

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHAPTER 407
DEPARTMENT OF HUMAN SERVICES

DIVISION 7
CRIMINAL RECORDS AND ABUSE CHECK RULES

Rules 0000 to 0100
DHS Employees, Volunteers, and Contractors

PERMANENT RULES EFFECTIVE 2/10/2020
FOR BACKGROUND CHECKS SUBMITTED ON OR AFTER 2/10/2020

Contents

407-007-0000 Purpose and Scope (Permanent 2/10/2020)..... 1

407-007-0010 Definitions (Permanent 2/10/2020) 1

407-007-0020 Criminal History Check Required (Permanent 2/10/2020) 6

407-007-0030 Criminal RECORDS Check Process (Permanent 2/10/2020) 8

407-007-0041 Potentially Disqualifying Convictions (Permanent 2/10/2020) 12

407-007-0050 Potentially Disqualifying Conditions (Permanent 2/10/2020)..... 17

407-007-0060 Weighing Test (Permanent 2/10/2020) 18

407-007-0065 Hired On A Preliminary Basis (Permanent 2/10/2020)..... 21

407-007-0070 Final Fitness Determinations (Permanent 2/10/2020)..... 22

407-007-0080 Contesting A Final Fitness Determination (Permanent 2/10/2020)..... 25

407-007-0090 Record Keeping, Confidentiality (Permanent 2/10/2020) 29

407-007-0100 Variances (Permanent 1/1/2010)..... 30

[This page intentionally left blank.]

1 **407-007-0000 PURPOSE AND SCOPE** (*Permanent 2/10/2020*)

- 2 (1) The purpose of these rules, OAR 407-007-0000 to 407-007-0100 is to supplement OAR
3 125-008-0200 to 125-007-0330 with guidelines and requirements specific to background
4 checks for Department of Human Services (Department) and Oregon Health Authority
5 (Authority) subject individuals (SIs). These rules provide for the reasonable screening
6 under ORS 181A.195, 181A.200, 409.027 AND 413.036 of the Department’s employees,
7 volunteers, and contractors to determine if they have a history of specific criminal
8 behavior identified in federal or state law or rules such that they should not be allowed
9 to work, volunteer, be employed, or otherwise perform in positions covered by these
10 rules.
- 11 (2) These rules apply to evaluating potentially disqualifying convictions and conditions of an
12 SI when conducting fitness determinations based upon such information. The fact that
13 an SI is approved does not guarantee employment or placement. Except for OAR 407-
14 007-0010, these rules do not apply to SIs covered under OAR 407-007-0200 to 407-007-
15 0370.
- 16 (3) The Authority authorizes the Background Check Unit (BCU), a shared service of the
17 Department and the Authority, to act on its behalf in performing criminal records
18 checks. References in these rules to the Department or Authority shall be construed to
19 be references to either or both agencies.
- 20 (4) Although abuse checks may occur concurrently with criminal records checks and may
21 share similar processes, the criminal records check process is separate and distinct from
22 the abuse checks that may be performed under OAR 407-007-0400 to 407-007-0460.

23 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

24 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200, 409.010 & 443.004*

26 **407-007-0010 Definitions** (*Permanent 2/10/2020*)

27 In addition to the definitions in OAR 125-007-0210, the following definitions apply to OAR 407-
28 007-0000 to 407-007-0640 unless otherwise noted:

29 [Definitions from DAS rules in Times Roman]

- 30 (1) “Abuse” has the meaning given in the administrative rules promulgated by the
31 Department or Authority corresponding to the setting in which the abuse was alleged or
32 investigated.
- 33 (2) “Abuse check” means obtaining and reviewing abuse allegations, abuse investigation
34 reports, and associated exhibits and documents for the purpose of determining whether
35 an SI has potentially disqualifying abuse.

- 1 (3) "Abuse investigation report" means a written report completed after an investigation
2 into suspected abuse and retained by the Department or the Authority pursuant to ORS
3 124.085, 419B.030, or 430.757, or a similar report filed in another state agency or by
4 another state.
- 5 (4) "Appeal process" means the process of contesting a final fitness determination of
6 denied or approved with restrictions.
- 7 (5) "Approved" means that a subject individual, following a final fitness determination, is fit
8 to work, volunteer, be employed, or otherwise perform in the position listed in the
9 criminal records check request.
- 10 (6) "Approved with restrictions" or restricted approval means an approval in which some
11 restriction is made to the position listed in the criminal records check request including
12 but not limited to the SI, the SI's environment, the type or number of clients for whom
13 the SI may provide care, or the information to which the SI has access.
- 14 (7) "Authority" means the Oregon Health Authority.
- 15 (8) "Authorized designee (AD)" means an individual whom the Department designates and
16 authorizes to receive and process criminal records and abuse check requests from SIs;
17 criminal records information, abuse investigation reports, and any other information
18 gathered during the background check process; and to make fitness determinations.
- 19 (9) "Background check" means a criminal records check and an abuse check.
- 20 (10) "Background check submission date" means the date when the Background Check Unit
21 receives a request for a criminal records check or abuse check as required by Oregon
22 statute or administrative rule, including the subject individual's authorization for the
23 checks.
- 24 (11) "Background Check Unit" means the Background Check Unit (BCU), a Shared Services
25 unit which conducts criminal records checks, abuse checks and fitness determinations
26 for the Department and the Authority.
- 27 (12) "Care" means the provision of care, treatment, education, training, instruction,
28 supervision, placement services, recreation, or support to children, the elderly, or
29 individuals with disabilities (see ORS 181A.200).
- 30 (13) "Client" means any individual who receives services, care, or funding for care through
31 the Department or the Authority.
- 32 (2) "Conviction" means that a court of law has entered a final judgment on a verdict or
33 finding of guilty, a plea of guilty, a plea of nolo contendere (no contest) or any
34 determination of guilt entered by a court of law against a subject individual (SI) in a
35 criminal case, unless that judgment has been reversed or set aside by a subsequent court
36 decision

37

- 1 (14) "Criminal Justice Information" (CJI) means all of the Federal Bureau of Investigation (FBI)
2 Criminal Justice Information Systems (CJIS) provided data necessary for law
3 enforcement and civil agencies to perform their missions including but not limited to
4 biometric, identity history, biographic, property, and case/incident history data. CJI also
5 includes data stored in the Oregon Law Enforcement Data System (LEDS), the National
6 Criminal Information Center (NCIC), and other criminal justice information systems files.
7 See FBI CJIS Security Policy, version 5.8 (6/2019) or current version.
- 8 (4) "Criminal Offender Information" means records, including fingerprints and photographs,
9 received, compiled and disseminated by the Oregon Department of State Police (OSP) ,
10 or by other states, for purposes of identifying criminal offenders and alleged offenders,
11 and maintained as part of an individual's records of arrests, the nature and disposition of
12 criminal charges, sentencing, confinement, but does not include the retention by OSP or
13 records of transfer of inmates between penal institutions or other correctional facilities,
14 and release. It also includes the OSP Computerized Criminal History System (see OAR
15 257-010-0015).
- 16 (15) "Criminal records check" means obtaining and reviewing criminal records and includes
17 either or both of the following:
- 18 (a) An Oregon criminal records check where criminal offender information is
19 obtained from Oregon State Police (OSP) using LEDS.
- 20 (b) A national criminal records check where criminal records are obtained from the
21 FBI through the use of fingerprint cards sent to OSP and other identifying
22 information. A national criminal records check also includes criminal records
23 obtained from the FBI exclusively through the use of identifying information if
24 the FBI has determined that the SI's fingerprints are illegible.
- 25 (16) "Criminal Records Information Management System (CRIMS)" means the electronic and
26 online records system used to process and maintain background checks in compliance
27 with OAR 407-007-0000 to 407-007-0640.
- 28 (17) "Denied" means that a subject individual, following a fitness determination including a
29 weighing test, is not fit to work, volunteer, be employed, or otherwise perform in the
30 position listed in the criminal records check request.
- 31 (18) "Department" means the Department of Human Services.
- 32 (19) "Employee" in OAR 407-007-0000 to 407-007-0100, and 407-007-0400 to 407-007-0460,
33 means an individual working in the Department or the Authority in any position
34 including a new hire, promotion, demotion, direct appointment, re-employment, limited
35 duration, job rotation, developmental assignment, transfer, an individual impacted by
36 the Department's or the Authority's lay-off process, or temporary hire.

37

- 1 (20) “Federal Tax Information” (FTI) tax return or return information received directly from
2 the Internal Revenue Service (IRS) or obtained through an authorized secondary source,
3 such as Social Security Administration (SSA), Federal Office of Child Support
4 Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and
5 Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an
6 Internal Revenue Code (IRC) 6103(p)(2)(B) Agreement.
- 7 (21) “Fingerprint capture” means taking the SI’s fingerprints for a national criminal records
8 check in a manner that meets current Oregon statutes and the OSP’s capacity for
9 receiving fingerprints.
- 10 (22) “Fitness determination” means, regarding a criminal records check and abuse check
11 when either or both are considered, the evaluation of whether an SI is fit to hold a
12 position provide care or be granted a license, certifications, registrations or permit to
13 provide care. Fitness determination includes:
- 14 (a) The decision regarding SI disclosures, an Oregon criminal records check, and
15 preliminary review (a preliminary fitness determination); or
- 16 (b) The decision regarding SI disclosures, completed criminal and abuse records
17 check when either or both are considered including the gathering of other
18 information as necessary, and a final review by an AD (a final fitness
19 determination).
- 20 (23) “Founded or substantiated” has the meaning given these terms in the Department or
21 Authority’s administrative rules corresponding to the setting in which the abuse was
22 investigated.
- 23 (24) “Good cause” means a valid and sufficient reason for not complying with time frames
24 set during the criminal records check process, abuse check process, or appeal process,
25 including but not limited to an explanation of circumstances beyond an SI’s reasonable
26 control.
- 27 (25) “Hearing representative” means a Department employee representing the Department
28 in a contested case hearing.
- 29 (26) “Human Resources” in OAR 407-007-0000 to 407-007-0100, and 407-007-0400 to 407-
30 007-0460, means either the Department’s Office of Human Resources or the Authority’s
31 Office of Human Resources.
- 32 (27) “Office of Training, Investigations, and Safety (OTIS)” means the Office of Training,
33 Investigations, and Safety, formerly the Office of Adult Abuse Prevention and
34 Investigations, a shared service of the Department and Authority which is responsible
35 for coordinating and conducting abuse investigations and providing protective services
36 regarding reports of abuse and neglect of vulnerable individuals.

37

- 1 (28) “Other criminal history information” means any information obtained and allowed for a
2 fitness determination that is not criminal offender information from OSP. Other criminal
3 history information includes but is not limited to police investigations and records,
4 information from local or regional criminal records information systems, justice records,
5 court records, information from the Oregon Judicial Case Information Network, sexual
6 offender registration records, warrants, Oregon Department of Corrections records,
7 Oregon Department of Transportation’s Driver and Motor Vehicle Services Division
8 information, disclosures by an SI, and any other information from any jurisdiction
9 obtained by or provided to the Department for the purpose of conducting a fitness
10 determination during the current background check or from any previous background
11 checks completed by the Department.
- 12 (29) “Position” means the job or placement listed on the criminal records check request or
13 background check request for the SI to initiate an abuse check, criminal records check,
14 or background check. Covered positions include any type of employment, volunteer
15 placement, contract placement, or a living or visiting situation at a facility where such a
16 background check is required.
- 17 (30) “Subject individual (SI)” in OAR 407-007-0000 to 407-007-0100, and 407-007-0400 to
18 407-007-0460, means an individual on whom the Department may conduct a criminal
19 records check and from whom the Department may require fingerprints for the purpose
20 of conducting a national criminal records check. An SI includes any of the following:
- 21 (a) A Department employee.
- 22 (b) An individual who has been offered employment by the Department.
- 23 (c) An individual secured by the Department through the services of a temporary
24 employment agency, staffing agency, or personnel services agency who is
25 providing any of the duties or having access as described in section (30)(e) of this
26 rule.
- 27 (d) A Department client who is placed in the Work Experience or JOBS Plus program
28 at a Department site.
- 29 (e) An individual who provides or seeks to provide services to the Department at
30 Department facilities, sites, or offices as a contractor, subcontractor, vendor,
31 volunteer under Department direction and control, or student under
32 Department direction and control who:
- 33 (A) May have contact with clients;
- 34 (B) Has access to personal information about employees of the Department,
35 clients, or members of the public, including but not limited to Social
36 Security numbers, dates of birth, driver license numbers, medical
37 information, personal financial information, or criminal background
38 information;

- 1 (C) Has access to information the disclosure of which is prohibited by state or
2 federal laws, rules, or regulations or information that is defined as
3 confidential under state or federal laws, rules, or regulations;
- 4 (D) Has access to property held in trust or to private property in the
5 temporary custody of the state;
- 6 (E) Has payroll or fiscal functions or responsibility for:
- 7 (i) Receiving, receipting or depositing money or negotiable
8 instruments;
- 9 (ii) Billing, collections, setting up financial accounts, or other financial
10 transactions; or
- 11 (iii) Purchasing or selling property;
- 12 (F) Provides security, design or construction services for government
13 buildings, grounds, or facilities;
- 14 (G) Has access to critical infrastructure or secure facilities information; or
- 15 (H) Is providing information technology services and has control over or
16 access to information technology systems.
- 17 (f) Any individual applying for employment or a volunteer placement or any
18 employee, volunteer, contractor, or employee of any contractor in any of the
19 following:
- 20 (A) A State-operated or Authority-contracted secure residential treatment
21 facility;
- 22 (B) A State-operated group home within the Department’s Stabilization and
23 Crisis Unit;
- 24 (C) Oregon State Hospital (OSH).
- 25 (31) “Weighing test” means a process carried out by the Department in which available
26 information is considered to make a fitness determination.

27 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

28 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200 & 409.010*

29

30 **407-007-0020 Criminal History Check Required (Permanent 2/10/2020)**

- 31 (1) SIs must have a criminal records check in the following circumstances:
- 32 (a) If an individual becomes an SI on or after the effective date of these rules.

33

- 1 (b) Except as provided in section (2) of this rule, if the individual, whether previously
2 considered an SI or not, changes positions, and the position requires a criminal
3 records check. Change in a position may include but is not limited to promotion,
4 transfer, demotion, re-employment, job rotation, developmental assignment,
5 restoration, layoff, or recall.
- 6 (c) If the Department has reason to believe that a criminal records check is justified.
7 Examples include but are not limited to credible evidence of new potentially
8 disqualifying convictions or conditions by an SI or quality assurance monitoring
9 of a previously conducted criminal records check.
- 10 (d) If the SI's position requires use or access to CJI, or CJIS clearance pursuant to the
11 FBI CJIS Security Policy, version 5.8 (6/2019) or current version.
- 12 (e) If the SI's position in state services requires use or access to FTI, the SI must have
13 a new criminal records check every five years.
- 14 (2) Human Resources may determine that conducting a new criminal records check and
15 fitness determination for an employee is not required.
- 16 (a) After submission of a criminal records check, Human Resources may consider
17 ending the criminal records check if:
- 18 (A) The SI who has been offered a new position has completed a previous
19 criminal records check and fitness determination with an outcome of
20 approved; and
- 21 (B) There has been no break in employment with the Department.
- 22 (b) Human Resources may cease the criminal records check without making a new
23 fitness determination if there is no indication of new potentially disqualifying
24 crimes or conditions, and at least one of the following is true:
- 25 (A) The previous criminal records check identified no potentially disqualifying
26 crimes or conditions as defined at that time and Human Resources
27 determines that the previous fitness determination is sufficient for the
28 new position.
- 29 (B) Human Resources determines that the new position requires the same or
30 less responsibility or access in the duties as described in OAR 407-007-
31 0060(3).
- 32 (3) All SIs shall notify Human Resources within five days of being arrested, charged, or
33 convicted of any crime.

34 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

35 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200 & 409.010*

36

407-007-0030 CRIMINAL RECORDS CHECK PROCESS (Permanent 2/10/2020)

- 1 (1) The Department shall conduct a criminal records checks on an SI through LEDSS
2 maintained by the Oregon State Police (OSP) in accordance with ORS chapter 181A and
3 the rules adopted pursuant thereto (see OAR Chapter 125, division 007 and Chapter
4 257, division 15).
5
- 6 (2) If a national criminal records check of an SI is necessary, OSP shall provide the
7 Department the results of criminal records checks conducted pursuant to ORS
8 181A.195, including fingerprint identification, through the FBI.
- 9 (3) Only Department employees who are ADs may be authorized and approved to receive
10 and evaluate criminal offender information and other criminal records information, and
11 to conduct fitness determinations.
- 12 (4) The Department shall submit the criminal records check to BCU through CRIMS. In
13 addition to information required in OAR 125-007-0220, the criminal records check
14 request shall include the following:
 - 15 (a) Disclosure of potentially disqualifying criminal history:
 - 16 (A) The SI must disclose potentially disqualifying convictions and potentially
17 disqualifying criminal conditions at a minimum, and may disclose all
18 arrests, charges, and convictions regardless of outcome or date of
19 occurrence. Disclosure includes any juvenile or adult record of custody,
20 arrests, or charges; and the outcome of custody, arrests, or charges
21 against a juvenile or adult.
 - 22 (B) The disclosed crimes and the dates must reasonably match the SI's
23 criminal offender information and other criminal history information, as
24 determined by the Department.
 - 25 (C) The SI is not required to disclose any criminal history which has been
26 expunged or set aside by a court in any jurisdiction. However, if the SI
27 does disclose expunged or set aside criminal history, the Department
28 may not consider the criminal history as potentially disqualifying or in a
29 weighing test if the Department has proof that the criminal history has
30 been expunged or set aside by a court in any jurisdiction.
 - 31 (D) The Department may only consider criminal history as allowed in the
32 weighing test, OAR 407-007-0300.
 - 33 (b) Disclosure of other history required under OAR 407-007-0400 to 407-007-0460.
 - 34 (c) Disclosure of other information to be considered in the event of a weighing test
35 if the SI discloses any criminal history or other history required under OAR 407-
36 007-0400 to 407-007-0460:
 - 37 (A) The SI may provide mitigating information for BCU to review in a
38 weighing test.

- 1 (B) Human Resources or BCU may require the SI to provide other information
2 as needed to conduct the weighing test.
- 3 (d) Position title and description of duties to be considered.
- 4 (5) The criminal records check request shall include the following:
- 5 (a) A notice regarding disclosure of Social Security number indicating:
- 6 (A) The SI's disclosure of his or her Social Security Number is voluntary; and
7 (B) The Department requests the Social Security number solely for the
8 purpose of positively identifying the SI during the criminal records check
9 process.
- 10 (b) A notice that the SI may be subject to fingerprinting and a criminal records
11 check.
- 12 (c) A notice that the SI has the right to challenge criminal history through the local
13 source of the information.
- 14 (6) The Department shall verify the SI's identity using methods which include but are not
15 limited to asking for current and valid government-issued photo identification and
16 confirming the information on the photo identification with the SI and the information
17 included in the criminal records check request.
- 18 (7) BCU shall conduct an Oregon criminal records check after receiving a criminal records
19 check request. Using information submitted, BCU may obtain criminal offender
20 information from the LEDS system and may request other criminal history information
21 as needed.
- 22 (8) BCU may conduct a fingerprint-based national criminal records check after an Oregon
23 criminal records check is completed.
- 24 (a) A fingerprint-based national criminal records check may be completed under any
25 of the following circumstances:
- 26 (A) The SI has out of state residency evidenced by the SI's possession of an
27 out of state driver license or being outside Oregon for 60 or more
28 consecutive days during the previous five years.
- 29 (B) The criminal offender information from the LEDS check, SI disclosures, or
30 any other criminal history information obtained by the Department
31 indicates there may be criminal records outside of Oregon.
- 32 (C) The Department has reason to question the identity or history of the SI.
- 33 (D) The SI's position is at Oregon state institutions under OAR 407-007-0010.
- 34 (E) The SI is assigned duties involving any aspect of a criminal records or
35 abuse check process.

- 1 (F) A fingerprint-based criminal records check is required by federal or state
2 laws or regulations, other rules adopted by the Department, or by
3 contract with the Department.
- 4 (G) If the Department has reason to believe that fingerprints are needed to
5 make a final fitness determination.
- 6 (b) BCU shall request fingerprints for an SI under the age of 18 in accordance with
7 OAR 125-007-0220(3).
- 8 (c) The SI shall complete and submit a fingerprint capture when requested by the
9 Department.
- 10 (A) The Department shall give the SI notice regarding the Social Security
11 number as set forth in section (5) of this rule.
- 12 (B) The Department may require new fingerprint capture if previous captures
13 are rejected by OSP or the FBI.
- 14 (9) BCU requires that due diligence be exercised in complying with national criminal records
15 check requirements including fingerprints. However, if BCU determines that an SI is
16 unable to submit fingerprints, BCU shall document the circumstances that lead to the
17 decision to waive fingerprinting and proceed with obtaining other criminal history
18 information from states based on an SI's residential history and disclosures in lieu of a
19 fingerprint based criminal records check as required in this rule. A fingerprint-based
20 national criminal records may be waived due to inability to submit fingerprints unless
21 fingerprints are required by state or federal laws or regulations. Reasons for inability to
22 submit fingerprints include but are not limited to: ¶
- 23 (a) A physical condition in which all the SI's fingerprints are illegible or missing, or
24 which makes the capture of fingerprints impossible; ¶
- 25 (b) A mental or psychological condition which makes the capture of fingerprints
26 impossible; ¶
- 27 (c) Undue safety risk to the SI or other individuals in capturing the fingerprints. ¶
- 28 (10) The Department may also research other criminal history information from other states
29 in lieu of or in addition to a national criminal records check. Reasons for such research
30 include but are not limited to when:
- 31 (a) The Department has reason to believe that out-of-state criminal records may
32 exist.
- 33 (b) The Department has been unable to complete a national criminal records check
34 due to illegible fingerprints.
- 35 (c) The national criminal records check results show incomplete information about
36 charges or criminal records without final disposition.
- 37 (d) There is indication of residency or criminal records in a state that does not
38 submit all criminal records to the FBI.

- 1 (e) Based on available information, the Department has reason to believe that other
2 criminal history information regarding the SI is present in another state.
- 3 (11) In order to complete a criminal records check and fitness determination, the
4 Department may require additional information from an SI.
- 5 (a) Additional information includes but is not limited to criminal, judicial, other
6 background information, or proof of identity.
- 7 (b) If an SI who is a represented Department employee is required to provide
8 additional information, the process for obtaining that information through
9 investigatory interviews shall adhere to collective bargaining agreements on
10 investigatory interviews.
- 11 (12) BCU may conduct further research regarding criminal history through local jurisdiction
12 courts, Department records, or other resources.
- 13 (13) In addition to criminal records check requirements in this rule, a criminal records check
14 for an SI in a position which requires use or access to CJI, or CJIS clearance must include:
- 15 (a) A fingerprint-based national check;
- 16 (b) A review by Oregon State Police for CJIS clearance;
- 17 (14) In addition to criminal records check requirements in this rule, a criminal records check
18 for an SI in a position which requires use or access to FTI must include:
- 19 (a) A fingerprint-based national check;
- 20 (b) A check of local law enforcement agencies where the SI has lived, worked, or
21 attended school within the past five years;
- 22 (c) Validation of the SI's eligibility to legally work in the United States.
- 23 (15) The Department may conduct a criminal records check in situations of imminent danger
24 on SIs who have been background checked under these rules.
- 25 (a) If the Department determines there is indication of potentially disqualifying
26 criminal behavior by an SI that could more likely than not pose an immediate risk
27 to the Department, its clients, or vulnerable persons, the Department shall
28 authorize a criminal records check without the completion of a criminal records
29 check request.
- 30 (b) If the Department determines that a fitness determination based on the criminal
31 records check would be adverse to the SI, the Department shall provide the SI, if
32 available, the opportunity to disclose potentially disqualifying convictions and
33 conditions, and other information as indicated in OAR 407-007-0060 before the
34 completion of the fitness determination.
- 35 (16) Criminal records checks conducted under this rule shall be documented in writing.

1 **Statutory/Other Authority:** 181A.195, 181A.200 & 409.050
2 **Statutes/Other Implemented:** ORS 181A.195, 181A.200 & 409.010
3

4 **407-007-0041 Potentially Disqualifying Convictions (Permanent 2/10/2020)**

5
6 A conviction of any of the crimes listed in these rules is potentially disqualifying. However,
7 offenses or convictions that are classified as less than a misdemeanor, such as violations or
8 infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

9 (1) The crimes listed in this section are permanent review crimes which require that a
10 fitness determination with a weighing test be completed regardless of date of
11 conviction.

- 12 (a) ORS 163.095, Aggravated murder
- 13 (b) ORS 163.115, Murder
- 14 (c) ORS 163.118, Manslaughter I
- 15 (d) ORS 163.125, Manslaughter II
- 16 (e) ORS 163.145, Criminally negligent homicide
- 17 (f) ORS 163.149, Aggravated vehicular homicide
- 18 (g) ORS 163.165, Assault III
- 19 (h) ORS 163.175, Assault II
- 20 (i) ORS 163.185, Assault I
- 21 (j) ORS 163.187, Strangulation
- 22 (k) ORS 163.200, Criminal mistreatment II
- 23 (L) ORS 163.205, Criminal mistreatment I
- 24 (m) ORS 163.225, Kidnapping II
- 25 (n) ORS 163.235, Kidnapping I
- 26 (o) ORS 163.263, Subjecting another person to involuntary servitude in the
27 second degree
- 28 (p) ORS 163.264, Subjecting another person to involuntary servitude in the
29 first degree
- 30 (q) ORS 163.266, Trafficking in persons
- 31 (r) ORS 163.275, Coercion
- 32 (s) ORS 163.355, Rape III
- 33 (t) ORS 163.365, Rape II

1	(u)	ORS 163.375, Rape I
2	(v)	ORS 163.385, Sodomy III
3	(w)	ORS 163.395, Sodomy II
4	(x)	ORS 163.405, Sodomy I
5	(y)	ORS 163.408, Unlawful sexual penetration II
6	(z)	ORS 163.411, Unlawful sexual penetration I
7	(aa)	ORS 163.413, Purchasing sex with a minor, if the courts designate the
8		offense as a sex crime pursuant to ORS 163.413(3)(d), or the offense is
9		the defendant's second or subsequent convictions under ORS
10		163.413(3)(b)(B)
11	(bb)	ORS 163.415, Sexual abuse III
12	(cc)	ORS 163.425, Sexual abuse II
13	(dd)	ORS 163.427, Sexual abuse I
14	(ee)	ORS 163.432, Online sexual corruption of a child in the second degree, if
15		the offender reasonably believed the child to be more than five years
16		younger than the offender
17	(ff)	ORS 163.433, Online sexual corruption of a child in the first degree, if the
18		offender reasonably believed the child to be more than five years
19		younger than the offender
20	(gg)	ORS 163.435, Contributing to the sexual delinquency of a minor
21	(hh)	ORS 163.445, Sexual misconduct, if the offender is at least 18 years of age
22	(ii)	ORS 163.465, Public indecency
23	(jj)	ORS 163.467, Private indecency
24	(kk)	ORS 163.525, Incest, with a child victim
25	(LL)	ORS 163.535, Abandonment of a child
26	(mm)	ORS 163.537, Buying or selling a person under 18 years of age
27	(nn)	ORS 163.547, Child neglect I
28	(oo)	ORS 163.670, Using child in display of sexually explicit conduct
29	(pp)	ORS 163.680, Paying for viewing a child's sexually explicit conduct
30	(qq)	ORS 163.684, Encouraging child sexual abuse I
31	(rr)	ORS 163.686, Encouraging child sexual abuse II
32	(ss)	ORS 163.687, Encouraging child sexual abuse III

1	(tt)	ORS 163.688, Possession of materials depicting sexually explicit conduct
2		of a child I
3	(uu)	ORS 163.689, Possession of materials depicting sexually explicit conduct
4		of a child II
5	(vv)	ORS 163.700, Invasion of personal privacy II
6	(ww)	ORS 163.701, Invasion of personal privacy I
7	(xx)	ORS 163A.005, All crimes listed in definition of "Sex Crime", including
8		Transporting child pornography into the state
9	(yy)	ORS 164.055, Theft I
10	(zz)	ORS 164.057, Aggravated theft I
11	(aaa)	ORS 164.098, Organized retail theft
12	(bbb)	ORS 164.125, Theft of services
13	(ccc)	ORS 164.215, Burglary II
14	(ddd)	ORS 164.225, Burglary I
15	(eee)	ORS 164.325, Arson I
16	(fff)	ORS 164.377, Computer crime
17	(ggg)	ORS 164.405, Robbery II
18	(hhh)	ORS 164.415, Robbery I
19	(iii)	ORS 165.013, Forgery I
20	(jjj)	ORS 165.022, Criminal possession of a forged instrument I
21	(kkk)	ORS 165.032, Criminal possession of a forgery device
22	(LLL)	ORS 165.800, Identity theft
23	(mmm)	ORS 165.803, Aggravated identity theft
24	(nnn)	ORS 167.012, Promoting prostitution
25	(ooo)	ORS 167.017, Compelling prostitution
26	(ppp)	ORS 167.057, Luring a minor
27	(qqq)	ORS 167.320, Animal abuse I
28	(rrr)	ORS 167.322, Aggravated animal abuse I
29	(sss)	ORS 167.333, Sexual assault of animal
30	(ttt)	ORS 475.752(1) and (2), Prohibited acts generally (regarding delivery and
31		manufacture drug crimes; formerly ORS 475.840, 2005-2011)
32	(uuu)	ORS 475.806, Unlawful manufacture of hydrocodone

1	(vvv)	ORS 475.808, Unlawful manufacture of hydrocodone within 1,000 feet of
2		school
3	(www)	ORS 475.810, Unlawful delivery of hydrocodone
4	(xxx)	ORS 475.812, Unlawful delivery of hydrocodone within 1,000 feet of
5		school
6	(yyy)	ORS 475.816, Unlawful manufacture of methadone
7	(zzz)	ORS 475.818, Unlawful manufacture of methadone within 1,000 feet of
8		school
9	(aaaa)	ORS 475.820, Unlawful delivery of methadone
10	(bbbb)	ORS 475.822, Unlawful delivery of methadone within 1,000 feet of school
11	(cccc)	ORS 475.826, Unlawful manufacture of oxycodone
12	(dddd)	ORS 475.828, Unlawful manufacture of oxycodone within 1,000 feet of
13		school
14	(eeee)	ORS 475.830, Unlawful delivery of oxycodone
15	(ffff)	ORS 475.832, Unlawful delivery of oxycodone within 1,000 feet of school
16	(gggg)	ORS 475.840(1) and (2), Prohibited acts generally (regarding delivery and
17		manufacture drug crimes formerly ORS 475.992; renumbered to ORS
18		475.752 in 2011)
19	(hhhh)	ORS 475.846, Unlawful manufacture of heroin
20	(iiii)	ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school
21	(jjjj)	ORS 475.850, Unlawful delivery of heroin
22	(kkkk)	ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
23	(LLLL)	ORS 475.866, Unlawful manufacture of 3,4-
24		methylenedioxymethamphetamine
25	(mmmm)	ORS 475.868, Unlawful manufacture of 3,4-
26		methylenedioxymethamphetamine within 1,000 feet of school
27	(nnnn)	ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine
28	(oooo)	ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine
29		within 1,000 feet of school
30	(pppp)	ORS 475.876, Unlawful manufacture of cocaine
31	(qqqq)	ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of
32		school
33	(rrrr)	ORS 475.880, Unlawful delivery of cocaine
34	(ssss)	ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school

- 1 (tttt) ORS 475.886, Unlawful manufacture of methamphetamine
2 (uuuu) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000
3 feet of school
4 (vvvv) ORS 475.890, Unlawful delivery of methamphetamine
5 (wwww) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet
6 of school
7 (xxxx) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet
8 of school
9 (yyyy) ORS 475.906, Penalties for distribution to minors
10 (zzzz) ORS 475.908, Causing another person to ingest a controlled substance
11 (aaaa) ORS 475.910, Application of controlled substance to the body of another
12 person
13 (bbbb) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board
14 of Pharmacy)
15 (ccccc) Any crime of attempt, solicitation, or conspiracy to commit a crime listed
16 in this section pursuant to ORS 161.405, 161.435, or 161.450
17 (dddd) Any crime in any other jurisdiction that is the substantial equivalent of
18 any of the Oregon crimes listed in this section, as determined by BCU,
19 including any U.S. military crime
20 (2) The crimes listed in this section are ten-year review crimes which require that a fitness
21 determination with a weighing test be completed if the date of conviction is within ten
22 years of the background check submission date.
23 (a) Any misdemeanor or felony not listed in section (1) or (3) of this rule in Oregon
24 Revised Statutes or a local Oregon or any other jurisdiction. This includes U.S.
25 military crimes not considered to be the substantial equivalent of crimes listed in
26 section (1) of this rule.
27 (b) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this
28 section pursuant to ORS 161.405 or 161.435
29 (3) Two or more convictions of ORS 813.010, Driving under the Influence of Intoxicants
30 (DUII), are potentially disqualifying if they have occurred within five years of the date of
31 the background check submission.
32 (a) A single conviction of ORS 813.010 is not considered potentially disqualifying
33 regardless of the date of conviction.
34 (b) If an SI has two or more convictions of ORS 813.010 and only one, or none,
35 occurred within five years from the date of the background check submission,
36 the convictions are not potentially disqualifying.

- 1 (4) Evaluations of crimes may be based on available information in Oregon laws and laws in
2 other jurisdictions regarding the crime.
- 3 (5) Under no circumstances may a crime be considered potentially disqualifying if it is:
4 (a) Related to marijuana and the crime is no longer a criminal offense in the
5 originating jurisdiction.
6 (b) Part of a juvenile record that has been expunged pursuant to ORS 419A.260 to
7 419A.262.
8 (c) Part of an adult record that has been set aside pursuant to ORS 137.225.

9 **Statutory/Other Authority:** ORS 181A.195 & 409.050

10 **Statutes/Other Implemented:** ORS 181A.195

11

12 **407-007-0050 Potentially Disqualifying Conditions (Permanent 2/10/2020)**

13 Pursuant to OAR 125-007-0270(5), the following are potentially disqualifying conditions, if they
14 exist on the date of the final fitness determination unless otherwise noted:

- 15 (1) False statement is potentially disqualifying when all the following conditions are met:
16 (a) In a background check request, an SI has submitted the answer, “No” to the
17 question regarding whether the SI has criminal history;
18 (b) The Department finds potentially disqualifying criminal history in the criminal
19 records check; and
20 (c) The found potentially disqualifying criminal history occurred before the date of
21 the SI’s submission.
- 22 (2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption
23 that an SI is likely to engage in conduct that would pose a significant risk to the
24 Department, its clients, or vulnerable individuals if the SI has been designated a
25 predatory sex offender under ORS 181.585 or found to be a sexually violent dangerous
26 offender under ORS 144.635 (or similar statutes in other jurisdictions).
- 27 (3) The SI has an outstanding warrant for any permanent review crime in any jurisdiction.
- 28 (4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion
29 program for a permanent review crime in any jurisdiction.
- 30 (5) The SI is currently on probation, parole, or post-prison supervision for a potentially
31 disqualifying crime in any jurisdiction.
- 32 (6) The SI is found in violation of post-prison supervision, parole, or probation for a
33 potentially disqualifying crime or condition in any jurisdiction regardless of the original
34 conviction date within five years or less from the background check submission date.
- 35 (7) The SI has an unresolved arrest, charge, or a pending indictment for any permanent
36 review crime.

- 1 (8) The SI has been arrested for a permanent review crime in any jurisdiction as a fugitive
2 from another state or a fugitive from justice for a permanent review crime that results
3 in a potentially disqualifying conviction or condition.
- 4 (9) An adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible
5 for a permanent review crime that would result in a conviction if committed by an adult.
6 Subsequent adverse rulings from a juvenile court, such as probation violations, shall also
7 be considered potentially disqualifying if within five years from the date of the final
8 fitness determination.
- 9 (10) A finding of “guilty except for insanity,” “guilty except by reason of insanity,” “not guilty
10 by reason of insanity,” “responsible except for insanity,” “not responsible by reason of
11 mental disease or defect,” or similarly worded disposition in any jurisdiction regarding a
12 permanent review crime , unless the local statutes indicate that such an outcome is
13 considered an acquittal.

14 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

15 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200 & 409.010*

16

17 **407-007-0060 Weighing Test (Permanent 2/10/2020)**

18 If the SI has potentially disqualifying convictions under OAR 407-007-0041, or potentially
19 disqualifying conditions under OAR 407-007-0050, the Department shall conduct a weighing
20 test. The weighing test shall include consideration of factors pursuant to ORS 181A.195 and the
21 following if available at the time of the weighing test:

- 22 (1) Circumstances regarding the nature of potentially disqualifying crimes and conditions
23 including but not limited to:
- 24 (a) Age, maturity and capacity of the SI at time of the potentially disqualifying
25 conviction or condition.
- 26 (b) Details of incidents leading to or resulting in potentially disqualifying convictions
27 or conditions.
- 28 (c) Facts that support the potentially disqualifying conviction or condition.
- 29 (d) Passage of time since commission of the crime or potentially disqualifying
30 condition.
- 31 (e) Consideration of state or federal laws, regulations, or rules covering the position
32 or the Department, regarding the potentially disqualifying convictions or
33 conditions.
- 34 (2) Other factors when available including but not limited to:
- 35 (a) Periods of incarceration, including rehabilitation or other impacts on SI.

- 1 (b) Status of and compliance with parole, post-prison supervision, or probation
2 regarding potentially disqualifying convictions or conditions.
- 3 (c) Evidence of drug or alcohol issues directly related to potentially disqualifying
4 convictions or conditions.
- 5 (d) Evidence of other treatment or rehabilitation related to potentially disqualifying
6 convictions or conditions.
- 7 (e) Likelihood of repetition of behaviors leading to potentially disqualifying
8 convictions or conditions.
- 9 (f) If a ten-year review conviction or a condition is related to driving any vehicle or
10 conveyance while under the influence of intoxicants in any jurisdiction,
11 consideration shall be given that, for an SI subject to OAR 407-007-0040(3), two
12 or more convictions of ORS 813.010 are needed within five years of the
13 background check to be considered potentially disqualifying. If the ten-year
14 review conviction or the condition have similar circumstances to ORS 813.010,
15 then less weight may be given to the convictions or conditions.
- 16 (g) Changes in circumstances subsequent to the criminal activity or disqualifying
17 conditions including but not limited to:
- 18 (A) History of high school, college, or other education related
19 accomplishments.
- 20 (B) Work history (employee or volunteer).
- 21 (C) History regarding licensure, certification, or training for licensure or
22 certification.
- 23 (D) Written recommendations from current or past employers.
- 24 (h) Indication of the SI's cooperation, honesty during the background check process,
25 including:
- 26 (A) Acknowledgment and acceptance of responsibility of potentially
27 disqualifying convictions and conditions; or
- 28 (B) Providing false, incomplete or misleading information regarding
29 potentially disqualifying convictions and conditions, or any subsequent
30 circumstances.
- 31 (3) The Department shall consider the relevancy of the SI's potentially disqualifying
32 convictions or conditions to the position or to the environment of the position.
33 Consideration includes the relation between the SI's potentially disqualifying convictions
34 or conditions and the following tasks or duties in the position:
- 35 (a) Access to or direct contact with Department clients, client property, or client
36 funds.

- 1 (b) Access to information technology services, or control over or access to
2 information technology systems that would allow an individual holding the
3 position to harm the information technology systems or the information
4 contained in the systems.
- 5 (c) Access to information, the disclosure of which is prohibited by state or federal
6 laws, rules, or regulations, or information that is defined as confidential under
7 state or federal laws, rules, or regulations.
- 8 (d) Access to payroll functions.
- 9 (e) Responsibility for receiving, receipting, or depositing money or negotiable
10 instruments.
- 11 (f) Responsibility for billing, collections, or other financial transactions.
- 12 (g) Access to mail received or sent to the Department, including interagency mail, or
13 access to any mail facilities in the Department.
- 14 (h) Responsibility for auditing the Department or other governmental agencies.
- 15 (i) Responsibility for any personnel or human resources functions.
- 16 (j) Access to personal information about employees, clients, or members of the
17 public including Social Security numbers, dates of birth, driver license numbers,
18 residency information, medical information, personal financial information,
19 criminal offender information, or other criminal records information.
- 20 (k) Access to medications, chemicals, or hazardous materials; access to facilities in
21 which medications, chemicals, and hazardous materials are present; or access to
22 information regarding the transportation of medications, chemicals, or
23 hazardous materials.
- 24 (L) Access to property to which access is restricted in order to protect the health or
25 safety of the public.
- 26 (m) Responsibility for security, design, or construction services. This includes
27 government buildings, grounds, or facilities or buildings, owned, leased, or
28 rented for government purposes.
- 29 (n) Access to critical infrastructure or security-sensitive facilities or information.
- 30 (o) Access or use of CJI, or the need for CJIS clearance.
- 31 (p) Access or use of FTI.

32 **Statutory/Other Authority:** ORS 181A.195, 181A.200 & 409.050

33 **Statutes/Other Implemented:** ORS 181A.195, 181A.200 & 409.010

34

407-007-0065 Hired On A Preliminary Basis (Permanent 2/10/2020)

The Department shall make a preliminary fitness determination to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed in the criminal records check request prior to a final fitness determination. The Department may not hire an SI on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The Department shall complete a preliminary fitness determination and send notice to the hiring manager.

(2) After review of the criminal records check request, the Department shall make one of the following determinations:

(a) An SI may be hired on a preliminary basis, only during the time period prior to a final fitness determination, into the position listed in the criminal records check request and allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of potentially disqualifying convictions or conditions in the criminal records check request and the Department has no reason to believe the SI has potentially disqualifying convictions or conditions.

(B) If an SI discloses potentially disqualifying convictions or conditions, the SI may be hired on a preliminary basis only after BCU completes a weighing test. The Department may hire an SI on a preliminary basis only if, based on information available at the time, BCU determines that more likely than not that the SI poses no potential threat to the Department, its clients, or vulnerable persons.

(b) The Department may not hire an SI on a preliminary basis if the BCU or Human Resources determines that:

(A) After a weighing test, the SI more likely than not poses a potential threat to the Department, its clients, or vulnerable persons;

(B) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(C) The SI is currently involved in contesting a criminal records check determination under these or other Department criminal records check or abuse check rules.

(3) An SI who is hired on a preliminary basis shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules. The individual providing active supervision shall do at all times the following:

(a) Be in the same building as the SI or, if outdoors of Department buildings or any location off Department property, be within line of sight and hearing of the SI;

- 1 (b) Know where the SI is and what the SI is doing; and
2 (c) Periodically observe the actions of the SI.
- 3 (4) An SI who was approved without restrictions within the previous 24 months through a
4 documented criminal records check pursuant to these rules may work after being hired
5 on a preliminary basis without active supervision. The 24-month time frame is
6 calculated from the date of previous approval to the date starting the new position. This
7 exemption is not allowed in any of the following situations:
- 8 (a) If the SI cannot provide documented proof that he or she worked continuously
9 under the previous approval for at least one year.
- 10 (b) If there is evidence of criminal activity within the previous 24 months.
- 11 (c) If the Department determines the job duties in the new position are so
12 substantially different from the previous position that the previous fitness
13 determination is inadequate for the new position.
- 14 (5) The Department may immediately remove an SI hired on a preliminary basis from the
15 position. Removal is not subject to hearing or appeal. Reasons for removal include but
16 are not limited to the following:
- 17 (a) There is any indication of falsification in the criminal records check request.
- 18 (b) The Department determines that allowing the SI to be hired on a preliminary
19 basis is not appropriate, based on the application, criminal records, position
20 duties, or regulations regarding the position.
- 21 (6) Nothing in this rule is intended to require that an SI, who is eligible for being hired on a
22 preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in
23 the position listed in the criminal records check request prior to a final fitness
24 determination.
- 25 (7) Preliminary fitness determinations must be documented in writing, including any details
26 regarding a weighing test, if required.

27 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

28 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200 & 409.010*

29

30 **407-007-0070 Final Fitness Determinations (Permanent 2/10/2020)**

31 The Department shall make a final fitness determination in accordance with OAR 125-007-0260
32 and this rules after all necessary criminal records checks and a weighing test, if necessary, have
33 been completed.

- 34 (1) The Department may obtain and consider additional information as necessary to
35 complete the final fitness determination. Particularly in weighing tests where it appears
36 the outcome may be adverse to an SI, the Department shall attempt to obtain additional

- 1 information for the weighing test from the SI directly through correspondence, phone,
2 or both.
- 3 (2) The final fitness determination shall result in one of the following outcomes:
- 4 (a) The Department may approve an SI if:
- 5 (A) The SI has no potentially disqualifying convictions or potentially
6 disqualifying conditions; or
- 7 (B) The SI has potentially disqualifying convictions or potentially disqualifying
8 conditions and, after a weighing test with available information, the
9 Department determines that more likely than not the SI poses no risk to
10 the Department, its clients, or vulnerable persons.
- 11 (b) The Department may approve an SI with restrictions if, after a weighing test with
12 available information, it determines that more likely than not that the SI poses
13 no risk to the Department, its clients, or vulnerable persons, if certain
14 restrictions are placed on the SI, such as but not limited to restrictions to one or
15 more specific clients, position duties, or environments. The Department shall
16 complete a new background check and fitness determination on the SI before
17 removing a restriction. A fitness determination of approved with restrictions
18 shall only be considered for the following SIs:
- 19 (A) An individual secured by the Department through the services of a
20 temporary employment agency, staffing agency, or personnel services
21 agency who is providing any of the duties or having access as described in
22 OAR 407-007-0060(3).
- 23 (B) A volunteer or student under Department direction and control.
- 24 (C) A Department client who is placed in a Work Experience or JOBS Plus
25 program at a Department site.
- 26 (D) Any individual who is required to complete a criminal records check
27 pursuant to the statutory authority of ORS 181A.195 and 181A.200 or the
28 authority of these rules pursuant to a contract with the Department.
- 29 (c) The Department shall deny an SI whom it determines, after a weighing test with
30 available information, more likely than not poses a risk to the Department, its
31 clients, or vulnerable individuals.
- 32 (d) The Department shall consider a criminal records check to have any outcome of
33 incomplete fitness determination in the following circumstances:
- 34

- 1 (A) The Department or SI discontinues the application or the SI fails to
2 cooperate with the criminal records check or fitness determination
3 process, including but not limited to refusal to be fingerprinted or failing
4 to respond in a timely manner to requests from the Department. The
5 criminal records check request is considered closed and there are no
6 hearing rights for the SI.
- 7 (B) BCU determines that the SI has no potentially disqualifying convictions
8 under OAR 407-007-0041, and no potentially disqualifying conditions
9 under OAR 407-007-0050, and has been denied under OAR 407-007-0400
10 to 407-007-0460 due to a weighing test involving potentially disqualifying
11 abuse. The criminal records checks is considered completed and the SI
12 has hearing rights under OAR 407-00-0400 to 407-007-0460.
- 13 (C) BCU determines that the SI is ineligible for the position due to federal
14 requirements, state statutes, or for reasons other than criminal history.
15 The criminal records check request is considered closed and SI has no
16 hearing rights.
- 17 (D) BCU or the QE withdraws or closes the background check request before
18 a final fitness determination for any reason. The background check
19 request is considered closed and the SI has no hearing rights.
- 20 (E) The SI withdraws the application, leaves the position prior to completion
21 of the background check, or the Department cannot locate or contact the
22 SI. The background check request is considered closed and the SI has no
23 hearing rights.
- 24 (3) Upon completion of a final fitness determination, the Department shall provide the SI
25 with written notice, which shall:
- 26 (a) Be in a Department approved format;
- 27 (b) Include information regarding appeal rights for denied or approved with
28 restrictions outcomes if appeal is allowed. The notice shall also include a
29 statement that it becomes a final order by default in the event of a withdrawal
30 or a failure to participate during the appeal or hearing; and
- 31 (c) Be mailed or hand-delivered to the SI no later than 14 calendar days after the
32 decision. The effective date of action shall be recorded on the notice.
- 33 (d) Human Resources shall also provide employees with all formal disciplinary
34 documents and letters up to and including a letter of dismissal.
- 35 (4) When an SI is denied, the Department may not allow the SI to work, volunteer, be
36 employed, or otherwise perform in the position listed in the criminal records check
37 request. A denial applies only to the position in question.
- 38

- 1 (a) The process for a Department employee’s removal from service or dismissal shall
2 adhere to Department-wide Support Services discharge policies, Department of
3 Administrative Services’ Human Resource Services Division dismissal polices, and
4 collective bargaining agreements on discharge, as applicable.
- 5 (b) For all other SIs, a denial shall result in immediate dismissal.
- 6 (5) Final fitness determinations shall be documented in writing, including any other
7 necessary details including but not limited to restrictions in a restricted approval or
8 potentially disqualifying crimes or conditions in a denial.
- 9 (6) The Department shall make new fitness determinations for each application. The
10 outcome of previous fitness determinations does not set a precedent for subsequent
11 fitness determinations.

12 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

13 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200 & 409.010*

14

15 **407-007-0080 Contesting A Final Fitness Determination (*Permanent***
16 ***2/10/2020*)**

- 17 (1) An SI may contest a final fitness determination of denied or approved with restrictions
18 pursuant to OAR 407-007-0070.
- 19 (2) An SI who is already employed by the Department at the time of the final fitness
20 determination may appeal through applicable personnel rules, policies, and collective
21 bargaining provisions. The SI’s decision to do so is an election of remedies as to the
22 rights of the SI with respect to the fitness determination and constitutes a waiver of the
23 appeal process described in this rule.
- 24 (3) This appeal process is conducted in accordance with OAR 125-007-0300, ORS 183.411 to
25 183.497 and the Attorney General’s Uniform and Model Rules of Procedure for the
26 Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
- 27 (4) During the appeal process, the final fitness determination remains in effect.
- 28 (a) If an SI is denied, then the SI may not work, volunteer, be employed, or
29 otherwise perform in positions covered by these rules.
- 30 (b) If an SI has an approval with restrictions, then the SI may only work under the
31 terms of the restriction listed on the notice of final fitness determination during
32 on the appeal.
- 33 (5) A positive change of the final fitness determination at any time during the appeal
34 process does not guarantee employment or placement. A positive change is either:
- 35 (a) A denial changing to an approval or an approval with restrictions; or
36 (b) An approval with restrictions changing to an approval.

- 1 (6) The SI may represent himself or herself or have legal representation during the appeal
2 process. In this rule, the term "SI" shall be considered to include the SI's legal
3 representative if the SI has provided the Department with such information.
- 4 (a) If the SI is a member of a bargaining unit, the SI may be represented by the certified
5 or recognized exclusive representative of the bargaining unit.
- 6 (b) For all other SIs, the SI's legal representative may be an Oregon licensed
7 attorney.
- 8 (7) A hearing representative may represent BCU in contested case hearings. Alternatively,
9 BCU may be represented by the Office of the Attorney General.
- 10 (8) Any contested case hearing request must be received by the Department by 11:59 p.m.
11 on the due date, or if mailed, postmarked by 11:59 p.m. on the due date.
- 12 (a) To request a contested case hearing the SI shall complete, sign, and date the
13 Hearing Request form.
- 14 (b) The completed, signed and dated form must be received by the Department on
15 or before the due date. The due date is 30 calendar days after the effective date
16 of action on the notice of fitness determination.
- 17 (c) If a request for a contested case hearing is not timely, the Department shall
18 determine, based on a written statement from the SI and available information,
19 if there is good cause to proceed with the appeal process.
- 20 (d) The Department may refer an untimely request to OAH for a contested case
21 hearing solely on the issue of timeliness of the contested case hearing request.
- 22 (9) After the Department receives the SI's request for a contested case hearing, the
23 Department may conduct an administrative review before referring the SI's request for
24 a contested case hearing to OAH.
- 25 (a) The administrative review is not open to the public.
- 26 (b) The SI must participate in the administrative review.
- 27 (c) In addition to any other method of communication, the Department shall
28 provide the SI with written correspondence that initiates the administrative
29 review process ("Correspondence"). The Correspondence shall include a due
30 date for the SI.
- 31 (d) Participation by the SI may include but is not limited to providing additional
32 information or additional documents requested on or before the due date
33 specified in the Department's Correspondence.
- 34 (e) Any response to the Department's Correspondence must be received by the
35 Department by 11:59 p.m. on the due date, or if mailed, postmarked by 11:59
36 p.m. on the due date.

- 1 (f) For the purposes of this rule, failure to participate in the administrative review
2 means that the SI does not respond in any way to the Department's
3 Correspondence by the specified due date. Failure to participate in the
4 administrative review process shall result in a dismissal order pursuant to
5 paragraph (13)(b)(C) of this rule.
- 6 (g) The outcome of an administrative review is a new fitness determination.
- 7 (A) If the hearing representative makes a positive change to approved, BCU
8 shall issue an amended notice to the SI and Human Resources.
- 9 (B) If the hearing representative makes a positive change from denial to
10 approval with restrictions, BCU shall issue an amended notice to the SI
11 and Human Resources. If the SI does not continue with a contested case
12 hearing, BCU shall issue a final order.
- 13 (C) If the hearing representative maintains the outcome of the final fitness
14 determination, or changes an approval with restrictions to a denial, BCU
15 will refer the contested case hearing request to OAH.
- 16 (10) The SI may not challenge a finding of criminal conviction that was a basis for the adverse
17 outcome under this rule. The SI has the right to contest the weight the Department has
18 given to:
- 19 (a) The evidence;
- 20 (b) The factors used in the weighing test; or
- 21 (c) Any other information used in making the fitness determination.
- 22 (11) The Department may conduct additional criminal records checks during the appeal
23 process to update or verify the SI's criminal records. If needed, the Department shall
24 amend the notice of fitness determination during the appeal process while still
25 maintaining the original hearing rights and deadlines as far as allowed under the Model
26 Rules of Procedure for OAH.
- 27 (12) An administrative law judge from OAH conducts the contested case hearing.
- 28 (a) The administrative law judge shall make a new fitness determination based on
29 the evidence in the contested case hearing record.
- 30 (b) The only remedy that may be awarded is a new fitness determination of
31 approved; denied; or if allowed pursuant to OAR 407-007-070(1)(b), approval
32 with restrictions.
- 33 (c) Under no circumstances shall the Department be required to place an SI in any
34 position, nor shall the Department be required to accept services or enter into a
35 contractual agreement with an SI.
- 36 (13) The result of an appeal is a final order.

- 1 (a) In the following situations, the notice of fitness determination becomes the final
2 order by default as if the SI never requested a hearing:
- 3 (A) Failure to request a hearing in the time allotted in this rule. No other
4 document shall be issued after the notice of fitness determination.
- 5 (B) Withdrawal of the request for hearing at any time during the appeal
6 process.
- 7 (b) The Department shall issue an order dismissing the appeal (a “dismissal order”)
8 in the following circumstances:
- 9 (A) The Department shall dismiss a contested case hearing request if the
10 administrative review results in a positive outcome. The only exception
11 to the Department issuing a dismissal order is when the SI proceeds to
12 contested case hearing because the administrative review changed
13 fitness determination from denial to approval with restrictions.
- 14 (B) The SI may withdraw a hearing request verbally or in writing at any time
15 before the issuance of a final order. A dismissal order due to a
16 withdrawal is effective the date the withdrawal is received by the
17 Department or OAH. The SI may cancel the withdrawal in writing within
18 14 calendar days after the date of withdrawal.
- 19 (C) The Department shall dismiss a hearing request when the SI fails to
20 participate in the administrative review. Failure to participate as defined
21 in (9)(f) of this rule shall result in termination of hearing rights through a
22 dismissal order.
- 23 (i) The dismissal order is effective on the date the Department mails
24 the dismissal order.
- 25 (ii) The Department shall review a good cause request to reinstate
26 hearing rights if received in writing by the Department within 14
27 calendar days from the date of the dismissal order.
- 28 (D) The Department shall dismiss a hearing request when the SI fails to
29 appear at the time and place specified for the contested case hearing.
- 30 (i) The dismissal order is effective on the date scheduled for the
31 hearing.
- 32 (ii) The Department shall review a good cause request to reinstate
33 hearing rights if received in writing by the Department within 14
34 calendar days from the date of the dismissal order.
- 35 (c) After a contested case hearing, the administrative law judge shall issue a
36 proposed and final order.

- 1 (A) If no written exceptions are received by the Department within 14
2 calendar days after the service of the proposed and final order, the
3 proposed and final order shall become the final order.
- 4 (B) If timely written exceptions to the proposed and final order are received
5 by the Department, the Department's Director or designee shall consider
6 the exceptions and serve a final order, or request a written response or a
7 revised proposed and final order from the administrative law judge.
- 8 (14) Final orders, including dismissal and default orders, are subject to reconsideration or
9 rehearing petitions within 60 calendar days after the final order is served, pursuant to
10 OAR 137-003-0675.

11 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

12 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200, 183.341, 409.010, 2019 OR Law ch 519*

13

14 **407-007-0090 Record Keeping, Confidentiality (Permanent 2/10/2020)**

- 15 (1) All LEDS reports are confidential and the Department shall maintain the reports in
16 accordance with applicable OSP requirements in ORS chapter 181 and OAR chapter 257,
17 division 15.
- 18 (a) LEDS reports may only be shared with approved Department authorized
19 designees if there is a need to know consistent with these rules.
- 20 (b) The LEDS report and any photocopies may not be shown or given to the SI.
- 21 (2) The results of a national criminal records check provided by the FBI or through OSP are
22 confidential and may not be disseminated by the Department except:
- 23 (a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall
24 be provided a copy of the results upon request.
- 25 (b) During the contested case hearing, the Department shall provide state and
26 national criminal offender information as exhibits.
- 27 (3) All completed criminal records check requests, other criminal history information, and
28 other records collected or developed during the criminal records check process shall be
29 kept confidential and disseminated only on a need-to-know basis.
- 30 (4) The Department shall retain and destroy all criminal records check documents pursuant
31 to federal law and records retention schedules published by Oregon State Archives.

32 **Statutory/Other Authority:** *ORS 181A.195, 181A.200 & 409.050*

33 **Statutes/Other Implemented:** *ORS 181A.195, 181A.200 & 409.010*

34

407-007-0100 Variances (Permanent 1/1/2010)

- (1) The outcome of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made through contested case hearing rights set forth in these rules or alternative options available to Department employees.
- (2) The Department may grant a variance based upon a demonstration by the Department program area or work unit that the variance would not pose a significant risk to the Department, its clients, or vulnerable individuals.
- (3) The program office or work unit requesting a variance shall submit, in writing, an application to the BCU that contains the following:
 - (a) The section of the rule from which the variance is sought;
 - (b) The reason for the proposed variance;
 - (c) The alternative practice, service, method, concept or procedure proposed;
 - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and
 - (e) An explanation on how the safety and well-being of the Department or affected individuals will be ensured during the time the variance period is in effect.
- (4) The Assistant Director or designee for the Department’s Administrative Services Division shall approve or deny the request for a variance.
- (5) The Department shall notify the program office or work unit of the decision. This notice shall be sent within 30 calendar days of the receipt of the request by the Department with a copy to other relevant divisions of the Department.
- (6) Appeal of the denial of a variance request shall be made in writing to the Department’s Director or designee, whose decision shall be final.
- (7) The duration of the variance shall be determined by the Department’s Director or designee.
- (8) The Department program office or work unit may implement a variance only after receipt of written approval from the Department.
- (9) Granting a variance does not set a precedent for subsequent requests for variances.

Statutory/Other Authority: *ORS 181.537 & 409.050*

Statutes/Other Implemented: *ORS 181.537 & 409.010*