

University Standard 580-023

CRIMINAL BACKGROUND CHECKS

Effective Date: March 30, 2020

Last Review Date: March 30, 2020

Next Scheduled Review Date: March 30, 2021

580-023-0106

Purpose

(1) This Standard applies retroactively to applications submitted on or after January 1, 2008. Oregon State University (OSU) is committed to protecting the security, safety, and health of faculty, staff, students, and others as well as safeguarding the assets and resources of OSU.

(2) Any policies or procedures adopted under this Standard must be consistent with OSU standards and policies, applicable Oregon state laws, and federal law.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0111

Definitions

(1) "Criminal records check" means the review of any and all criminal records containing any information collected and stored in a state or county repository or the criminal records repository of the Federal Bureau of Investigation.

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere (no contest), or any determination of guilt.

(3) "Subject individual" means a person from whom OSU may require criminal records checks as a condition to provide services as a contractor, employee, or volunteer. Subject individuals include persons currently serving as a contractor, employee, or volunteer, or persons who seek appointment as an employee, volunteer, or engagement as a contractor to a position that is designated as a critical or security-sensitive position. The categories of critical or security-sensitive positions for which OSU may conduct criminal records checks include those in which the person:

(a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;

(b) 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;

(c) 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;

(d) Has access to property where chemicals, hazardous materials and other items controlled by state or federal laws or regulations are located;

(e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;

(f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or,

(g) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0116

Criminal Records Check Process

(1) OSU may require the subject individual to complete a criminal records request form and provide any additional information necessary to complete the criminal records check in a reasonable period of time.

(2) OSU may conduct a criminal records 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.

(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimum qualification of the position. The fact that a subject individual may be approved as fit on the basis of a criminal records check does not guarantee the individual a position as an employee, contractor, or vendor.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0121

Criminal Records Check Notice to Applicants

Application forms and solicitations for contract services must give notice to any prospective employee, contractor, or volunteer if the position requires a criminal records check as defined by this Standard.

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580-023-0126

Confidentiality of Criminal Records Checks

Any information obtained in the criminal records check is confidential. OSU will restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by OSU, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0131

Refusal to Consent to Criminal Records Check and Incomplete Fitness Determination

- (1) OSU will close a fitness determination as incomplete when:
 - (a) Circumstances change so that a person no longer meets the definition of a "subject individual";
 - (b) The subject individual does not provide materials or information as requested;
 - (c) OSU cannot locate or contact the subject individual;
 - (d) OSU determines that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer for a reason unrelated to the fitness determination process; or,
 - (e) The position is no longer open.
- (2) A subject individual does not have the right to a hearing under 580-023-0146 to challenge the closing of an incomplete fitness determination.
- (3) If a subject individual refuses to consent to a criminal records check, OSU shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted services. A subject individual may not appeal any determination made on the basis of a refusal to consent.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0136

Fitness to Hold Position Based on Criminal Records Check

- (1) OSU must use these provisions; to determine whether the subject individual is fit to hold a position, provide a service, or be employed based on the criminal records check obtained, including any additional information provided by the subject individual and on any false statement made regarding the subject individual's criminal history. In making the fitness determination, OSU must consider:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment of that indicate the making of a false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services or employment; and,
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include, but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and,
 - (F) A recommendation of an employer.
- (2) Crimes Relevant to a Fitness Determination
 - (a) All felonies;
 - (b) All Class A 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 subsection (2) pursuant to ORS 161.405, 161.435, or 161.450; and,
 - (e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection (2).
- (3) Evaluation Based on Oregon and Other Laws. An authorized designee 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 records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.
- (4) Notwithstanding subsections (2) and (3) OSU may adopt standards, policies and procedures setting forth which crimes will be considered relevant to a fitness determination.

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580-023-0141

Notice of Adverse Fitness Determination Based on Criminal Records Check

OSU shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via electronic or certified mail to the most current address provided by the subject individual, of such disqualification.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0146

Challenging a Fitness Determination

If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a hearing.

(1) The subject individual may appeal a final fitness determination made on the basis of a criminal records check by submitting a written request for a hearing to the address specified by OSU within fourteen (14) calendar days of the date in the notice. OSU may extend the time to appeal if OSU determines the delay was caused by factors beyond the reasonable control of the subject individual.

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

(3) OSU is entitled to rely on the criminal history information supplied by any reporting agency or other entities until OSU is notified that the information has been changed or corrected.

(4) Any hearing under this Standard is not open to the public.

(5) Remedy. The only remedy that may be awarded under this hearing process is a determination that the subject individual is fit. Under no circumstance shall OSU be required to place a subject individual in any position, nor shall OSU be required to accept services or enter into a contractual agreement with a subject individual.

(6) Hearing Process. Upon receiving valid notice under subsection (1) of this Standard, the president of the university shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the president or their designee.

(a) Prehearing Conferences. Prior to the hearing, the hearing officer may, in their discretion, conduct one or more prehearing conferences to facilitate the conduct of and resolution of the case. The hearing officer may convene the conference on their own initiative or at a party's request.

(b) The purposes of a prehearing conference may include, but are not limited to the following:

(A) To facilitate discovery and to resolve disagreements about discovery;

(B) To identify, simplify, and clarify issues;

- (C) To eliminate irrelevant issues;
 - (D) To obtain stipulations of fact;
 - (E) To provide the hearing officer and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;
 - (F) To authenticate documents;
 - (G) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing; or,
 - (H) To discuss settlement or other resolution or partial resolution of the case.
- (c) Conducting the Hearing. The hearing shall be conducted, subject to the discretion of the hearing officer, so as to include the following:
- (A) The statement and evidence of OSU to support its action;
 - (B) The statement and evidence of the subject individual determined to be unfit to support its position;
 - (C) Any rebuttal evidence; and,
 - (D) Any closing arguments.
- (d) The hearing officer shall have the authority to question witnesses and set reasonable time limits for oral presentation. The hearing officer may exclude cumulative, repetitious, or immaterial matter.
- (e) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
- (f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the hearing officer.
- (g) The hearing officer shall draft a proposed order for the consideration of the president, to include the following:
- (A) Findings of fact;
 - (B) Conclusions of law;
 - (C) Order.
- (h) Within twenty-one (21) calendar days of receiving the proposed order from the hearing officer, the president must:
- (A) Adopt the proposed order as the final order for the case; or,

(B) Amend the proposed order as the final order for the case.

(i) The final order from the president is final. The final order shall be delivered to the subject individual in writing, via certified mail.

(j) OSU may adopt standards, policies and procedures outlining the hearing process required to challenge a fitness determination.

(7) Appealing a fitness determination under section (1) of this Standard, or challenging criminal history information with the agency that provided the information, will not delay or postpone OSU's hiring process or employment decisions.

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0151

Fees

OSU may charge a fee for acquiring criminal history information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged OSU by the reporting agency to obtain criminal history information on the subject individual.

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