

OREGON MILITARY DEPARTMENT	NUMBER: AGP-99.300.05
ADJUTANT GENERAL PERSONNEL	EFFECTIVE DATE: June 1, 2023
SUBJECT: Criminal Background Checks	

APPLICABILITY: This policy applies to individuals as defined in Oregon Administrative Rule (OAR) 125-007-0200 (Criminal Records Check Rules) through 125-007-0330, Oregon Revised Statutes (ORS) 181A.195 (Criminal Records Check), and ORS 396.332 (Authority of Oregon Military Department to require fingerprints for criminal records check). This applies to any state of Oregon Military Department (OMD) new hire, promotion, demotion, direct appointment, re-employment, transfer, volunteer, intern, or temporary hire. It does NOT apply to job rotations or developmental assignments unless there is a direct nexus to the job (financial, HR, IT, etc.).

AUTHORITY/REFERENCE: Guidelines for conducting background checks on Subject Individuals pursuant to OAR 125-007-0200 through 125-007-0330, OAR 137-003-0501 through 137-003-0700, ORS 181A.195, and ORS 396.332.

PURPOSE: To provide clarification regarding screening of OMD state employees, volunteers, job applicants, and others who may be considered as applicants for the agency. The purpose of the policy is to ensure that the agency conducts fair criminal records check standards which includes case-by-case assessments that are relevant to the position for which an applicant applied and reduce risk in the hiring process to an acceptable level. Individuals not complying with this policy may be removed from consideration in the hiring process.

DEFINITIONS:

1. **Criminal Background Check:** A review, conducted by the Authorized Designee (AD), of a Subject Individual's (SI) 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 (OSP), Federal Bureau of Investigation (FBI), or other official entities.
2. **Fitness Determination:** A determination made by an AD pursuant to the process established in Oregon Revised Statutes (ORS) 181A.195(10)(c) that an SI is or is not fit to be an agency employee in an OMD position.
3. **Law Enforcement Data System (LEDS):** Database System maintained by the Criminal Justice Information Services (CJIS) division of the OSP, for the purpose of maintaining and accessing criminal history files.
4. **Subject Individual (SI):**

- A. A person who has applied for and is the final candidate for employment by OMD as a state worker.
- B. An OMD state employee who has applied for and is the final candidate for a promotion, a transfer, demotion, etc.
- C. A person who is a volunteer or a participant in a program over whom OMD has direction and/or control.
- D. Contractors serving in an authorized capacity to access agency information and/or information systems.

POLICY GUIDANCE:

1. Criminal background checks will be conducted on subject individuals pursuant to OAR 125-007-0200 through OAR 125-007-0330. All SIs will go through the criminal background check process following a conditional job offer, promotion, transfer, or voluntary demotion or on any current employee, as deemed necessary by the Adjutant General Personnel (AGP) Director and as outlined in the Applicability section.
2. A fingerprint background check will be required on any SI that has lived outside the State of Oregon for more than six (6) months in the last three (3) years. A fingerprint background check will also be required on personnel who are assigned to the Oregon Youth Challenge Program, are issued firearms and munitions such as Force Protection Officers, have fiscal and purchasing responsibilities as their main duties, have Information Technology responsibilities, are within the AGP section, or have regular access to restricted areas within a military installation.
3. Criminal information obtained from Law Enforcement Data Systems (LEDS) shall remain *For Official Use Only* and shared with only those persons who have a need to know.
4. Criminal background checks will be conducted as part of the selection process on all identified positions after a conditional job offer has been made by the hiring supervisor and may also include inquiry deemed by the AGP Director, as needed.
5. OMD will conduct fingerprint based criminal records checks for employees or applicants with direct access or unescorted access to CJIS as required by the OSP.
6. Whenever unfavorable criminal activity is found, the affected individual shall be contacted and given an opportunity to refute or provide additional information prior to any adverse action being taken.
7. In making a final fitness determination about a SI, OMD shall consider the following factors in relation to information provided by the applicant/employee, any LEDS report or criminal offender information obtained through criminal records check, and any false statements made by the individual. In accordance with ORS 181A.195, the agency will make a fitness determination and will use this information in considering:

- A. The nature of the crime;
 - B. The facts that support the conviction or pending indictment or that indicate the making of a false statement;
 - C. The relevancy, if any, of the crime or the false statement to the specific requirements of the SI's present or proposed position, services, employment, license, certification or registration; and
 - D. The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:
 - The passage of time since the commission or alleged commission of a crime;
 - The age of the individual at the time of the commission or alleged commission of a crime;
 - The likelihood of repetition of offenses or of the commission of another crime;
 - The subsequent commission of another crime;
 - Whether a conviction has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;
 - A recommendation of an employer.
8. Current employees and volunteers and those employees with Federal Security Clearances, must report, within three (3) business days, any citation, arrest or conviction to their immediate supervisor or the AGP Director and a background check will be performed to include criminal and driving history.
9. A current regular status employee who is found to have an unfavorable criminal history, as it relates to the individual's employment with OMD, shall be given due process prior to dismissal from state service.
10. Criminal history information shall not be retained in an employee's official personnel file and past criminal disclosures should only be provided to Human Resources, not management, unless current employees are informing management of any new arrest or conviction. The specific information is not shared with the hiring manager – the hiring manager only gets notice of pass or fail.
11. The AGP Office shall ensure that information received as a result of the background check shall be secured in a file separate from the employee's official personnel and maintained for the duration of 90 days. The background check log and record of pass/fail along with the weigh test will be retained electronically until superseded.

12. Any cost associated with criminal background checks shall be the responsibility of each program.
13. Applicants must accurately and completely disclose ALL criminal history. This includes ALL felonies, misdemeanors, probation violations and failures to appear. Serious traffic offenses, such as "Reckless Driving" or "Driving Under the Influence of Intoxicants (DUII)" or "Driving While Suspended" must be listed. "Failure to Appear," even for a minor traffic violation must be listed. Minor traffic violations such as speeding or failing to stop at a stop sign or red light are required to be listed. Parking offenses are NOT required to be listed.
14. Dispositions of the LEDS check are emailed to the hiring supervisor when the background check is approved or not approved. If potentially disqualifying crimes are found, a weigh test is conducted, and if it results in an unfavorable outcome and employment is denied, the SI will be notified by a Human Resources Analyst.
15. Appeal Information – If a final fitness determination results in an unfavorable/denied outcome, the applicant/employee will be notified of appeal rights and the ability to request a hearing with the Oregon Office of Administrative Hearings (OAH). The request for a hearing must be made to the agency within 10 days' notice of the final fitness determination of unfavorable/denied. The agency will then schedule a hearing in accordance with OAR 137-003-0501 – 0700 (call 971-720-0251). The SI will be notified that per OAR 137-003-0505, a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested timely, within the 10-day notice period. Choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the 10-day period stated in the notice and the matter is not resolved through the collaboration process.
16. Driver license and driving record assessments will be conducted on conditional job offers to determine if applicants have an acceptable record to drive on official state business. If driving is an essential function of the job, it must be supported by the assigned duties and stated in the position description. A driving record will be considered unacceptable for any one or more of the following convictions, though not limited to such:
 - A. Misdemeanor or felony traffic offense in the last 24 months. This includes reckless driving, driving under the influence of intoxicants, failing to perform the duties of a driver, criminal driving while suspended or revoked, fleeing, or attempting to elude a police officer and others, or the equivalent.
 - B. Felony revocation of driving privileges or a suspension caused by a felony or misdemeanor or the equivalent within the last 24 months.
 - C. More than three moving traffic violations in the last twelve months or the equivalent.
 - D. Careless driving conviction within the last 12 months.

E. One Class A moving violation in the last 12 months (Class A is the most serious level of violation, e.g., going 30 MPH over the limit).

17. If driving is incidental for a position, alternative means of transportation may be considered for an individual who does not meet acceptable driving requirements. Options may include carpooling, public transit, taxi, bicycle, etc.

INQUIRIES / QUESTIONS: Questions pertaining to this guidance may be directed to AGP at (503) 509-2152.

A handwritten signature in black ink that reads "Tracy Garcia". The signature is fluid and cursive, with the first name "Tracy" and last name "Garcia" clearly distinguishable.

Tracy Garcia
HR Director
Adjutant General State Personnel