

# The Weighing Test for Clearinghouse Criminal Records Checks

## WHAT IS ASSESSED IN THE WEIGHING TEST

The Background Check Unit (BCU) conducts criminal records checks on behalf of the Oregon State Police for its “Clearinghouse” program for businesses and organizations not licensed, certified, or otherwise regulated by an Oregon state agency.

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 their history, providing an estimate is best. The SI should list what is known and explain why they don’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 any convictions (regardless of when they occurred) as well as some crime-related conditions such as sex offender registration and unresolved charges. If an SI has PDQs, BCU must do a weighing test. BCU will weigh positive and negative aspects of the 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.

Organizations and businesses use the BCU Clearinghouse voluntarily to ensure a professional and detailed review of a fingerprint-based national criminal records check. However, an organization or business may choose to hire or place an SI regardless of the background check outcome.

## 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.

- **National Community and Services Act [42USC 12645g](https://www.govinfo.gov/app/details/USCODE-2021-title42/USCODE-2021-title42-chap129-subchapl-divsnF-sec12645g)** - Criminal history checks under the National and Community Service State Grant Program require mandatory exclusions for certain volunteers meeting specific criteria. For more information, please visit this link: <https://www.govinfo.gov/app/details/USCODE-2021-title42/USCODE-2021-title42-chap129-subchapl-divsnF-sec12645g>.
- **Federal Department of Justice Grants** – If a person works under a grant supporting domestic violence and crime victim assistance, there are specific [award condition for grantees regarding individuals who may interact with participating minors](#), which includes the need for a fingerprint-based criminal records check and mandatory exclusions for certain convictions and circumstances.
- 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.

## 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.

### NATURE of the CRIME/PDQ:

BCU considers the nature of the crime. 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.*
- *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.*

**FACTS THAT SUPPORT THE CONVICTION/PDQ OR THAT INDICATE FALSE STATEMENT:**

The results of the national fingerprint-based criminal records check support the convictions and other PDQs the SI has. Facts that indicate false statement are found in the SI's disclosures, manner of explanation, level of detail, etc.: how the SI is responding to the background check and being responsible for their 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 their actions?

- *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.*

**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.

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.*

**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.*

**AGE 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.*

**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.*

### **SUBSEQUENT COMMISSION OF ANOTHER RELEVANT CRIME:**

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 but could show serious risk to vulnerable individuals.*

### **RELEVANT INTERVENING CIRCUMSTANCES SINCE PDQS:**

Describe changes since the potentially disqualifying convictions or conditions. An SI can provide any information that they believe 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 the PDQs?*
- *How have they decreased the likelihood of risk to vulnerable individuals?*
- *BCU will consider any information provided by the SI.*

### **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.

Participation in the Clearinghouse criminal records check process is voluntary. If BCU denies and SI or approves an SI with restrictions, the business or organization is not obligated to terminate the SI. If the SI is terminated due to a criminal records check denial or restricted approval, the SI has hearing rights.