

## The Weighing Test

### 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 Department of Human Services (DHS) programs ranging from Aging and People with Disabilities (APD) and Child Care, to the Child Welfare Program (CWP) and Developmental Disabilities (DD).

In addition, BCU also conducts background checks on a number of Oregon Health Authority (OHA) providers such as Traditional Health Workers and persons responsible for operations of medical marijuana dispensaries.

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 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 he or she doesn't have all the details if there may be more.*
- *Other information from a subject individual 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 criminal 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 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 subject individual does have hearing rights.

**IMPORTANT  
NOTE:**

Certain jobs fall under ORS 443.004, a statute dictating that convictions for specific crimes make an applicant automatically ineligible. Consequently she or he does not receive a weighing test because she or he cannot be legally considered for the position.

Individuals applying for positions falling under ORS 443.004 and found to have applicable convictions do not have hearing rights if he or she are found ineligible.

## **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 a subject individual.

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**DETAILS OF INCIDENTS:** 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 a subject individual's explanation.*
- *Court records provide details, such as dates of dismissal or conviction, probation terms, etc.*

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**AGE OF SI** Helps in assessing the SI's maturity, understanding, and reasoning at the time of the history.

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**PROOF OF PDQ:** Sources of information may include the Law Enforcement Data System (LEDS), FBI, Oregon Justice Information Network (OJIN), other courts, police reports, or even the subject individual.

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**TIME SINCE PDQ:** How much time has passed since the last potentially disqualifying conviction or condition?

- *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.*

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**OTHER LAWS TO CONSIDER:** Are there Federal laws, Oregon laws or Oregon Administrative Rules (OARs) that impact the weighing test?

- *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.*

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**FACTORS SPECIFIC TO POTENTIALLY DISQUALIFYING ABUSE:**

Potentially disqualifying abuse includes serious financial, sexual, or physical abuse against an adult that occurred since 1/1/2010. For certain positions involving access or care for children, physical abuse includes open child protective services (CPS) investigations and founded CPS investigations.

Determining substantiated abuse does not use the same standards as a court of law for convictions. In addition to the other factors in a weighing test, the quality of investigations, whether due process was allowed, and the corrective actions required at the end of the investigation, are considered.

- *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.*
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**OTHER CRIMINAL ACTIVITY:** 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.*

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**INCARCERATION:** Amount of time a subject individual was sentenced for a 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.*

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**COMPLIANCE WITH PAROLE OR PROBATION:** Summarize compliance of previous or current probation/parole.

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

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**SUBSTANCE ABUSE ISSUES:** Describe issues including criminal activities, treatment, relapses, etc. Does the subject individual appear to have benefited from treatment?

- *Addiction is a medical condition, but when there is criminal activity associated with addiction, it is important to assess the SI's sobriety and commitment to it—further substance use could lead to further activity 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.*
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**OTHER TREATMENT:** Describe treatment that is related to criminal history, such as Theft Talk, Anger Management, therapy, counseling, etc. Does the subject individual 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.*

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**REPETITION:** Summarize whether the criminal history shows the possibility of repetition.

- *Helps determine if there is ongoing risk.*

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**OTHER PROTECTIVE SERVICES:** During the abuse check, BCU may see other protective services information that may be relevant to the weighing test. Usually the answer to this factor is “none” or “unknown” with no further research.

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**CHANGE SINCE PDQS:** A subject individual can add any information that might be relevant for BCU’s consideration. Areas of consideration include but are not limited to education, work history, license/certification history, and employer recommendations.

- *What has the subject individual done since his or her PDQs, and how has he or she decreased the likelihood of risk to vulnerable individuals?*
  - *Information should be included that will help BCU make a good decision.*
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**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 his or her 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. If a subject individual shows cooperation, honesty, and accountability, the chance of repetition and risk to vulnerable individuals is decreased.*

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**RELEVANCY TO  
POSITION:**

Describe how the subject individual's PDQs are relevant or irrelevant to the position. A position description provides information regarding duties or work environment.

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

What contact will the SI have with vulnerable individuals, and their personal information, possessions, home, funds, or medications?

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 subject individual'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.*
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## **SUMMARY AND DECISION**

Having completed the sections above, BCU compiles the information and shows, based on the evidence, whether the subject individual 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 subject individual has hearing rights.

Individuals applying for positions falling under ORS 443.004 and found to have applicable convictions do not have hearing rights if he or she are found ineligible.