

**Internal Operations Manual**

**SUBJECT:** Criminal Records Check - Federal & State

**NUMBER:** 107-04-150

**DIVISION:** Operations Division - Personnel Office

**EFFECTIVE DATE:** 09-01-06

**APPROVED:**

*Lindsay A. Ball*

**POLICY/  
PURPOSE:**

It is the policy of the Department of Administrative Services (DAS) to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to work or volunteer in positions covered by OAR 125-007-0220(2)(a)-(n).

**AUTHORITY:**

Chapter 730 – 2005 Laws, Oregon Administrative Rule (OAR) 125-007-0200 through 125-007-0330.

**APPLICABILITY:**

This policy applies to subject individuals as defined in OAR 125-007-0220(2)(a)-(n).

**ATTACHMENTS:**

1. Criminal Records Check Request
2. Notice of Fitness Determination
3. DAS Hearing Request

**DEFINITIONS:**

As used in OAR chapter 125, division 007, unless the context of the rule requires otherwise, the following definitions apply:

**“Approved”** means that a criminal records check and any required fitness determination have been completed on a subject individual and an authorized designee has determined that the subject individual is fit to be an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).

**“Authorized Designee”** means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

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

**“Criminal Offender Information”** includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

**“Crime Relevant to a Fitness Determination”** means a crime listed or described in OAR 125-007-0270.

**“Criminal Records Check and Fitness Determination Rules”** or **“These Rules”** means OAR chapter 125, division 007.

**“Criminal Records Check”** or **“CRC”** means one of three processes undertaken to check the criminal history of a subject individual.

- (a) a check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);
- (b) a check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or
- (c) a nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

**“Denied”** means that a criminal records check and subsequent fitness determination have been completed on a subject individual, and an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).

**“Department”** means the Oregon Department of Administrative Services (DAS) or any subdivision thereof.

**“False Statement”** means that, in association with an activity governed by these rules, a subject individual either provided the Department with materially false information about his or her criminal history, such as materially false information about his or her identity or conviction record, or failed to provide to the Department information material to determining his or her criminal history.

**“Fitness Determination”** means a determination made by an authorized designee pursuant to the process established in OAR 125-007-0240 (preliminary fitness determination) or 125-007-0260 (final fitness determination) that a subject individual is or is not fit to be a Department employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).

**“Other Criminal Records Information”** means any information, in addition to criminal offender information, sought or obtained by the Department about a subject individual relevant to determining the individual's criminal history.

**“Related”** means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

**“Subject Individual”** means an individual identified in OAR 125-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

The Oregon Department of Administrative Services may require the fingerprints of a person who is employed by or is applying for employment with the Department or provides services or seeks to provide services to the Department as a volunteer, contractor, or vendor and is working or will be working or providing services in a position in which:

- ❖ the person is providing information technology services and has control over or access to information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

- ❖ the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;
- ❖ the person has payroll functions;
- ❖ the person has responsibility for receiving, receipting or depositing money or negotiable instruments;
- ❖ the person has responsibility for billing, collections or other financial transactions;
- ❖ the person has responsibility for purchasing or selling property, or has access to property held in trust or to private property in the temporary custody of the state;
- ❖ the person has mailroom duties as his/her primary duty or job function;
- ❖ the person has responsibility for auditing the Department or other governmental agencies;
- ❖ the person has personnel or human resources functions as one of his/her primary responsibilities;
- ❖ the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information;
- ❖ the person has access to chemicals, hazardous materials or to facilities where chemicals and hazardous materials are present, or to information regarding the transportation of chemicals or hazardous materials;
- ❖ the person has access to property to which access is restricted in order to protect the health or safety of the public;
- ❖ the person provides security, design or construction services for government buildings, grounds or facilities;
- ❖ the person has access to critical infrastructure or security-sensitive facilities or information.

### **GUIDELINES:**

The Department may request that the Department of State Police conduct a criminal records check on a Subject Individual. One or more of the following three criminal records check processes will be used: LEDS Criminal Records Check, Oregon Criminal Records Check, and Nationwide Criminal Records Check.

### **A subject individual is required to have criminal records check in the following circumstances:**

- ❖ When a person becomes a subject individual on or after the effective date of these rules;
- ❖ When a person changes departments or agencies and meets the criteria of OAR 125-007-0220(2)(a)-(n). (If the subject individual's department or agency merges with another department or agency or changes names, this would not be considered a change under this section.)
- ❖ When a person changes positions through promotion, transfer, demotion, restoration, bumping or recall and meets the criteria of OAR 125-007-0220(2)(a)-(n);
- ❖ When federal or state laws or regulations or other rules adopted by the Department or contract or written agreement with the Department requires;
- ❖ When the Department has reason, such as any indication of possible criminal behavior, to believe that a criminal records check is justified.

**When the subject individual changes positions, a criminal records check is not required under the following circumstances:**

- ❖ When there is no change of department/agency and when there are no new potentially disqualifying crimes, arrests, or conditions, and when at least one of the following is true:
- ❖ a) The previous fitness determination identified no potentially disqualifying history, and the authorized designee determines that the previous fitness determination is sufficient for the new position; or
- ❖ b) The authorized designee determines that the new position requires the same or less responsibility for functions covered by OAR 125-007-0220(2)(a)-(n).

**Criminal Records Check:**

When an authorized designee determines that a criminal record check is needed, the authorized designee shall proceed as follows:

(A) LEADS Criminal Records Check (a check of criminal history, State of Oregon only). The authorized designee shall conduct a LEADS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(B) Oregon Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct an Oregon criminal records check when:

1) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEADS criminal records check, or other criminal records information; or

2) The authorized designee requests a nationwide criminal records check.

(C) Nationwide Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct a nationwide criminal records check when:

1) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

2) Information provided by the subject individual or the results of a LEADS or Oregon criminal records check provide reason to believe, as judged by an authorized designee, that the subject individual has a criminal history outside of Oregon;

3) As judged by an authorized designee, there is reason to question the identity of, or information provided by, a subject individual because, e.g., the subject individual fails to disclose a Social Security Number, discloses a Social Security Number that appears to be invalid, or does not have an Oregon driver's license or identification card;

4) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department; or

5) Regardless of the presence of factors 1) through 4) above, a subject individual will serve in a position identified in OAR 125-007-0220(2)(a), (c), (d), (e), (h) or (j).

### **Specific DAS positions will receive a criminal history check:**

<b><u>Division</u></b>	<b><u>Section</u></b>	<b><u>Type of Check</u></b>
State Data Center (SDC):	all positions	LEDS & Nationwide FBI
State Services Division (SSD):	all positions	LEDS
Public Employee Benefit Board (PEBB):	all positions	LEDS
Human Resource Service Division (HRSD):	all positions except Trainers	LEDS
Information Resource Management Division (IRMD):	Printing & Distribution (P&D)	LEDS
	Technology Support Center (TSC)	LEDS
	Enterprise Application Services (EAS)	LEDS
	Enterprise Security Office (ESO)	LEDS & Nationwide FBI
State Controller's Division (SCD):	all positions	LEDS
Operations	Payroll	LEDS
	Cashier/Admin	LEDS
	Personnel	LEDS
	Personnel-Authorized Designee	LEDS & Nationwide FBI
Facilities	Operations & Maintenance (O&M)	LEDS
	Parking	LEDS
Directors Office	Internal Audit	LEDS

### **Potentially Disqualifying Crimes**

A conviction of any of the crimes listed in OAR 125-007-0270(1) is potentially disqualifying. OAR 125-007-0270(2) and (3) cover 10-year and 5-year review of crimes for potential disqualification.

### **Hiring on a Preliminary Basis:**

A subject individual hired on a preliminary basis may participate in training, orientation, and work activities prior to a final fitness determination only under the following conditions:

- ❖ When the DAS Criminal Records Request Form has been completed by the subject individual and reviewed by the authorized designee.
- ❖ When the preliminary fitness determination has been completed pursuant to OAR 125-007-0250.
- ❖ When active supervision is constantly maintained by someone who is approved pursuant to these rules.

- ❖ When Exemption from Active Supervision has been approved by the authorized designee, a subject individual who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules or prior DAS criminal records check rules may be hired on a preliminary basis without active supervision provided the subject individual provides proof of having worked for a sustained period under the previous fitness determination. The Department must maintain the documentation. NOTE: Time frame (24 months) is based on the length of time between the date of previous approval and the date of starting the new position.

**Incomplete/Closed Case:**

If the subject individual or Department discontinues the application process or if the subject individual fails to cooperate with the criminal records check process, then the application is considered incomplete per OAR 125-007-0280. The subject individual may not appeal the determination of incomplete.

**Appealing a Final Fitness Determination:**

If a subject individual is disqualified or denied, that person may not hold the position or be employed in that specific position. A subject individual may challenge the accuracy of information provided per OAR 125-007-0300.

**Recordkeeping and Confidentiality:**

All LEDS reports, FBI reports and fingerprint cards are confidential and must be maintained by the authorized designee during the hiring process in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant hereto. After the criminal history check has been approved by the authorized designee, the authorized designee must destroy **all criminal history check forms** (including those for the hired candidates) within 30 days of hire, of final disposition or of closure of the case.

**PROCEDURE:**

<b><u>Step</u></b>	<b><u>Responsible Party</u></b>	<b><u>Action</u></b>
1.	Personnel Coordinator	<p>Contact the interview candidates during the final interview process. Prepare the criminal history check forms by filling in the position number, classification, division, section and the applicant’s name. Attach an envelope to each history check form and distribute to each final interview candidate. If the position requires only a LEDS check, candidate completes Section 1 only. If the position requires Oregon &amp; Nationwide and LEDS criminal history checks, the candidate completes both Section 1 and 2.</p> <p>Verify the identification of the applicant, obtain applicant’s signature on the form, and sign as the person securing the information for DAS.</p> <p>Return the form to the candidate and instruct him/her to complete Section 2. When completed, the candidate seals the form into the provided envelope with his or her name on it and initials the back of the envelope indicating he/she sealed it. Personnel Coordinator sends <u>all</u> sealed envelopes to the authorized designee in Personnel marked <b>“Confidential.”</b></p>
2.	Hiring Manager	<p>Make employment offer to the selected candidate without setting a hire date.</p> <p>If the candidate accepts the offer, the Hiring Manager advises him/her</p>

that the hire date is contingent upon the outcome of a preliminary review of the self-disclosed criminal history check. Personnel will inform manager of status for hiring on preliminary basis.

Where applicable, the Hiring Manager sends the candidate within 4 hours of the employment offer for a drug screen test.

Probationary status requires active supervision under OAR 125-007-0310. During the probationary status period, the employee is not authorized to operate state vehicles on state business.

3. Authorized Designee/Personnel Office

Review the criminal history check form for completeness and determine if the candidate is suitable for probationary status. Notify hiring manager via e-mail by the end of the next business day after receipt of the criminal history check form if probationary status is allowed.

Conduct a Law Enforcement Data System (LEDS) and Oregon Driver's License Check (Department of Motor Vehicle), if appropriate. Determine if a Nationwide FBI check is required. If not, notify manager of approval for the removal of probationary status. If so, notify Hiring Manager to send candidate to the Oregon State Police Identification Services.
4. Hiring Manager

Advise the candidate to go to State Police, Identification Services Division for fingerprinting and to bring a completed fingerprint card. OSP Identification Services is located at 3772 Portland Road NE, Salem, in the building directly behind the OSP Patrol Office. LEDS checks will be completed in the Personnel Office.

If the candidate is outside of the Salem area, local law enforcement agencies can perform this service as long as the candidate has a fingerprint card with DAS information completely filled out.
5. Authorized Designee/Personnel Office

Receive FBI check results from State Police. Advise manager whether the candidate is approved, pending or denied.

If denied, notify the candidate by letter of his/her right to appeal a completed final fitness determination and attach the Hearing Request form. The candidate may submit a request for hearing within 14 calendar days of the date appearing on the determination letter. Advise the candidate that the offer of employment has been rescinded.

After the criminal history check has been approved by the authorized designee, Personnel must destroy **all** candidate forms (including those for the hired candidates) within 30 days of hire. Log data into a tracking spreadsheet that shows only action taken (approved/denied) and dates.

Send each division or section a monthly billing for each State Police Oregon only criminal history check and/or Nationwide FBI criminal history check. (Current rates for these services available at Personnel.)

# Department of Administrative Services

## Criminal Records Check Request



Use for current employees and applicants for DAS positions

**APPLICANT:** (Please Print)

### Section 1: To be completed by the hiring unit

1. Personnel Coordinator:

2. Phone: (     )

3. Hiring Manager:

4. Phone: (     )

5. Manager's Worksite / Section:

Division:

City:

8. Reason for request:  New hire  Current employee  Temp  Contractor  Student  
 Intern  Vendor  Volunteer

9. a) Working Job Title:

9. b) Classification#:

Position#:

10. a) Position requires direct contact with:

Confidential Information  Negotiable Documents  Information Technology Services  
 Security Sensitive environment  audit, budget, financial information  mailroom  purchasing

10. b) Will employee be driving to conduct state business?  Yes  No

*I have confirmed the identification of the subject individual:*

Photo ID checked

Photo ID not available

Signature of Personnel Coordinator:

Date:     /     /

## Instructions for the Subject Individual

### Read all instructions before completing form

The "**Subject Individual**" is the person whose criminal history is being checked. The subject individual must complete and sign Section 2.

Listing your social security number (SSN) is necessary for the Department to complete the criminal records history check. If you do not provide your SSN, your hire status may be in jeopardy. If you do not have a SSN but do have an INS number, write your INS number on line 12 of Section 2.

**Disclose all criminal history.** You must accurately and completely disclose **all** criminal history. This includes **all** felonies, misdemeanors, probation violations and failures to appear. If you fail to list any part of your history, you may be denied employment. Serious traffic offenses, such as "Reckless Driving," "Driving Under the Influence of Intoxicants" (DUI) and "Driving While Suspended" (DWS) **must** be listed.

"Failure to Appear," even for a minor traffic violation, **must** be listed. If you are not sure if something should be listed, you should list it. Be certain to include the date (approximate if necessary) and location (city and state) of each arrest and conviction.

If you have history that you believe is "expunged" or removed from your record, or a crime for which you have been pardoned but you do not have documentation that it was removed, you should list it. A crime is not removed from your record until you complete the formal process to have it removed.

**Arrests.** In most cases, arrests alone will not result in denial of employment. If, however, you fail to disclose or falsify information about arrests, you may be denied employment.

**Violations.** Minor traffic violations such as parking tickets, speeding, or failing to stop at a stop sign or red light, are **not** required to be listed.

**If you have any criminal history, provide the following information in question 24.**

- Tell us what happened when you were arrested and/or convicted.
- What did you have to do because of the arrest or conviction? Serve probation? Pay restitution?
- List any treatment, counseling, alcohol or drug rehabilitation, education, and training you have had.
- List employment demonstrating responsible behavior.
- How is your criminal history relevant to your job or position?
- How has your life changed since the criminal event?
- Why do you believe you are no longer a risk to vulnerable people?
- Explain why you believe past criminal behavior is not likely to recur.
- Attach documentation to support the information provided.

**Denial.** You may be denied employment if you have a potentially disqualifying crime or condition as indicated in OAR 125.007.0270, or if you falsify or fail to disclose requested information. You may be denied employment if you have a probation violation, outstanding warrant, deferred sentence or unresolved arrest. You may be denied employment if you are on probation.

**Failure to cooperate.** If you do not cooperate with the criminal-history check process, your application may be closed without a fitness determination and you will **not** have a right to appeal the decision.





## **Additional Information and Instructions**

**Authority.** The Department of Administrative Services (DAS) is authorized by state law to screen subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to work or volunteer in positions covered by OAR 125-007-0220 (2)(a)-(n).

**Results.** Results from this request for criminal history check are e-mailed by the Authorized Designee to the hiring supervisor listed in Section 1 if the background check is approved. If potentially disqualifying crimes are found, the Authorized Designee in Personnel reviews the results, takes appropriate action, and notifies the subject individual by letter of the results.

**Rechecks.** This background check process may be repeated by the Authorized Designee at any time while the subject individual works, resides or otherwise continues in this position. The subject individual must notify the Authorized Designee if he/she is arrested or convicted for any misdemeanor or felony after completing this form.

**Sources checked.** In doing this check, DAS may use information from the Driver and Motor Vehicle Division; Department of Corrections; Oregon State Police; Federal Bureau of Investigation; and local, state and federal courts. DAS may use information from other criminal justice, corrections and law-enforcement agencies, and other state and local government agencies. Fingerprints may be requested by the DAS Authorized Designee in Personnel. In some cases, current and previous employers may be checked.

**Challenging the state information.** The subject individual may look at the criminal history information (LEDS record) provided by the Oregon State Police. If the subject individual wants to obtain a copy of the record or challenge information in the record, the subject individual must contact the Oregon State Police, (503) 378-3070, extension 330.

**Challenging the FBI information.** The subject individual may challenge the accuracy and completeness of information in the FBI record if he or she believes it is incorrect. To obtain a copy or challenge the FBI record, the subject individual must contact the Federal Bureau of Investigation for information, (304) 625-3878.

**Civil rights.** Subject individuals may have rights under Title VII of the Civil Rights Act of 1964. Discrimination by an employer on the basis of arrests alone may violate federal law. Individuals wishing to obtain information regarding civil rights should contact the Oregon Bureau of Labor and Industries, (503) 731-4075, or the U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000.

**Return the completed form in the sealed and initialed envelope to  
the Personnel Coordinator for transmittal to the Authorized  
Designee.**



**Confidential Information**

# Notice of Fitness Determination DAS Personnel Section

Original Notice       Amended Notice

1 Name and Mailing Address of Subject Individual   	2 Date of Birth	3 Recruitment Number
	4 Position/Job Title	

5 Work Site Location

**6 Final Fitness Determination**

**APPROVED**

**CASE CLOSED** (No right to request a hearing)

**DENIED**

Denial based on:

Five-year crime (OAR 125-007-0270) \_\_\_\_\_

Ten-year crime (OAR 125-007-0270) \_\_\_\_\_

Permanent crime (OAR 125-007-0270) \_\_\_\_\_

False statement/non-disclosure (OAR 125-007-0260) \_\_\_\_\_

Unresolved arrest(s) or warrant (OAR 125-007-0260) \_\_\_\_\_

Deferred sentence, diversion or probation (OAR 125-007-0260) \_\_\_\_\_

Probation violation (OAR 125-007-0260) \_\_\_\_\_

Sex offender registration (OAR 125-007-0260) \_\_\_\_\_

Failure to cooperate or to provide requested information (OAR 125-007-0260) \_\_\_\_\_

Other (explanation required) \_\_\_\_\_

If you are denied, you may appeal the decision by requesting a hearing. Complete the Hearing Request and mail it to:

**DAS Personnel Section, Authorized Designee, 155 Cottage Street NE U130, Salem OR 97301-3974**

The request must be received by DAS within **10 days** of the date in Box 10.

Hearings on fitness determinations are conducted in accordance with OAR 137-003-0501. See OAR 125-007-0330 for more information. If you disagree with the information provided by the Oregon State Police or Federal Bureau of Investigation, you need to first clarify your record with the law enforcement agency.

**If you need this form in large print or if you have questions, call DAS Personnel 503-378-3622.**

   	8 Authorized Designee (Please Print)	
	9 Signature	Date
	10 Effective Date of Action	



**Confidential  
Information**

# DAS Hearing Request

Informal Administrative Review  
and  
Contested Case Hearing

1 Name and Mailing Address of Subject Individual   	2 Date of Birth	3 Recruitment Number
	4 Position/Job Title Applying For:	

5 Home/Message Phone

6 Explain why you disagree with the action taken. Attach additional pages if needed.

7 Effective Date of Action	8 Is an interpreter or alternate format required? (list need)
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9 Signature	10 Date Signed
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If you have been denied following a DAS criminal records check, you may request a hearing. To request a hearing, complete this form and return it within **10 days** of the effective date of the denial notice you received. Mail the completed form to:

**DAS Personnel – Authorized Designee, 155 Cottage Street NE U130, Salem OR 97301-3974**

Upon receipt of your hearing request, a representative of the department will contact you, and an informal administrative review will be held. This will give all parties an opportunity to correct any misunderstanding of the facts.

If the denial is maintained after the completion of the informal administrative review, a contested case hearing will be scheduled and held before an impartial administrative law judge. This hearing is usually conducted by phone. You have the right to have witnesses testify on your behalf. You also have the right to be represented by an attorney. If you cannot afford an attorney but wish to be represented, contact the Oregon State Bar at 1-800-452-8260 for more information.

If you believe your criminal record is incorrect, contact the law enforcement agency that holds your record. Information on how to contact law enforcement agencies is located on page 4 of the **DAS Criminal History Request**.

**You may attach any additional information you believe will help explain why you should be approved.** You may stop the appeal process at any time.

DAS/ Agency Use Only	Date Request Rcvd	Issue Code	Agency	Phone Number
	Date Form Rcvd	DAS Hearings Representative	DAS Representative Signature	Date Signed