Exclusion of certain individuals and entities from participation in Medicare and state health programs. Requires certain mandatory exclusions based on convictions involving abuse or fraud.
- [42USC 12645g](#) - Criminal history checks under the National and Community Service State Grant Program, requiring mandatory exclusions for certain volunteers meeting specific criteria.
- Other federal laws, regulations or grants also may have mandatory exclusions; for example, individuals working under Runaway and Homeless Youth Grants; working with clients through the Office of Refugee Resettlement, etc. Let BCU know if your agency has special funding or requirements.
- [ORS 443.004](#) - This statute prohibits certain workers from being employed if they have specific convictions.

FACTORS IN THE WEIGHING TEST

The list below includes a variety of factors typically assessed by BCU during the weighing test. Some sections may not apply to an SI.

COOPERATION, HONESTY, AND ACCOUNTABILITY:

The SI's disclosures, manner of explanation, amount of details, etc.: how the SI is responding to the background check and being responsible for his or her actions.

Is the SI as honest as possible? Does the SI mislead in his or her explanations?

Does the SI show a clear understanding of actions, maybe even remorse for actions? Does the SI blame others or show accountability/responsibility for actions?

- *The factors can be some of the best indications of risk to vulnerable individuals. If an SI shows cooperation, honesty, and accountability, the chance of repetition and risk to vulnerable individuals is decreased.*
- *If an SI has significant history, s/he may not remember all of it, and it is okay to admit this. It is also a good idea to get a copy of all records, so the SI has criminal or abuse records ready whenever they are needed.*
- *Under current rules (effective 6/25/2021), BCU does not require the SI to list potentially disqualifying crimes or go into detail when disclosing. BCU has learned that more details from the SI actually helps in the weighing test and gives the SI a chance to provide information that no one else has. A list of PDQs is available at BCU's website on the [Training and Other Tools](#) page.*

DETAILS OF INCIDENTS leading to PDQs:

What happened according to the SI? According to official documents (police report, court records, etc.)?

- *Helps BCU understand what happened, what led to the arrest/charge.*
- *Gives the SI an opportunity to explain his or her side of events.*
- *Sometimes having a police report will help corroborate an SI's explanation.*
- *Court records provide details, such as dates of dismissal or conviction, probation terms, etc.*

AGE, MATURITY, and MENTAL CAPACITY OF SI at the time of the PDQs:

- *Helps in assessing the SI's ability to understand his or her actions at the time of the history, as well as the implication of those actions.*

PROOF of PDQs:

Sources of information may include the Law Enforcement Data System (LEDS), FBI, Oregon Justice Information Network (OJIN), other courts, police reports, or even the SI.

- *If the SI has any documents, such as police reports, court records, etc., providing them at the beginning of the background check may speed the process.*

TIME SINCE COMMISSION of the PDQs:

- *Helps in determining if there has been enough time to demonstrate a change in behavior; enough time to see if repetition is likely or not likely to happen.*

OTHER LAWS TO CONSIDER covering the position, facility, employer, or QE regarding the PDQs:

Are there Federal laws, Oregon laws or Oregon Administrative Rules (OARs) that specifically impact the weighing test for this SI or this position?

- *Laws may impact how criminal history or abuse history may be viewed or considered. There are some laws that actually preclude a weighing test and require a denial.*
- *Some crimes might have been potentially disqualifying at the time of conviction, but at the time of the weighing test no longer are, such as crimes involving possession of drugs. This could give drug crimes much less weight; the number of convictions will also be considered.*

FACTORS SPECIFIC TO POTENTIALLY DISQUALIFYING ABUSE:

Potentially disqualifying abuse includes serious neglect and financial, sexual or physical abuse against a vulnerable adult since 1/1/2010. For all DHS providers, homecare workers and personal support workers, all types of adult foster homes, and any OHA with contact with children, founded or substantiated child abuse is also potentially disqualifying. If formal review or appeal rights are offered to the alleged perpetrator (SI) after the completion of the abuse investigation, these rights must be completed or timed out before the abuse is considered potentially disqualifying abuse.

Determining whether abuse is substantiated or founded does not use the same standards as a court of law for convictions. In addition to reviewing the details of the investigation, type of abuse, how long ago it occurred, and the quality of the investigation, the weighing test includes consideration of whether due process was allowed and the corrective actions required at the end of the investigation.

- *DHS is the holder of child protective services and adult protective services investigations. The reported victim is always a vulnerable individual, so any potentially disqualifying abuse may be highly relevant to a new position working with vulnerable individuals.*
- *The required conditions and actions resulting from the abuse recommended or imposed on the alleged perpetrator (SI) are also highly relevant in the weighing test as they might indicate what the SI needed to do to be reinstated in a care-providing position.*

PERIODS OF INCARCERATION including rehabilitation or other impacts on SI:

Amount of time an SI was sentenced for a potentially disqualifying conviction and how much time s/he actually served.

- *Helps determine seriousness of convictions or probation violations.*

- *Other factors include early release, if release was recent, if SI had time to change behavior, etc.*

COMPLIANCE WITH PAROLE OR PROBATION:

Summarize compliance with probation/parole related to PDQs.

- *Helps in determining the SI's accountability and responsibility, ability to follow laws and rules, and interest/dedication to change behavior.*

ALCOHOL & SUBSTANCE USE ISSUES:

Describe issues including treatment, relapses, etc. directly related to PDQs. Does the SI appear to have benefited from treatment?

- *Addiction is a medical condition, but when there are PDQs associated with addiction, it is important to assess the SI's sobriety and commitment to it—further substance use could lead to further PDQs given the SI's history.*
- *Many providers have the opportunity to work with diverse populations. If there have been substance abuse issues related to the criminal history, the SI's progress and success in treatment are positive factors to add to the weighing test.*

OTHER TREATMENT:

Describe treatment that is directly related to PDQs, such as Theft Talk, Anger Management, therapy, counseling, etc. Does the SI appear to have benefited from treatment?

- *Helps to determine change in behavior, whether different non-criminal behaviors were learned, and assesses other successful life changes.*

REPETITION:

Summarize the likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying convictions or conditions.

- *Helps determine if there is ongoing risk or indication that risk is greatly reduced.*

OTHER CRIMINAL ACTIVITY: *[ONLY considered for SIs of Child Welfare child caring agencies, SIs associated with child foster homes licensed by child caring agencies, or SIs associated with child care providers under DHS' Employment Related Day Care]*

Other arrests, charges, or convictions that are not potentially disqualifying.

- *Helps determine if there is a pattern.*
- *Helps identify other behavior that is not potentially disqualifying under the rules but could show serious risk to vulnerable individuals.*

CHANGE SINCE PDQS:

Describe changes since the potentially disqualifying convictions or conditions. An SI can provide any information that s/he believes might be relevant for BCU's consideration. Examples include but are not limited to education, work history, license/certification history, and employer recommendations.

- *What has the SI done since his or her PDQs?*
- *How has s/he decreased the likelihood of risk to vulnerable individuals?*
- *BCU will consider any information provided by the SI.*

RELEVANCY TO POSITION:

Describe how the SI's PDQs are or are not relevant to the position. A position description provides information regarding duties or work environment.

Most SIs are mandatory reporters, meaning s/he must report unusual incidents including those s/he has caused.

In the position, what contact will the SI have with vulnerable individuals, and their personal information, possessions, home, funds, or medications? Are the PDQs relevant to such contact?

Do PDQs show poor judgment about safety of self or others?

If PDQs are not relevant to the position, describe why.

- *By statute, BCU must consider the SI's PDQs and the "nexus" to the position or work environment. If criminal history appears relevant (e.g., hurting others, stealing the identity of others), this shows clear risk to vulnerable individuals.*

SUMMARY AND DECISION

Having completed the sections above, BCU compiles the information and asks the question: More likely than not, does the SI pose a risk to the physical, emotional or financial well-being of vulnerable individuals?

If the SI more than likely does not pose a risk, BCU will make a fitness determination of approved.

If the PDQs and evidence indicate that more than likely the SI poses a risk to the emotional, physical, or financial well-being of vulnerable individuals, BCU will make the fitness determination of denied.

If it is possible to restrict the SI's duties or environment to alleviate risk to vulnerable individuals, BCU will make a restricted approval.

If denied or given a restricted approval, the SI has hearing rights.