

DIVISION 600**CRIMINAL HISTORY CHECK AND FITNESS DETERMINATION RULES****635-600-0000****Statement of Purpose and Statutory Authority**

Purpose. These rules ~~[control]~~ **provide for** 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, **contractor, vendor or** 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, **contractor, vendor or** 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, **contractor, vendor or** 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, **contractor, vendor or** 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, **contractor, vendor or** 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 contractor, **vendor** or volunteer; 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; [ø]

(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[-];

(e) In which the person resides on property managed by the Department;

(f) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(g) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(h) That has mailroom duties as a primary duty or job function;

(i) In which the person has responsibility for auditing the Department;

(j) In which the person has access to Social Security numbers, dates of birth or criminal

background information of employees or members of the public; or

(k) In which the person has access to tax or financial information about individuals or business entities.

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 LEDS 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 **contractor, vendor or** 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)

635-600-0040

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, **contractor, vendor or** 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)