



Current Status: Active

PolicyStat ID: 5395579



Origination:	06/2010
Effective:	11/2018
Last Approved:	11/2018
Last Revised:	11/2018
Next Review:	11/2021
Owner:	<i>Teresa Rainey: Equity and Inclusion Officer</i>
Area:	<i>Human Resources - 0201-0300</i>
References:	

## Criminal Record Check Policy - PO-0201

### 1. Purpose

The purpose of this policy is to ensure that the agency conducts fair criminal records check standards that include case-by-case assessments which are relevant to the position for which an applicant applied and reduce risk in the hiring process to an acceptable level. The Oregon Employment Department fosters fairness, equity, and inclusion to maintain a workplace environment where everyone is treated with respect and dignity regardless of race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, age, veteran status, disability, or status as a victim of domestic violence, harassment, sexual assault, or stalking. This applies to every aspect of our employment practices, including recruitment, hiring, retention, promotion, and training. A goal of the Oregon Employment Department is to become an employer of choice for individuals of all backgrounds and promote an inclusive workplace culture that encourages diversity and allows employees to excel.

The Employment Department shall ensure that this policy achieves a legitimate business purpose; reflects the agency's commitment to equity and inclusion; and complies with the state's Affirmative Action Guidelines and state and federal laws by incorporating Equal Employment Opportunity Commission (EEOC) guidance on criminal background checks.

The agency acknowledges that Title VII of the Civil Rights Act of 1964 prohibits selection policies or practices that have a disparate impact on protected classes of people<sup>[1]</sup>. Because using criminal records to screen candidates for employment has a disproportionate impact on people of color, a refusal to hire because of a past conviction is legal only where the conviction is related to the duties of the position the applicant applied for and the refusal to hire is required by business necessity. Therefore, the agency has incorporated research on recidivism (reoffending) risk in its determination of business necessity as it relates to criminal background checks. The agency will only consider information from the past four years (starting from the date of the arrest) for nonviolent offenses and the past seven years for violent offenses when conducting its own criminal records checks pursuant to **Oregon Administrative Rules (OAR) 125-007-0200 through 125-007-0330** (Type 1 in the list below). The agency will then conduct an individualized assessment to determine if the conviction is related to the duties of the position for which the applicant applied and if there is a business necessity for declining to hire the subject individual.

<sup>[1]</sup> Questions and Answers About the EEOC's Enforcement Guidance on the Consideration of Arrest and

Conviction Records in Employment Decisions Under Title VII". Available at [https://www.eeoc.gov/laws/guidance/ga\\_arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/ga_arrest_conviction.cfm).

## 2. Scope

This policy is applicable to all Employment Department new hires; employees promoting, demoting, and transferring; volunteers; or any other person serving in an authorized capacity to access agency information and information systems.

This policy covers three distinct types of criminal records checks:

- A. Criminal records check for determining eligibility for employment with the agency. Applicable to all new hires, promotions, demotions, transfers.
- B. Fingerprint-based, national criminal records check for determining eligibility to access Criminal Justice Information Systems (CJIS Access). Applies only to personnel who will have access to Criminal Justice Information or unescorted access to areas that contain Criminal Justice Information.
- C. Fingerprint-based, national criminal records check for determining eligibility to access Federal Tax Information. Applies only to personnel who will have access to Federal Tax Information or systems that receive, process, or store Federal Tax Information.

## 3. Definitions

- A. **Agency Information:** Any data or information of the Oregon Employment Department or its clients, or otherwise entrusted to the Oregon Employment Department that has a confidentiality or security requirement outlined in state or federal statute, administrative rule, code, regulation, procedure, or guideline.
- B. **Authorized Designee:** An Oregon Employment Department employee authorized to obtain and review criminal offender information and other records about a subject individual through criminal records checks and other means, and to conduct the fitness determination. Authorized designees for the agency include Human Resources Business Partners, the Human Resources Director, and the Human Resources Deputy Director.
- C. **Criminal Justice Information (CJI):** The term used to refer to all the FBI Criminal Justice Information Services (CJIS) provided data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data. CJI is a subset of regulated data.
- D. **Criminal Justice Information Services (CJIS):** A division of the United States Federal Bureau of Investigation established in 1992 for the purpose of providing timely and relevant criminal justice information to qualified law enforcement, criminal justice, and civilian organizations. CJIS services include the National Crime Information Center (NCIC), Integrated Automated Fingerprint Identification System (IAFIS), Law Enforcement Online (LEO), the National Instant Criminal Background Check System (NCIS), Uniform Crime Reporting and National Incident-Based Reporting System (UCR/NIBRS), and the Law Enforcement Data Exchange (N-Dex).

- E. **Criminal Records Check:** A review, conducted by the authorized designee, of a subject individual's criminal offender information, driver and motor vehicles records, and other relevant information from inside or outside Oregon's borders obtained from the Oregon State Police, Federal Bureau of Investigation, or other official entities.
- F. **Employment:** Work under the direction and control of the Oregon Employment Department.
- G. **Family Member:** Spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.
- H. **Fitness Determination:** A determination made by an authorized designee pursuant to the process established in Oregon Revised Statutes (ORS) 181A.195(10)(c) that a subject individual is or is not fit to be an agency employee in a position covered by Oregon Administrative Rules (OAR) 471-007-0220(1)(a)-(d).
- I. **Federal Tax Information:** Federal tax returns and return information, and information derived from federal tax returns and return information, which is in the agency's possession or control, and is subject to Internal Revenue Code (IRC) 6103(p)(4) safeguarding requirements. Federal Tax Information includes return or return information received directly from the Internal Revenue Service, or obtained through an authorized secondary source. Federal Tax Information is a subset of regulated data.
- J. **Law Enforcement Data System:** Database System maintained by the CJIS division of the Oregon State Police, for the purpose of maintaining and accessing criminal history files.
- K. **Notice of Fitness Determination:** Notification provided by authorized designee to a subject individual upon completion or closure of a Fitness Determination.
- L. **Regulated Data:** Any data or information of agency or its clients or otherwise entrusted to agency that has a confidentiality or security requirement outlined in state or federal statute, administrative rule, code, regulation, policy, procedure or guideline that has been identified by the agency. Regulated data can be in any media, including, but not limited to, paper, electronic, digital images, and voice recordings. Regulated data includes, but is not limited to: Federal Tax Information (FTI), personally identifiable information (PII), Health Insurance Portability and Accountability Act (HIPAA) information, Social Security Administration (SSA) information, Criminal Justice Information Systems (CJIS), Law Enforcement Data System (LEDS) information, Department of Labor and Bureau of Labor Statistics data, Family Educational Rights and Privacy Act (FERPA) information, and other confidential or regulated information developed by, received by, or entrusted to the Oregon Employment Department.
- M. **Subject Individual:**
1. A person who has applied for and is the one final candidate for employment by the Employment Department.
  2. An Employment Department employee who has applied for and is the one final candidate for a promotion, a transfer, or a demotion to an Employment Department position.
  3. A person who is a volunteer or a participant in an internship program over whom the Employment Department has direction and control.
  4. Contractors serving in an authorized capacity to access agency information and information systems.
- N. **Volunteer:** A person approved by agency management to engage in an unpaid work opportunity.
- O. **Workforce Partners:** Signatories to a memo of understanding and/or a resource sharing agreement in

## 4. Policy

Criminal records checks shall be completed on subject individuals for the purpose of making employment decisions and for determining employee eligibility for access to regulated data. The Employment Department will pay the costs of the criminal records check unless otherwise specified.

### A. Requirements for Subject Individuals

#### 1. Permanent or Limited Duration Employee

The Employment Department includes the following statement or a link to the statement on all recruitment announcements informing applicants of the requirement to complete criminal records check as a condition of employment:

##### a. Criminal Records Check for Determining Eligibility for Employment

Employment with the Oregon Employment Department is subject to completion of a criminal records check as a condition of employment pursuant to Oregon Administrative Rules (OAR) 125-007-0200 through 125-007-0330. The Employment Department is also committed to being a leader in providing its employees with fair and equal employment opportunities and recognizes that as a best practice in equity and inclusion, criminal background check policies shall be job related and consistent with business necessity. Accordingly, the agency has adopted the following policy:

1. Criminal background information will not be requested and criminal background checks will not be run until one final candidate has been selected.
2. Subject individuals may request a reasonable accommodation for the criminal records check process by contacting Human Resources.
3. After the hiring manager has selected one final candidate and informed that candidate of their status as the finalist, the Employment Department's Human Resources staff will conduct a criminal background check and make a fitness determination based on the results. The assigned Human Resources Business Partner may have a general consultation with the hiring manager to determine what types of convictions could be related to the duties of the job.
4. Criminal records information received through the criminal background check process is confidential and will not be shared with the candidate's hiring manager.
5. Applicants must provide criminal history for the past seven years (starting from the arrest date) for any pending and unresolved charges, or charges for which they have either pled nolo contendere (or no contest) to, been convicted of, or have been found guilty except for insanity (or a comparable disposition). Applicants will not be required to provide information on arrests that resulted in a finding of "not guilty" or in a dismissal. Applicants will not be required to provide criminal history that occurred before the past seven years.
6. The applicant must pass the criminal records check fitness determination in order to be offered a position with the Employment Department. The assigned Human Resources Business Partner will notify the hiring manager of whether or not the applicant passed the fitness determination. The hiring manager will also be notified if there will be a delay in completing a required fitness determination due to the need for a fingerprint-based national records check.

7. The fitness determination for eligibility for employment will only consider offenses that occurred within the past seven years (for violent offenses) or four years (for nonviolent offenses).
8. The fitness determination will consider such factors as the nature and seriousness of the offense, relevance of the offense to the position applied for, length of time since the offense occurred, frequency of the offense, and information provided by the applicant regarding mitigating factors, such as expungement of the applicable offense or rehabilitation.
9. For positions requiring access to Criminal Justice Information Services (CJIS) or Federal Tax Information, a separate federal fingerprinting background check will be completed. For positions requiring access to CJIS, the fitness determination will be conducted by the Oregon State Police. Factors consistent with federal CJIS, Federal Tax Information, and other regulated data policies will be considered to determine a candidate's fitness to perform essential functions of the position.

**b. Employment Offer:**

1. A criminal records check may be run on the final, selected candidate, only after the hiring manager has selected one final candidate and informed that candidate of their status as the finalist. The hiring manager confirms that they have notified the candidate of their finalist status by sending an email to Human Resources.
2. Criminal records checks shall not be completed as part of a screening process to determine the final candidate.
3. The one final selected candidate may be invited to work on a preliminary contingent basis while the criminal background check is taking place as permitted in Oregon Administrative Rules (OAR) 125-007-0250. This work may include participation in training, orientation, or work activities as assigned by the authorized agency.
4. A new criminal records check may be completed to determine fitness for the position, when new criminal history information has been reported for a current employee.

**2. Contractors and Vendors**

- a. The Department of Administrative Services may perform criminal records checks on all non-employed personnel with access to buildings, information, or systems outlined in Oregon Revised Statutes (ORS) 184.365, prior to the start date of the contract.
- b. All contractors, subcontractors, vendors, and consultants over whom the Employment Department has direction and control may conduct and pay for criminal record checks, at their expense, on any of their employees who have access to any Employment Department systems or data, or who may enter any of the agency's buildings. The contractor, subcontractor, vendor, or consultant, will provide written assurance to the agency that the subject individuals are fit for service to the agency.
- c. The Employment Department may, at its discretion, opt to escort contractors or vendors while they are performing services in lieu of a criminal background check being conducted.
- d. A contractor or vendor may be invited to work on a preliminary, contingent basis while the criminal background check is taking place, as permitted in OAR 125-007-0250. This work may include participation in training, orientation, or work activities as assigned by the authorized agency.

**3. Direct Appointments, Temporary Employees, and Volunteers**

- a. The Employment Department performs criminal records checks as outlined in its Criminal Records Checks procedure.
- b. A direct appointment, temporary employee, or volunteer may be invited to work on a preliminary, contingent basis while the criminal background check is taking place, as permitted in Oregon Administrative Rules (OAR) 125-007-0250. This work may include participation in training, orientation, or work activities as assigned by the authorized agency.

**B. Criminal Records Check for Determining Eligibility to Access Criminal Justice Information Systems (CJIS Access)**

The Oregon State Police require a fingerprint based national criminal records check for subject individuals when one of the following apply:

1. **Level 1 Access** - All personnel who have unescorted access to a physically secure location or controlled area that contains Criminal Justice Information (CJI). Some examples are custodians, maintenance staff, non-IT vendors, and other agency personnel. These persons are not authorized to access CJI.
2. **Level 2 Access** - All authorized personnel with physical access to CJI. Some examples include: Human Resources personnel, and some members of the Executive Team. This could also be regulatory investigators who are not Law Enforcement Data Systems certified, but view CJI as part of their duties.
3. **Level 3 Access** - All authorized personnel with both physical and logical (login) access to CJI. Some examples are Law Enforcement Data Systems users, Office of Administrative Hearings personnel, and staff with logins to records management or case management systems.
4. **Level 4 Access** - All Information Technology personnel (including vendors) with physical or logical (login) access to Information Technology equipment that stores or transmits CJI. Some examples are database administrators, network administrators, security administrators and any personnel with access to servers, routers, switches, used to receive, process, or store CJI.

Criminal Justice Information Systems (CJIS) clearance fingerprints are processed in the same manner as employment criminal records checks. **The Criminal Justice Information Systems Security Clearance Background Request form must be sent to the Oregon State Police to initiate the process within the 30 days of initial hire as directed in section 5.12.1.1 of the Criminal Justice Information Systems Security Policy, and the State Criminal Justice Information Systems Officer or their designee.**

Per the Criminal Justice Information Systems Security Policy, if a felony conviction of any kind exists, regardless of when the felony conviction occurred, access to CJI or systems used to receive, process, or store CJI, must be denied. The agency may request a review of the case by the Criminal Justice Information Systems Officer with the Oregon State Police, during which the Criminal Justice Information Systems Officer can make a determination as to whether or not CJIS access is appropriate.

Fingerprints are retained by the Oregon State Police only to report any future criminal activity if it occurs. Newly reported criminal history may result in revoking CJIS access by the Oregon State Police.

Subject Individuals with approved CJIS access must take a basic security awareness training within

**30 days of initial assignment**, and biennially thereafter. This training is required for all personnel who have access to CJI to include personnel who have unescorted access to a physically secure location. After completing the test, the subject individual must print and retain the certificate.

The subject individual may not have access to any CJI until a fitness determination has been made and the subject individual has been formally cleared for access to CJI. Prior to receiving clearance for access to CJI, a CJI cleared individual must escort the subject individual in any areas as described above.

**C. Criminal Records Check for Determining Eligibility to Access Federal Tax Information**

Internal Revenue Service Publication 1075 requires that all agency employees, contractors, and authorized sub-contractors must complete and pass a favorably adjudicated background investigation prior to being authorized to access Federal Tax Information. The background investigation for any individual granted authorized access to Federal Tax Information must include:

1. Federal Bureau of Investigation Fingerprint-based national records check;
2. Check of local law enforcement agencies where the subject individual has lived, worked, and/or attended school within the last five years; and
3. Validation of the subject individual's eligibility to legally work in the United States (e.g. a United States Citizen or foreign citizen with the necessary authorization).

Background investigation results will be weighed against the crimes considered according to Oregon Administrative Rules (OAR) 125-007-0270.

The Employment Department will complete a reinvestigation for all agency employees, contractors, and sub-contractors that have authorized access to Federal Tax Information within ten years of the previous background investigation date.

**D. Conflict of Interest**

An authorized designee must advise their immediate supervisor when a conflict of interest exists for one or more of the following:

1. The subject individual is a family member of the authorized designee (OAR 471-007-0300);
2. The subject individual has a financial or close personal relationship with the authorized designee (OAR 471-007-0300); or
3. The employee is unable to make a fitness determination due to personal bias regarding the nature of the criminal history or any connection with the subject individual.

## 5. Review Schedule

The Oregon Employment Department will review and update the current Criminal Records Check Policy every three years or more often as needed.

[Criminal Record Check Procedures - PR-0201](#)

## 6. Roles and Responsibilities

**A. Oregon Employment Department Human Resources**

Human Resources shall be the Criminal Records Check Policy and Procedure owner. The below roles within Human Resources shall have the following responsibilities:

1. **Law Enforcement Data Systems Representative/Terminal Agency Coordinator (TAC)**

The Law Enforcement Data Systems Representative administers Criminal Justice Information Systems (CJIS) programs within the local agency and oversees the agency's compliance with CJIS policies. Additionally, the Law Enforcement Data Systems Representative serves as the point of contact within the agency for matters relating to CJIS information access.

**2. Human Resources Business Partner**

The Human Resources Business Partner will conduct and document the fitness determination and notify the hiring manager of the outcome.

**3. Human Resources Director:**

If a subject individual makes a timely request for an internal review of a fitness determination, the Human Resources Director will conduct the review. The Human Resources Director will refer any request for a contested case hearing to the Office of Administrative Hearings as required under Oregon Administrative Rules (OAR) 125-007-0300 and Oregon Revised Statutes (ORS) 183.635(1).

**B. Local Agency Security Officer (LASO)**

The Local Agency Security Officer shall:

1. Identify who is using CJIS approved hardware, software, and firmware, and ensure no unauthorized individuals or processes have access to the same.
2. Identify and document how the equipment is connected to the state system;
3. Ensure that personnel security screening procedures are being followed as stated in the CJIS Security Policy;
4. Ensure the approved and appropriate security measures are in place and working as intended; and
5. Support policy and compliance.

**C. Internal Revenue Service (IRS) Liaison**

The IRS Liaison shall work with all levels of agency management, federal agencies, and other state agencies, and serve as the key point of contact with internal and external parties on all issues relative to the protection of Federal Tax Information. The IRS Liaison shall provide guidance to the Employment Department management and Human Resources relative to background investigation requirements for agency personnel who will be authorized to access Federal Tax Information. Guidance shall be consistent with Internal Revenue Service Publication 1075 requirements.

All users and managers shall be aware of and observe the Employment Department Criminal Records Check Policy. It is the responsibility of all agency employees, contractors, vendors, and agents to adhere to this policy, and to refrain from any activity that might circumvent this policy.

## 7. Management Commitment

Employment Department management shall actively support personnel security efforts within the organization, including criminal records checks on subject individuals covered by this policy, through clear direction, demonstrated commitment, explicit assignment, and acknowledgement of personnel security responsibilities and requirements.

## 8. Compliance

Failure to comply with this policy may result in disciplinary action up to and including dismissal from state service.



## 9. Forms

Criminal Records Check (CRC) Form [Attachment 1]

Criminal Justice Information Systems Security Clearance Background Request Form [Attachment 2]

Final Fitness Determination Form [Attachment 3]

Weigh Test [Attachment 4]

## 10. References

Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e *et seq* (1964)

Internal Revenue Service (IRS) Publication 1075: *Tax Information Security Guidelines for Federal, State, and Local Agencies – Safeguards for Protecting Federal Tax Returns and Return Information*, Section 5.1.1 (2016).

OAR 125-007-0200 through 125-007-0330

OAR 471-007-0200 through 471-007-0310

ORS 181A.195 Criminal Records Check

ORS 181S.200 Authority of Department of Human Services, Oregon Health Authority and Employment Department to Require Fingerprints

ORS 183.635(1) Agencies Required to Use Administrative Law Judges from Office of Administrative Hearings

U.S. Department of Justice Federal Bureau of Investigation - *Criminal Justice Information Services (CJIS) Security Policy* v 5.6, Section 5.12.1.1 (2017)

## 11. Links

<https://www.irs.gov/pub/irs-pdf/p1075.pdf>

[http://arcweb.sos.state.or.us/pages/rules/oars\\_100/oar\\_125/125\\_007.html](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_125/125_007.html)

[http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_471/471\\_007.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_471/471_007.html)

<https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

<https://www.oregonlaws.org/ors/181A.195>

<https://www.oregonlaws.org/ors/181A.200>

[https://www.eeoc.gov/laws/guidance/qa\\_arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm)

## 12. Approved

**Attachments:**

No Attachments

## Approval Signatures

Approver	Date
Kay Erickson: Director	11/2018
Andrea Fogue: Legislative and Public Affairs Manager	11/2018
Cristina Koreski	11/2018
Teresa Rainey: Equity and Inclusion Officer	11/2018
Cristina Koreski	11/2018
Cristina Koreski	11/2018
Teresa Rainey: Equity and Inclusion Officer	11/2018
Sharon Tietsort: Human Resources Director	11/2018
Cristina Koreski	11/2018
Teresa Rainey: Equity and Inclusion Officer	11/2018

## Applicability

Oregon Employment Department

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