

The Weighing Test for ODHS | OHA Human Resources Background Checks

The Background Check Unit (BCU) conducts criminal history and (in most circumstances) abuse history checks on the applicants, employees, volunteers and contractors for the Oregon Department of Human Services (ODHS) and the Oregon Health Authority (OHA). Many ODHS or OHA contractors are only subject to a criminal records check. The checks occur when ODHS or OHA offers a position or there is reason to believe that a new check is needed (such as when a person has new criminal history or abuse history).

Oregon Revised Statutes (ORS) and Oregon Administrative Rules provide details about the background check process: ORS [181A.195](#), [181A.200](#), [181A.215](#), [409.027](#), and [413.036](#); OAR [125-007-0200 to 125-007-0330](#), [407-007-0000 to 407-007-0100](#); [407-007-0400 to 407-007-0460](#) and [943-007-0001 to 943-007-0501](#).

The subject individual (SI) is the person who is the subject of the criminal records check and abuse check.

Once ODHS or OHA offers a position to the SI, the local office submits a background check application with SI identifying information and details about the position including a position description to BCU through the online ORCHARDS portal. The SI must provide authorization for the background check to begin. In addition, the SI provides disclosures if they have any potentially disqualifying convictions or conditions.

Potentially disqualifying convictions or conditions (“PDQs”) include certain convictions, 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 the PDQs, changes since the PDQs and the relevancy of the PDQs to the position to determine if the SI poses a risk to vulnerable individuals or the agency (ODHS or OHA). This flyer provides details about the factors BCU considers in a weighing test. BCU makes a fitness determination of approved, approved with restrictions, or denied. If denied or given a restricted approval, the SI does have hearing rights.

The PDQs are either criminal or abuse. See the [PDQ Convictions and Conditions](#) and [PDQ Abuse](#) lists for the current PDQs.

Important note: Certain jobs for the ODHS Stabilization and Crisis Unit fall under [ORS 443.007](#) and [OAR 407-007-0445](#). This statute and rule require that substantiations in specific abuse investigations make an applicant or ODHS employee automatically ineligible. Consequently, BCU cannot conduct a weighing test on these specific abuse substantiations because the SI cannot be legally considered for the position and the SI does not have hearing rights for the ineligibility.

Information from the SI: Any disclosures and documents from the SI are very helpful in a weighing test. Knowing what BCU considers in the weighing test can help the SI determine what information to provide so that BCU makes an informed fitness determination.

- The SI must disclose whether they have any potentially disqualifying convictions or conditions.
- The SI may also provide details regarding arrests, charges, and convictions as well as involvement in substantiated or founded abuse investigations where they were an alleged perpetrator or “respondent.”
- If an SI doesn’t recall their history, providing an estimate is best. The SI should list what they know and explain why they don’t have all the details if there may be more.
- The SI may also provide details about their lives since the potentially disqualifying convictions or conditions as evidence of positive changes. The SI may also send documents to BCU while a background check is still pending by email: bcu.hrbackgroundchecks@odhsoha.oregon.gov.

Factors in the Weighing Test

The list below includes a variety of factors BCU assesses during the weighing test. Depending on an SI’s history, many or all sections may apply to an SI.

Cooperation, Honesty and Accountability

Describe, based on the SI’s disclosures, manner of explanation, amount of details, etc., how the SI is responding to the background check and being responsible for their actions.

Does the SI show a clear understanding of actions, maybe even remorse for actions? Does the SI blame others rather than being accountable?

- This can be one of the best indications of risk to vulnerable individuals or the Department. If an SI shows cooperation, honesty, and accountability, the chance of repetition and risk to vulnerable individuals or the Department is decreased.
- If an SI has significant history, they may not remember all of it, and it is okay to admit this. It is also a good idea for the SI to get a copy of all records related to their history, so the SI has them ready whenever they are needed.
- Although BCU does not require the SI to list potentially disqualifying crimes or go into detail when disclosing, more details from the SI helps in the weighing test and gives the SI a chance to provide information that no one else has.

Facts that support the PDQs

Sources of information may include the Law Enforcement Data System (LEDS), FBI, Oregon Justice Information Network (OJIN), other courts, police reports, abuse investigations held by ODHS or OHA, or the SI.

- Provides proof of the history based on official records.
- The SI’s disclosures show their understanding of what happens.

Details of incidents leading to and about the PDQs

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

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

Factors specific to potentially disqualifying abuse

Determining whether abuse is substantiated or founded does not use the same standards as for convictions. Because of this, BCU has specific factors to consider regarding potentially disqualifying abuse:

- The nature and type of the abuse (this information is in the investigation report)
- Other information gathered during the investigation (interviews, documents, etc.)
- The date of the abuse incident and the abuse investigation
- The quality of the investigation (its completeness, objectivity, and sufficiency)
- Due process (was the alleged perpetrator provided details of the allegation? did the alleged perpetrator participate in the investigation? what if any appeal rights were given to the alleged perpetrator and the outcome of that appeal?)
- Any corrective actions required at the end of the investigation and the alleged perpetrator's compliance
- Timeline, frequency, and relation between potentially disqualifying abuse, if there are more than one allegations or investigations

The weighing test includes consideration of these factors when available to BCU. Consideration of potentially disqualifying abuse in a weighing test is particularly important given the nature of abuse:

- ODHS 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 (the 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.
- Many providers have the opportunity to work with diverse populations including those with history as a perpetrator of abuse. The SI's progress and success in treatment and other learned experience are positive factors to add to the weighing test.

Age, maturity and 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.

Time since commission of the PDQs

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

Timeline, frequency and relation between PDQs

- If the SI has more than one PDQ, are they related (e.g., related to same incident? Occurring at the same time, or in close succession? Does the SI have more than one of the same kind of PDQ?)
- One PDQ may indicate a one-time mistake, while numerous PDQs may indicate a pattern of behavior.

Other laws to consider covering the position or Department 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 an outcome of ineligibility; see the information above about ORS 443.007 and OAR 407-007-0445.
- 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.

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 they 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 criminal PDQs.

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

Alcohol and substance abuse use issues

Describe issues such as treatment and relapses 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 including those with substance use. The SI's progress and success in treatment and other learned experience 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. How has the SI benefited from treatment?

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

Cultural and societal forces contributing to circumstances leading to PDQs

Are there issues such as marginalization and disadvantage that may have led to the likelihood of the PDQs happening?

- While accountability and responsibility about the SI's behaviors are important factors to consider, were there other factors out of the SI's control that influenced their behavior?

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.

Change 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 their PDQs?
- How have they decreased the likelihood of risk to vulnerable individuals?
- BCU will consider any information provided by the SI.

Relevancy to position

How are the SI's PDQs are or are not relevant to the position? BCU receives a copy of the position description with the application; the position description provides information regarding duties or work environment.

SIs are mandatory reporters, meaning he or she must report unusual incidents including those he or she has caused.

See [OAR 407-007-0060\(3\)](#) for detailed list of tasks and duties to consider.

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 his or her "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 shows, based on the evidence, whether the SI more likely than not poses a risk to the physical, emotional or financial well-being of vulnerable individuals.

As mentioned previously, BCU will make a fitness determination of approved, approved with restrictions, or denied. If denied or given a restricted approval, the SI has hearing rights.

Individuals applying for positions subject to certain federal or state statutes or regulations and found to have applicable convictions do not have hearing rights if he or she is found ineligible.

Links used in this document

ORS 181A.195, 181A.200, 181A.215: https://www.oregonlegislature.gov/bills_laws/ors/ors181A.html

ORS 409.027: https://www.oregonlegislature.gov/bills_laws/ors/ors409.html

ORS 413.036: https://www.oregonlegislature.gov/bills_laws/ors/ors413.html

OAR 125-007-0200 to 125-007-0330:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=227>

OAR 407-007-0000 to 407-007-0100; 407-007-0400 to 407-007-0460:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1626>

OAR 943-007-0001 to 943-007-0501:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4201>

PDQ Convictions and Conditions: <https://www.oregon.gov/odhs/background-checks/Documents/pdq-criminal-tier-3.pdf>

PDQ Abuse: <https://www.oregon.gov/odhs/background-checks/Documents/pdq-abuse-hr.pdf>

ORS 443.007: https://www.oregonlegislature.gov/bills_laws/ors/ors443.html

OAR 407-007-0445: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=247904>

OAR 407-007-0060(3): <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=279100>