

## DIVISION 600

## CRIMINAL HISTORY CHECK AND FITNESS DETERMINATION RULES

## 635-600-0000

## Statement of Purpose and Statutory Authority

(1) Purpose[=:]. These rules 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 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.

~~[(2) Authority. These rules are authorized under ORS 181.534 and 496.121.]~~ Stat. Auth.: ORS [181.534 and] **181A.195**, 496.121

Stats. Implemented: ORS [181.534(9)] **181A.195, 496.121**

## 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 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) **or any determination of guilt entered by a court of law** 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~~] **means records, including fingerprints and photographs**, and related data [~~as to physical description and vital statistics, fingerprints~~

~~and~~] **received, compiled, and disseminated** by the Oregon Department of State Police

[~~Identification Services Section~~] **(OSP), or by other states**, for purposes of identifying criminal

31 offenders and alleged offenders, **and maintained as part of an individual's** records of arrests[  
32 ~~and~~], the nature and disposition of criminal charges, including sentencing, confinement,  
33 [~~parole~~]**but does not include the retention by OSP or records of transfer of inmates between**  
34 **penal institutions or other correctional facilities,** and release.

35 (4) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 635-  
36 600-0035.

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

39 (6) "Criminal History Check" or "CHC" means [~~one of three~~]**obtaining and reviewing criminal**  
40 **records as required or permitted by these rules and includes any or all of the following**  
41 processes[~~undertaken to check the criminal history of a subject individual~~]:

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

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

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

52 (7) "Denied" means that, pursuant to a preliminary fitness determination under OAR 635-600-  
53 0020 or a final fitness determination under OAR 635-600-0030, the Department has determined  
54 that the subject individual is not fit to be an employee, contractor, vendor or volunteer in a  
55 position covered by OAR 635-600-0010(2)[~~(a)-(d)~~].

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

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

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

66 (11) **“Provide Services” means any provision of what is necessary for the health, welfare,**  
67 **maintenance or protection of an individual.**

68 **(12)**”Subject Individual” means an individual identified in **ORS 496.121 and** OAR 635-600-  
69 0010 who is required to complete a criminal history check pursuant to these rules and from  
70 whom the Department may require fingerprints for the purpose of conducting a criminal history  
71 check.

72 Stat. Auth.: ORS [~~181.534 and~~]**181A.195**, 496.121

73 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

74

## 75 **635-600-0010**

### 76 **Subject Individual**

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

80 (1)(a) [~~i~~]**I**s employed by or considered for employment [~~with~~]**by** the Department; or

81 (b) [~~p~~]**P**rovides services or seeks to provide services to the Department as a contractor, vendor or  
82 volunteer; and

83 (2) [~~i~~]**I**s, or will be, working or providing services in a position:

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

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

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

- 91 (d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms
- 92 or munitions, access to firearms or munitions or the training of others in the use or handling of
- 93 firearms;
- 94 (e) In which the person resides on property managed by the Department;
- 95 (f) In which the person has access to information, the disclosure of which is prohibited by state
- 96 or federal laws, rules or regulations or information that is defined as confidential under state or
- 97 federal laws, rules or regulations;
- 98 (g) That has payroll functions or in which the person has responsibility for receiving, receipting
- 99 or depositing money or negotiable instruments, for billing, collections or other financial
- 100 transactions or for purchasing or selling property or has access to property held in trust or to
- 101 private property in the temporary custody of the state;
- 102 (h) That has mailroom duties as a primary duty or job function;
- 103 (i) In which the person has responsibility for auditing the Department;
- 104 (j) In which the person has access to Social Security numbers, dates of birth or criminal
- 105 background information of employees or members of the public; or
- 106 (k) In which the person has access to tax or financial information about individuals or business
- 107 entities.

108 Stat. Auth.: [~~ORS 181.534 and~~ **181A.195**, 496.121

109 Stats. Implemented: ORS [~~181.534(9)~~ **181A.195, 496.121**

110

111 **635-600-0015**

112 **Criminal History Check Process**

113 (1) Disclosure of Information by Subject Individual.

114 (a) Preliminary to a criminal history check, a subject individual shall complete [~~and sign the~~ **a**

115 ODFW Criminal History Request form and, if requested by the Department, a fingerprint

116 [~~and~~ **capture**]. The Criminal History Request form [~~shall require the following~~

117 **information: may include, but not limited to: legal name[;] and aliases, date of birth[~~date~~],**

118 Social Security Number, [~~physical characteristics,~~ driver license or identification card number,

119 [~~current~~ ]address, [~~prior residences~~ ] **and residency information, disclosure of criminal history**

120 **(all arrests, charges, convictions and offenses)**, and any other information deemed necessary

121 by the Department. The ODFW Criminal History Request form may also require details  
122 concerning any circumstance listed in OAR 635-600-~~0030~~~~(0020(3)(a)-(f))~~.

123 (b) A subject individual shall complete and submit to the Department the ODFW Criminal  
124 History Request form and, if requested, a fingerprint ~~[eard]~~capture within three business days of  
125 receiving the forms. The Department may extend the deadline for good cause.

126 (c) The Department shall not request a fingerprint ~~[eard]~~capture from a subject individual under  
127 the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 et  
128 seq, or unless the Department also requests the written consent of a parent or guardian. In such  
129 case, such parent or guardian and youth must be informed that they are not required to consent.  
130 Notwithstanding, failure to consent may be construed as a refusal to consent~~[under OAR 635-~~  
131 ~~600-0030(3)(d)(B)]~~.

132 (d) **The Department may require additional information from the subject individual as**  
133 **necessary to complete the criminal history check and fitness determination, such as, but not**  
134 **limited to, proof of identity; or additional criminal, judicial, or other background**  
135 **information.** Within a reasonable period of time as established by the Department, a subject  
136 individual shall disclose additional information as requested by the Department~~[in order to~~  
137 ~~resolve any issues hindering the completion of a criminal history check]~~.

138 (2) When a Criminal History Check is Conducted. The Department may conduct, or request that  
139 the Oregon Department of State Police conduct, a criminal history check when:

140 (a) ~~[a]~~An individual meets the definition of “subject individual”; or

141 (b) ~~[f]~~Required by federal law or regulation, by state law or administrative rule, or by contract or  
142 written agreement with the Department.

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

147 Stat. Auth.: ORS ~~[181.534 and]~~181A.195, 496.121

148 Stats. Implemented: ORS ~~[181.534(9)]~~181A.195, 496.121

149

150 **635-600-0020**

151 **Preliminary Fitness Determination**

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

155 (2) If the Department elects to make a preliminary fitness determination about a subject  
156 individual, pending a final fitness determination, the Department shall make a preliminary fitness  
157 determination about a subject individual based on information disclosed by the subject individual  
158 under OAR 635-600-0015(1) and a LEDS [~~Computerized~~]Criminal History Check.

159 (3) The Department shall approve a subject individual as fit on a preliminary basis if the  
160 authorized designee has no reason to believe [~~that~~] the subject individual has made a false  
161 statement and the information available to the Department does not disclose that the subject  
162 individual[?].

163 (a) [~~h~~]**H**as pled nolo contendere (or no contest) to, been convicted of, found guilty except for  
164 insanity (or comparable disposition) of, or has a pending indictment for a crime listed under  
165 OAR 635-600-0035;

166 (b) [~~has been arrested for or~~]**Is being investigated for, has an outstanding warrant for, or has**  
167 **been** charged with a crime listed under OAR 635-600-0035;

168 [~~(e) is being investigated for, or has an outstanding warrant for a crime listed under OAR 635-~~  
169 ~~600-0035;~~

170 [~~(d) is~~]**(c) Is** currently on probation, parole, or any form of post-prison supervision for a crime  
171 listed under OAR 635-600-0035;

172 [~~(e) h~~]**(d) H**as a deferred sentence or conditional discharge in connection with a crime listed  
173 under OAR 635-600-0035; or

174 [~~(f) h~~]**(e) H**as been adjudicated in a juvenile court and found to be within the court's jurisdiction  
175 for an offense that would have constituted a crime listed in OAR 635-600-0035 if committed by  
176 an adult.

177 (4) If the information available to the Department discloses one or more of the circumstances  
178 identified in section (3), the Department may [~~nonetheless~~]approve a subject individual [~~as fit~~]on  
179 a preliminary basis if the Department concludes, after evaluating all available information[?], **and**  
180 **considering the factors in OAR 635-600-0030(1)**, that hiring or appointing the subject  
181 individual on a preliminary basis does not pose any risk of harm to the Department, its client  
182 entities, the State, or members of the public.

183 (5) If a subject individual is either approved or denied on the basis of a preliminary fitness  
184 determination, the Department [~~thereafter~~] shall conduct a final fitness determination under OAR  
185 635-600-0030.

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

188 Stat. Auth.: ORS [~~181.534 and~~]**181A.195**, 496.121

189 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

190

### 191 **635-600-0025**

#### 192 **Hiring or Appointing on a Preliminary Basis**

193 (1) The Department may hire or appoint a subject individual on a preliminary basis if the  
194 Department has approved the subject individual on the basis of a preliminary fitness  
195 determination under OAR 635-600-0020.

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

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

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

206 Stat. Auth.: ORS [~~181.534 and~~]**181A.195**, 496.121

207 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

208

### 209 **635-600-0030**

#### 210 **Final Fitness Determination**

211 [~~—(1) If the Department elects to conduct a criminal history check, the Department shall make~~  
212 ~~a fitness determination about a subject individual based on information provided by the subject~~

213 individual under OAR 635-600-0015(1), the criminal history check(s) conducted, if any, and any  
214 false statements made by the subject individual.

215 ~~—(2) In making a fitness determination about a subject individual, the~~**(1) The** Department  
216 shall consider the **following** factors in ~~[subsections (a)–(f) in ]~~relation to information provided by  
217 the subject individual~~[under OAR 635-600-0015(1), any LEADS report or]~~, **including any**  
218 criminal offender information obtained through a criminal history check **and other information**  
219 **known by the Department**~~[, and any false statement made by the subject individual. To assist in~~  
220 ~~considering these factors, the authorized designee may obtain and deemed relevant from the~~  
221 ~~subject individual or any other source, including law enforcement and criminal justice agencies~~  
222 ~~or courts within or outside of Oregon. To acquire other relevant information from the subject~~  
223 ~~individual, the Department may request to meet with the subject individual, to receive written~~  
224 ~~materials from him or her, or both. The Department will use all collected information in~~  
225 ~~considering]~~:

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

229 ~~—(b) The ]~~**(a) The** nature of ~~[any]~~**the** crime~~[ identified under subsection (a)];~~

230 ~~[—(e)]~~**(b)** The facts that support the ~~[arrest,]conviction[, finding of guilty except for insanity,]~~  
231 ~~or pending indictment];~~

232 ~~—(d) The facts ]~~**or** that indicate the ~~[subject individual made]~~**making of** a false statement;

233 ~~[—(e)]~~**(c)** The ~~[relevance]~~**relevancy**, if any, of ~~[a]~~**the** crime or ~~[identified under subsection (a)~~  
234 ~~or of a]~~**the** false statement ~~[made by the subject individual]~~to the specific requirements of the  
235 subject individual’s present or proposed position, services~~[or]~~, employment, **license,**  
236 **certification or registration;** and

237 ~~[—(f) The following intervening]~~**(d) Intervening** circumstances~~[, to the extent that they are]~~  
238 relevant to the responsibilities and circumstances of the **position,** services~~[ or employment for~~  
239 ~~which the fitness determination is being made, including, but not limited to, the following:]~~,

240 **employment, license, certification, registration or permit such as:**

241 ~~[—(A)]~~**(i)** The passage of time since the commission ~~[or alleged commission]~~of ~~[a]~~**the**  
242 ~~crime]~~~~[identified under subsection (a)];~~



243 [~~—(B)~~](ii) The age of the subject individual at the time of the [~~commission or alleged~~  
244 ~~commission of a crime identified under subsection (a)]**crime**;~~

245 [~~—(C)~~](iii) The likelihood of a repetition of offenses or of the commission of another crime;

246 [~~—(D)~~](iv) The subsequent commission of another **relevant** crime [~~listed in OAR 635-600-~~  
247 ~~0035~~];

248 [~~—(E)~~](v) [~~w~~]**Whether the** [~~a~~]conviction [~~identified under subsection (a) has been~~]**was** set  
249 aside [~~or pardoned,~~]and the legal effect of setting aside the conviction [~~or of a pardon~~]; **and**

250 [~~—(F)~~](vi) **The** recommendation of an employer[;].

251 [~~—(3) Possible Outcomes of a Final Fitness Determination~~

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

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

257 ~~—(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR~~  
258 ~~635-600-0035;~~

259 ~~—(C) Evidence that the subject individual has been arrested for any crime listed in OAR 635-~~  
260 ~~600-0035;~~

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

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

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

271 **(2) Upon completion of the fitness determination, one of the following outcomes shall be**  
272 **made and written notification shall be provided to the subject individual indicating the**  
273 **outcome when appeal rights are afforded or when a fitness determination is not completed;**

274 **(a) Approval.**

275 **(A) The subject individual is approved to work, obtain or retain credentials, have direct**

276 **access, or otherwise provide services to individuals.**

277 **(B) An approved outcome does not guarantee employment, obtaining or retaining**

278 **credentials, or the ability to have direct access, or otherwise provide services, to**

279 **individuals.**

280 [(e)]**(b) Restricted or Conditional Approval.**

281 (A) [If the Department approves a subject individual under subsection (3)(b) of this rule, the] **The**

282 Department may restrict the approval to specific activities, **clients** or locations.

283 (B) The Department [~~shall~~]**may** complete a new criminal history check and fitness determination

284 on the subject individual [~~before~~]**prior to** removing a restriction.

285 [(d)]**(c) Denial.**

286 [~~—(A) If a fitness determination under this rule shows credible evidence of any of the factors~~

287 ~~identified in paragraphs (3)(a)(A)–(E) of this rule and, after evaluating the information described~~

288 ~~in sections (1) and (2) of this rule, the Department concludes that the subject individual acting~~

289 ~~in the position for which the fitness determination is being conducted would pose any risk of~~

290 ~~harm to the Department, its client entities, the State, or members of the public, the authorized~~

291 ~~designee shall deny the subject individual as not fit for the position.~~

292 ~~—(B)]~~**(A) The Department denies a subject individual if the Department determines,**

293 **through a fitness determination, that the subject individual is not fit to work, obtain or**

294 **retain credentials, have direct access, or otherwise provide services to individuals.**

295 **(B) If a subject individual is denied, then the subject individual shall not work, receive or**

296 **retain credentials, have direct access, or otherwise provide services to individuals.**

297 **(d) Incomplete Fitness Determination.**

298 **(A) The subject individual discontinues the criminal history process for any reason or**

299 **refuses to be fingerprinted or respond to written correspondence from the Department.**

300 **(B) The subject individual is determined to be ineligible for reasons other than a criminal**

301 **history check.**

302 **(C) The subject individual is determined to be ineligible pursuant to the Department’s**

303 **enabling statute, or otherwise provided by law.**

304 **(D) The subject individual shall not be allowed to work, receive credentials, have direct**  
305 **access, or otherwise provide services to individuals.**

306 **(e) Refusal to Consent.** If a subject individual refuses to submit or consent to a criminal history  
307 check, [~~including fingerprint identification~~]**or refuses to be fingerprinted**, the Department shall  
308 deny the employment of the subject individual, or revoke or deny any applicable position[~~or~~],  
309 authority to provide services, **license, certification, registration or permit**. A person may not  
310 appeal any determination made based on a refusal to consent.

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

314 [~~—(4) Under no circumstances shall a subject individual be denied under these rules on the basis~~  
315 ~~of the existence or contents of a juvenile record that has been expunged pursuant to ORS~~  
316 ~~419A.260 and 419A.262.~~

317 [~~—(5)~~]**(3) Final Order.** A completed final fitness determination is final unless the  
318 [~~affected~~]subject individual appeals by requesting either a contested case hearing [~~as provided by~~  
319 ~~OAR 635-600-0050(2)(a)~~]or an alternative appeal[s] process as provided by OAR 635-600-  
320 0050[~~(6)~~].

321 Stat. Auth.: ORS [~~181.534 &~~]**181A.195**, 496.121

322 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

323

324 **635-600-0035**

325 **Crimes Relevant to a Fitness Determination**

326 [~~(1) Crimes Relevant to a Fitness Determination.~~]**(1) A conviction of any of the following**  
327 **crimes or offenses is potentially disqualifying, unless otherwise provided by law.**

328 (a) All felonies[;].

329 (b) All misdemeanors[;].

330 (c) Any [~~United States Military~~]**U.S. military** crime or international crime[;].

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

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

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

340 [~~Stat. Auth.: ORS 181.534 and 496.121~~  
341 ~~Stats. Implemented: ORS 181.534(9)~~

342  
343 **635-600-0040**

344 **Incomplete Fitness Determination**

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

347 (a) **(3) The following are examples of crimes likely to result in denial unless there are**  
348 **significant mitigating** circumstances; [~~change so that a person no longer meets the definition of~~  
349 ~~a “subject individual” under OAR 635-600-0010;~~

350 (b) the subject individual does not provide materials or information under OAR 635-600-  
351 0015(1) within the timeframes established under that rule;

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

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

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

358 (f) the position is no longer open.

359 (2) A subject individual does not have a right to a contested case hearing under OAR 635-  
360 600-0050 or alternative appeal process under OAR 635-600-0050(6) to challenge the closing of  
361 an incomplete fitness determination.]

362 **(a) ORS 163.095, Aggravated murder;**

363 **(b) ORS 163.115, Murder;**

364 **(c) ORS 163.375, Rape I;**

365 **(d) ORS 163.405, Sodomy I;**

366 **(e) ORS 163.411, Unlawful sexual penetration I;**  
367 **(f) 163.427, Sexual abuse I(4) Under no circumstances shall a subject individual be denied**  
368 **under these rules because of a juvenile record that has been expunged or set aside pursuant**  
369 **to ORS 419A.260 to 419A.262.**

370 **(5) Under no circumstances shall a subject individual be denied under these rules due to**  
371 **the existence or contents of an adult record that has been set aside pursuant to ORS**  
372 **137.225.**

373 **(6) Examples of other criminal offender information that may be potentially disqualifying**  
374 **may include;**

375 **(a) Sex offender registration,**

376 **(b) Conditions of parole, probation, or diversion program, or**

377 **(c) Unresolved arrest, charge, pending indictment or outstanding warrant**

378 Stat. Auth.: ORS [~~181.534 and~~]**181A.195, 496.121**

379 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

380

381 **635-600-0050**

382 **Appealing a Final Fitness Determination**

383 (1) An authorized designee shall provide written notice to a subject individual upon completion  
384 of the final fitness determination[-] **when there is a denied or restricted approval.** Such notice  
385 shall meet the requirements of ORS 183.415 and shall be served personally or by registered or  
386 certified mail.

387 (2) [~~Process~~

388 (~~a~~)-]A subject individual may appeal a **final** fitness determination [~~by submitting~~]**outcome of a**  
389 **denied or restricted approval. To appeal a Final Fitness Determination:**

390 **(a) The subject individual shall submit a written request for a review to the appropriate**  
391 **ODFW Division or Region Administrator within 14 calendar days from the date they were**  
392 **notified of a denied or restricted approval.**

393 **(b) If the outcome of the review in subsection (2)(a) continues to be a denied or restricted**  
394 **approval, the subject individual or the subject individual's legal representative shall**

395 **submit** a written request for a contested case hearing to the address specified in the **written**

396 notice provided [~~under OAR 635-600-0050(1)~~]**by Department,** within 14 calendar days of the

397 date appearing on the **written** notice **from the ODFW Division or Region Administrator**. The  
398 Department shall address a request received after expiration of the deadline as provided under  
399 OAR 137-003-0528.

400 ~~[(b)]~~**(3)** When a timely request **for a contested case hearing** is received by the Department  
401 under subsection (~~[a]~~**2b**), a contested case hearing shall be conducted by ~~[an administrative law~~  
402 ~~judge assigned by]~~the Office of Administrative Hearings~~[- pursuant to the Attorney General's~~  
403 ~~Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-~~  
404 ~~003-0501 to 137-003-0700, as supplemented by the provisions of this rule.~~

405 ~~(3) Discovery.~~**(4) Confidentiality.** The Department or the administrative law judge may  
406 protect information made confidential by ORS ~~[181.534(15)]~~**181A.195** or other applicable law as  
407 provided in OAR 137-003~~[-0570(7) or (8)].~~**0568.**

408 ~~[(4)]~~**5** No Public Attendance. Contested case hearings on fitness determinations are closed to  
409 non-participants.

410 ~~[(5)]~~**6** Proposed and Final Order

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

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

414 (c) Default. A completed final fitness determination made under OAR 635-600-0030 becomes  
415 final:

416 (A) Unless the subject individual makes a timely request for a hearing; or

417 (B) ~~[w]~~**When** a party withdraws a hearing request, notifies the agency or the ALJ that the party  
418 will not appear, or fails to appear at the hearing.

419 ~~[(6)]~~**7** Alternative Process. A subject individual currently employed by the Department may  
420 choose to appeal a final fitness determination either under the process made available by this rule  
421 or through the process made available by applicable personnel rules, policies and collective  
422 bargaining provisions. A subject individual's decision to appeal a fitness determination through  
423 applicable personnel rules, policies, and collective bargaining provisions is an election of  
424 remedies as to the rights of the individual with respect to the fitness determination and is a  
425 waiver of the contested case process made available by this rule.

426 ~~[(7) Remedy. The only remedy that may be awarded is a determination that the subject~~  
427 ~~individual is fit, or fit with restrictions pursuant to OAR 635-600-0030(3)(c). Under no~~

428 ~~circumstances shall the Department be required to place a subject individual in any position, nor~~  
429 ~~shall the Department be required to accept services or enter into a contractual agreement with a~~  
430 ~~subject individual.]~~(8) Challenging Criminal Offender Information. A subject individual may not  
431 use the appeals process established by this rule to challenge the accuracy or completeness of  
432 information provided by the Oregon Department of State Police, the Federal Bureau of  
433 Investigation, or agencies reporting information to the Oregon Department of State Police or the  
434 Federal Bureau of Investigation.

435 (a) To challenge information identified in this section (8), a subject individual may use any  
436 process made available by the **providing** agency~~[-that provided the information]~~.

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

444 ~~[(9) Appealing a fitness determination under section (2) or section (6) of this rule]~~**(9) Remedy.**  
445 **The only remedy that may be awarded is a determination that the subject individual is fit,**  
446 **or not fit. Under no circumstances shall the Department be required to place a subject**  
447 **individual in any position, nor shall the Department be required to accept services or enter**  
448 **into a contractual agreement with a subject individual.**

449 **(10) No delay in hiring. Appealing a fitness determination,** challenging criminal offender  
450 information with the agency that provided the information, or requesting a new criminal  
451 ~~[records]~~**history** check and re-evaluation of the original fitness determination~~[-under section (8)~~  
452 ~~of this rule, will], **may** not delay or postpone the Department's hiring process or employment~~  
453 ~~decisions[-except when the Department decides that a delay or postponement should occur].~~

454 Stat. Auth.: ORS [~~181.534 and~~]**181A.195**, 496.121  
455 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

456  
457 **635-600-0055**

458 **Recordkeeping and Confidentiality**

459 (1) ~~[Records Received from Oregon Department of State Police.~~  
460 ~~—(a) Records the Department receives from the Oregon Department of State Police resulting~~  
461 ~~from a criminal history check, including but not limited to LEDS reports and state or federal~~  
462 ~~criminal offender information originating with the Oregon Department of State Police or the~~  
463 ~~Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).~~  
464 ~~—(b) Within the Department, only.]~~

465 **Criminal Offender information obtained in the criminal history check is confidential. The**  
466 **Department must restrict the dissemination of information obtained in the criminal history**  
467 **check. Only those persons, as identified by the Department, with a demonstrated and**  
468 **legitimate need to know [shall]the information, may have access to the [records the Department**  
469 **receives from the Oregon Department of State Police resulting from a-] criminal history check**  
470 **records.** ~~[—(e) The Department shall maintain and disclose records received from the Oregon~~  
471 ~~Department of State Police resulting from a criminal history check in accordance with applicable~~  
472 ~~requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws,~~  
473 ~~rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257,~~  
474 ~~division 15), these rules, and any written agreement between the Department and the Oregon~~  
475 ~~Department of State Police.]~~

476 ~~([d]2) If a fingerprint-based criminal history check was conducted with regard to a subject~~  
477 ~~individual, the Department shall permit that subject individual to inspect his or her own state and~~  
478 ~~federal criminal offender information, unless prohibited by [federal]state or federal law and~~  
479 ~~only the extent required by the terms of the Public Records law.~~

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

487 ~~—(2) Other Records.~~

488 ~~—(a) The Department shall treat all records received or created under these rules that concern~~  
489 ~~the criminal history of a subject individual, other than records covered under section (1) of this~~



490 rule, including ODFW Criminal History Request forms and fingerprint cards, as confidential  
491 pursuant to ORS 181.534(15).

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

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

496 **(3) Sharing information. Final fitness determination results may be shared with other**  
497 **authorized agencies that have already made a fitness determination for the subject**  
498 **individual once they have received a request pursuant to ORS 181A.195(10)(c)(A).**

499 Stat. Auth.: ORS [~~181.534 &~~]**181A.195**, 496.121

500 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**

501

502 **635-600-0065**

503 **Fees**

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

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

513 Stat. Auth.: ORS [~~181.534 and~~]**181A.195**, 496.121

514 Stats. Implemented: ORS [~~181.534(9)~~]**181A.195, 496.121**