

# Oregon Department of Human Services Background Check Process for Providers of Service

October 2010



# **Our agenda today:**

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**BCU Overview**

**Current Program**

**Factors Considered**

**Appeals**

**House Bill 2442/ORS 443.004**

# The DHS Mission

**The mission of DHS is to help people become healthy, independent and safe.**

**DHS is committed to protecting the health and safety of children, seniors, and people with disabilities who receive care from employees, volunteers, and those who provide care on behalf of DHS.**

## **Background Check Unit Mission**

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**Provide a background screening process to determine if an individual should be allowed to work, volunteer, be employed, or otherwise perform in positions affecting the health and safety of DHS clients.**

# Annual Applicant Submissions

**January 2009 – December 2009**

<b>DHS Employees/Volunteers</b>	<b>5,174</b>	<b>(4.1%)</b>
<b>Child Care Providers</b>	<b>19,748</b>	<b>(15.8%)</b>
<b>Child Welfare Division</b>	<b>13,987</b>	<b>(11.2%)</b>
<b>Seniors</b>	<b>53,335</b>	<b>(42.6%)</b>
<b>Mental Health</b>	<b>8,672</b>	<b>(6.9%)</b>
<b>Developmental Disabilities</b>	<b>24,260</b>	<b>(19.4%)</b>

**Total: 125,176      Avg. 10,431/Month**

## **DHS Authority to conduct background Checks**

**ORS 181.537 - Overall Authority**

**ORS 181.534 – Fingerprint Authority**

**OAR 407-007-0000 through 0100 DHS**

**OAR 407-007-0200 through 0380 Providers**

## BCU Process

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- **Who is subject to a background check (OAR 407-007-0210 (21))?**
- **Any individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by DHS and who provides care.**
- **Employees, contractors, or volunteers that have direct access to DHS clients, client information or funds.**

## **BCU Process**

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- **Application received via mail or fax**
- **Sorted by program area**
- **LEDS/OJIN (Law Enforcement Data System and Oregon Judicial Information network) are run**
- **Decision to approve or move forward in process**



# BCU Process

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- **Fitness Determination**
  - In-house
  - Sent to Provider (AD)
- **Notice of Fitness Determination sent to Subject Individual**
- **Appeal Process for Denied or Restricted Approval**

# BCU Process

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**All listed convictions are potentially  
disqualifying**

**Permanent Review**

**10-Year**

**5-Year**

**Potentially disqualifying conditions**

**Fitness Determination**

**Appeals**

# BCU Process

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- **Weigh test is conducted when Subject Individual has potentially disqualifying history.**
- **Factors considered include potentially disqualifying convictions and other conditions.**

# BCU Process

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- **Permanent Review convictions are considered to be serious crimes.**
- **Listed in OAR 407-007-0280 (1)**
- **Includes:**
  - **Murder, Assault 1-4, Kidnapping, Rape, Sexual Abuse, Theft 1, Burglary, Arson, Identity Theft, Unlawful Possession and others.**
- **Not automatically disqualifying (unless subject to ORS 443.004).**

# BCU Process

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- **10 year Review convictions are review-able within 10 years of the conviction date.**
- **Listed in OAR 407-007-0280 (2)**
- **Includes:**
  - **Perjury, Failure to Appear, Theft 2-3, Official Misconduct, Harassment, Prostitution, Tax Evasion, Reckless Driving and others.**

# BCU Process

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- **5 year Review convictions are review-able within 5 years of the conviction date.**
- **Listed in OAR 407-007-0280 (3)**
- **Includes:**
  - **DUII, Contempt of Court, Violation of a Restraining Order, Criminal Driving While Suspended or Revoked and others.**

## BCU Process

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- **Potentially disqualifying conditions (OAR 407-007-0290) include:**
- **False Statement during background check process.**
- **Being a registered sex offender.**
- **Outstanding warrants.**
- **Deferred sentence or currently in diversion.**
- **Currently on probation or parole.**

# BCU Process

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- **Fitness Determination**
- **When potentially disqualifying convictions and/or conditions exist, a weigh test is performed to make a Final Fitness Determination.**
- **The Weigh Test (OAR 407-007-0300) is where the Authorized Designee weighs the potentially disqualifying convictions/conditions to determine fitness to hold the position.**



## BCU Process

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- **Weigh Test, factors to consider include:**
- **Age of the Subject Individual at the time of conviction.**
- **Time passed since conviction.**
- **Changes in circumstances including education, certifications, and written professional recommendations.**
- **Relevancy of the conviction/condition to the position applied for.**

# BCU Process

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- **Final Fitness Determinations:**
- **Approved-May work in position. Does not guarantee employment.**
- **Denied-May not work in the position. May be appealed.**
- **Approved with Restrictions-May work in position but there are specific restrictions. May be appealed.**
- **Closed Case-No fitness determination is made. No appeal rights, but may simply apply again.**

## BCU Process

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- **Appeals (OAR 407-007-0330)**
- **Denied and Restricted fitness determination may be appealed.**
- **Appeals are processed through the Oregon Office of Administrative Hearings (OAH).**
- **May take months to complete depending on information required and OAH scheduling.**
- **If an appeal results in approval, it does not guarantee employment.**

## BCU Process

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- **Appeals (OAR 407-007-0330)**
- **The first step of the process is a “More Information Letter.” This is a generic letter sent to all who appeal.**
- **The more information you provide, the better. Answer all relevant questions on the Letter and provide as much documentation as possible.**

## BCU Process

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- **Appeals (OAR 407-007-0330)**
- **Once the response to the letter is received, a Hearings Representative will contact you, often via telephone to gather more information.**
- **Once all information is gathered, the case will be referred to OAH.**
- **Providing as much information as possible as early as possible is the best way to expedite an appeal.**

# BCU Process

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- **ORS 443.004 (HB 2442)-Effective 7/28/2009**
- **Introduces immediately and permanently disqualifying crimes-if convicted of a crime listed in this law, regardless of how long ago, a Subject Individual (SI) may not hold the position.**
- **Denials under this law may be appealed. Regardless of the final decision, though, the SI may not be employed in the position.**

# BCU Process

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- **Applies to:**
  - **All developmental disability programs**
  - **Assisted Living Facilities**
  - **Residential Care Facilities**
  - **Adult Foster Homes**
  - **In Home Care or Home Health Agencies**
  - **Residential Treatment Homes and Facilities**
  - **Community Mental Health Programs**

# BCU Process

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- **Crimes include (but not limited to):**

- Theft I
- Burglary I and II
- Rape I, II, and III
- Sexual Abuse I, II, and III
- Murder
- Assault I, II, and III
- Identity Theft
- Manslaughter I and II
- Trafficking in Persons
- Kidnapping I and II



# BCU Process

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## Background Check Unit Contact Information:

**Bill Buckley-Unit Manager**

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**[www.oregon.gov/DHS/chc/rules\\_policy.shtml](http://www.oregon.gov/DHS/chc/rules_policy.shtml)**