

BOARD OF PSYCHOLOGY

DIVISION 10

PROCEDURAL RULES

858-010-0034

Criminal Records Checks and Fitness Determinations

(1) The purpose of this rule is to provide for the reasonable screening of licensees and applicants for licensure to determine if they have a history of criminal behavior and are not fit to hold a license that is issued by the Board.

(2) The following persons (“subject individuals”) must take the steps necessary to complete a nationwide criminal records check under ORS 181A.195:

(a) All applicants for a psychologist or psychologist associate license; and

(b) Licensees under investigation by the Board, when the Board has a rational reason to determine if the licensee has a history of criminal behavior.

(3) To complete a criminal records check, each subject individual must:

(a) Respond completely and truthfully to all of the Board’s character and fitness questions;

(b) Provide fingerprints pursuant to ORS 181A.170 (additional fingerprints may be required if the initial fingerprints are rejected);

(c) Provide personal information necessary to obtain the criminal records check pursuant to OAR 125-007-0220; and

(d) Pay to the Board the actual cost of acquiring and furnishing the criminal offender information.

(4) Any original fingerprint cards will subsequently be destroyed in accordance with ORS 181A.195.

(5) The Board will make a final fitness determination based on criminal offender information and any other pertinent information obtained by the Board, including any false statements or omissions made by the subject individual, and other factors pursuant to ORS 181A.195(10)(d) and OAR 125-007-0260 to 125-007-0270. The Board may make a fitness determination conditional upon the subject individual's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(6) If a subject individual refuses to consent to the criminal records check or refuses to be fingerprinted, the Board will deny the licensure application or revoke the license.

(7) Criminal offender information is confidential and will not be disseminated by the Board except to persons with a demonstrated and legitimate need to know the information, including:

(a) The Board will permit the subject individual to inspect their own state and national criminal offender records and, if requested, provide the subject individual with a copy of their own state and national criminal offender records.

(b) Criminal records information may be used as exhibits during a contested case hearing process.

(8) A subject individual may appeal an adverse final fitness determination pursuant to OAR 125-007-0300. Challenges to the accuracy or completeness of criminal records information must be made to the reporting agency and not to the Board or through the contested case process.

(9) If the subject individual successfully contests the accuracy or completeness of criminal records information, the Board will conduct a new criminal records check and re-evaluate the fitness determination.

Stat. Auth.: ORS 181A.195, 676.303, 675.070

Stats. Implemented: ORS181A.170, 181A.195, 181A.215, 670.280, 676.303, 675.070

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10, BPE 2-2017, f. & cert. ef. 2-16-17

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION 7

CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

125-007-0200

Statement of Purpose

The purpose of these rules is to provide uniform administrative rules to streamline criminal records check processes state-wide, unless otherwise provided by law.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0210

Definitions

(1) "Authorized Agency" as defined in ORS 181A.215 or described in these rules.

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual (SI) in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(3) "Credentials" means activities defined in ORS 181A.215(4)(f).

(4) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled and disseminated by the Oregon Department of State Police (OSP), or by other states, for purposes of identifying criminal offenders and alleged offenders, and maintained as part of an individual's records of arrests, the nature and disposition of criminal charges, sentencing, confinement, but does not include the retention by OSP or records of transfer of inmates between penal institutions or other correctional facilities, and release. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(5) "Criminal Records Check" means obtaining and reviewing criminal records as required or permitted by these rules and includes any or all of the following;

(a) A check of criminal offender information and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by OSP, in accordance with the rules adopted and procedures established by OSP;

(b) A check of Oregon or other state criminal offender information, including through fingerprint identification or other means, conducted by OSP at the authorized agency or district's request; or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by OSP through the Federal Bureau of Investigation (FBI).

(6) "Districts" as defined in ORS 267.237.

(7) "Final Fitness Determination" means a determination made by an authorized agency or district pursuant to the process established in OAR 125-007-0260, that the SI is or is not fit to hold a position, paid or not paid, obtain or retain credentials, have direct access, or otherwise provide services as defined in this rule.

(8) "Provides Services" means any provision of what is necessary for the health, welfare, maintenance or protection of an individual.

(9) "Qualified Entity" as defined in an authorized agency's enabling statute.

(10) "Subject Individual" or "SI" means an individual from whom the authorized agency, districts and qualified entities may conduct a criminal records check pursuant to ORS 181A.190, 181A.195, 181A.200, 181A.215, 267.237 and any required enabling legislation or executive order. SI may include, but is not limited to the following;

(a) Any individual applying for credentials,

(b) Any individual with direct access to a vulnerable population,

(c) Any individual who provides services to a vulnerable population, and

(d) An individual subject under ORS 181A.190(1)(c), 181A.195(1)(b), 181A.200(2), 267.237(1)(c) and any required enabling legislation or executive order.

(11) "Vulnerable Population" means any of the following categories;

(a) A child, an unmarried person who is under eighteen (18) years of age.

(b) The elderly, a person sixty-five (65) years of age or older.

(c) Persons with disabilities, a person with a physical or mental impairment that substantially limited one or more major life activities,

(d) Persons with mental illness, a person with a condition that impacts their thinking, mood or behavior affecting his or her ability to relate to others and function on a daily basis.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0220

Information Required

(1) An SI may be required to provide identification and information to have a criminal records check completed including, but not limited to;

(a) Legal name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Type of work or service being performed;

(f) Disclosure of criminal history; all arrests, charges, convictions and offenses.

(g) Social Security number, optional only, used solely for the purpose of positively identifying the SI during the criminal records check process.

(2) Identification shall be determined by using methods which include but are not limited to;

(a) Asking the SI for current and valid government-issued photo identification;

(b) Confirming the information on the photo identification with the SI;

(c) Fingerprint capture

(3) The authorized agency, district or qualified entity shall not request a fingerprint card from an SI under the age of eighteen (18) years unless the SI is emancipated pursuant to ORS 419B.550 et seq, or unless the authorized agency, district or qualified entity also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 125-007-0260.

(4) The authorized agency, district or qualified entity may require additional information from the SI as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0250

Hiring or Appointing on a Preliminary Basis

(1) An authorized agency or district may conduct a preliminary fitness determination if the agency, district or qualified entity is hiring or appointing an SI on a preliminary basis, pending a final fitness determination.

(2) The authorized agency or district shall make a preliminary fitness determination about an SI based on information disclosed by the SI and a LEADS criminal records check pursuant to each authorized agency, district or qualified entity's governing statutes.

(3) An SI hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the authorized agency, district or qualified entity.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0260

Final Fitness Determination

(1) Unless otherwise provided by law, the authorized agency or district shall consider factors pursuant to ORS 181A.195(10)(d) in relation to information provided by the SI, including any criminal offender information, as defined in OAR 125-007-0210, obtained through a criminal records check and other information known by the agency or district.

(2) Upon completion of the fitness determination, one of the following outcomes shall be made and written notification shall be provided to the SI indicating the outcome when appeal rights are afforded or when a fitness determination is not completed;

(a) Approval.

(A) The SI is approved to work, obtain or retain credentials, have direct access, or otherwise provide services to individuals defined in OAR 125-007-0210.

(B) An approved outcome does not guarantee employment, obtaining or retaining credentials, or the ability to have direct access, or otherwise provide services, to individuals defined in OAR 125-007-0210.

(b) Restricted or Conditional Approval.

(A) The authorized agency or district may restrict the approval to specific activities, clients or locations.

(B) The authorized agency or district may complete a new criminal records check and fitness determination on the SI prior to removing a restriction.

(c) Denial.

(A) The authorized agency or district denies an SI if the agency determines, through a fitness determination, that the SI is not fit to work, obtain or retain credentials, have direct access, or otherwise provide services to individuals defined in OAR 125-007-0210.

(B) If an SI is denied, then the SI shall not work, receive or retain credentials, have direct access, or otherwise provide services to individuals described in OAR 125-007-0210.

(d) Incomplete Fitness Determination.

(A) The SI discontinues the criminal records process for any reason or refuses to be fingerprinted or respond to written correspondence from the agency or district.

(B) The SI is determined to be ineligible for reasons other than a criminal records check.

(C) The SI is determined to be ineligible pursuant to an authorized agency's enabling statute, or otherwise provided by law.

(D) The SI shall not be allowed to work, receive credentials, have direct access, or otherwise provide services to individuals described in OAR 125-007-0210.

(E) Appeal rights, if any, are dependent on the authorized agency's or district's obligations to provide such rights when a final fitness determination was not completed.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0270

Crimes Considered

(1) A conviction of any of the following crimes or offenses is potentially disqualifying, unless otherwise provided by law.

(a) All felonies.

(b) All misdemeanors.

(c) Any U.S. military crime or international crime.

(2) The authorized agency or district shall evaluate a crime or offense on the basis of the law of the jurisdiction in which the crime or offense occurred.

(3) The following are examples of crimes likely to result in denial unless there are significant mitigating circumstances;

(a) ORS 163.095, Aggravated murder;

(b) ORS 163.115, Murder;

(c) ORS 163.375, Rape I;

(d) ORS 163.405, Sodomy I;

(e) ORS 163.411, Unlawful sexual penetration I;

(f) ORS 163.427, Sexual abuse I

(4) Under no circumstances shall an SI be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 to 419A.262.

(5) Under no circumstances shall an SI be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

(6) Examples of other criminal offender information that may be potentially disqualifying may include;

(a) Sex offender registration,

(b) Conditions of parole, probation, or diversion program, or

(c) Unresolved arrest, charge, pending indictment or outstanding warrant

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0300

Appealing a Fitness Determination

(1) An SI may contest a final fitness determination outcome of a denied or restricted approval.

(2) Process for authorized agencies using Office of Administrative Hearings (OAH): To request a contested case hearing, the SI or the SI's legal representative shall submit a written request for a contested case hearing to the address specified in the notice provided under OAR 125-007-0260, within the time required by law or a reasonable time period.

(3) Confidentiality. The Department or the administrative law judge may protect information made confidential by ORS 181A.195(11) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Unless otherwise provided by law, contested case hearings on fitness determinations are closed to non-participants.

(5) Authorized agencies and districts that are not obligated by law to use the OAH must adopt procedural rules providing for SIs to contest fitness determinations or may elect to use the process outlined in this rule.

(6) Alternative Process. An SI currently employed by the authorized agency district or qualified entity may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. An SI's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Challenging Criminal Offender Information. An SI may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by OSP, the FBI, or agencies reporting information to OSP or the FBI. To challenge information, an SI may use any process made available by the providing agency.

(8) Remedy. When the fitness determination is performed as part of an authorized agency's hiring process or employment decision, the only remedy that may be awarded is a determination the SI is fit or not fit. Under no circumstances shall the authorized agency be required to place an SI in any position, nor shall the agency be required to accept services or enter into a contractual agreement with an SI.

(9) No delay in hiring. Appealing a final fitness determination, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check may not delay or postpone the authorized agency's hiring process or employment decisions.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0310

Recordkeeping and Confidentiality

(1) Criminal offender information obtained in the criminal records check is confidential. The authorized agency, district or qualified entity must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the authorized agency, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

(2) Sharing information. Final fitness determination results may be shared pursuant to ORS 181A.195(10)(c)(A).

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0330

Fees

Authorized agencies or districts shall develop policies or administrative rules, based on statutory authority, to charge fees for criminal records checks.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365

Stats. Implemented: ORS 181A.170, 181A.195, 181A.215

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-00; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16