



Origination 06/2010
 Last Approved 04/2025
 Effective 04/2025
 Last Revised 08/2023
 Next Review 08/2026

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 Human Resources Director
 Area Human Resources - 0201-0300

Criminal Record Check Policy - PO-0201

1. Purpose

The purpose of this policy is to ensure that the agency conducts fair criminal records checks 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. The goal of the Oregon Employment Department is to become an employer of choice for individuals of all backgrounds and to 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^[1]. Therefore, the agency reviews several factors as outlined in Oregon Revised Statute (ORS) 181A.195(10)(c) and Oregon Administrative Rules (OAR) 125-007-0200 through 125-007-0330, which include factors and guidance from the EEOC, for ensuring that employment decisions based on criminal history are fair and do not have a disparate impact on applicants from underrepresented racial, ethnic, and social groups. This includes, when applicable, 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 candidate.

[1] 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/qa_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. Fingerprint-based, national criminal records check is required for all candidates who have lived outside of the state for more than 60 days during the last three years.
- 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 candidate through criminal records checks and other means, and to conduct the fitness determination. Authorized designees for the agency include at least one (1) designated Human Resources Analyst 2 (HRA2); all Human Resources Analyst 3s (HRA3); the Human Resources Deputy Director, and the Human Resources 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 (NICS), 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 candidate'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 through the completion of a weighing test by an authorized designee pursuant to the process established in Oregon Revised Statutes (ORS) 181A.195(10)(c) that a candidate 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 candidate 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. **Candidate:**
 - 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. **Weighing Test:** A process carried out by the agency in which available candidate's background information is considered to make a fitness determination.
- P. **Workforce Partners:** Signatories to a memo of understanding and/or a resource sharing agreement or similar document in WorkSource Oregon centers.

4. Policy

Criminal records checks shall be completed on candidates 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. Candidates 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 Human Resources Director or Human Resources Deputy Director to

determine what types of convictions could be related to the duties of the job.

4. The denial of any fitness determination will be reviewed by the Human Resources Director or Deputy Director, in consultation with the Equity and Inclusion Director, to ensure the assessment of the candidate's background history was fair and equitable.
5. Criminal records information received through the criminal background check process is confidential and will not be shared with the candidate's hiring manager.
6. Applicants must provide a comprehensive criminal history 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.
7. The applicant must pass the criminal records check fitness determination to be offered a position with the Employment Department. The assigned Human Resources Business Partner will notify the hiring manager of whether the applicant passed the fitness determination. The hiring manager will also be notified if there is a delay in completing a required fitness determination due to the need for a fingerprint-based national records check.
8. The fitness determination will consider such factors as age of candidate at time of conviction; whether the candidate has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending charge for an offense listed in Oregon Administrative Rules (OAR) 125-007-0270; the nature and seriousness of the offense; periods of incarceration related to the offense; status of and compliance with any parole, post-prison supervision, or probation related to the offense; evidence of treatment or rehabilitation (if applicable); relevance of the offense to the position being applied for; considerations of any applicable state or federal laws, regulations or rules covering the position or employer; the length of time since the offense occurred; the likelihood of repetition of behavior; the frequency of the offense; other behavior involving contact with law enforcement; and information provided by the candidate regarding employment history, education and/or certifications, and 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 shall 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 with Human Resources that they have notified the candidate of their finalist status and how the hiring manager notified the candidate.
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 candidates are fit for service to the agency.
- c. The Employment Department will escort contractors or vendors while they are performing services in lieu of a criminal background check being conducted when services being performed are in agency locations where information needs to remain confidential.
- 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 candidates 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 CJIS Security Policy requires identification verification. State of residency and national fingerprint-based record checks shall be conducted prior to granting access to CJI for all personnel who have unescorted access to unencrypted CJI or unescorted access to physically secure locations or controlled areas (during times of CJI processing). **The CJIS 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.**

If a felony conviction of any kind exists, regardless of when the felony conviction

occurred, access to CJI must be denied by the Oregon State Police (OSP). The agency may request a review of the case by the CJIS Systems Officer with the OSP, during which the CJIS Systems Officer can decide as to whether CJI access is appropriate. Newly reported criminal history may result in revoking CJI access by the OSP.

Individuals with approved CJIS access must complete CJIS security training prior to being given access to CJI and annually thereafter, and when required by system changes or within 30 days of any security event for individuals involved in the event.

In the event that a candidate has been convicted of misdemeanor, they may not have access to any CJIS until a fitness determination has been made and the candidate has been formally cleared for access to CJIS. Prior to receiving clearance for access to CJIS, a CJIS cleared individual must escort the candidate 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 candidate has lived, worked, and/or attended school within the last five years.
3. Validation of the candidate's eligibility to legally work in the United States (e.g., a United States Citizen or foreign citizen with the necessary authorization).
4. Background investigation results will be weighed against the crimes considered according to Oregon Administrative Rules (OAR) 125-007-0270.
5. The Employment Department will complete a reinvestigation for all agency employees, contractors, and sub-contractors that have authorized access to Federal Tax Information within **five (5) 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 candidate is a family member of the authorized designee (OAR 471-007-0300);
2. The candidate 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 candidate.

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.

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. **Equity and Inclusion Director** The Equity and Inclusion Director will be consulted with Human Resources Director or Deputy Director on all denial results (all candidates).
3. **Human Resources Business Partner** The Human Resources Business Partner will conduct and document the fitness determination and review the outcome with the Human Resources Deputy Director. The Human Resources Business Partner will notify the hiring manager of the final outcome.
4. **Human Resources Deputy Director** The Human Resources Deputy Director will review the outcome of the fitness determination with the Human Resources Business Partner to ensure all aspects of the weighing test have been considered in accordance with OAR 125-007-0210, OAR 125-007-0260, and ORS 181A.195(10)(d).
5. **Human Resources Director** If a candidate makes a timely request for an internal review of a fitness determination due to a denied or restricted approval, 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 candidates 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 \[Attachment 3\]](#)

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

11. Links

The Criminal Record Check Procedure can be found at this link here: [Criminal Record Check Procedure](#) or by searching "Criminal Record Check Procedure" on the [Manager Toolkit](#).

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

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=227>

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2331>

<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

12. Approved

Approved

Attachments

[Criminal Justice Information Systems Security Clearance Background Request Form](#)

[Criminal Records Check Request Form_FORM101](#)

[Fitness Determination_FORM103](#)

Approval Signatures

Step Description	Approver	Date
Director Final Approval	David Gerstenfeld: Acting Director	04/2025
Communications Review	Rebeka Gipson-King: Communications Director [PB]	04/2025
Executive Policy Committee Final Review	Perla Brambila-Arechiga: Policy Coordinator	04/2025

Employee Review	Perla Brambila-Arechiga: Policy Coordinator	04/2025
Executive Policy Committee Review	Perla Brambila-Arechiga: Policy Coordinator	04/2025
Equity and Inclusion Council Review	Jason Baurer: Human Resources Director	02/2025
Equity and Inclusion Council Review	Teresa Rainey: Director of Equity and Inclusion	01/2025
Division Director Review	Jason Baurer: Human Resources Director	01/2025
Review Initiated	Jason Baurer: Human Resources Director	01/2025
Review Initiated	Perla Brambila-Arechiga: Policy Coordinator	01/2025

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