



OREGON DEPARTMENT OF FISH AND WILDLIFE POLICY

Human Resources Division

Title:	Driving Record and Criminal History Checks	HR_450_17
Supersedes:	HR_450_17, dated July 1, 2019	
Applicability:	All volunteers, contract service providers, and employees, where not in conflict with a collective bargaining agreement, and applicant finalists, for designated positions	
Reference:	ORS 181A.195, 496.121, OAR 125-155and 635-Division 600.	
Effective Date:	January 26, 2021	Approved: <i>Curtis E. Malin</i>

I. PURPOSE

To ensure that employees in specified job assignments are properly licensed, have an acceptable driving and/or criminal history record.

II. DEFINITIONS

- A. Criminal History Check or CHC: One or more of three processes to check the criminal history of a subject individual: a Law Enforcement Database System (LEDS) Criminal History Check, an Oregon Criminal History Check, a Nationwide Criminal History Check through the Federal Bureau of Investigation (FBI), or any combination thereof.
- B. False Statement: A statement made by an applicant or employee, in association with an activity governed by this policy, that either:
1. Provides 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 criminal history (including but not limited to fish or wildlife violation history); or
 2. Fails to provide to the department information material, complete and/or accurate to determining his or her criminal history.
- C. Fitness Determination: A preliminary or final determination made by the Human Resources Division Administrator or designee that an applicant or employee is or is not fit to be a department employee, contractor, vendor, or volunteer in a subject position based on information acquired from the criminal history check process.
- D. Subject Individual: An individual identified who is required to complete a criminal history check and from whom the department may require fingerprints for the purpose of conducting a criminal history check because the person:
1. Is employed by or considered for employment with the department; or
 2. Is, or will be, working or providing services for the department.

- E. Subject Position: A position consisting of duties and responsibilities which requires a current driver license and an acceptable driving record, and/or which is designated as sensitive and subject to a criminal history check on applicants or employees.

III. POLICY

A. Driving Record Checks - Operators of State Vehicles

1. All operators of state vehicles and personal vehicles used on the job shall hold a valid driver license and maintain an acceptable driving record. An acceptable driving record meets the guidelines detailed in this policy and in Attachment A.
2. Volunteers and contractors operating state and personal vehicles for state business are subject to a driving record check and shall follow a similar process to an individual subject for employment purposes.
3. Driving record checks shall be required for:
 - a. Applicants for positions where the operation of a state vehicle is a requirement of the position, prior to making a job offer.
 - b. Employees whose job duties require the operation of state vehicle. Record checks shall generally be conducted annually, and also as required at the discretion of the Human Resources Administrator.

Human Resources will conduct Oregon driving record checks on all finalists. Before making an offer of employment, the hiring manager shall contact the HR Records Specialist to request the Oregon driving record on all finalists. The manager shall note the Oregon Driver's License (ODL) number(s) and provide a copy of the ODFW Driving Certification form (Attachment A) completed by the applicant in the request. Applicants from states other than Oregon are required to present a current certified court print driving record for review of at least the past two years for the state the applicant resides in, as required pursuant to the recruiting announcement. The hiring manager shall send this out of state record to HR for approval.

3. Acceptable Driving Record Guidelines.
 - a. In general, the following kinds of driving records are acceptable:
 - No major traffic offense in the last 24 months such as 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 (this list is not all inclusive);
 - No felony revocation of driving privileges or felony or misdemeanor driver license suspension within the last 24 months;
 - No more than three moving traffic violations in the last 12 months;
 - No careless driving conviction in the last 12 months; or
 - No Class A moving traffic infraction in the last 12 months. Class A moving traffic infractions include, but are not limited to, failure to obey or yield to a traffic patrol member, certain violations of speed limits, speed racing on a highway, failure to stop for bus safety lights, and refusing to obey a flagger.

- No pending traffic offenses as listed above in 3.a.
 - A driver must not have forfeited bail or been convicted of the above driving issues to have an acceptable driving record.
- b. Application of these guidelines may vary from case-to-case, depending upon the relevance of the infraction to the position.
4. If the driving record is not acceptable:
- a. If the operation of a state vehicle is an essential function of the position, an applicant shall be denied employment. An employee may be subject to the removal or disciplinary process up to and including dismissal as provided by the collective bargaining agreement or statewide policy DAS 70.000.02, Management Service Discipline and Dismissal.
- b. If the operation of a state vehicle is a requirement of the position but not an essential function, an applicant shall be denied employment. An employee may be assigned other duties or may be required to provide an acceptable alternate means of transportation.
5. Disciplinary action may be taken against employees whose driving is unsafe, discourteous or results in an accident or citation. Such disciplinary action may include:
- Suspension or revocation of the use of a state vehicle;
 - Formal disciplinary action up to and including dismissal from state service.
- While citizen complaints can be relevant indicators of deficient driving, they should not be the basis of disciplinary action until their validity has been determined.

B. Criminal History Checks

The department will conduct criminal history checks, including fish and wildlife violation checks, on individuals who are considered for employment and/or are employed with the department in subject positions. Criminal history checks shall also be conducted by HR annually on subject individuals.

Volunteers and contractors providing services to the department and subject to a criminal history check shall follow a similar process to individual's subject for employment purposes. For volunteers and contractor service providers the applicable Division Administrator or Region Manager makes the preliminary and final fitness determination on individuals as needed.

1. Individuals who are considered for employment, are employed with the department, and/or are providing services to the department in subject positions shall:
- a. Complete, sign and submit to the department the ODFW Criminal History Check Form (Attachment B) as requested by the Human Resources Division or the hiring manager. Once the individual begins employment in the subject position, the fingerprint process for the Criminal History Check must be completed within ten (10) days of hire into the position. Individuals in subject positions for firearms purposes are required to complete the fingerprint process within three (3) days of hire into the position. The department may extend the deadline for good cause.

- b. Within a reasonable period of time as established by the department, disclose additional information as requested by the department in order to resolve any issues hindering the completion of a criminal history check.
2. When the department determines that a criminal record check is needed, in addition to checking an applicant or employee's fish or wildlife violation record, 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.
3. An individual may be approved on a preliminary basis as fit to serve in a subject position if the Human Resources Division Administrator:
 - a. Has no reason to believe that the individual has made a false statement; and,
 - b. Determines that, after evaluating all available information, hiring or appointing the 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.
4. Managers are responsible to ensure that a preliminary fitness determination is completed and approved prior to offering appointment to individuals who are applicants for subject positions which require a criminal history check and prior to assigning the employee sensitive duties.
5. In instances when an appointment is made prior to a final fitness determination, the appointment remains contingent on a final fitness determination.
4. 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.
5. In making a final fitness determination about a subject individual, the department shall consider the factors in subsection a–f below in relation to information provided by the subject individual, any LEADS report or criminal offender information obtained through a national criminal history check of the FBI, and any false statement made by the subject individual. To assist in considering these factors, the Human Resources Division Administrator 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 written materials and/or may meet with the subject individual. The department will use the 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;
 - b. The nature of any crime;
 - 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 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:
 - i. The passage of time since the commission or alleged commission of a crime;
 - ii. The age of the subject individual at the time of the commission or alleged commission of a crime;
 - iii. The likelihood of a repetition of offenses or of the commission of another crime;
 - iv. The subsequent commission of another crime;
 - v. Whether a conviction has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;
 - vi. A recommendation of an employer.
6. If the final fitness determination is that the individual is unfit for the subject position:
- a. The applicant shall be denied the position;
 - b. A trial service employee shall be removed from trial service;
 - c. An employee applying for a different position shall be denied promotion, demotion or transfer to a subject position.
9. Criminal history checks shall also be conducted as required at the discretion of the Human Resources Division Administrator. If an employee in his/her current position is determined to be unfit, he/she may be subject to the dismissal process as provided by the collective bargaining agreement, or statewide policy DAS 70.000.02.

IV. POLICY CLARIFICATION

- A. Under authority granted in ORS 181A.195 and ORS 496.121, the Department of Fish and Wildlife has the authority to conduct criminal history background checks at any time without notice.
- B. The fact that the department approves a subject individual as fit does not guarantee the individual a continued position as a department employee.
- C. The department shall verify that a driver meets its standards whenever the department learns of the driver's involvement in an accident, traffic citation, or a major traffic offense, and may verify a driver's qualifications at any other time.
- D. Any individual who knowingly provides false, inaccurate or incomplete information for the driving record or criminal history check shall be subject to denial of employment or disciplinary action up to and including dismissal.

All positions within the department are subject to criminal history checks. Except for positions which require 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, the department will not require a criminal records check on any current represented employee in his or her current position if the requirement was not in place when the employee was appointed to the position. Current employees that demote, promote, or transfer positions will be subject to a criminal history check prior to moving into the position.

- E. Volunteers and contractors providing services to the department and subject to a criminal history check shall follow a similar process to individual's subject for employment purposes. For volunteers and contractor service providers the applicable Division Administrator or Region Manager makes the preliminary and final fitness determination on individuals as needed.

- Attachment A ODFW Driving Certification Form
- Attachment B ODFW Criminal History Background Check Form