

**CHAPTER 407
DEPARTMENT OF HUMAN SERVICES**

**DIVISION 7
CRIMINAL RECORDS AND ABUSE CHECK RULES**

Criminal Records Checks and Abuse Checks on Providers

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1 **407-007-0200** **Purpose and Scope**

- 2
- 3 (1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the
4 reasonable screening under ORS 181.534, 181.537, and 409.027 of subject individuals (SIs) to
5 determine if they have a history of criminal or abusive behavior such that they should not be
6 allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by
7 these rules.
8
- 9 (2) These rules apply to evaluating criminal records and potentially disqualifying conditions of an SI
10 when conducting fitness determinations based upon such information. The fact that an SI is
11 approved does not guarantee employment or placement. These rules do not apply to
12 individuals subject to OAR 407-007-0000 to 407-007-0100 or 407-007-0400 to 407-007-0460.
13
- 14 (3) Providers for the Department of Human Services (Department) and the Oregon Health
15 Authority (Authority) are subject to criminal and abuse checks. The Authority authorizes the
16 Department to act on its behalf in carrying out criminal and abuse checks associated with the
17 administration of programs or activities administered by the Authority. References in these
18 rules to the Department or Authority shall be construed to be references to either or both
19 agencies.
20

21 *Stat. Auth.: ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 411.122,*
22 *418.016, 418.640, 441.055, 443.730, 443.735 & 678.153*

23 *Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 &*
24 *443.004*

25
26

27 **407-007-0210** **Definitions**

28

29 As used in OAR 407-007-0200 to 407-007-0370 the following definitions apply:

- 30
- 31 (1) "Abuse" has the meaning given in the administrative rules promulgated by the Department or
32 Authority corresponding to the setting in which the abuse was alleged or investigated.
33
- 34 (2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports,
35 and associated exhibits and documents for the purpose of determining whether an SI has a
36 history as a perpetrator of potentially disqualifying abuse (a potentially disqualifying condition)
37 as described in OAR 407-007-0290(11).
38
- 39
- 40 (3) "Abuse investigation report" means a written report completed after an investigation into
41 suspected abuse and retained by the Department or the Authority pursuant to ORS 124.085,
42 419B.030, or 430.757, or a similar report filed in another state agency or by another state.

- 1 (4) "Appointing authority" means an individual designated by the qualified entity (QE) who is
2 responsible for appointing QE designees (QEDs). Examples include but are not limited to human
3 resources staff with the authority to offer and terminate employment, a business owner, a
4 member of the board of directors, a director, or a program administrator.
5
- 6 (5) "Approved" means that an SI, following a final fitness determination, is fit to work, volunteer,
7 be employed, or otherwise perform in the position listed in the background check request.
8
- 9 (6) "Approved with restrictions" means an approval in which some restriction is made including but
10 not limited to an SI, an SI's environment, the type or number of clients for whom an SI may
11 provide care, or the information to which an SI has access.
12
- 13 (7) "Authority" means the Oregon Health Authority.
14
- 15 (8) "Background check" means a criminal records check and an abuse check under these rules.
16
- 17 (9) "Background Check Unit (BCU)" means the Background Check Unit conducting background
18 checks for the Department and the Authority.
19
- 20 (10) "Care" means the provision of care, treatment, education, training, instruction, supervision,
21 placement services, recreation, or support to children, the elderly, or individuals with
22 disabilities (see ORS 181.537).
23
- 24 (11) "Client" means any individual who receives services, care, or funding for care through the
25 Department or Authority.
26
- 27 (12) "Closed case" means a background check request that has been closed without a final fitness
28 determination.
29
- 30 (13) "Criminal records check" means obtaining and reviewing criminal records as required by these
31 rules and includes any or all of the following:
32
- 33 (a) An Oregon criminal records check where criminal offender information is obtained from
34 the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The
35 Oregon criminal records check may also include a review of other criminal records
36 information.
37
- 38
- 39 (b) A national criminal records check where records are obtained from the Federal Bureau
40 of Investigation (FBI) through the use of fingerprint cards sent to OSP and other
41 identifying information. The national criminal records check may also include a review of
42 other criminal records information.
43

- 1 (c) A state-specific criminal records check where records are obtained from law
2 enforcement agencies, courts, or other criminal records information resources located
3 in, or regarding, a state or jurisdiction outside Oregon.
4
- 5 (14) "Criminal Information Management System (CRIMS)" means the electronic records system used
6 to process and maintain background check records under these rules.
7
- 8 (15) "Criminal offender information" means records, including fingerprints and photographs,
9 received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and
10 alleged offenders and maintained as part of an individual's records of arrest, the nature and
11 disposition of criminal charges, sentencing, confinement, and release, but does not include the
12 retention by OSP of records of transfer of inmates between penal institutions or other
13 correctional facilities.. It also includes the OSP Computerized Criminal History System (see OAR
14 257-010-0015).
15
- 16 (16) "Denied" means that an SI, following a fitness determination including a weighing test, is not fit
17 to work, volunteer, be employed, reside, or otherwise hold the position listed on the
18 background check request.
19
- 20 (17) "Department" means the Department of Human Services.
21
- 22 (18) "Fitness determination" means the decision in a case that is not closed and includes:
23
- 24 (a) The decision regarding a background check request and preliminary review (a
25 preliminary fitness determination); or
26
- 27 (b) The decision regarding a background check request, completed background check,
28 including gathering other information as necessary, and a final review by BCU (a final
29 fitness determination).
30
- 31 (19) "Founded or substantiated" has the meaning given in the Department or Authority's
32 administrative rules corresponding to the setting in which the abuse was alleged or
33 investigated.
34
- 35 (20) "Good cause" means a valid and sufficient reason for not complying with established time
36 frames during the background check process or contested case hearing process that includes
37 but is not limited to an explanation of circumstances beyond a subject individual's reasonable
38 control.
39
- 40 (21) "Hearing representative" means a Department employee representing the Department in a
41 contested case hearing.
42

- 1 (22) “Hired on a preliminary basis” means a condition in which a QE allows an SI to work, volunteer,
2 be trained, or reside in an environment following the submission of a background check
3 request. Hired on a preliminary basis may also be called probationary status.
4
- 5 (23) “Ineligible Due to ORS 443.004” means BCU has determined that an SI, subject to ORS 443.004
6 and either OAR 407-007-0275 or 407-007-0277, has one or more convictions that prohibits the
7 SI from holding the position listed in the background check request.
8
- 9 (24) “Office of Investigation and Training (OIT)” means the Office of Investigation and Training, a
10 shared service of the Department and Authority.
11
- 12 (25) “Other criminal records information” means information obtained and used in the criminal
13 records check process that is not criminal offender information from OSP. Other criminal
14 records information includes but is not limited to police investigations and records, information
15 from local or regional criminal records information systems, justice records, court records,
16 information from the Oregon Judicial Information Network, sexual offender registration
17 records, warrants, Oregon Department of Corrections records, Oregon Department of
18 Transportation’s Driver and Motor Vehicle Services Division information, information provided
19 on the background check requests, disclosures by a subject individual, and any other
20 information from any jurisdiction obtained by or provided to the Department for the purpose of
21 conducting a fitness determination.
22
- 23 (26) “Position” means the position listed in the background check request which determines
24 whether the individual is a subject individual under these rules, Department program rules or
25 Authority program rules.
26
- 27 (27) “Qualified entity (QE)” means a community mental health or developmental disability program,
28 local health department, or an individual, business, or organization, whether public, private,
29 for-profit, nonprofit, or voluntary, that provides care, including a business or organization that
30 licenses, certifies, or registers others to provide care (see ORS 181.537).
31
- 32 (28) “QE designee (QED)” means an individual appointed by the QE’s appointing authority to handle
33 background checks on behalf of the QE.
34
- 35 (29) “QE Initiator (QEI)” means an approved subject individual (SI) who BCU has granted access to
36 CRIMS for one QE for the purpose of entering background check request data.
37
- 38 (30) “Subject individual (SI)” means an individual on whom BCU may conduct a criminal records
39 check and an abuse check, and from whom BCU may require fingerprints for the purpose of
40 conducting a national criminal records check.
41
- 42 (a) An SI includes any of the following:
43

- 1 (A) An individual who is licensed, certified, registered, or otherwise regulated or
2 authorized for payment by the Department or Authority and who provides care.
3
- 4 (B) An employee, contractor, temporary worker, or volunteer who provides care, or
5 has access to clients, client information, or client funds within or on behalf of any
6 entity or agency licensed, certified, registered, or otherwise regulated by the
7 Department or Authority.
8
- 9 (C) Any individual who is paid directly or indirectly with public funds who has or will
10 have contact with recipients of:
11
 - 12 (i) Services within an adult foster home (defined in ORS 443.705); or
 - 13
 - 14 (ii) Services within a residential facility (defined in ORS 443.400).
 - 15
- 16 (D) Any direct care staff secured by any residential care facility or assisted living
17 facility through the services of a personnel services or staffing agency who works
18 in the facility.
19
- 20 (E) Any direct care staff secured by any nursing facility through the services of a
21 personnel services or staffing agency who works in the facility
22
- 23 (F) Except as excluded in section (30)(b)(C) and (D) of this rule, an individual who
24 lives in a facility that is licensed, certified, registered, or otherwise regulated by
25 the Department to provide care. The position of this SI includes but is not limited
26 to resident manager, household member, or boarder.
27
- 28 (G) An individual working or volunteering for a private licensed child caring agency
29 or system of care contractor providing child welfare services pursuant to ORS
30 chapter 418.
31
- 32 (H) A homecare worker as defined in ORS 410.600, a personal support worker as
33 defined in ORS 410.600, a personal care services provider, or an independent
34 provider employed by a Department or Authority client who provides care to the
35 client if the Department or Authority helps pay for the services.
- 36 (I) A child care provider and their employees reimbursed through the Department's
37 child care program and other individuals in child care facilities that are exempt
38 from certification or registration by the Child Care Division of the Oregon
39 Employment Department (OED). This includes all individuals who reside in or
40 who are frequent visitors to the residence or facility where the child care
41 services are provided and who may have unsupervised access to the children
42 (see OAR 461-165-0180).
43

- 1 (J) An appointing authority, QED, or QEI associated with any entity or agency
2 licensed, certified, registered, otherwise regulated by the Department, or subject
3 to these rules.
4
- 5 (K) An individual providing on the job certified nursing assistant classes to staff
6 within a long term care facility.
7
- 8 (L) A student enrolled in a long term care facility nursing assistant training program
9 for employment at the facility.
10
- 11 (M) Any individual serving as an owner, operator, or manager of a room and board
12 facility pursuant to OAR chapter 411, division 68.
13
- 14 (N) An employee providing care to clients of the Department Aging & People with
15 Disabilities programs who works for an in-home care agency as defined by ORS
16 443.305 which has a contract with the Department's Aging & People with
17 Disabilities programs.
18
- 19 (O) Any individual who is required to complete a background check pursuant to
20 Department or Authority program rules or a contract with the Department or
21 Authority, if the requirement is within the Department or Authority's statutory
22 authority. Specific statutory authority or reference to these rules and the
23 positions under the contract subject to a criminal records check must be
24 specified in the contract. The exceptions in section (30)(b) do not apply to these
25 SIs.
26
- 27 (b) An SI does not include:
28
 - 29 (A) Any individual under 16 years of age.
30
 - 31 (B) An individual receiving training through a Department-licensed or Department-
32 certified QE as part of the required curriculum through any college, university, or
33 other training program and who is not an employee for the QE in which training
34 is provided. The individual may not be considered a volunteer under these rules.
35 QEs must ensure that all students or interns have passed a substantially
36 equivalent background check process through the training program or are:
37
 - 38 (i) Actively supervised at all times as defined in OAR 407-007-0315; and
39
 - 40 (ii) Not allowed to have unsupervised access to vulnerable individuals.
41
 - 42
 - 43

- 1 (C) Department, Authority, or QE clients. The only circumstance in which BCU shall
2 allow a check to be performed on a client pursuant to this paragraph is if the
3 client falls within the definition of "subject individual" as listed in sections
4 (30)(a)(A)-(E) and (30)(a)(G)-(O) of this rule, or if the facility is dually licensed for
5 different populations of vulnerable individuals.
6
- 7 (D) Individuals working in child care facilities certified or registered by the OED.
8
- 9 (E) Individuals employed by a private business that provides services to clients and
10 the general public and is not regulated by the Department or Authority.
11
- 12 (F) Individuals employed by a business that provides appliance or structural repair
13 for clients and the general public, and who are temporarily providing these
14 services in a licensed or certified QE. The QE shall ensure active supervision of
15 these individuals while on QE property and the QE may not allow unsupervised
16 contact with QE clients or residents. This exclusion does not apply to a business
17 that receives funds from the Department or Authority for care provided by an
18 employee of the business.
19
- 20 (G) Individuals employed by a private business in which a client of the Department
21 or Authority is working as part of a Department- or Authority-sponsored
22 employment service program. This exclusion does not apply to an employee of a
23 business that receives funds from the Department or Authority for care provided
24 by the employee.
25
- 26 (H) Employees and volunteers working in hospitals, ambulatory surgical centers,
27 special inpatient care facilities, outpatient renal dialysis facilities, and
28 freestanding birthing centers as defined in ORS 442.015.
29
- 30 (I) Volunteers, who are not under the direction and control of a licensed, certified,
31 registered, or otherwise regulated QE.
32
- 33 (J) Individuals employed or volunteering in a Medicare-certified health care
34 business which is not subject to licensure or certification by the State of Oregon.
35
- 36 (K) Individuals working in restaurants or at public swimming pools.
37
- 38 (L) Hemodialysis technicians.
39
40
41
42
43

- 1 (M) Employees, contractors, temporary workers, or volunteers who provide care, or
2 have access to clients, client information, or client funds of an alcohol and drug
3 program that is certified, licensed, or approved by the Authority's Addictions and
4 Mental Health Division to provide prevention, evaluation, or treatment services.
5 This exclusion does not apply to programs specifically required by other
6 Authority program rules to conduct criminal records checks in accordance with
7 these rules.
8
- 9 (N) Individuals working for a transit service provider which conducts background
10 checks pursuant to ORS 267.237.
11
- 12 (O) Individuals being certified by the Department as interpreters pursuant to ORS
13 409.623. This exclusion does not apply to Department-certified interpreters
14 when being considered for a specific position.
15
- 16 (P) Provider group categories that were authorized for payment by the Department
17 for care if the provider group categories were not covered by a Department
18 criminal record check process prior to 2004.
19
- 20 (Q) Emergency medical technicians and first responders certified by the Authority's
21 Emergency Medical Services and Trauma Systems program.
22
- 23 (R) Employees, contractors, temporary workers, or volunteers of continuing care
24 retirement communities registered under OAR chapter 411, division 67.
25

26 (31) "Weighing test" means a process in which BCU considers available information to make a
27 fitness determination when an SI has potentially disqualifying convictions or conditions.
28

29 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

30 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

31

32 **407-007-0220 Background Check Required**

33

- 34 (1) BCU shall conduct criminal records checks on all SIs through LEDS maintained by OSP in
35 accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division
36 15).
37
- 38 (2) If a national criminal records check is necessary, OSP shall provide BCU results of national
39 criminal records checks conducted pursuant to ORS 181.534, including fingerprint
40 identification, through the FBI.
41
- 42 (3) BCU shall conduct abuse checks using available abuse investigation reports and associated
43 documents.

- 1 (4) An SI is required to have a background check in the following circumstances:
2
3 (a) An individual who becomes an SI on or after the effective date of these rules.
4
5 (b) The SI changes employers to a different QE.
6
7 (c) Except as provided in section (6) of this rule, the individual, whether previously
8 considered an SI or not, changes positions under the same QE, and the new position
9 requires a background check.
10
11 (d) The individual, whether previously considered an SI or not, changes Department or
12 Authority-issued licenses, certifications, or registrations, and the license, certification, or
13 registration requires a background check under these rules.
14
15 (e) For a student enrolled in a long term care facility nursing assistant training program for
16 employment at the facility, a new background check is required when the student
17 becomes an employee at the facility. A new background check is not required by the
18 Department or the Authority at graduation from the training program or at the granting
19 of certification by the Board of Nursing unless the Department, the Authority, or the QE
20 have reason to believe that a background check is justified.
21
22 (f) A background check is required by federal or state laws or regulations, other
23 Department or Authority administrative rules, or by contract with the Department or
24 Authority.
25
26 (g) When BCU or the QE has reason to believe that a background check is justified.
27 Examples include but are not limited to:
28
29 (A) Any indication of possible criminal or abusive behavior by an SI.
30
31 (B) A lapse in working or volunteering in a position under the direction and control
32 of the QE but the SI is still considered in the position. An example is an extended
33 period of leave by an SI. The QE determines the need for a background check.
34
35 (C) Quality assurance monitoring by the Department or Authority of a previously
36 conducted criminal records check or abuse check.
37
38 (5) If the SI is subject to a background check due to involvement with the foster or adoptive
39 placement of a child and:
40
41 (a) Is subject to the Interstate Compact on Placement of Children (ORS 417.200; OAR 413-
42 040-0200 to 413-040-0330), the background check must comply with Interstate
43 Compact requirements.
44

1 (b) Is subject to the Intercounty Adoption Act of 2000 (42 USC 14901 et seq.), the
2 background check must comply with federal requirement and ORS 417.262.
3

4 (6) If QEs, Department program rules, or Authority program rules require an SI to report any new
5 arrests, charges, or convictions, the QE may determine if personnel action is required if the SI
6 does not report. Personnel action may include a new background check.
7

8 (7) A background check is not required under the following circumstances:
9

10 (a) A homecare worker, as defined in ORS 410.600, has a Department background check
11 notice of final fitness determination dated within the recheck period according to
12 Department program rules showing that the homecare worker has been approved or
13 approved with restrictions, and listing a worksite of "various," "various clients,"
14 "statewide," or similar wording.
15

16 (b) A personal support worker, personal care services provider, Lifespan Respite or other
17 respite care provider, or an independent provider paid with Department or Authority
18 funds who changes or adds clients within the same QE, Department, or Authority
19 district, and the prior, documented criminal records check or abuse check conducted
20 within the previous 24 months through the Department or Authority has been approved
21 without restrictions.
22

23 (c) The SI is a child care provider as described in OAR 461-165-0180 who changes or adds
24 clients and who has been approved without restrictions within the required recheck
25 period according to Department program rules.
26

27 (d) The SI remains with a QE in the same position listed on the background check request
28 while the QE merges with another QE, is sold to another QE, or changes names. The
29 changes may be noted in documentation attached to the notice of fitness determination
30 but do not warrant a background check.
31

32 (8) Background checks are completed on SIs who otherwise meet the qualifications of the position
33 listed on the background check request. A background check may not be used to screen
34 applicants for a position.
35

36 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

37 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
38

1 **407-007-0230** **Qualified Entities**

- 2
- 3 (1) A QE and its appointing authority must be approved in writing by the Department or Authority
4 pursuant to these rules in order to appoint a QED. Documentation of a current and valid
5 license, certification, or letter of approval from the Department or Authority are considered
6 proof of approval. Unless specifically indicated otherwise in these rules, all QEs and appointing
7 authorities discussed in these rules are considered approved.
8
- 9 (2) A QE shall ensure the completion of background checks for all SIs who are the QE's employees,
10 volunteers, or other SIs under the direction or control of the QE.
11
- 12 (3) BCU may allow a QE's appointing authority or QED to appoint one or more QEDs based on the
13 needs of the QE and the volume of SIs under the QE.
14
- 15 (4) A QE's appointing authority shall appoint QEDs as needed to remain in compliance with these
16 rules and shall communicate any changes regarding QEDs or QEDs to BCU.
17
- 18 (5) If for any reason a QE no longer has any QEDs, the QE or appointing authority shall ensure that
19 the confidentiality and security of background check records by immediately providing all
20 background check related documents to BCU or to another QE as determined by BCU.
21
- 22 (6) BCU shall provide QEs with periodic training and on-going technical assistance.
23
- 24 (7) Any decisions made by BCU in regard to these rules are final and may not be overturned by
25 any QE.
26

27 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

28 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

31 **407-007-0240** **QE Designees and QE Initiators**

- 32
- 33 (1) All requirements in this section must be completed within 90 calendar days. To receive BCU
34 approval, a QED must meet the following requirements:
35
- 36 (a) A QED must be one of the following:
37
- 38 (A) Employed by the agency for which the QED will handle criminal records check
39 information.
40
- 41 (B) Contracted with the QE to perform as a QED.

- 1 (C) Employed by another similar QE or a parent QE. For example, an assisted living
2 facility QED may act as QED for another assisted living facility.
3
- 4 (b) A QED must have work-related access to the internet and e-mail for the processing of
5 background checks and entering background check requests into CRIMS.
6
- 7 (c) A QED must complete a certification program and successfully pass any BCU required
8 testing.
9
- 10 (d) An appointing authority must appoint a QED on a form provided by BCU. The applicant
11 QED must complete and submit required documents and information to BCU for
12 processing and registration.
13
- 14 (e) BCU shall conduct an abuse check, an Oregon criminal records check, a national criminal
15 records check, and if necessary, a state-specific criminal records check. A QED must
16 have:
17
- 18 (A) No conviction for a potentially disqualifying permanent review crime;
19
- 20 (B) No convictions for any other crime in the past 15 years;
21
- 22 (C) No potentially disqualifying conditions; and
23
- 24 (D) With consideration of the QE and potentially disqualifying abuse under OAR 407-
25 007-0290(11), no determination that the QED was found responsible for
26 potentially disqualifying abuse of a vulnerable person.
27
- 28 (2) BCU shall deny the individual's status as a QED if the individual does not meet QED
29 requirements. Once denied, the individual may no longer perform the duties of a QED. There
30 are no exceptions for individuals who fail to meet QED requirements.
31
- 32 (3) An approved QED shall have the following responsibilities:
33
- 34 (a) Demonstrate understanding of and adherence to these rules in all actions pertaining to
35 the background check process.
36
- 37 (b) Act as the Department's designee in any action pursuant to these rules and the
38 background check process. A QED may not advocate for an SI during any part of the
39 background check process, including contesting a fitness determination.
40
- 41 (c) Ensure that adequate measures are taken to protect the confidentiality of the records
42 and documents required by these rules. A QED may not view criminal offender
43 information. A QED may not view abuse investigation reports and associated abuse
44 investigation exhibits or documents as part of the background check process.

- 1 (d) A QED shall verify the SI's identity or ensure that the same verification requirements are
2 understood by each individual responsible for verifying identity. The QE may verify
3 identity at any time during the hiring or placement process up to the submission of the
4 background check request.
5
- 6 (A) If conducting a background check on the SI for the first time or at rehire of the SI,
7 a QED shall verify identity or ensure identity is verified by using methods which
8 include but are not limited to reviewing the SI's current and valid government-
9 issued photo identification and confirming the information on the photo
10 identification with the SI, the information included in the background check
11 request, and the information written on the fingerprint card if a national criminal
12 records check is conducted.
13
- 14 (B) If an SI is being rechecked for the same QE without any break in placement,
15 service, or employment, review of government-issued photo identification may
16 not be necessary. The QED shall verify the SI's name, current address, and any
17 aliases or previous names, or ensure this information is verified.
18
- 19 (e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any
20 position covered by these rules before the submission of the background check request
21 to BCU
22
- 23 (f) Ensure that the result of the preliminary fitness determination, granting the QE to hire
24 the SI on a preliminary basis or prohibiting the QE from hiring the SI on a preliminary
25 basis, is followed.
26
- 27 (g) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is
28 understood by each individual responsible for providing active supervision.
29
- 30 (h) Ensure that if an SI is removed from working on a preliminary basis, the SI is
31 immediately removed from the position and remains removed until BCU reinstates
32 hired on a preliminary basis or the completion of a final fitness determination allowing
33 the SI to resume the position.
34
- 35 (i) Ensure that the SI has a fingerprint card and understands what is needed to get a
36 fingerprint card completed if a national background check is required.
37
- 38 (j) Notify BCU of any changes regarding an SI who still has a background check in process,
39 including but not limited to address or employment status changes.
40
- 41 (k) Monitor the status of background check applications and investigate any delays in
42 processing.
43

- 1 (L) Ensure that documentation required by these rules is processed and maintained in
2 accordance with these rules.
3
- 4 (m) Notify BCU immediately if arrested, charged, or convicted of any crime, or if found
5 responsible for abuse by the Department or Authority.
6
- 7 (4) A QED may make preliminary fitness determinations:
8
- 9 (a) A QED shall review the SI's completed background check request to ensure
10 completeness of the information, verify identity, and to determine if the SI has any
11 disclosed criminal history.
12
- 13 (b) A QED shall adhere to OAR 407-007-0315(4) when making a preliminary fitness
14 determination.
15
- 16 (c) If the SI has adverse criminal history within the five year period from the date the SI
17 manually or electronically signed the background check request, the QED may request in
18 writing that BCU make a preliminary fitness determination requiring a weighing test.
19
- 20 (5) BCU may change QED status in the following circumstances which include but are not limited
21 to:
22
- 23 (a) BCU shall inactivate QED status when the position with the QE ends or when the QE
24 terminates the appointment. The QE shall notify BCU immediately upon the end of the
25 position or termination of the appointment.
26
- 27 (b) BCU shall suspend or revoke the appointment if a QED fails to comply with
28 responsibilities or fails to continue to meet the requirements for QED status, as
29 applicable. After suspending or revoking the appointment, the QE must immediately
30 notify the BCU in writing. If BCU takes the action, it must immediately notify the QE in
31 writing.
32
- 33 (c) BCU shall revoke QED status if a QED fails to recertify.
34
- 35 (6) Any changes to QED status are not subject to appeal rights unless the denial or termination
36 results in immediate loss of employment or position. A QED losing employment or position
37 have the same hearing rights as other SIs under these rules.
38
- 39 (7) If a QED leaves employment or position with the QE for any reason, BCU shall inactivate QED
40 status. If the individual finds employment with another QE, BCU shall determine the
41 requirement for reactivation of QED status.
42
- 43 (8) BCU shall review and recertify appointments of QEDs, up to and including a new application,
44 background check, and additional training, under the following circumstances:

- 1 (a) Every three years; or
2
3 (b) Any time BCU has reason to believe the individual no longer meets QED requirements
4 including but not limited to indication of criminal or abusive behavior or indication of
5 noncompliance with these rules.
6
7 (9) With BCU approval, QEs may appoint QEs to enter background check request into CRIMS. QEs
8 must:
9
10 (a) Be currently approved SIs for the QE;
11
12 (b) Have internet access and working e-mail accounts to access CRIMS; and
13
14 (c) Meet other criteria as determined by BCU and the QE.
15

16 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

17 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

18
19

20 **407-007-0250 Background Check Process**

21

- 22 (1) A QE and SI shall use CRIMS to request a background check which shall include the following
23 information regarding an SI:
24
25 (a) Name and aliases;
26
27 (b) Date of birth;
28
29 (c) Address and recent residency information;
30
31 (d) Driver license or identification card information;
32
33 (e) Position for which the SI is completing the background check request;
34
35 (f) Disclosure of all criminal history;
36
37 (A) The SI must disclose all arrests, charges, and convictions regardless of outcome
38 or when the arrests, charges, or convictions occurred.
39
40 (B) The disclosed crimes and the dates must reasonably match the SI's criminal
41 offender information and other criminal records information, as determined by
42 BCU.
43

- 1 (g) Disclosure of other information to be considered in the event of a weighing test.
2
- 3 (2) The background check request shall include the following notices to the SI:
4
- 5 (a) A notice regarding disclosure of Social Security number indicating that:
6
- 7 (A) The SI's disclosure is voluntary; and
8
- 9 (B) The Department requests the Social Security number solely for the purpose of
10 positively identifying the SI during the criminal records check process.
11
- 12 (b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.
13
- 14 (c) A notice that BCU shall conduct an abuse check on the SI. Unless required by program
15 rule, an SI is not required to disclose any history of potentially disqualifying abuse, but
16 may provide BCU with mitigating or other information.
17
- 18 (3) Using identifying information submitted in a background check request, BCU shall conduct an
19 abuse check to determine if the subject individual has potentially disqualifying abuse.
20
- 21 (4) BCU shall conduct an Oregon criminal records check. Using information submitted on the
22 background check request, BCU may obtain criminal offender information from LEDS and may
23 request other criminal records information as needed.
24
- 25 (5) BCU shall handle criminal offender information in accordance with applicable OSP requirements
26 in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).
27
- 28 (6) BCU may conduct a fingerprint-based national criminal records check.
29
- 30 (a) A fingerprint-based national criminal records check may be completed under any of the
31 following circumstances:
32
- 33 (A) The SI has been outside Oregon:
34
- 35 (i) For 60 or more consecutive days during the previous 18 months and the
36 SI is a child care provider or other individual included in OAR 461-165-
37 0180.
38
- 39 (ii) For 60 or more consecutive days during the previous five years for all
40 other SIs.
41
- 42 (B) The LEDS check, SI disclosures, or any other criminal records information
43 obtained by BCU indicate there may be criminal records outside of Oregon.
44

- 1 (C) The SI has an out-of-state driver license or out-of-state identification card.
- 2
- 3 (D) BCU or the QE has reason to question the identity of the SI or the information of
- 4 the criminal record found in LEDS.
- 5
- 6 (E) A fingerprint-based criminal records check is required by federal or state laws or
- 7 regulations, other Department or Authority rules, or by contract with the
- 8 Department or Authority.
- 9
- 10 (F) The SI is a QED.
- 11
- 12 (G) BCU has reason to believe that fingerprints are needed to make a final fitness
- 13 determination.
- 14
- 15 (b) BCU must receive consent from the parent or guardian to obtain fingerprints from an SI
- 16 under 18 years of age.
- 17
- 18 (c) The SI shall complete and submit a fingerprint card when requested by BCU. BCU shall
- 19 send the request to the QE and the QED shall notify the SI.
- 20
- 21 (A) The SI shall use a fingerprint card provided by BCU or an official fingerprint card
- 22 for employment from the FBI or fingerprinting vendor. BCU shall give the SI
- 23 notice regarding the Social Security number as set forth in section (2)(a) of this
- 24 rule.
- 25
- 26 (B) The SI shall submit the fingerprint card to BCU within 21 calendar days of the
- 27 request.
- 28
- 29 (i) BCU may close the application, making it a closed case, if the fingerprint
- 30 card is not received within 21 calendar days. When a case is closed, the SI
- 31 may not be allowed to work, volunteer, be employed, or otherwise
- 32 perform in positions covered by these rules, and shall be immediately
- 33 terminated and removed from the position.
- 34
- 35 (ii) BCU may extend the time allowed due to processing requirements or for
- 36 good cause provided by the SI or QE.
- 37
- 38 (C) BCU may require new fingerprint cards if previous cards are rejected by OSP or
- 39 the FBI.
- 40
- 41 (7) BCU may also conduct a state-specific criminal records check instead of or in addition to a
- 42 national criminal records check. Reasons for a state-specific criminal records check include but
- 43 are not limited to:
- 44

- 1 (a) When BCU has reason to believe that out-of-state criminal records may exist and a
2 national criminal records check cannot be accomplished.
3
- 4 (b) When BCU has been unable to complete a national criminal records check due to
5 illegible fingerprints.
6
- 7 (c) When the national criminal records check results show incomplete information about
8 charges or criminal records without final disposition.
9
- 10 (d) When there is indication of residency or criminal records in a state that does not submit
11 all criminal records to the FBI.
12
- 13 (e) When, based on available information, BCU has reason to believe that a state-specific
14 criminal records check is necessary.
15
- 16 (8) In order to complete a background check and fitness determination, BCU may require
17 additional information from the SI including but not limited to additional criminal, judicial,
18 other background information, or proof of identity.
19
- 20 (9) BCU may conduct a background check in situations of imminent danger.
21
- 22 (a) If the Department or Authority determines there is indication of criminal or abusive
23 behavior that could more likely than not pose an immediate risk to vulnerable
24 individuals, BCU shall conduct a new criminal records check on an SI without the
25 completion of a new background check request.
26
- 27 (b) If BCU determines that a fitness determination based on the new background check
28 would be adverse to the SI, BCU shall provide the SI, if available, the opportunity to
29 disclose criminal records, potentially disqualifying conditions, and other information as
30 indicated in OAR 407-007-0300 before completion of the fitness determination.
31
- 32 (10) All criminal records checks conducted under this rule shall be documented.
33

34 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

35 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

36

37 **407-007-0275 Disqualifying Convictions Under ORS 443.004 for Aging and**
38 **People with Disabilities Programs**

- 39
- 40 (1) Section (2) of this rule applies to an SI who works exclusively with clients who are 65 years old
41 or older and is one of the following:
42

- 1 (a) An individual who is paid directly or indirectly with public funds who has or will have
2 contact with recipients of services within:
3
4 (A) An adult foster home (defined in ORS 443.705); or
5
6 (B) A residential facility (defined in ORS 443.400).
7
8 (b) Any direct care staff secured by any residential care facility or assisted living facility
9 through the services of a personnel services or staffing agency and the direct care staff
10 works in the facility.;
- 11
12 (c) A homecare worker as defined in ORS 410.600, a personal support worker as defined in
13 ORS 410.600, a personal care services provider, or an independent provider employed
14 by a Department client who provides care to the client if the Department helps pay for
15 the services.
16
17 (d) An employee providing care to Department Aging and People with Disabilities clients
18 who works for an in-home care agency as defined by ORS 443.305 which has a contract
19 with the Department Aging and People with Disabilities programs.
20
21 (e) An individual in a position specified as being subject in relevant Oregon statutes or
22 Oregon Administrative Rules.
23
- 24 (2) Public funds may not be used to support, in whole or in part, the employment of an SI identified
25 in section (1) in any capacity who has been convicted:
26
27 (a) Within five years of the date of hire noted in the background check request, of any of
28 the following crimes:
29
30 (A) ORS 163.465, Public indecency
31
32 (B) ORS 163.467, Private indecency
33
34 (C) ORS 163.700, Invasion of personal privacy
35
36 (D) ORS 164.055, Theft I
37
38 (E) ORS 164.125, Theft of services, if charged as a felony
39
40 (F) ORS 164.377, Computer crime, if charged as a felony
41
42 (b) Within ten years of the date the background check request was manually or
43 electronically signed by the SI or the date BCU conducted a criminal records check due

- 1 to imminent risk, a crime involving the delivery or manufacture of a controlled
2 substance; or
3
- 4 (c) Of any of the following crimes:
- 5
- 6 (A) ORS 163.095, Aggravated murder
7
- 8 (B) ORS 163.115, Murder
9
- 10 (C) ORS 163.118, Manslaughter I
11
- 12 (D) ORS 163.125, Manslaughter II
13
- 14 (E) ORS 163.145, Criminally negligent homicide
15
- 16 (F) ORS 163.149, Aggravated vehicular homicide
17
- 18 (G) ORS 163.165, Assault III
19
- 20 (H) ORS 163.175, Assault II
21
- 22 (I) ORS 163.185, Assault I
23
- 24 (J) ORS 163.187, Strangulation
25
- 26 (K) ORS 163.200, Criminal mistreatment II
27
- 28 (L) ORS 163.205, Criminal mistreatment I
29
- 30 (M) ORS 163.225, Kidnapping II
31
- 32 (N) ORS 163.235, Kidnapping I
33
- 34 (O) ORS 163.263, Subjecting another person to involuntary servitude II
35
- 36 (P) ORS 163.264, Subjecting another person to involuntary servitude I
37
- 38 (Q) ORS 163.266, Trafficking in persons
39
- 40 (R) ORS 163.275, Coercion
41
- 42 (S) ORS 163.355, Rape III
43
- 44 (T) ORS 163.365, Rape II

- 1
- 2 (U) ORS 163.375, Rape I
- 3
- 4 (V) ORS 163.385, Sodomy III
- 5
- 6 (W) ORS 163.395, Sodomy II
- 7
- 8 (X) ORS 163.405, Sodomy I
- 9
- 10 (Y) ORS 163.408, Unlawful sexual penetration II
- 11
- 12 (Z) ORS 163.411, Unlawful sexual penetration I
- 13
- 14 (AA) ORS 163.415, Sexual abuse III
- 15
- 16 (BB) ORS 163.425, Sexual abuse II
- 17
- 18 (CC) ORS 163.427, Sexual abuse I
- 19
- 20 (DD) ORS 163.432, Online sexual corruption of a child II, if the offender reasonably
- 21 believed the child to be more than five years younger than the offender
- 22
- 23 (EE) ORS 163.433, Online sexual corruption of a child I, if the offender reasonably
- 24 believed the child to be more than five years younger than the offender
- 25
- 26 (FF) ORS 163.435, Contributing to the sexual delinquency of a minor
- 27
- 28 (GG) ORS 163.445, Sexual misconduct, if the offender is at least 18 years of age
- 29
- 30 (HH) ORS 163.525, Incest with a child victim
- 31
- 32 (II) ORS 163.535, Abandonment of a child
- 33
- 34 (JJ) ORS 163.537, Buying or selling a person under 18 years of age
- 35
- 36 (KK) ORS 163.547, Child neglect I
- 37
- 38 (LL) ORS 163.670, Using a child in display of sexually explicit conduct
- 39
- 40 (MM) ORS 163.680, Paying for viewing a child's sexually explicit conduct
- 41
- 42 (NN) ORS 163.684, Encouraging child sexual abuse I
- 43
- 44 (OO) ORS 163.686, Encouraging child sexual abuse II

- 1
- 2 (PP) ORS 163.687, Encouraging child sexual abuse III
- 3
- 4 (QQ) ORS 163.688, Possession of materials depicting sexually explicit conduct of a
- 5 child I
- 6
- 7 (RR) ORS 163.689, Possession of materials depicting sexually explicit conduct of a
- 8 child II
- 9
- 10 (SS) ORS 164.057, Aggravated theft I
- 11
- 12 (TT) ORS 164.098, Organized retail theft
- 13
- 14 (UU) ORS 164.215, Burglary II
- 15
- 16 (VV) ORS 164.225, Burglary I
- 17
- 18 (WW) ORS 164.325, Arson I
- 19
- 20 (XX) ORS 164.405, Robbery II
- 21
- 22 (YY) ORS 164.415, Robbery I
- 23
- 24 (ZZ) ORS 165.013, Forgery I
- 25
- 26 (AAA) ORS 165.022, Criminal possession of a forged instrument I
- 27
- 28 (BBB) ORS 165.032, Criminal possession of a forgery device
- 29
- 30 (CCC) ORS 165.800, Identity theft
- 31
- 32 (DDD) ORS 165.803, Aggravated identity theft
- 33
- 34 (EEE) ORS 167.012, Promoting prostitution
- 35
- 36 (FFF) ORS 167.017, Compelling prostitution
- 37
- 38 (GGG) ORS 167.057, Luring a minor
- 39
- 40 (HHH) ORS 167.320, Animal abuse I
- 41
- 42 (III) ORS 167.322, Aggravated animal abuse I
- 43
- 44 (JJJ) ORS 181.594, Sex crimes, including transporting child pornography into the state

- 1 (d) Of an attempt, conspiracy, or solicitation to commit a crime described in section (2)(a)
2 to (2)(c) of this rule; or
3
- 4 (e) Of a crime in another jurisdiction that is substantially equivalent to a crime described in
5 section (2)(a) to (2)(d) of this rule.
6
- 7 (3) Individuals identified in section (1) of this rule who are employees and hired prior to July 28,
8 2009 are exempt from section (2) of this rule provided that the individual remains in the same
9 position working for the same employer after July 28, 2009. This exemption is not applicable to
10 licensees.
11
- 12 (4) Section (6) of this rule applies to a subject individual who works with clients who are receiving
13 services through the Department's Developmental Disabilities Programs who are under 65
14 years old.
15
- 16 (5) Section (6) of this rule applies to a subject individual who works with clients with physical
17 disabilities under the age of 65 years old and who is:
18
- 19 (a) Any individual who is paid directly or indirectly with public funds who has or will have
20 contact with recipients of:
21
- 22 (A) Services within an adult foster home (defined in ORS 443.705); or
23
- 24 (B) Services within a residential facility (defined in ORS 443.400).
25
- 26 (b) Any direct care staff secured by any residential care facility or assisted living facility
27 through the services of a personnel services or staffing agency and the direct care staff
28 works in the facility.
29
- 30 (c) A homecare worker as defined in ORS 410.600, a personal support worker as defined in
31 ORS 410.600, a personal care services provider, or an independent provider employed
32 by a Department client who provides care to the client if the Department helps pay for
33 the services.
34
- 35 (d) An employee providing care to Department Aging and People with Disabilities clients
36 who works for an in-home care agency as defined by ORS 443.305 which has a contract
37 with the Department Aging and People with Disabilities programs.
38
- 39 (e) An individual in a position specified as being subject in relevant Oregon statutes or
40 Oregon Administrative Rules.
41
- 42 (6) Public funds may not be used to support, in whole or in part, the employment of a subject
43 individual identified in section (4) or section (5) of this rule in any capacity who has been
44 convicted:

- 1 (a) In the last 10 years of a crime involving the delivery or manufacture of a controlled
- 2 substance; or
- 3
- 4 (b) Of any of the following crimes:
- 5
- 6 (A) ORS 163.095, Aggravated murder
- 7
- 8 (B) ORS 163.115, Murder
- 9
- 10 (C) ORS 163.118, Manslaughter I
- 11
- 12 (D) ORS 163.125, Manslaughter II
- 13
- 14 (E) ORS 163.145, Criminally negligent homicide
- 15
- 16 (F) ORS 163.149, Aggravated vehicular homicide
- 17
- 18 (G) ORS 163.165, Assault III
- 19
- 20 (H) ORS 163.175, Assault II
- 21
- 22 (I) ORS 163.185, Assault I
- 23
- 24 (J) ORS 163.187, Strangulation
- 25
- 26 (K) ORS 163.200, Criminal mistreatment II
- 27
- 28 (L) ORS 163.205, Criminal mistreatment I
- 29
- 30 (M) ORS 163.225, Kidnapping II
- 31
- 32 (N) ORS 163.235, Kidnapping I
- 33
- 34 (O) ORS 163.263, Subjecting another person to involuntary servitude II
- 35
- 36 (P) ORS 163.264, Subjecting another person to involuntary servitude I
- 37
- 38 (Q) ORS 163.266, Trafficking in persons
- 39
- 40 (R) ORS 163.275, Coercion
- 41
- 42 (S) ORS 163.355, Rape III
- 43
- 44 (T) ORS 163.365, Rape II

- 1 (U) ORS 163.375, Rape I
- 2
- 3 (V) ORS 163.385, Sodomy III
- 4
- 5 (W) ORS 163.395, Sodomy II
- 6
- 7 (X) ORS 163.405, Sodomy I
- 8
- 9 (Y) ORS 163.408, Unlawful sexual penetration II
- 10
- 11 (Z) ORS 163.411, Unlawful sexual penetration I
- 12
- 13 (AA) ORS 163.415, Sexual abuse III
- 14
- 15 (BB) ORS 163.425, Sexual abuse II
- 16
- 17 (CC) ORS 163.427, Sexual abuse I
- 18
- 19 (DD) ORS 163.432, Online sexual corruption of a child II, if the offender reasonably
- 20 believed the child to be more than five years younger than the offender
- 21
- 22 (EE) ORS 163.433, Online sexual corruption of a child I, if the offender reasonably
- 23 believed the child to be more than five years younger than the offender
- 24
- 25 (FF) ORS 163.435, Contributing to the sexual delinquency of a minor
- 26
- 27 (GG) ORS 163.445, Sexual misconduct, if the offender is at least 18 years of age
- 28
- 29 (HH) ORS 163.465, Public indecency
- 30
- 31 (II) ORS 163.467, Private indecency
- 32
- 33 (JJ) ORS 163.525, Incest with a child victim
- 34
- 35 (KK) ORS 163.535, Abandonment of a child
- 36
- 37 (LL) ORS 163.537, Buying or selling a person under 18 years of age
- 38
- 39 (MM) ORS 163.547, Child neglect I
- 40
- 41 (NN) ORS 163.670, Using a child in display of sexually explicit conduct
- 42
- 43 (OO) ORS 163.680, Paying for viewing a child's sexually explicit conduct
- 44

- 1 (PP) ORS 163.684, Encouraging child sexual abuse I
- 2
- 3 (QQ) ORS 163.686, Encouraging child sexual abuse II
- 4
- 5 (RR) ORS 163.687, Encouraging child sexual abuse III
- 6
- 7 (SS) ORS 163.688, Possession of materials depicting sexually explicit conduct of a
- 8 child I
- 9
- 10 (TT) ORS 163.689, Possession of materials depicting sexually explicit conduct of a
- 11 child II
- 12
- 13 (UU) ORS 163.700, Invasion of personal privacy
- 14
- 15 (VV) ORS 164.055, Theft I
- 16
- 17 (WW) ORS 164.057, Aggravated theft I
- 18
- 19 (XX) ORS 164.098, Organized retail theft
- 20
- 21 (YY) ORS 164.125, Theft of services, if charged as a felony
- 22
- 23 (ZZ) ORS 164.215, Burglary II
- 24
- 25 (AAA) ORS 164.225, Burglary I
- 26
- 27 (BBB) ORS 164.325, Arson I
- 28
- 29 (CCC) ORS 164.377, Computer crime, if charged with a felony
- 30
- 31 (DDD) ORS 164.405, Robbery II
- 32
- 33 (EEE) ORS 164.415, Robbery I
- 34
- 35 (FFF) ORS 165.013, Forgery I
- 36
- 37 (GGG) ORS 165.022, Criminal possession of a forged instrument I
- 38
- 39 (HHH) ORS 165.032, Criminal possession of a forgery device
- 40
- 41 (III) ORS 165.800, Identity theft
- 42
- 43 (JJJ) ORS 165.803, Aggravated identity theft
- 44

- 1 (KKK) ORS 167.012, Promoting prostitution
2
3 (LLL) ORS 167.017, Compelling prostitution
4
5 (MMM) ORS 167.057, Luring a minor
6
7 (NNN) ORS 167.320, Animal abuse I
8
9 (OOO) ORS 167.322, Aggravated animal abuse I
10
11 (PPP) ORS 181.594, Sex crimes, including transporting child pornography into the state
12
13 (c) Of an attempt, conspiracy, or solicitation to commit a crime described in section (6)(b)
14 to (6)(b) of this rule; or
15
16 (d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in
17 section (6)(a) to (6)(b) of this rule.
18
19 (7) Subject individuals identified in section (4) and section (5) of this rule who are employees and
20 hired prior to July 28, 2009 are exempt from section (6) of this rule provided that the employee
21 remains in the same position working for the same employer after July 28, 2009. This
22 exemption is not applicable to licensees.
23
24 (8) If BCU determines that an individual is subject to this rule and has a conviction listed in this
25 rule, BCU shall make the determination of Ineligible Due to ORS 443.004. A fitness
26 determination with a weighing test is not required regardless of any other potentially
27 disqualifying convictions and conditions the SI has.
28
29 (9) A determination of Ineligible Due to ORS 443.004 is not subject to appeal rights under OAR 407-
30 007-0330, 407-007-0335, 943-007-0335, or 943-007-0501.

31
32 *Stat. Auth.: ORS 181.534 & 409.050*

33 *Stats. Implemented: ORS 181.534 & ORS 443.004*
34

35 **407-007-0277** **Disqualifying Convictions Under ORS 443.004 for Mental**
36 **Health or Alcohol and Drug Programs**

- 37
38 (1) This rule applies to subject individuals who are mental health or substance abuse treatment
39 providers defined under ORS 443.004(8).
40
41 (2) Public funds may not be used to support, in whole or in part, the employment of an individual
42 in any capacity who has been convicted:

- 1 (a) Of any of the following crimes:
2
3 (A) ORS 163.095, Aggravated murder
4
5 (B) ORS 163.115, Murder
6
7 (C) ORS 163.375, Rape I
8
9 (D) ORS 163.405, Sodomy I
10
11 (E) ORS 163.411, Unlawful sexual penetration I
12
13 (F) ORS 163.427, Sexual abuse I
14
15 (b) Of an attempt, conspiracy, or solicitation to commit a crime described in section (2)(a)
16 of this rule.
17
18 (3) If BCU determines that an individual is subject to this rule and has a conviction listed in this
19 rule, BCU shall make the determination of Ineligible Due to ORS 443.004. A fitness
20 determination with a weighing test is not required regardless of any other potentially
21 disqualifying convictions and conditions the SI has.
22
23 (4) A determination of Ineligible Due to ORS 443.004 is not subject to appeal rights under OAR 943-
24 007-0335 or 943-007-0501.
25

26 *Stat. Auth.: ORS 181.534 & 409.050*

27 *Stats. Implemented: ORS 181.534 & ORS 443.004*

28
29 **407-007-0280 Potentially Disqualifying Convictions**

30
31 A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are
32 classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying
33 (see ORS 161.505 to 161.565).
34

- 35 (1) The crimes listed in this section are permanent review crimes which require that a fitness
36 determination with a weighing test be completed regardless of date of conviction.
37
38 (a) ORS 162.155, Escape II
39
40 (b) ORS 162.165, Escape I
41
42 (c) ORS 162.285, Tampering with a witness
43

- 1 (d) ORS 162.325, Hindering prosecution
- 2
- 3 (e) ORS 163.005, Criminal homicide
- 4
- 5 (f) ORS 163.095, Aggravated murder
- 6
- 7 (g) ORS 163.115, Murder
- 8
- 9 (h) ORS 163.118, Manslaughter I
- 10
- 11 (i) ORS 163.125, Manslaughter II
- 12
- 13 (j) ORS 163.145, Criminally negligent homicide
- 14
- 15 (k) ORS 163.149, Aggravated vehicular homicide
- 16
- 17 (L) ORS 163.160, Assault IV
- 18
- 19 (m) ORS 163.165, Assault III
- 20
- 21 (n) ORS 163.175, Assault II
- 22
- 23 (o) ORS 163.185, Assault I
- 24
- 25 (p) ORS 163.187, Strangulation
- 26
- 27 (q) ORS 163.190, Menacing
- 28
- 29 (r) ORS 163.200, Criminal mistreatment II
- 30
- 31 (s) ORS 163.205, Criminal mistreatment I
- 32
- 33 (t) ORS 163.207, Female genital mutilation
- 34
- 35 (u) ORS 163.208, Assault of public safety officer
- 36
- 37 (v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I
- 38
- 39 (w) ORS 163.225, Kidnapping II
- 40
- 41 (x) ORS 163.235, Kidnapping I
- 42
- 43 (y) ORS 163.245, Custodial interference II
- 44

1	(z)	ORS 163.257, Custodial interference I
2		
3	(aa)	ORS 163.263, Subjecting another person to involuntary servitude in the second degree
4		
5		
6	(bb)	ORS 163.264, Subjecting another person to involuntary servitude in the first degree
7		
8	(cc)	ORS 163.266, Trafficking in persons
9		
10	(dd)	ORS 163.275, Coercion
11		
12	(ee)	ORS 163.355, Rape III
13		
14	(ff)	ORS 163.365, Rape II
15		
16	(gg)	ORS 163.375, Rape I
17		
18	(hh)	ORS 163.385, Sodomy III
19		
20	(ii)	ORS 163.395, Sodomy II
21		
22	(jj)	ORS 163.405, Sodomy I
23		
24	(kk)	ORS 163.408, Unlawful sexual penetration II
25		
26	(ll)	ORS 163.411, Unlawful sexual penetration I
27		
28	(mm)	ORS 163.415, Sexual abuse III
29		
30	(nn)	ORS 163.425, Sexual abuse II
31		
32	(oo)	ORS 163.427, Sexual abuse I
33		
34	(pp)	ORS 163.432, Online sexual corruption of a child in the second degree
35		
36	(qq)	ORS 163.433, Online sexual corruption of a child in the first degree
37		
38	(rr)	ORS 163.435, Contributing to the sexual delinquency of a minor
39		
40	(ss)	ORS 163.445, Sexual misconduct
41		
42	(tt)	ORS 163.452, Custodial sexual misconduct I
43		
44	(uu)	ORS 163.454, Custodial sexual misconduct II

1	(vv)	ORS 163.465, Public indecency
2		
3	(ww)	ORS 163.467, Private indecency
4		
5	(xx)	ORS 163.476, Unlawfully being in a location where children regularly congregate
6	(yy)	ORS163.479, Unlawful contact with a child
7		
8	(zz)	ORS 163.515, Bigamy
9		
10	(aaa)	ORS 163.525, Incest
11		
12	(bbb)	ORS 163.535, Abandonment of a child
13		
14	(ccc)	ORS 163.537, Buying or selling a person under 18 years of age
15		
16	(ddd)	ORS 163.545, Child neglect II
17		
18	(eee)	ORS 163.547, Child neglect I
19		
20	(fff)	ORS 163.555, Criminal nonsupport
21		
22	(ggg)	ORS 163.575, Endangering the welfare of a minor
23		
24	(hhh)	ORS 163.670, Using child in display of sexually explicit conduct
25		
26	(iii)	ORS 163.680, Paying for viewing a child's sexually explicit conduct
27		
28	(jjj)	ORS 163.684, Encouraging child sexual abuse I
29		
30	(kkk)	ORS 163.686, Encouraging child sexual abuse II
31		
32	(LLL)	ORS 163.687, Encouraging child sexual abuse III
33		
34	(mmm)	ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I
35		
36		
37	(nnn)	ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II
38		
39		
40	(ooo)	ORS 163.693, Failure to report child pornography
41		
42	(ppp)	ORS 163.700, Invasion of personal privacy
43		
44	(qqq)	ORS 163.732, Stalking

1	(rrr)	ORS 163.750, Violating court's stalking protective order
2		
3	(sss)	ORS 164.055, Theft I
4		
5	(ttt)	ORS 164.057, Aggravated theft I
6		
7	(uuu)	ORS 164.075, Theft by extortion
8		
9	(vvv)	ORS 164.085, Theft by deception
10		
11	(www)	ORS 164.098, Organized retail theft
12		
13	(xxx)	ORS 164.125, Theft of services
14		
15	(yyy)	ORS 164.135, Unauthorized use of a vehicle
16		
17	(zzz)	ORS 164.170, Laundering a monetary instrument
18		
19	(aaaa)	ORS 164.215, Burglary II
20		
21	(bbbb)	ORS 164.225, Burglary I
22		
23	(cccc)	ORS 164.315, Arson II
24		
25	(dddd)	ORS 164.325, Arson I
26		
27	(eeee)	ORS 164.365, Criminal mischief I
28		
29	(ffff)	ORS 164.377, Computer crime
30		
31	(gggg)	ORS 164.395, Robbery III
32		
33	(hhhh)	ORS 164.405, Robbery II
34		
35	(iiii)	ORS 164.415, Robbery I
36		
37	(jjjj)	ORS 165.013, Forgery I
38		
39	(kkkk)	ORS 165.022, Criminal possession of a forged instrument I
40		
41	(LLLL)	ORS 165.032, Criminal possession of a forgery device
42		
43	(mmmm)	ORS 165.055, Fraudulent use of a credit card
44		

1	(nnnn)	ORS 165.065, Negotiating a bad check
2		
3	(oooo)	ORS 165.581, Cellular counterfeiting I
4		
5	(pppp)	ORS 165.800, Identity theft
6		
7	(qqqq)	ORS 165.803, Aggravated identity theft
8		
9	(rrrr)	ORS 165.810, Unlawful possession of a personal identification device
10		
11	(ssss)	ORS 166.005, Treason
12		
13	(tttt)	ORS 166.070 Aggravated harassment
14		
15	(uuuu)	ORS 166.085, Abuse of corpse II
16		
17	(vvvv)	ORS 166.087, Abuse of corpse I
18		
19	(wwww)	ORS 166.155, Intimidation II
20		
21	(xxxx)	ORS 166.165, Intimidation I
22		
23	(yyyy)	ORS 166.220, Unlawful use of weapon
24		
25	(zzzz)	ORS 166.270, Possession of weapons by certain felons
26		
27	(aaaaa)	ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers
28		
29		
30	(bbbbb)	ORS 166.275, Possession of weapons by inmates of institutions
31		
32	(ccccc)	ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school
33		
34		
35	(ddddd)	ORS 166.382, Possession of destructive device prohibited
36		
37	(eeeee)	ORS 166.384, Unlawful manufacture of destructive device
38		
39	(fffff)	ORS 166.429, Firearms used in felony
40		
41	(ggggg)	ORS 166.450, Obliteration or change of identification number on firearms
42		
43	(hhhhh)	ORS 166.720, Racketeering activity unlawful
44		

1	(iiii)	ORS 167.012, Promoting prostitution
2		
3	(jjjj)	ORS 167.017, Compelling prostitution
4		
5	(kkkkk)	ORS 167.054, Furnishing sexually explicit material to a child
6		
7	(LLLLL)	ORS 167.057, Luring a minor
8		
9	(mmmmm)	ORS 167.062, Sadomasochistic abuse or sexual conduct in live show
10		
11	(nnnnn)	ORS 167.075, Exhibiting an obscene performance to a minor
12		
13	(ooooo)	ORS 167.080, Displaying obscene materials to minors
14		
15	(ppppp)	ORS 167.212, Tampering with drug records
16		
17	(qqqqq)	ORS 167.262, Adult using minor in commission of controlled substance offense
18		
19	(rrrrr)	ORS 167.315, Animal abuse II
20		
21	(sssss)	ORS 167.320, Animal abuse I
22		
23	(ttttt)	ORS 167.322, Aggravated animal abuse I
24		
25	(uuuuu)	ORS 167.333, Sexual assault of animal
26		
27	(vvvvv)	ORS 167.339, Assaulting law enforcement animal
28		
29	(wwwww)	ORS 181.594, Sex crimes including transporting child pornography into the state
30		
31	(xxxxx)	ORS 181.599, Failure to report as sex offender
32		
33	(yyyyy)	ORS 433.010, Spreading disease (willfully) prohibited
34		
35	(zzzzz)	ORS 475.525, Sale of drug paraphernalia prohibited
36		
37	(aaaaaa)	ORS 475.805, Providing hypodermic device to minor prohibited
38		
39	(bbbbbb)	ORS 475.840, Prohibited acts generally (regarding drug crimes formerly ORS 475.992)
40		
41		
42	(cccccc)	ORS 475.846, Unlawful manufacture of heroin
43		
44	(dddddd)	ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school

1		
2	(eeeeee)	ORS 475.850, Unlawful delivery of heroin
3		
4	(ffffff)	ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
5		
6	(gggggg)	ORS 475.854, Unlawful possession of heroin
7		
8	(hhhhhh)	ORS 475.856, Unlawful manufacture of marijuana
9		
10	(iiiiii)	ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school
11		
12	(jjjjjj)	ORS 475.860, Unlawful delivery of marijuana
13		
14	(kkkkkk)	ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school
15		
16	(lllllll)	ORS 475.864, Unlawful possession of marijuana
17		
18	(mmmmmm)	ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine
19		
20	(nnnnnn)	ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
21		
22		
23	(oooooo)	ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine
24		
25	(pppppp)	ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
26		
27		
28	(qqqqqq)	ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine
29		
30	(rrrrrr)	ORS 475.876, Unlawful manufacture of cocaine
31		
32	(ssssss)	ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school
33		
34	(tttttt)	ORS 475.880, Unlawful delivery of cocaine
35		
36	(uuuuuu)	ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school
37		
38	(vvvvvv)	ORS 475.884, Unlawful possession of cocaine
39		
40	(wwwwww)	ORS 475.886, Unlawful manufacture of methamphetamine
41		
42	(xxxxxx)	ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school
43		
44		

- 1 (yyyyyy) ORS 475.890, Unlawful delivery of methamphetamine
- 2
- 3 (zzzzzz) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school
- 4
- 5 (aaaaaaa) ORS 475.894, Unlawful possession of methamphetamine
- 6
- 7 (bbbbbbb) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of
- 8 school
- 9
- 10 (ccccccc) ORS 475.906, Penalties for distribution to minors
- 11
- 12 (ddddddd) ORS 475.908, Causing another person to ingest a controlled substance
- 13
- 14 (eeeeeee) ORS 475.910, Application of controlled substance to the body of another person
- 15
- 16 (fffffff) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board of
- 17 Pharmacy)
- 18
- 19 (ggggggg) ORS 475.967, Possession of precursor substance with intent to manufacture
- 20 controlled substance
- 21
- 22 (hhhhhhh) ORS 475.990, Commercial drug offense
- 23
- 24 (iiiiiii) ORS 475.992 Prohibited acts generally (regarding drug crimes; renumbered to
- 25 ORS 475.840 in 2005)
- 26
- 27 (jjjjjjj) ORS 677.080, Prohibited acts (regarding the practice of medicine)
- 28
- 29 (kkkkkkk) ORS 685.990, Penalties (pertaining to naturopathic medicine)
- 30
- 31 (LLLLLLL) ORS 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and
- 32 practitioners)
- 33
- 34 (mmmmmmm) Any federal crime
- 35
- 36 (nnnnnnn) Any U.S. military crime
- 37
- 38 (oooooooo) Any unclassified felony defined in Oregon Revised Statutes not listed in this rule
- 39 (ppppppp) Any other felony in Oregon Revised Statutes not listed in this rule that is serious
- 40 and indicates behavior that poses a threat or jeopardizes the safety of vulnerable
- 41 persons, as determined by BCU
- 42
- 43
- 44

- 1 (qqqqqqq) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent
2 of any of the Oregon crimes listed in this section but that is serious and indicates
3 behavior that poses a threat or jeopardizes the safety of vulnerable persons, as
4 determined by BCU
5
- 6 (rrrrrrr) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this
7 section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based
8 on criminal liability for conduct of another pursuant to ORS 161.155
9
- 10 (sssssss) Any crime in any other jurisdiction that is the substantial equivalent of any of the
11 Oregon crimes listed in section (1) of this rule, as determined by BCU
12
- 13 (ttttttt) Any crime that is no longer codified in Oregon or other jurisdiction but that is the
14 substantial equivalent of any of the crimes listed in section (1) of this rule, as
15 determined by BCU
16
- 17 (2) The crimes listed in this section are ten-year review crimes which require that a fitness
18 determination with a weighing test be completed if the date of conviction is within ten years of
19 the date the background check request was manually or electronically signed by the SI or the
20 date BCU conducted a criminal records check due to imminent risk.
21
- 22 (a) ORS 033.045, Contempt of court
23
- 24 (b) ORS 109.311, Prohibited fees-adoption
25
- 26 (c) ORS 133.076, Failure to appear on criminal citation
27
- 28 (d) ORS 133.310(3), Violation of restraining order
29
- 30 (e) ORS 135.290, Punishment by contempt of court (violation of release agreement)
31
- 32 (f) ORS 162.015, Bribe giving
33
- 34 (g) ORS 162.025, Bribe receiving
35
- 36 (h) ORS 162.065, Perjury
37
- 38 (i) ORS 162.075, False swearing
39
- 40 (j) ORS 162.117, Public investment fraud
41
- 42 (k) ORS 162.145, Escape III
43
- 44 (L) ORS 162.175, Unauthorized departure

- 1
- 2 (m) ORS 162.185, Supplying contraband
- 3
- 4 (n) ORS 162.195, Failure to appear II
- 5
- 6 (o) ORS 162.205, Failure to appear I
- 7
- 8 (p) ORS 162.247, Interfering with a peace officer
- 9
- 10 (q) ORS 162.257, Interfering with a firefighter or emergency medical technician
- 11
- 12 (r) ORS 162.265, Bribing a witness
- 13
- 14 (s) ORS 162.275, Bribe receiving by a witness
- 15
- 16 (t) ORS 162.295, Tampering with physical evidence
- 17
- 18 (u) ORS 162.305, Tampering with public records
- 19
- 20 (v) ORS 162.315, Resisting arrest
- 21
- 22 (w) ORS 162.335, Compounding
- 23
- 24 (x) ORS 162.355, Simulating legal process
- 25
- 26 (y) ORS 162.365, Criminal impersonation
- 27
- 28 (z) ORS 162.367, Criminal impersonation of peace officer
- 29
- 30 (aa) ORS 162.369, Possession of false law enforcement identification card
- 31
- 32 (bb) ORS 162.375, Initiating a false report
- 33
- 34 (cc) ORS 162.385, Giving false information to police officer for a citation
- 35
- 36 (dd) ORS 162.405, Official misconduct II
- 37
- 38 (ee) ORS 162.415, Official misconduct I
- 39
- 40 (ff) ORS 162.425, Misuse of confidential information
- 41
- 42 (gg) ORS 163.195, Recklessly endangering another person
- 43
- 44 (hh) ORS 163.196, Aggravated driving while suspended or revoked

- 1
- 2 (ii) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II
- 3
- 4 (jj) ORS 164.043, Theft III
- 5
- 6 (kk) ORS 164.045, Theft II
- 7
- 8 (ll) ORS 164.095, Theft by receiving
- 9
- 10 (mm) ORS 164.138, Criminal possession of a rented or leased motor vehicle
- 11
- 12 (nn) ORS 164.140, Criminal possession of rented or leased personal property
- 13
- 14 (oo) ORS 164.162, Mail theft or receipt of stolen mail
- 15
- 16 (pp) ORS 164.235, Possession of a burglary tool or theft device
- 17
- 18 (qq) ORS 164.255, Criminal trespass I
- 19
- 20 (rr) ORS 164.265, Criminal trespass while in possession of firearm
- 21
- 22 (ss) ORS 164.272, Unlawful entry into motor vehicle
- 23
- 24 (tt) ORS 164.354, Criminal mischief II
- 25
- 26 (uu) ORS 165.007, Forgery II
- 27
- 28 (vv) ORS 165.017, Criminal possession of a forged instrument II
- 29
- 30 (ww) ORS 165.037, Criminal simulation
- 31
- 32 (xx) ORS 165.042, Fraudulently obtaining a signature
- 33
- 34 (yy) ORS 165.070, Possessing fraudulent communications device
- 35
- 36 (zz) ORS 165.074, Unlawful factoring of credit card transaction
- 37
- 38 (aaa) ORS 165.080, Falsifying business records
- 39
- 40 (bbb) ORS 165.085, Sports bribery
- 41
- 42 (ccc) ORS 165.090, Sports bribe receiving
- 43
- 44 (ddd) ORS 165.095, Misapplication of entrusted property

- 1 (eee) ORS 165.100, Issuing a false financial statement
- 2
- 3 (fff) ORS 165.102, Obtaining execution of documents by deception
- 4
- 5 (ggg) ORS 165.540, Obtaining contents of communication
- 6
- 7 (hhh) ORS 165.543, Interception of communications
- 8
- 9 (iii) ORS 165.570, Improper use of 9-1-1 emergency reporting system
- 10
- 11 (jjj) ORS 165.572, Interference with making a report
- 12
- 13 (kkk) ORS 165.577, Cellular counterfeiting III
- 14
- 15 (LLL) ORS 165.579, Cellular counterfeiting II
- 16
- 17 (mmm) ORS 165.692, Making false claim for health care payment
- 18
- 19 (nnn) ORS 166.015, Riot
- 20
- 21 (ooo) ORS 166.023, Disorderly conduct I
- 22
- 23 (ppp) ORS 166.025, Disorderly conduct II
- 24
- 25 (qqq) ORS 166.065, Harassment
- 26
- 27 (rrr) ORS 166.076, Abuse of a memorial to the dead
- 28
- 29 (sss) ORS 166.090, Telephonic harassment
- 30
- 31 (ttt) ORS 166.116, Interfering with public transportation
- 32
- 33 (uuu) ORS 166.180, Negligently wounding another
- 34
- 35 (vvv) ORS 166.190, Pointing firearm at another
- 36
- 37 (www) ORS 166.240, Carrying of concealed weapon
- 38
- 39 (xxx) ORS 166.250, Unlawful possession of firearms
- 40
- 41 (yyy) ORS 166.470, Limitations and conditions for sales of firearms
- 42
- 43 (zzz) ORS 166.480, Sale or gift of explosives to children
- 44

1	(aaaa)	ORS 166.649, Throwing an object off an overpass II
2		
3	(bbbb)	ORS 166.651, Throwing an object off an overpass I
4		
5	(cccc)	ORS 166.660, Unlawful paramilitary activity
6		
7	(dddd)	ORS 167.007, Prostitution
8		
9	(eeee)	ORS 167.090, Publicly displaying nudity or sex for advertising purposes
10		
11	(ffff)	ORS 167.122, Unlawful gambling in the second degree
12		
13	(gggg)	ORS 167.127, Unlawful gambling in the first degree
14		
15	(hhhh)	ORS 167.167, Cheating
16		
17	(iiii)	ORS 167.222, Frequenting a place where controlled substances are used
18		
19	(jjjj)	ORS 167.325, Animal neglect II
20		
21	(kkkk)	ORS 167.330, Animal neglect I
22		
23	(LLLL)	ORS 167.337, Interfering with law enforcement animal
24		
25	(mmmm)	ORS 167.340, Animal abandonment
26		
27	(nnnn)	ORS 167.352, Interfering with assistance, search and rescue or therapy animal
28		
29	(oooo)	ORS 167.355, Involvement in animal fighting
30		
31	(pppp)	ORS 167.365, Dogfighting
32		
33	(qqqq)	ORS 167.370, Participation in dogfighting
34		
35	(rrrr)	ORS 167.428, Cockfighting
36		
37	(ssss)	ORS 167.431, Participation in cockfighting
38		
39	(tttt)	ORS 167.820, Concealing the birth of an infant
40		
41	(uuuu)	ORS 192.865, Criminal penalty (pertaining to Address Confidentiality Program)
42		
43	(vvvv)	ORS 314.075, Evading requirements of law prohibited (tax evasion)
44		

1	(wwwwww)	ORS 411.630, Unlawfully obtaining public assistance
2		
3	(xxxx)	ORS 411.640, Unlawfully receiving public assistance
4		
5	(yyyy)	ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance)
6		
7	(zzzz)	ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits
8		
9	(aaaaa)	ORS 412.074, Unauthorized use and custody of records of temporary assistance for needy families program
10		
11		
12	(bbbbbb)	ORS 412.099, Sharing assistance prohibited
13		
14	(ccccc)	ORS 417.990, Penalty for placement of children in violation of compact
15		
16	(dddddd)	ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property
17		
18		
19	(eeeee)	ORS 475.912, Unlawful delivery of imitation controlled substance
20		
21	(fffff)	ORS 475.916, Prohibited acts involving records and fraud
22		
23	(ggggg)	ORS 475.918, Falsifying drug test results
24		
25	(hhhhh)	ORS 475.950, Failure to report precursor substances transaction
26		
27	(iiiiii)	ORS 475.955, Failure to report missing precursor substances
28		
29	(jjjjj)	ORS 475.960, Illegally selling drug equipmen
30		
31	(kkkkk)	ORS 475.965, Providing false information on precursor substances report
32		
33	(LLLLL)	ORS 803.230, Forging, altering or unlawfully producing or using title or registration
34		
35		
36	(mmmmm)	ORS 807.620, Giving false information to police officer
37		
38	(nnnnn)	ORS 811.060, Vehicular assault of bicyclist or pedestrian
39		
40	(ooooo)	ORS 811.140, Reckless driving
41		
42	(ppppp)	ORS 811.540, Fleeing or attempting to elude police officer
43		
44	(qqqqq)	ORS 811.700, Failure to perform duties of driver when property is damaged

- 1 (rrrrr) ORS 811.705, Failure to perform duties of driver to injured persons
- 2
- 3 (sssss) ORS 819.300, Possession of a stolen vehicle
- 4
- 5 (ttttt) ORS 830.475, Failure to perform the duties of an operator (boat)
- 6
- 7 (uuuuu) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed
- 8 elsewhere in this rule
- 9
- 10 (vvvvv) Any other misdemeanor in Oregon Revised Statutes or a local Oregon jurisdiction
- 11 not listed in this rule that is serious and indicates behavior that poses a threat or
- 12 jeopardizes the safety of vulnerable persons, as determined by BCU
- 13
- 14 (wwwww) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial
- 15 equivalent of any of the Oregon crimes listed in section (2) of this rule but that is
- 16 serious and indicates behavior that poses a threat or jeopardizes the safety of
- 17 vulnerable persons, as determined by BCU. If a misdemeanor in a jurisdiction
- 18 outside Oregon is similar to a violation in Oregon, then it may not be considered
- 19 potentially disqualifying under this section.
- 20
- 21 (xxxxx) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this
- 22 section pursuant to ORS 161.405 or 161.435, including any conviction based on
- 23 criminal liability for conduct of another pursuant to ORS 161.155
- 24
- 25 (yyyyy) Any crime in any other jurisdiction which is the substantial equivalent of any of
- 26 the Oregon crimes listed in section (2) of this rule, as determined by BCU
- 27
- 28 (zzzzz) Any crime which is no longer codified in Oregon, but which is the substantial
- 29 equivalent of any of the crimes listed in section (2) of this rule, as determined by
- 30 BCU
- 31
- 32 (3) The crimes listed in this section are five-year review crimes which require that a fitness
- 33 determination with a weighing test be completed if the date of conviction is within five years of
- 34 the date the background check request was manually or electronically signed by the SI or the
- 35 date BCU conducted a criminal records check due to imminent risk.
- 36
- 37 (a) ORS 162.085, Unsworn falsification
- 38
- 39 (b) ORS 162.235, Obstructing governmental or judicial administration
- 40
- 41 (c) ORS 164.245, Criminal trespass II
- 42
- 43 (d) ORS 164.335, Reckless burning
- 44

- 1 (e) ORS 164.345, Criminal mischief III
- 2
- 3 (f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable
- 4 purposes
- 5
- 6 (g) ORS 165.813, Unlawful possession of fictitious identification
- 7
- 8 (h) ORS 166.075, Abuse of venerated objects
- 9
- 10 (i) ORS 166.095, Misconduct with emergency telephone calls
- 11
- 12 (j) ORS 811.182, Criminal driving while suspended or revoked
- 13
- 14 (k) ORS 813.010, Driving under the influence of intoxicants (DUII)
- 15
- 16 (L) ORS 830.315, Reckless operation of a boat
- 17
- 18 (m) ORS 830.325, Operating boat while under influence of intoxicating liquor or
- 19 controlled substance
- 20
- 21
- 22 (n) ORS 830.730, False information to peace officer or Oregon State Marine Board
- 23
- 24 (o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in
- 25 this section pursuant to ORS 161.405 or 161.435, including any conviction based
- 26 on criminal liability for conduct of another pursuant to ORS 161.155
- 27
- 28 (p) Any crime in any other jurisdiction which is the substantial equivalent of any of
- 29 the Oregon crimes listed in section (3) of this rule, as determined by BCU
- 30
- 31
- 32 (q) Any crime which is no longer codified in Oregon, but which is the substantial
- 33 equivalent of any of the crimes listed in section (3) of this rule, as determined by
- 34 BCU
- 35
- 36 (4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at
- 37 the time of the fitness determination, regardless of the jurisdiction in which the conviction
- 38 occurred.
- 39
- 40 (5) An SI may not be denied under these rules due to the existence or contents of a juvenile record
- 41 that has been expunged pursuant to ORS 419A.260 to 419A.262.
- 42
- 43 (6) An SI may not be denied under these rules due to the existence or contents of an adult record
- 44 that has been set aside pursuant to ORS 137.225.

1 *Stat. Auth.: ORS 181.537 & 409.050*

2 *Stats. Implemented: ORS 181.534, 181.537 & 409.010*

3

4 **407-007-0290 Other Potentially Disqualifying Conditions**

5

6 The following are potentially disqualifying conditions:

7

8 (1) The SI makes a false statement to the QE, Department, or Authority, including the provision of
9 materially false information, false information regarding criminal records, or failure to disclose
10 information regarding criminal records. Nondisclosure of violation or infraction charges may
11 not be considered a false statement.

12

13 (2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an
14 SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the
15 SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found
16 to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other
17 jurisdictions).

18

19 (3) The SI has an outstanding warrant for any crime in any jurisdiction.

20

21 (4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program
22 for any crime in any jurisdiction.

23

24 (5) The SI is currently on probation, parole, or post-prison supervision for any crime in any
25 jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if
26 there is no conviction date).

27

28 (6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime
29 in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea
30 if there is no conviction date), within five years from the date the background check request
31 was signed or the date the Department conducted a criminal records check due to imminent
32 danger.

33

34 (7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any
35 jurisdiction.

36

37 (8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from
38 justice, regardless of the date of arrest.

39

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- 1 (9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was
2 responsible for a potentially disqualifying crime that would result in a conviction if committed
3 by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations,
4 shall also be considered potentially disqualifying if within five years from the date the
5 background check request was signed or the date BCU conducted a criminal records check due
6 to imminent danger.
7
- 8 (10) The SI has a finding of “guilty except for insanity,” “guilty except by reason of insanity,” “not
9 guilty by reason of insanity,” “responsible except for insanity,” “not responsible by reason of
10 mental disease or defect,” or similarly worded disposition in any jurisdiction regarding a
11 potentially disqualifying crime, unless the local statutes indicate that such an outcome is
12 considered an acquittal.
13
- 14 (11) Potentially disqualifying abuse as determined from abuse investigation reports which have an
15 outcome of founded, substantiated, or valid and in which the SI is determined to have been
16 responsible for the abuse.
17
- 18 (a) For SIs associated with child foster homes licensed for children with developmental
19 disabilities, child foster homes licensed through a private licensed child caring agency, or
20 adoptive families through a private licensed child caring agency, potentially disqualifying
21 abuse includes:
22
- 23 (A) Child protective services history held by the Department regardless of the date
24 of initial report or outcome;
25
- 26 (B) Child protective services history reviewed pursuant to the federal Adam Walsh
27 Act requirements, determined by BCU ADs to be potentially disqualifying; and
28
- 29 (C) Adult protective services investigations of physical abuse, sexual abuse, or
30 financial exploitation initiated on or after January 1, 2010, as provided to BCU by
31 the Office of Investigation and Training and the Seniors and People with
32 Disabilities Division based on severity.
33
- 34 (b) For staff and volunteers of a private licensed child caring agency:
35
- 36 (A) Child protective services history held by the Department regardless of the date
37 of initial report or outcome; and
38
- 39 (B) Adult protective services investigations of physical abuse, sexual abuse, or
40 financial exploitation initiated on or after January 1, 2010, as provided to BCU by
41 the Office of Investigation and Training and the Seniors and People with
42 Disabilities Division based on severity.
43

- 1 (c) For child care providers and associated subject individuals defined in OAR 407-007-
2 0210(30)(a)(H);
3
4 (A) Child protective services history held by the Department regardless of the date
5 of initial report, date of outcome, and considered potentially disqualifying
6 pursuant to OAR 461-165-0420; and
7
8 (B) Adult protective services investigations of physical abuse, sexual abuse, or
9 financial exploitation initiated on or after January 1, 2010, as provided to BCU by
10 the Office of Investigation and Training and the Seniors and People with
11 Disabilities Division based on severity.
12
13 (d) For all other SIs, potentially disqualifying abuse includes founded or substantiated adult
14 protective services investigations of physical abuse, sexual abuse, or financial
15 exploitation initiated on or after January 1, 2010, as provided to the BCU by the Office of
16 Investigation and Training and the Seniors and People with Disabilities Division based on
17 severity.
18

19 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

20 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

21
22 **407-007-0300 Weighing Test**

23
24 When making a fitness determination, BCU shall consider any of the following factors if an SI has
25 potentially disqualifying convictions or conditions as disclosed by the SI or which is otherwise known:
26

- 27 (1) Circumstances regarding the nature of potentially disqualifying convictions and conditions
28 including but not limited to:
29
30 (a) The details of incidents leading to the charges of potentially disqualifying convictions or
31 resulting in potentially disqualifying conditions.
32
33 (b) Age of the SI at time of the potentially disqualifying convictions or conditions.
34
35 (c) Facts that support the convictions or potentially disqualifying conditions.
36
37 (d) Passage of time since commission of the potentially disqualifying convictions or
38 conditions.
39
40 (e) Consideration of state or federal laws, regulations, or rules covering the position,
41 facility, employer, or QE regarding the potentially disqualifying convictions or
42 conditions.
43

- 1 (2) If applicable, circumstances regarding the nature of potentially disqualifying abuse including but
2 not limited to:
3
- 4 (a) Circumstances leading to the incident of abuse;
 - 5
 - 6 (b) The nature and type of abuse; and
 - 7
 - 8 (c) Other information gathered during the scope of the abuse investigation.
 - 9
 - 10 (d) The date of the abuse incident and abuse investigation, and the age of the SI at the time
11 of the abuse.
 - 12
 - 13 (e) The quality of the abuse investigation including, if applicable, any exhibits and related
14 documents with consideration taken into account regarding completeness, objectivity,
15 and sufficiency.
 - 16
 - 17 (f) Due process provided to the SI after the abuse investigation.
 - 18
 - 19 (g) Required action resulting from the founded or substantiated abuse including but not
20 limited to training, counseling, corrective or disciplinary action, and the SI's compliance.
 - 21
- 22 (3) Other factors when available including but not limited to:
- 23
 - 24 (a) Other information related to criminal activity including charges, arrests, pending
25 indictments, and convictions. Other behavior involving contact with law enforcement
26 may also be reviewed if information is relevant to other criminal records or shows a
27 pattern relevant to criminal history.
 - 28
 - 29 (b) Periods of incarceration.
 - 30
 - 31 (c) Status of and compliance with parole, post-prison supervision, or probation.
 - 32
 - 33 (d) Evidence of alcohol or drug issues directly related to criminal activity or potentially
34 disqualifying conditions.
 - 35
 - 36 (e) Evidence of other treatment or rehabilitation related to criminal activity or potentially
37 disqualifying conditions.
 - 38
 - 39 (f) Likelihood of repetition of criminal behavior or behaviors leading to potentially
40 disqualifying conditions including but not limited to patterns of criminal activity or
41 behavior.
 - 42

- 1 (g) Information from the Department's or Authority's protective services, abuse, or other
2 investigations in which the investigator documented behavior or conduct by the SI that
3 would pose a risk to or jeopardize the safety of vulnerable individuals.
4
- 5 (h) Changes in circumstances subsequent to the criminal activity or disqualifying conditions
6 including but not limited to:
7
 - 8 (A) History of high school, college, or other education related accomplishments
9 .
 - 10 (B) Work history (employee or volunteer).
 - 11
 - 12 (C) History regarding licensure, certification, or training for licensure or certification.
13
 - 14 (D) Written recommendations from current or past employers, including
15 Department client employers.
16
 - 17 (i) Indication of the SI's cooperation, honesty, or the making of a false
18 statement during the criminal records check process, including
19 acknowledgment and acceptance of responsibility of criminal activity and
20 potentially disqualifying conditions.
21
- 22 (4) BCU shall consider the relevancy of the SI's criminal activity or potentially disqualifying
23 conditions to the paid or volunteer position, or to the environment in which the SI will reside,
24 work, or visit.
25

26 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

27 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

28

29 **407-007-0315 Hired on a Preliminary Basis**

- 30
- 31 (1) A preliminary fitness determination is required to determine if an SI may work, volunteer, be
32 employed, or otherwise perform in the position listed on the background check request prior to
33 a final fitness determination. An SI may not be hired on a preliminary basis prior to the
34 completion of a preliminary fitness determination.
35
- 36 (2) An SI may be hired on a preliminary basis only during the period of time prior to a final fitness
37 determination and into the position listed on the background check request.
38
- 39 (3) The SI must provide information required for a background check request and the QED must
40 review the information.
41
- 42 (4) The QED shall make one of the following determinations:
43

- 1 (a) If the SI makes no disclosures of criminal history, the QED may hire the SI on a
2 preliminary basis in accordance with relevant program rules or QE policies.
3
- 4 (b) If the SI discloses any criminal history and all of the history occurred outside the five
5 year period from the date the SI manually or electronically signed the background check
6 request, the QED may hire the SI on a preliminary basis in accordance with relevant
7 program rules or QE policies.
8
- 9 (c) If the SI indicates any criminal history occurring within the five year period from the
10 date the SI manually or electronically signed the background check request:
11
- 12 (A) The QED may allow the SI to be hired on a preliminary basis if the disclosed
13 criminal history has the outcome of “dismissed,” “no complaint filed,”
14 “expunged,” or other outcome that BCU determines is not adverse.
15
- 16 (B) The QED may not allow the SI to be hired on a preliminary basis if the disclosed
17 criminal history has an outcome of “pending outcome,” “diversion or conditional
18 discharge,” “convicted,” “on probation,” “juvenile adjudication,” “unknown,” or
19 other outcome that BCU determines is adverse.
20
- 21 (5) The QED shall submit the background check request to BCU immediately upon verification of
22 the SI’s identity, the SI’s completion of the background check request, and the QED’s
23 completion of the preliminary fitness determination.
24
- 25 (6) If requested by the QED, BCU may conduct a preliminary fitness determination with a weighing
26 test. The SI may be hired on a preliminary basis only if, based on information available at the
27 time, BCU determines that more likely than not, the SI poses no potential threat to vulnerable
28 individuals.
29
- 30 (7) The QE may not hire a SI on a preliminary basis under any of the following circumstances:
31
- 32 (a) Being hired on a preliminary basis or probationary status is not allowed under program
33 rules.
34
- 35 (b) The SI has disclosed criminal history occurring within the past five years that has an
36 outcome of “pending outcome,” “diversion or conditional discharge,” “convicted,” “on
37 probation,” “juvenile adjudication,” “unknown” or other outcome BCU determines to be
38 adverse and BCU has not completed a preliminary fitness determination resulting in the
39 QE being allowed to hire the SI on a preliminary basis.
40
- 41 (c) The QE or BCU determines that:
42
- 43 (A) More likely than not, the SI poses a potential threat to vulnerable individuals,
44 based on a preliminary fitness determination and weighing test;

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- (B) The SI's most recent background check under these rules or other Department or Authority criminal records check rules or abuse check rules resulted in a denial; or
 - (C) The SI is currently involved in contesting a background check under these or other Department or Authority criminal records check rules or abuse check rules.
 - (d) An outcome of no hiring on a preliminary basis may only be overturned by the BCU.
- (8) An SI hired on a preliminary basis shall be actively supervised at all times.
- (a) The individual providing active supervision at all times shall do the following:
 - (A) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and hearing, except as provided in section (8)(b)(B) of this rule;
 - (B) Know where the SI is and what the SI is doing; and
 - (C) Periodically observe the actions of the SI.
 - (b) The individual providing the active supervision may be either:
 - (A) An SI who has been approved without restrictions pursuant to these rules or previous Department or Authority criminal records check rules; or
 - (B) The adult client, an adult client's adult relation, the client's legal representative, or a child's parent or guardian. Active supervision by these individuals is appropriate in situations where care is given directly to clients usually in a home such as but not limited to in-home care, home health, or care by home care workers, personal care assistants, or child care providers.
 - (i) The adult client may actively supervise a homecare worker, personal care services provider, independent provider, or an employee of an in-home care agency or home health agency if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the Department, the Authority, the QED, or the private-pay client receiving services through an in-home care or home health agency.
 - (ii) A child client's parent or guardian shall be responsible for providing active supervision in the case of child care providers. The supervision is

1 not required to be performed by someone in the same building as the
2 child.
3

4 (9) An SI approved without restrictions within the previous 24 months through a documented
5 criminal records check or abuse check pursuant to these rules or prior Department or Authority
6 criminal records check rules or abuse check rules may be hired on a preliminary basis without
7 active supervision. Twenty-four months is calculated from date of previous approval to the date
8 of hire in the new position. This exemption from active supervision is not allowed in any of the
9 following situations:

10
11 (a) If the SI cannot provide documented proof that he or she worked continuously under
12 the previous approval for at least one year.

13
14 (b) If there is evidence of criminal activity or potentially disqualifying abuse within the
15 previous 24 months.

16
17 (c) If, as determined by the QE or BCU, the job duties in the new position are so
18 substantially different from the previous position that the previous fitness
19 determination is inadequate for the current position.
20

21 (10) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or BCU
22 may immediately revoke hired on a preliminary basis for any of the following reasons:
23

24 (a) There is any indication of falsification of application.

25
26 (b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests
27 that did not result in convictions or any out of state arrests or convictions.
28

29 (c) The QE or BCU determines that allowing the SI to be hired on a preliminary basis is not
30 appropriate, based on the application, criminal record, position duties, or Department
31 program rules.
32

33 (11) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary
34 basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed
35 on the background check request prior to a final fitness determination.
36

37 (12) Preliminary fitness determinations must be documented in writing, including any details
38 regarding a weighing test, if required.
39

40 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

41 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
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44

407-007-0320 Final Fitness Determinations

BCU shall make a final fitness determination after all necessary background checks have been received and a weighing test, if necessary, has been completed. BCU may obtain and consider additional information as necessary to complete the final fitness determination.

- (1) The final fitness determination results in one of the following outcomes:
 - (a) BCU may approve an SI if:
 - (A) The SI has no potentially disqualifying convictions or potentially disqualifying conditions; or
 - (B) The SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, BCU determines that more likely than not, the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals.
 - (b) BCU may approve an SI with restrictions if BCU determines that more likely than not, the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals, if certain restrictions are placed on the SI. Restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new background check and fitness determination shall be completed on the SI before removing a restriction.
 - (c) BCU shall deny an SI whom the BCU determines, after a weighing test, more likely than not poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.
- (2) Upon completion of a final fitness determination, BCU or the QE shall provide written notice to the SI.
 - (a) The notice shall be in a Department-approved format.
 - (b) If approved, BCU shall provide written notice to the QE. The QE shall provide the SI a copy of the notice.
 - (c) If the final fitness determination is a denial based on potentially disqualifying abuse under OAR 407-007-0290(11)(d) and there are no other potentially disqualifying convictions or conditions, BCU shall issue a Notice of Intent to Deny and provide the SI hearing rights under OAR 407-007-0335.

1 (d) Except as required by section (4)(c) of this rule, if denied or approved with restrictions,
2 BCU shall issue a notice of fitness determination to the SI which includes the potentially
3 disqualifying convictions or conditions that the outcome was based upon, information
4 regarding appeal rights and the notice becoming a final order in the event of a
5 withdrawal or failure to appear at the hearing.
6

7 (e) The notice of fitness determination shall be mailed or hand-delivered to the SI within 14
8 calendar days after the final fitness determination has been completed. The effective
9 date of action shall be recorded on the notice.
10

11 (3) BCU shall provide the QE notification of the final fitness determination when the SI is being
12 denied or approved with restrictions.
13

14 (4) When an SI is denied, the SI shall not be allowed to work, volunteer, be employed, or otherwise
15 perform in the position listed on the background check request. A denial applies only to the
16 position and application in question. A denial shall result in immediate termination, dismissal,
17 or removal of the SI.
18

19 (5) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be
20 employed, or otherwise perform in the position listed on the background check request and
21 only under the stated restrictions. A restricted approval applies only to the position and
22 application in question. A restricted approval shall result in immediate implementation of the
23 restrictions.
24

25 (6) BCU shall maintain any documents obtained or created during the background check process.
26

27 (7) BCU shall make new fitness determinations for each background check request. The outcome of
28 previous fitness determinations does not set a precedent for subsequent fitness
29 determinations.
30

31 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

32 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
33

34 **407-007-0325 Closed Case**
35

36 If the SI discontinues the application or fails to cooperate with the criminal records check or fitness
37 determination process, the application is considered incomplete and may be closed.
38

39 (1) Discontinuance or failure to cooperate includes but is not limited to the following
40 circumstances:
41

42 (a) The SI fails to disclose all criminal history on the background check request.
43

- 1 (b) The SI refuses to be fingerprinted when required by these rules.
- 2
- 3 (c) The SI fails to respond within a stated time period to a request for corrections to the
- 4 application, fingerprints, or any other information necessary to conduct a criminal
- 5 records check or an abuse check and there is not enough information available to make
- 6 a fitness determination.
- 7
- 8 (d) The SI withdraws the application, leaves the position prior to completion of the
- 9 background check, or the Department cannot locate or contact the subject individual.
- 10
- 11 (e) The SI is determined to be ineligible for the position by the QE for reasons other than
- 12 the background check.
- 13
- 14 (2) When the application is closed without a final fitness determination, the SI does not have a
- 15 right to contest the closure.
- 16
- 17 (3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or
- 18 otherwise perform in the position listed on the background check request. A closed case applies
- 19 only to the position in question. A closed case shall result in immediate termination, dismissal,
- 20 or removal of the SI.
- 21
- 22 (4) BCU or the QED shall document the reasons for a closed case.
- 23

24 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

25 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

26

27 **407-007-0330 Contesting a Fitness Determination**

- 28
- 29 (1) A final fitness determination of denied or restricted approval is considered an adverse
- 30 outcome. An SI with an adverse outcome may contest that fitness determination unless already
- 31 granted contested case hearing rights under OAR 407-007-0335.
- 32
- 33 (2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed,
- 34 certified, or registered, or otherwise perform in positions covered by these rules. An SI
- 35 appealing a restricted approval may only work under the terms of the restriction during the
- 36 appeal.
- 37
- 38 (3) If an adverse outcome is changed at any time during the appeal process, the change does not
- 39 guarantee employment or placement.
- 40
- 41 (4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI,
- 42 or other agencies reporting information to BCU, by appealing to the entity providing the
- 43 information. These challenges are not subject to BCU's appeal process.

- 1 (5) An SI has the right to represent himself or herself or have legal representation during the
2 appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's
3 legal representative.
4
- 5 (a) An SI who is appealing an adverse outcome regarding the position of homecare worker
6 as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be
7 represented by a labor union representative pursuant to ORS 183.459.
8
- 9 (b) For all other SIs, the SI may not be represented by a lay person.
10
- 11 (6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The
12 contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and
13 the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative
14 Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
15
- 16 (a) To request a contested case hearing, the SI shall complete and sign the Hearing Request
17 form.
18
- 19 (b) The completed and signed form must be received by the Department within 45 calendar
20 days after the effective date of action.
21
- 22 (c) BCU shall accept a properly addressed hearing request that was not timely filed if it was
23 postmarked within the time specified for timely filing.
24
- 25 (d) In the event an appeal is not timely by the date of receipt or by the date of postmark,
26 BCU shall determine, based on a written statement from the SI and available
27 information, if there is good cause to proceed with the appeal.
28
- 29 (e) BCU may refer an untimely request to the OAH for a hearing on the issue of timeliness.
30
- 31 (7) BCU may conduct an administrative review before referring the appeal to OAH.
32
- 33 (a) The SI must participate in the administrative review. Participation may include but is not
34 limited to providing additional information or additional documents requested by the
35 BCU within a specified amount of time.
36
- 37 (b) The administrative review is not open to the public.
38
- 39 (8) BCU may conduct additional criminal records checks or abuse checks during the contested case
40 hearing process to update or verify the SI's potentially disqualifying convictions or conditions
41 and factors to consider in the weighing test. If needed, BCU shall amend the notice of fitness
42 determination while still maintaining the original hearing rights and deadlines.
43

- 1 (9) The Department shall be represented by a hearing representative in contested case hearings.
2 The Department may also be represented by the Office of the Attorney General.
3
- 4 (a) BCU shall provide the administrative law judge and the SI a complete copy of available
5 information used during the background checks and fitness determinations. The notice
6 of contested case and prehearing summary and other documents may be mailed by
7 regular first class mail or provided electronically.
8
- 9 (b) An SI may not have access to confidential information contained in abuse investigation
10 reports or other records collected or developed during the abuse check process without
11 a protective order limiting further disclosure of the information.
12
- 13 (A) A protective order issued pursuant to this section must be issued by an
14 administrative law judge as provided for in OAR 137-003-0570(8) or by a court of
15 law.
16
- 17 (B) In conjunction with a protective order issued pursuant to this section,
18 individually identifying information relating to clients, witnesses, and other
19 persons identified in abuse investigation reports or other records collected or
20 developed during the abuse check process shall be redacted prior to disclosure,
21 except for the information identifying the SI.
22
- 23 (c) The contested case hearing is not open to the public.
24
- 25 (d) The administrative law judge shall make a new fitness determination based on evidence
26 and the contested case hearing record.
27
- 28 (e) The only remedy an administrative law judge may grant is a fitness determination that
29 the subject individual is approved, approved with restrictions, or denied. Under no
30 circumstances shall the Department or the QE be required to place an SI in any position,
31 nor shall the Department or the QE be required to accept services or enter into a
32 contractual agreement with an SI.
33
- 34 (f) A hearing pursuant to these rules may be conducted in conjunction with a licensure or
35 certification hearing for the SI.
36
- 37 (10) The notice of fitness determination issued is final as if the SI never requested a hearing in the
38 following situations:
39
- 40 (a) The SI failed to request a hearing in the time allotted in this rule. No other document
41 will be issued after the notice of fitness determination.
42
- 43 (b) The SI withdraws the request for hearing at any time during the appeal process.
44

- 1 (11) BCU may make an informal disposition based on the administrative review. The Department
2 shall issue a final order and new notice of fitness determination. If the resulting fitness
3 determination is an adverse outcome, the appeal shall proceed to a contested case hearing
4
- 5 (12) BCU shall issue a dismissal order in the following situations:
6
- 7 (a) The SI may withdraw a hearing request verbally or in writing at any time before the
8 issuance of a final order. A dismissal order due to the withdrawal is effective the date
9 the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in
10 writing within 14 calendar days after the date of withdrawal.
11
- 12 (b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative
13 review. Failure to participate in the administrative review shall result in termination of
14 hearing rights. The order is effective on the due date for participation in the
15 administrative review. BCU shall review a good cause request to reinstate hearing rights
16 if received in writing by BCU within 14 calendar days.
17
- 18 (c) BCU shall dismiss a hearing request when the SI fails to appear at the time and place
19 specified for the contested case hearing. The order is effective on the date scheduled for
20 the hearing. BCU shall review a good cause request to reinstate hearing rights if
21 received in writing by BCU within 14 calendar days of the order.
22
- 23 (13) After a hearing, the administrative law judge shall issue a proposed and final order.
24
- 25 (a) If no written exceptions are received by BCU within 14 calendar days after the service of
26 the proposed and final order, the proposed and final order becomes the final order.
27
- 28 (b) If timely written exceptions to the proposed and final order are received by BCU, the
29 Department's Director or designee shall consider the exceptions and serve a final order,
30 or request a written response or a revised proposed and final order from the
31 administrative law judge.
32
- 33 (14) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing
34 petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.
35
- 36 (15) BCU may provide the QED with the results of the appeal.
37

38 *Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050*

39 *Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004*

407-007-0335 Decision and Hearing Rights for Potentially Disqualifying Abuse

- (1) This rule applies only to:
 - (a) Background checks in which an SI has potentially disqualifying abuse under OAR 407-007-0290(11)(d) with no other potentially disqualifying convictions or conditions; and
 - (b) After a weighing test under OAR 407-007-0300, BCU determines that more likely than not, the SI poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.
- (2) BCU shall provide the SI a Notice of Intent to Deny in writing.
 - (a) BCU shall indicate on the Notice of Intent to Deny the date the final fitness determination was made and the date of the intended action if the SI fails to request an expedited hearing.
 - (b) BCU shall mail the Notice of Intent to Deny to the SI using the mailing address provided by the SI by the next business day after the date of the final fitness determination.
 - (c) BCU shall include an Expedited Hearing Request form with the Notice of Intent to Deny.
- (3) An SI may contest a Notice of Intent to Deny by requesting an expedited hearing. The expedited hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General’s Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
- (4) To request an expedited hearing, the SI must submit a completed and signed Expedited Hearing Request form. The request for an expedited hearing must be received by the Department within 10 calendar days after the date of the final fitness determination.
 - (a) BCU shall accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing.
 - (b) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.
- (5) An SI has the right to represent him or herself or have legal representation during the expedited hearing process. For the purpose of this rule, the term “SI” shall be considered to include the SI’s legal representative if the SI has provided BCU with such information.

- 1 (a) An SI who is appealing a Notice of Intent to Deny regarding the position of homecare
2 worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600
3 may be represented by a labor union representative pursuant to ORS 183.459.
4
- 5 (b) For all other SIs, the SI may not be represented by a lay person.
6
- 7 (6) If the SI fails to request an expedited hearing under this rule within the allowed time, BCU shall
8 issue a Notice of Denial to the SI and to the QE. The SI shall have no further hearing rights under
9 OAR 407-007-0330.
10
- 11 (7) If the SI requests an expedited hearing in a timely manner, the SI shall remain in the same
12 status made in a preliminary fitness determination under OAR 407-007-0315 until the date of a
13 final order or the Notice of Denial.
14
- 15 (8) BCU may conduct an administrative review before referring the appeal to OAH.
16
- 17 (a) The SI must participate in the administrative review. Participation may include but is not
18 limited to providing additional information or additional documents requested by BCU
19 within a specified amount of time.
20
- 21 (b) The administrative review is not open to the public.
22
- 23 (c) BCU may make an informal disposition based on the administrative review. BCU shall
24 issue a final order and a notice of fitness determination.
25
- 26 (9) The Department shall be represented by a hearing representative in expedited hearings. The
27 Department may also be represented by the Office of the Attorney General.
28
- 29 (a) BCU shall provide the administrative law judge and the SI a complete copy of available
30 information used during the background checks and fitness determinations. The
31 claimant is entitled to reasonable notice of all hearing documents either through
32 personal service, electronically, regular mail, or certified mail.
33
- 34 (b) An SI may not have access to confidential information contained in abuse investigation
35 reports or other records collected or developed during the abuse check process without
36 a protective order limiting further disclosure of the information.
37
- 38 (A) A protective order issued pursuant to this section must be issued by an
39 administrative law judge as provided for in OAR 137-003-0570(8) or by a court of
40 law.
41
42
43

- 1 (B) In conjunction with a protective order issued pursuant to this section,
2 individually identifying information relating to clients, witnesses, and other
3 persons identified in abuse investigation reports or other records collected or
4 developed during the abuse check process shall be redacted prior to disclosure,
5 except for the information identifying the SI.
6
- 7 (10) The expedited hearing shall be conducted by the OAH by telephone within 10 business days
8 from the receipt of the completed and signed Expedited Hearing Request form.
9
- 10 (a) The expedited hearing is not open to the public.
11
- 12 (b) The administrative law judge shall make a new fitness determination based on evidence
13 and the record.
14
- 15 (c) The only remedy an administrative law judge may grant is a fitness determination that
16 the subject individual is approved, approved with restrictions, or denied. Under no
17 circumstances shall the Department or the QE be required to place an SI in any position,
18 nor shall the Department or the QE be required to accept services or enter into a
19 contractual agreement with an SI.
20
- 21 (11) BCU shall issue a dismissal order in the following situations:
22
- 23 (a) The SI may withdraw an expedited hearing request verbally or in writing at any time
24 before the issuance of a final order. A dismissal order due to the withdrawal is effective
25 the date the withdrawal is received by BCU or the OAH. The SI may cancel the
26 withdrawal in writing within four calendar days after the date of withdrawal.
27
- 28 (b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative
29 review. Failure to participate in the administrative review shall result in termination of
30 hearing rights. The order is effective on the due date for participation in the
31 administrative review.
32
- 33 (c) BCU shall dismiss a hearing request when the SI fails to appear at the time specified for
34 the expedited hearing. The order is effective on the date scheduled for the hearing.
35
- 36 (12) After an expedited hearing, the administrative law judge shall issue a final order within three
37 business days.
38
- 39 (a) If the final order maintains BCU's intent to deny, BCU shall issue a Notice of Denial by
40 the next business day after the date of the final order. The SI shall have no further
41 hearing rights under OAR 407-007-0330.
42
43

1 (b) If the final order reverses BCU's intent to deny to an approval or a restricted approval,
2 BCU shall issue a Notice of Fitness Determination by the next business day after the date
3 of the final order unless BCU formally stays the final order. The SI shall have no further
4 hearing rights under OAR 407-007-0330.
5

6 (13) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing
7 petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.
8

9 *Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050*

10 *Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004*
11

12 **407-007-0340 Record Keeping, Confidentiality**

13
14 (1) All LEDS reports are confidential and the Department and Authority shall maintain the reports
15 in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted
16 pursuant thereto (see OAR chapter 257, division 15).
17

18 (a) LEDS reports are confidential and may only be shared within BCU if there is a need to
19 know consistent with these rules.
20

21 (b) The LEDS report and any photocopies may not be shown or given to the SI.
22

23 (2) The results of a national criminal records check provided by the FBI or the OSP are confidential
24 and may not be disseminated by BCU unless:
25

26 (a) If an SI requests the results of a fingerprint-based criminal records check received by
27 BCU, the SI shall be provided a copy of the results.
28

29 (b) The state and national criminal offender information shall be provided as exhibits during
30 the contested case hearing.
31

32 (3) The results of an abuse check are confidential and may not be disseminated by the Department
33 or the Authority except in compliance with confidentiality statutes and guidelines of the
34 Department or the Authority. An SI may not have access to confidential information contained
35 in abuse investigation reports or other records collected or developed during the abuse check
36 process without a protective order limiting further disclosure of the information during the
37 contested case hearing process.
38

39 (4) All completed background check requests, other criminal records information, and other
40 records collected or developed during the background check or contested case process shall be
41 kept confidential and disseminated only on a need-to-know basis.
42

1 (5) The Department and Authority shall retain and destroy all criminal records check documents
2 pursuant to federal law and records retention schedules published by Oregon State Archives.
3

4 (6) Documents retained by a QE may be requested and reviewed by the Department and the OSP
5 for the purposes of determining and ensuring compliance with these rules.
6

7 (7) If an error is discovered on a notice of fitness determination, BCU may correct it by issuing an
8 amended notice of fitness determination.
9

10 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

11 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
12

13 **407-007-0350 Immunity from Liability**

14
15 (1) The Department, the Authority and the QE, acting within the course and scope of employment,
16 have immunity from any civil liability that might otherwise be incurred or imposed for
17 determining, in accordance with ORS 181.537, that an SI is fit or not fit to hold a position,
18 provide services, or be employed, licensed, certified, or registered.
19

20
21 (2) The Department, and Authority, and the QE, , acting within the course and scope of
22 employment, and an employer or employer’s agent are not liable for the failure to hire a
23 prospective employee or the decision to discharge an employee on the basis of a fitness
24 determination or closed case if they in good faith comply with:
25

26 (a) ORS 181.537 and ORS 409.027; and
27

28 (b) The decision of the QE or employee of the QE acting within the course and scope of
29 employment.
30

31 (3) No employee of the state, a business, or an organization, acting within the course or scope of
32 employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in
33 connection with the lawful dissemination of information lawfully obtained under ORS 181.537.
34

35 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

36 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
37

38 **407-007-0370 Variances**

39
40 (1) The Department and Authority may consider variance requests regarding these rules.
41

- 1 (a) The outcomes of a fitness determination made pursuant to these rules is not subject to
2 variance. Challenges to fitness determinations may only be made by SIs through
3 contested case hearing rights set forth in these rules.
4
- 5 (b) Neither the Department nor the Authority may grant variances to ORS 181.534 and
6 181.537.
7
- 8 (2) The Department or Authority may grant a variance to any section of these rules based upon a
9 demonstration by the QE that the variance would not pose a significant risk to physical,
10 emotional, or financial well-being of vulnerable individuals.
11
- 12 (3) The QE requesting a variance must submit, in writing, an application to the BCU that contains:
13
- 14 (a) The section of the rule from which the variance is sought;
15
- 16 (b) The reason for the proposed variance;
17
- 18 (c) The alternative practice, service, method, concept, or procedure proposed;
19
- 20 (d) A plan and timetable for compliance with the section of the rule from which the
21 variance is sought; and
22
- 23 (e) An explanation on how the welfare, health, or safety of individuals receiving care will be
24 ensured during the time the variance is in effect.
25
- 26 (4) The Assistant Director or designee for the Department and Authority's Shared Services, Office
27 of Human Resources shall approve or deny the request for a variance.
28
- 29 (5) BCU shall notify the QE of the decision within 60 calendar days of the receipt of the request and
30 shall provide a copy to other relevant Department or Authority program offices.
31
- 32 (6) Appeal of the denial of a variance request must be made in writing to the Department or
33 Authority's Director, whose decision is final.
34
- 35 (7) The Department or Authority shall determine the duration of the variance.
36
- 37 (8) The QE may implement a variance only after receipt of written approval from BCU.
38
- 39 (9) Granting a variance does not set a precedent that must be followed by the Department or
40 Authority when evaluating subsequent variance requests.
41

42 *Stat. Auth.: ORS 181.537 & 409.050*

43 *Stats. Implemented: ORS 181.534, 181.537 & 409.010*

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