

**DIVISION 600**

**CRIMINAL HISTORY CHECK AND FITNESS DETERMINATION RULES**

**635-600-0000**

**Statement of Purpose and Statutory Authority**

**Purpose. These rules control the Department's acquisition of information about a subject individual's criminal history through criminal history checks and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer or contractor in a position covered by OAR 635-600-0010(2)(a)-(d). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer or contractor.**

**(2) Authority. These rules are authorized under ORS 181.534 and 496.121.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0005**

**Definitions**

**As used in OAR chapter 635, division 600, unless the context of the rule requires otherwise, the following definitions apply:**

**(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 635-600-0020 or a final fitness determination under OAR 635-600-0030, the Department has determined that the subject individual is fit to be an employee, volunteer, or contractor in a position covered by OAR 635-600-0010(2)(a)-(d).**

**(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a**

criminal case, unless that judgment has been reversed or dismissed by a subsequent court decision.

(3) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Identification Services Section for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(4) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 635-600-0035.

(5) "Criminal History Check and Fitness Determination Rules" or "These Rules" means OAR chapter 635, division 600.

(6) "Criminal History Check" or "CHC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) a check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Computerized Criminal History check);

(b) a check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal History Check); or

(c) a national check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (National Criminal History Check).

**(7) "Denied" means that, pursuant to a preliminary fitness determination under OAR 635-600-0020 or a final fitness determination under OAR 635-600-0030, the Department has determined that the subject individual is not fit to be an employee, volunteer or contractor in a position covered by OAR 635-600-0010(2)(a)-(d).**

**(8) "Department" means the Oregon Department of Fish and Wildlife or any subdivision thereof.**

**(9) "False Statement" means that, in association with an activity governed by these rules, a subject individual either: (a) provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record; or (b) failed to provide to the Department information material to determining his or her criminal history.**

**(10) "Fitness Determination" means a determination made by the Department pursuant to the process established in OAR 635-600-0020 (preliminary fitness determination) or 635-600-0030 (final fitness determination) that a subject individual is or is not fit to be a Department employee, volunteer or contractor in a position covered by OAR 635-600-0010(2)(a)-(d).**

**(11) "Subject Individual" means an individual identified in OAR 635-600-0010 who is required to complete a criminal history check pursuant to these rules and from whom the Department may require fingerprints for the purpose of conducting a criminal history check.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0010**

**Subject Individual**

**“Subject Individual” means a person who is required to complete a criminal history check pursuant to these rules and from whom the Department may require fingerprints for the purpose of conducting a criminal history check because the person:**

**(1)(a) is employed by or considered for employment with the Department; or**

**(b) provides services or seeks to provide services to the Department as a volunteer or contractor;**  
**and**

**(2) is, or will be, working or providing services in a position:**

**(a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;**

**(b) That has personnel or human resources functions as one of the position’s primary responsibilities;**

**(c) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems; or**

**(d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions or the training of others in the use or handling of firearms.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0015**

**Criminal History Check Process**

**(1) Disclosure of Information by Subject Individual.**

- (a) Preliminary to a criminal history check, a subject individual shall complete and sign the ODFW Criminal History Request form and, if requested by the Department, a fingerprint card. The Criminal History Request form shall require the following information: name, birthdate, Social Security Number, physical characteristics, driver license or identification card number, current address, prior residences, and any other information deemed necessary by the Department. The ODFW Criminal History Request form may also require details concerning any circumstance listed in OAR 635-600-0020(3)(a)-(f).
- (b) A subject individual shall complete and submit to the Department the ODFW Criminal History Request form and, if requested, a fingerprint card within three business days of receiving the forms. The Department may extend the deadline for good cause.
- (c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 et seq, or unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 635-600-0030(3)(d)(B).
- (d) Within a reasonable period of time as established by the Department, a subject individual shall disclose additional information as requested by the Department in order to resolve any issues hindering the completion of a criminal history check.
- (2) When a Criminal History Check is Conducted. The Department may conduct, or request that the Oregon Department of State Police conduct, a criminal history check when:
- (a) an individual meets the definition of “subject individual”; or
- (b) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

**(3) Which Criminal History Check(s) Is Conducted. When the Department determines under subsection (2) of this rule that a criminal record check is needed, the Department may request or conduct a LEADS Criminal History Check, an Oregon Criminal History Check, a Nationwide Criminal History Check, or any combination thereof.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0020**

**Preliminary Fitness Determination**

**(1) The Department may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.**

**(2) If the Department elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the Department shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 635-600-0015(1) and a LEADS Computerized Criminal History Check.**

**(3) The Department shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the Department does not disclose that the subject individual:**

**(a) has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 635-600-0035;**

**(b) has been arrested for or charged with a crime listed under OAR 635-600-0035;**

(c) is being investigated for, or has an outstanding warrant for a crime listed under OAR 635-600-0035;

(d) is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 635-600-0035;

(e) has a deferred sentence or conditional discharge in connection with a crime listed under OAR 635-600-0035; or

(f) has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 635-600-0035 if committed by an adult.

(4) If the information available to the Department discloses one or more of the circumstances identified in section (3), the Department may nonetheless approve a subject individual as fit on a preliminary basis if the Department concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose any risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, the Department thereafter shall conduct a final fitness determination under OAR 635-600-0030.

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 635-600-0050 or otherwise.

Stat. Auth.: ORS 181.534 and 496.121

Stats. Implemented: ORS 181.534(9)

635-600-0025

Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if the

Department has approved the subject individual on the basis of a preliminary fitness determination under OAR 635-600-0020.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 635-600-0030, may not appeal the termination under the process provided under OAR 635-600-0050.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 635-600-0030(3)(d), then the Department shall immediately terminate the subject individual's employment or appointment.

Stat. Auth.: ORS 181.534 and 496.121

Stats. Implemented: ORS 181.534(9).

### 635-600-0030

#### Final Fitness Determination

(1) If the Department elects to conduct a criminal history check, the Department shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 635-600-0015(1), the criminal history check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, the Department shall consider the factors in subsections (a)-(f) in relation to information provided by the subject individual under OAR 635-600-0020(1), any LEADS report or criminal offender information obtained through a criminal history check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other information deemed relevant



from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, the Department may request to meet with the subject individual, to receive written materials from him or her, or both. The Department will use all collected information in considering:

(a) whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 635-600-0035;

(b) the nature of any crime identified under subsection (a);

(c) the facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) the facts that indicate the subject individual made a false statement;

(e) the relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) 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:

(A) the passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) the age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) the likelihood of a repetition of offenses or of the commission of another crime;

(D) the subsequent commission of another crime listed in OAR 635-600-0035;

(E) whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) a recommendation of an employer;

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. The Department shall approve a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 635-600-0035;

(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR 635-600-0035;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 635-600-0035;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule, the Department may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the Department determines (i) that the evidence is not credible; or (ii) if the evidence is credible, that the subject individual acting in the position for which the fitness determination is being conducted would not pose any risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If the Department approves a subject individual under subsection (3)(b) of this rule, the Department may restrict the approval to specific activities or locations.

(B) The Department shall complete a new criminal history check and fitness determination on the subject individual before removing a restriction.

(d) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, the Department concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose any risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal history check, including fingerprint identification, the Department shall deny the employment of the subject individual, or revoke or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services as a volunteer or contractor to the Department in a position covered by OAR 635-600-0010(2).

(4) Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Order. A completed final fitness determination is final unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 635-600-0050(2)(a) or an alternative appeals process as provided by OAR 635-600-0050(6).

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0035**

**Crimes Relevant to a Fitness Determination**

**(1) Crimes Relevant to a Fitness Determination.**

**(a) All felonies;**

**(b) All misdemeanors;**

**(c) Any United States Military crime or international crime;**

**(d) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;**

**(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.555, when the underlying crime is listed in this section (1);**

**(2) Evaluation Based on Oregon Laws. The Department shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal history check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0040**

**Incomplete Fitness Determination**

**(1) The Department will close a preliminary or final fitness determination as incomplete when:**

**(a) circumstances change so that a person no longer meets the definition of a “subject individual” under OAR 635-600-0010;**

**(b) the subject individual does not provide materials or information under OAR 635-600-0015(1) within the timeframes established under that rule;**

**(c) the Department cannot locate or contact the subject individual;**

**(d) the subject individual fails or refuses to cooperate with the Department’s attempts to acquire other relevant information under OAR 635-600-0030(2); or**

**(e) the Department determines that the subject individual is not eligible or not qualified for the position of employee, volunteer or contractor for a reason unrelated to the fitness determination process; or**

**(f) the position is no longer open.**

**(2) A subject individual does not have a right to a contested case hearing under OAR 635-600-0050 or alternative appeal process under OAR 635-600-0050(6) to challenge the closing of an incomplete fitness determination.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0050**

**Appealing a Final Fitness Determination**

**(1) An authorized designee shall provide written notice to a subject individual upon completion of the final fitness determination. Such notice shall meet the requirements of ORS 183.415 and shall be served personally or by registered or certified mail.**

**(2) Process**

(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 635-600-0050(1), within 14 calendar days of the date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or

(8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order.

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent.

(c) Default. A completed final fitness determination made under OAR 635-600-0030 becomes final: (A) unless the subject individual makes a timely request for a hearing; or (B) when a party withdraws a hearing request, notifies the agency or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by the Department may choose to appeal a final fitness determination either under the process made available by this rule or

through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 635-600-0030(3)(c). Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (8), a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal history check and re-evaluate the original fitness determination made under OAR 635-600-0030 by submitting a new ODFW Criminal History Request form. This provision only applies if the position for which the original criminal history check was conducted is vacant and available.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8) of this rule, will not delay or postpone the Department's hiring process or employment decisions except when the Department decides that a delay or postponement should occur.

Stat. Auth.: ORS 181.534 and 496.121

Stats. Implemented: ORS 181.534(9)

635-600-0055

#### Recordkeeping and Confidentiality

##### (1) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal history check, including but not limited to LEADS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

(b) Within the Department, only those persons with a demonstrated and legitimate need to know shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal history check.

(c) The Department shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal history check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.



**(d) If a fingerprint-based criminal history check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.**

**(e) If a subject individual with a right to inspect criminal offender information under subsection (f) makes a request, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity before providing the criminal offender information to him or her. The Department shall require that the subject individual sign a receipt confirming his or her receipt of the criminal offender information.**

**(2) Other Records.**

**(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including ODFW Criminal History Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).**

**(b) Within the Department, only those persons with a demonstrated and legitimate need to know shall have access to the records identified under subsection (a).**

**(c) A subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

**635-600-0065**

**Fees**

**(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.**

**(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.**

**Stat. Auth.: ORS 181.534 and 496.121**

**Stats. Implemented: ORS 181.534(9)**

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