

12-28

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [upon filing] by the  
Date prior to or same as filing date  
DAS, Operations Division, Personnel Office 125

Agency and Division Administrative Rules Chapter Number  
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to become effective [ upon filing ]. Rulemaking Notice was published in the [ October 2006 ] Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Criminal Records Check and Fitness Determination

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 125-007-0200, 125-007-0210, 125-007-0220, 125-007-0230, 125-007-0240, 125-007-0250, 125-007-0260, 125-007-0270, 125-007-0280, 125-007-0290, 125-007-0300, 125-007-0310, 125-007-0320, 125-007-0330

**AMEND:**

**REPEAL:** OAR 125-007-0200 (T), 125-007-0210(T), 125-007-0220(T), 125-007-0230(T), 125-007-0240(T), 125-007-0250(T), 125-007-0260(T), 125-007-0270(T), 125-007-0280(T), 125-007-0290(T), 125-007-0300(T), 125-007-0310(T), 125-007-0320(T), 125-007-0330(T)

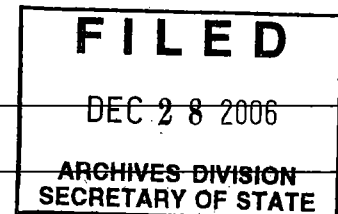
**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 181.534, 184.340, 184.365

Other Auth.:

Stats. Implemented: ORS 181.534(9)



**RULE SUMMARY**

These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor in a position covered by OAR 125-077-0220(2)(a)-(n). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor.

*Lindsay A. Ball* Lindsay A. Ball, Director 12-28-06  
Authorized Signer Printed name Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

# DEPARTMENT OF ADMINISTRATIVE SERVICES

## DIVISION 7

### CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

#### 125-007-0200 Statement of Purpose and Statutory Authority

- (1) **Purpose.** These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor.
- (2) **Authority.** These rules are authorized under ORS 181.534, 184.340 and 184.365.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9)

#### 125-007-0210 Definitions

As used in OAR chapter 125, division 007, unless the context of the rule requires otherwise, the following definitions apply:

- (1) **"Approved"** means that, pursuant to a preliminary fitness determination under OAR 125-007-0240 or a final fitness determination under OAR 125-007-0260, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).
- (2) **"Authorized Designee"** means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.
- (3) **"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 set aside by a subsequent court decision.
- (4) **"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 Bureau of Criminal Identification 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.

- (5) **"Crime Relevant to a Fitness Determination"** means a crime listed or described in OAR 125-007-0270.
- (6) **"Criminal Records Check and Fitness Determination Rules" or "These Rules"** means OAR chapter 125, division 007.
- (7) **"Criminal Records Check" or "CRC"** 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 Criminal Records 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 Records Check); or
  - (c) a nationwide 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 (Nationwide Criminal Records Check).
- (8) **"Denied"** means that, pursuant to a preliminary fitness determination under OAR 125-007-0240 or a final fitness determination under OAR 125-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).
- (9) **"Department"** means the Oregon Department of Administrative Services (DAS) or any subdivision thereof.
- (10) **"False Statement"** means that, in association with an activity governed by these rules, a subject individual either provided the Department with materially false information about his or her criminal history, such as materially false information about his or her identity or conviction record, or failed to provide to the Department information material to determining his or her criminal history.
- (11) **"Fitness Determination"** means a determination made by an authorized designee pursuant to the process established in OAR 125-007-0240 (preliminary fitness determination) or 125-007-0260 (final fitness determination) that a subject

individual is or is not fit to be a Department employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).

- (12) **"Other Criminal Records Information"** means any information, in addition to criminal offender information, sought or obtained by the Department about a subject individual relevant to determining the individual's criminal history.
- (13) **"Related"** means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.
- (14) **"Subject Individual"** means an individual identified in OAR 125-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **125-007-0220 Subject Individual**

**"Subject Individual"** means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

- (1)(a) is employed by or applying for employment with the Department; or
- (b) provides services or seeks to provide services to the Department as a volunteer, contractor, or vendor; and
- (2) is, or will be, working or providing services in a position:
  - (a) 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;
  - (b) 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;
  - (c) that has payroll functions;

- (d) in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments;
- (e) in which the person has responsibility for billing, collections or other financial transactions;
- (f) in which the person has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;
- (g) that has mailroom duties as the primary duty or job function of the position;
- (h) in which the person has responsibility for auditing the Department or other governmental agencies;
- (i) that has personnel or human resources functions as one of the position's primary responsibilities;
- (j) in which the person 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 history information;
- (k) in which the person has access to chemicals or hazardous materials, to facilities in which chemicals and hazardous materials are present or to information regarding the transportation of chemical or hazardous materials;
- (l) in which the person has access to property to which access is restricted in order to protect the health or safety of the public;
- (m) in which the person provides security, design or construction services for government buildings, grounds or facilities; or
- (n) in which the person has access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

### **125-007-0230 Criminal Records Check Process**

- (1) Disclosure of Information by Subject Individual.
- (a) Preliminary to a criminal records check, a subject individual shall complete and sign the DAS Criminal Records Request form and, if requested by the

Department, a fingerprint card. Both forms ask for identifying information, *e.g.*, name, birth date, Social Security Number, physical characteristics, marital status, driver's license or identification card number and current address. The DAS Criminal Records Request form also asks for information about prior residences and for details concerning any circumstance listed in OAR 125-007-0240(3)(a)-(f).

- (b) A subject individual shall complete and submit to the Department the DAS Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.
  - (c) The Department shall receive a fingerprint card from a subject individual under the age of 18 years only if the subject individual also submits the written consent of a parent or guardian.
  - (d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve an issue hindering the completion of a criminal records check, *e.g.*, providing additional proof of identity.
- (2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:
- (a) an individual meets the definition of "subject individual," but has not been approved under these rules, unless the individual was a Department employee serving in his or her current position prior to the effective date of these rules and that position does not involve authorized designee responsibilities;
  - (b) an individual employed by the Department meets the definition of "subject individual" because he or she is either moving to or applying for a position that meets the criteria of OAR 125-007-0220(2)(a)-(n), if:
    - (A) the Department has not conducted a fitness determination on the subject individual within the previous three years;
    - (B) the subject individual had been previously approved under OAR 125-007-0260(3)(b); or
    - (C) an authorized designee determines that the new position requires greater responsibility for functions covered by OAR 125-007-0220(2)(a)-(n) than the subject individual's prior position;
  - (c) an authorized designee has reason to believe that a subject individual committed a crime listed in OAR 125-007-0270 and either a fitness determination has not yet

been done on the subject individual or the crime had not been identified in a prior fitness determination;

- (d) an authorized designee has reason to believe that a factor relevant to a fitness determination listed in OAR 125-007-0260(2), not previously identified in a fitness determination, applies to a subject individual who had been previously approved under OAR 125-007-0260(3)(b);
  - (e) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.
- (3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal record check is needed, the authorized designee shall proceed as follows:
- (a) LEDS Criminal Records Check. The authorized designee shall conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.
  - (b) Oregon Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct an Oregon criminal records check when:
    - (A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or other criminal records information; or
    - (B) The authorized designee requests a nationwide criminal records check.
  - (c) Nationwide Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct a nationwide criminal records check when:
    - (A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;
    - (B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;
    - (C) As determined by an authorized designee, there is reason to question the identity of or information provided by a subject individual because, e.g., the subject individual fails to disclose a Social Security Number, discloses a Social Security Number that appears to be invalid, or does not have an Oregon driver's license or identification card;

- (D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department;
- (E) A subject individual is a DAS employee working in, moving to, or applying for a position within the State Data Center or Enterprise Security Office;
- (F) The Department Director or Deputy Director seeks to serve as an authorized designee; or
- (G) A subject individual is a DAS employee working in, moving to, or applying for a position within the Personnel Unit of the Department's Operations Division designated by the Department Director or the Director's designee as including the responsibilities of an authorized designee.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **125-007-0240 Preliminary Fitness Determination.**

- (1) An authorized designee 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) An authorized designee shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 125-007-0230(1) and a LEDS criminal records check.
- (3) The authorized designee 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 authorized designee does not disclose that the subject individual:
  - (a) has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 125-007-0270;
  - (b) within the last five years, has been arrested for or charged with a crime listed under OAR 125-007-0270;
  - (c) is being investigated for, or has an outstanding warrant for a crime listed under OAR 125-007-0270;
  - (d) is currently on probation, parole, or another form of post-prison supervision for a crime listed under OAR 125-007-0270;



- (e) has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270; 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 125-007-0270 if committed by an adult.
- (4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a 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, an authorized designee thereafter shall conduct a fitness determination under OAR 125-007-0260.
- (6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 125-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **125-007-0250 Hiring or Appointing on a Preliminary Basis**

- (1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 125-007-0240.
- (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 125-007-0260, may not appeal the termination under the process provided under OAR 125-007-0300.
- (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 125-007-0260(3)(d), then the Department shall immediately terminate the subject individual's employment or appointment.

- (5) A subject individual whose employment or appointment is terminated under subsection (4) of this rule may avail himself or herself of the appeal process provided under OAR 125-007-0300.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

### **125-007-0260 Final Fitness Determination**

- (1) An authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 125-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.
- (2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)-(f) in relation to information provided by the subject individual under OAR 125-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other criminal records information from the subject individual or any other source, including law enforcement agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The authorized designee will use all collected information in considering:
- (a) whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 125-007-0270;
  - (b) the nature of any crime identified under subsection (a);
  - (c) the facts that support the 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:
  - (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 127-007-0270;
  - (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;
  - (G) the disposition of a pending indictment identified under subsection (a);
  - (H) whether the subject individual has been arrested for or charged with a crime listed under OAR 125-007-0270 within the last five years;
  - (I) whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 125-007-0270;
  - (J) whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 125-007-0270;
  - (K) whether the subject individual has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270;
  - (L) whether the subject individual 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 125-007-0270 if committed by an adult;
  - (M) periods of incarceration of the subject individual;
  - (N) whether the subject individual has a history of drug or alcohol abuse which relates to his or her criminal activity and the subject individual's history of treatment or rehabilitation for such abuse; and
  - (O) the education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

- (3) Possible Outcomes of a Final Fitness Determination
- (a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) shows:
- (A) No credible evidence that the subject individual has been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(1);
- (B) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(2) within ten years of the date that the subject individual signed the DAS Criminal Records Request form;
- (C) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(3) within five years of the date that the subject individual signed the DAS Criminal Records Request form;
- (D) No credible evidence that the subject individual has a pending indictment for a crime listed in OAR 125-007-0270;
- (E) No credible evidence of the subject individual having made a false statement; and
- (F) No discrepancies between the criminal offender information, other criminal records information and information obtained from the subject individual.
- (b) Evaluative Approval. If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)-(F) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.
- (c) Restricted Approval.
- (A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.
- (B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to 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)-(F) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a 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 records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.
- (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, contractor or vendor to the Department in a position covered by OAR 125-007-0220(2).
- (4) Final Order. A completed final fitness determination becomes a final order of the Department unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 125-007-0300(2)(a) or an alternative appeals process as provided by OAR 125-007-0300(6).

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **125-007-0270 Crimes Relevant to a Fitness Determination**

- (1) Permanent Review Crimes.
  - (a) ORS 162.015, Bribe giving;
  - (b) ORS 162.025, Bribe receiving;
  - (c) ORS 162.065, Perjury;
  - (d) ORS 162.085, Unsworn falsification;
  - (e) ORS 162.155, Escape II;
  - (f) ORS 162.165, Escape I;
  - (g) ORS 162.235, Obstructing governmental or judicial administration;

- (h) ORS 162.265, Bribing a witness;
- (i) ORS 162.275, Bribe receiving by a witness;
- (j) ORS 162.305, Tampering with public records;
- (k) ORS 162.325, Hindering prosecution;
- (l) ORS 162.405, Official misconduct II;
- (m) ORS 162.415, Official misconduct I;
- (n) ORS 162.425, Misuse of confidential information;
- (o) ORS 163.005, Criminal homicide;
- (p) ORS 163.095, Aggravated murder;
- (q) ORS 163.115, Murder;
- (r) ORS 163.118, Manslaughter I;
- (s) ORS 163.125, Manslaughter II;
- (t) ORS 163.145, Criminally negligent homicide;
- (u) ORS 163.160, Assault IV;
- (v) ORS 163.165, Assault III;
- (w) ORS 163.175, Assault II;
- (x) ORS 163.185, Assault I;
- (y) ORS 163.187, Strangulation;
- (z) ORS 163.190, Menacing;
- (aa) ORS 163.200, Criminal mistreatment II;
- (bb) ORS 163.205, Criminal mistreatment I;
- (cc) ORS 163.207, Female genital mutilation;
- (dd) ORS 163.208, Assault of Public Safety Officer;

- (ee) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
- (ff) ORS 163.225, Kidnapping II;
- (gg) ORS 163.235, Kidnapping I;
- (hh) ORS 163.257, Custodial interference I;
- (ii) ORS 163.275, Coercion;
- (jj) ORS 163.355, Rape III;
- (kk) ORS 163.365, Rape II;
- (ll) ORS 163.375, Rape I;
- (mm) ORS 163.385, Sodomy III;
- (nn) ORS 163.395, Sodomy II;
- (oo) ORS 163.405, Sodomy I;
- (pp) ORS 163.408, Unlawful Sexual penetration II;
- (qq) ORS 163.411, Unlawful Sexual penetration I;
- (rr) ORS 163.415, Sexual abuse III;
- (ss) ORS 163.425, Sexual abuse II;
- (tt) ORS 163.427, Sexual abuse I;
- (uu) ORS 163.435, Contributing to the sexual delinquency of a minor;
- (vv) ORS 163.452, Custodial sexual misconduct I;
- (ww) ORS 163.454, Custodial sexual misconduct II;
- (xx) ORS 163.465, Public indecency;
- (yy) ORS 163.515, Bigamy;
- (zz) ORS 163.525, Incest;
- (aaa) ORS 163.535, Abandonment of a child;

- (bbb) ORS 163.537, Buying or selling a person under 18 years of age;
- (ccc) ORS 163.545, Child neglect II;
- (ddd) ORS 163.547, Child neglect I;
- (eee) ORS 163.555, Criminal nonsupport;
- (fff) ORS 163.575, Endangering the welfare of a minor;
- (ggg) ORS 163.670, Using child in display of sexually explicit conduct;
- (hhh) ORS 163.684, Encouraging child sexual abuse I;
- (iii) ORS 163.686, Encouraging child sexual abuse II;
- (jjj) ORS 163.687, Encouraging child sexual abuse III;
- (kkk) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
- (lll) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
- (mmm) ORS 163.693, Failure to report child pornography;
- (nnn) ORS 163.732, Stalking;
- (ooo) ORS 164.057, Aggravated theft I;
- (ppp) ORS 164.075, Theft by extortion;  
ORS 164.085, Theft by deception;
- (qqq) ORS 164.125, Theft of services;  
ORS 164.162, Mail theft or receipt of stolen mail;
- (rrr) ORS 164.225, Burglary I;
- (sss) ORS 164.325, Arson I;  
ORS 164.377, Computer crime;
- (ttt) ORS 164.395, Robbery III;



(uuu) ORS 164.405, Robbery II;

(vvv) ORS 164.415, Robbery I;

(www) ORS 165.007, Forgery II;

(xxx) ORS 165.013, Forgery I;

(yyy) ORS 165.017, Criminal possession of a forged instrument II;

(zzz) ORS 165.022, Criminal possession of a forged instrument I;

(aaaa) ORS 165.032, Criminal possession of a forgery device;

(bbbb) ORS 165.042, Fraudulently obtaining a signature;

(cccc) ORS 165.055, Fraudulent use of a credit card;

(dddd) ORS 165.080, Falsifying business records;

(eeee) ORS 165.095, Misapplication of entrusted property;

(ffff) ORS 165.100, Issuing a false financial statement;

(gggg) ORS 165.581, Cellular counterfeiting I;

(hhhh) ORS 165.800, Identity theft;

(iiii) ORS 166.005, Treason;

(jjjj) ORS 166.015, Riot;

(kkkk) ORS 166.085, Abuse of corpse II;

(llll) ORS 166.087, Abuse of corpse I;

(mmmm) ORS 166.155, Intimidation II;

(nnnn) ORS 166.165, Intimidation I;

(oooo) ORS 166.220, Unlawful use of weapon;

(pppp) ORS 166.270, Possession of weapons by certain felons;

(qqqq) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;

(rrrr) ORS 166.275, Possession of weapons by inmates of institutions;

(ssss) ORS 166.429, Firearms used in felony;

(tttt) ORS 166.720, Racketeering activity unlawful;

(uuuu) ORS 167.012, Promoting prostitution;

(vvvv) ORS 167.017, Compelling prostitution;

(wwwv) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;

(xxxx) ORS 167.065, Furnishing obscene materials to minors;

(yyyy) ORS 167.070, Sending obscene materials to minors;

(zzzz) ORS 167.075, Exhibiting an obscene performance to a minor;

(aaaaa) ORS 167.080, Displaying obscene materials to minors;

(bbbbb) ORS 167.262, Adult using minor in commission of controlled substance offense;

(ccccc) ORS 167.315, Animal abuse II;

(ddddd) ORS 167.320, Animal abuse I;

(eeeee) ORS 167.322, Aggravated animal abuse I;

(fffff) ORS 167.333, Sexual assault of animal;

(ggggg) ORS 181.599, Failure to report as sex offender;

(hhhhh) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;

(iiii) ORS 411.630, Unlawfully obtaining public assistance;

(jjjj) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);

(kkkkk) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;

(llll) ORS 475.525, Sale of drug paraphernalia prohibited;

(mmmmm) ORS 475.805, Providing hypodermic device to minor prohibited;

(nnnnn) ORS 475.840, Prohibited acts generally (regarding drug crimes);

(ooooo)      ORS 475.846, Unlawful manufacture of heroin;

(ppppp)      ORS 475.848, Unlawful manufacture of heroin within 1,000 ft of school;

(qqqqq)      ORS 475.850, Unlawful delivery of heroin;

(rrrrr)      ORS 475.852, Unlawful delivery of heroin within 1,000 ft of school;

(sssss)      ORS 475.854, Unlawful possession of heroin;

(ttttt)      ORS 475.856, Unlawful manufacture of marijuana;

(uuuuu)      ORS 475.858, Unlawful manufacture of marijuana within 1,000 ft of school;

(vvvvv)      ORS 475.860, Unlawful delivery of marijuana;

(wwwww)      ORS 475.862, Unlawful delivery of marijuana within 1,000 ft of school;

(xxxxx)      ORS 475.864, Unlawful possession of marijuana;

(yyyyy)      ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;

(zzzzz)      ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine  
within 1,000 ft of school;

(aaaaa)      ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;

(bbbbb)      ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within  
1,000 ft of school;

(ccccc)      ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;

(ddddd)      ORS 475.876, Unlawful manufacture of cocaine;

(eeeeee)      ORS 475.878, Unlawful manufacture of cocaine within 1,000 ft of school;

(ffffff)      ORS 475.880, Unlawful delivery of cocaine;

(ggggg)      ORS 475.882, Unlawful delivery of cocaine within 1,000 ft of school;

(hhhhh)      ORS 475.884, Unlawful possession of cocaine;

(iiiii)      ORS 475.886, Unlawful manufacture of methamphetamine;

(jjjjj)      ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 ft of  
school;

(kkkkkk) ORS 475.890, Unlawful delivery of methamphetamine;

(llllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 ft of school;

(mmmmmm) ORS 475.894, Unlawful possession of methamphetamine;

(nnnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;

(oooooo) ORS 475.906, Penalties for distribution to minors;

(pppppp) ORS 475.908, Causing another person to ingest a controlled substance;

(qqqqqq) ORS 475.910, Application of controlled substance to the body of another person;

(rrrrrr) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);

ORS 475.916, Prohibited acts involving records and fraud;

ORS 475.918, Falsifying drug test results;

(ssssss) ORS 475.920, Providing drug test falsification equipment

(tttttt) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;

(uuuuuu) ORS 475.975, Unlawful possession & distribution of iodine in its elemental form;

(vvvvvv) ORS 475.976, Unlawful possession & distribution of iodine matrix;

(wwwwww) ORS 677.080, Prohibited acts (regarding the practice of medicine);

(yyyyyy) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;

(zzzzzz) ORS 811.140, Reckless driving;

(aaaaaa) ORS 811.182, Criminal driving while suspended or revoked;

(bbbbbb) ORS 811.540, Fleeing or attempting to elude police officer;

(cccccc) ORS 811.700, Failure to perform duties of driver when property is damaged;

(dddddd) ORS 811.705, Failure to perform duties of driver to injured persons;

- (eeeeeee) ORS 813.010, Driving under the influence of intoxicants (DUII);
- (ffffff) ORS 819.300, Possession of a stolen vehicle;
- (ggggggg) Any federal crime;
- (hhhhhhh) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
- (iiiiiii) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
- (jjjjjjj) 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;
- (kkkkkkk) Any crime based on criminal liability for conduct of another pursuant to ORS 61.155, when the underlying crime is listed in this section (1);
- (lllllll) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (1) as determined by the authorized designee;
- (mmmmmmm) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (1) as determined by the authorized designee.
- (2) Ten-Year Review Crimes.
  - (a) ORS 133.076, Failure to appear on criminal citation;
  - (b) ORS 162.075, False swearing;
  - (c) ORS 162.117, Public investment fraud;
  - (d) ORS 162.145, Escape III;
  - (e) ORS 162.175, Unauthorized departure;
  - (f) ORS 162.185, Supplying contraband;
  - (g) ORS 162.195, Failure to appear II;
  - (h) ORS 162.205, Failure to appear I;

- (i) ORS 162.247, Interfering with a peace officer or parole & probation officer;
- (j) ORS 162.285, Tampering with a witness;
- (k) ORS 162.295, Tampering with physical evidence;
- (l) ORS 162.315, Resisting arrest;
- (m) ORS 162.335, Compounding;
- (n) ORS 162.355, Simulating legal process;
- (o) ORS 162.365, Criminal impersonation;
- (p) ORS 162.367, Criminal impersonation of peace officer;
- (q) ORS 162.369, Possession of false law enforcement identification card;
- (r) ORS 162.375, Initiating a false report;
- (s) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
- (t) ORS 163.195, Recklessly endangering another person;
- (u) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
- (v) ORS 163.245, Custodial interference II;
- (w) ORS 163.445, Sexual misconduct;
- (x) ORS 163.467, Private indecency;
- (y) ORS 163.700, Invasion of personal privacy;
- (z) ORS 163.750, Violating court's stalking protective order;
- (aa) ORS 164.043, Theft III;
- (bb) ORS 164.045, Theft II;
- (cc) ORS 164.055, Theft I;
- (dd) ORS 164.095, Theft by receiving;
- (ee) ORS 164.135, Unauthorized use of a vehicle;

- (ff) ORS 164.140, Criminal possession of rented or leased personal property;
- (gg) ORS 164.215, Burglary II;
- (hh) ORS 164.235, Possession of burglar's tools or theft device;
- (ii) ORS 164.255, Criminal trespass I;
- (jj) ORS 164.265, Criminal trespass while in possession of firearm;
- (kk) ORS 164.272, Unlawful entry into motor vehicle;
- (ll) ORS 164.315, Arson II;
- (mm) ORS 164.335, Reckless burning;
- (nn) ORS 164.354, Criminal Mischief II;
- (oo) ORS 164.365, Criminal Mischief I;
- (pp) ORS 165.037, Criminal simulation;
- (qq) ORS 165.065, Negotiating a bad check;
- (rr) ORS 165.070, Possessing fraudulent communications device;
- (ss) ORS 165.074, Unlawful factoring of payment card transaction;
- (tt) ORS 165.085, Sports bribery;
- (uu) ORS 165.090, Sports bribe receiving;
- (vv) ORS 165.102, Obtaining execution of documents by deception;
- (ww) ORS 165.540, Obtaining contents of communication;
- (xx) ORS 165.543, Interception of communications;
- (yy) ORS 165.570, Improper use of emergency reporting system;
- (zz) ORS 165.572, Interference with making a report;
- (aaa) ORS 165.577, Cellular counterfeiting III;
- (bbb) ORS 165.579, Cellular counterfeiting II;

- (ccc) ORS 165.692, Making false claim for health care payment;
- (ddd) ORS 166.023, Disorderly conduct I;
- (eee) ORS 166.025, Disorderly conduct II;
- (fff) ORS 166.065, Harassment;
- (ggg) ORS 166.076, Abuse of a memorial to the dead;
- (hhh) ORS 166.116, Interfering with public transportation;
- (iii) ORS 166.180, Negligently wounding another;
- (jjj) ORS 166.190, Pointing firearm at another;
- (kkk) ORS 166.240, Carrying of concealed weapon;
- (lll) ORS 166.250, Unlawful possession of firearms;
- (mmm) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
- (nnn) ORS 166.382, Possession of destructive device prohibited;
- (ooo) ORS 166.384, Unlawful manufacture of destructive device;
- (ppp) ORS 166.470, Limitations and conditions for sales of firearms;
- (qqq) ORS 166.480, Sale or gift of explosives to children;
- (rrr) ORS 166.649, Throwing an object off an overpass II;
- (sss) ORS 166.651, Throwing an object off an overpass I;
- (ttt) ORS 166.660, Unlawful paramilitary activity;
- (uuu) ORS 167.007, Prostitution;
- (vvv) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
- (www) ORS 167.212, Tampering with drug records;
- (xxx) ORS 167.222, Frequenting a place where controlled substances are used;
- (yyy) ORS 167.325, Animal neglect II;



- (zzz) ORS 167.330, Animal neglect I;
- (aaaa) ORS 167.337, Interfering with law enforcement animal;
- (bbbb) ORS 167.355, Involvement in animal fighting;
- (cccc) ORS 167.365, Dogfighting;
- (dddd) ORS 167.370, Participation in dogfighting;
- (eeee) ORS 167.820, Concealing the birth of an infant;
- (ffff) ORS 417.990, Penalty for placement of children in violation of compact;
- (gggg) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;
- (hhhh) ORS 418.140, Sharing assistance prohibited;
- (iiii) ORS 418.250, Supervision of child-caring agencies;
- (jjjj) ORS 418.327, Licensing of certain schools and organizations offering residential programs;
- (kkkk) ORS 433.010, Spreading disease (willfully) prohibited;
- (llll) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;
- (mmmm) ORS 475.900, Commercial drug offense;
- (nnnn) ORS 475.912, Unlawful delivery of imitation controlled substance;
- (oooo) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);
- (pppp) ORS 475.950, Failure to report precursor substance;
- (qqqq) ORS 475.955, Failure to report missing precursor substances;
- (rrrr) ORS 475.960, Illegally selling drug equipment;
- (ssss) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;
- (tttt) ORS 475.965, Providing false information on precursor substances report;

- (uuuu) ORS 475.979 Unlawful possession of lithium or sodium metal;
- (vvvv) ORS 657A.280, Failure to certify child care facility;
- (wwwv) ORS 807.620, Giving false information to police officer;
- (xxxx) ORS 830.475, Failure to perform the duties of an operator (boat);
- (yyyy) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;
- (zzzz) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
- (aaaaaa) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (2) pursuant to ORS 161.405, 161.435, or 161.450;
- (bbbbbb) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (2);
- (ccccc) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (2) as determined by the authorized designee;
- (dddddd) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (2) as determined by the authorized designee.
- (3) Five-Year Review Crimes.
  - (a) ORS 164.245, Criminal trespass II;
  - (b) ORS 164.345, Criminal mischief III;
  - (c) ORS 164.882, Unlawful operation of audiovisual device;
  - (d) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;
  - (e) ORS 166.075, Abuse of venerated objects;
  - (f) ORS 166.090, Telephonic harassment;
  - (g) ORS 166.095, Misconduct with emergency telephone calls;

- (h) ORS 167.340, Animal abandonment;
- (i) ORS 418.630, Operating uncertified foster home;
- (j) ORS 685.990, Violations pertaining to naturopathic medicine;
- (k) ORS 822.045, Crimes relating to conducting a vehicle dealer business;
- (l) ORS 830.035/990, Fleeing or attempting to allude a peace officer (small watercraft);
- (m) ORS 830.053/990, Fraudulent report of theft of boat;
- (n) ORS 830.315/990, Reckless operation of a boat;
- (o) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;
- (p) ORS 830.730/990, False information to peace officer or State Marine Board;
- (q) ORS 830.955/990, Prohibition of installation of submersible polystyrene device;
- (r) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435 or 161.450
- (s) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (3).
- (t) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (3) as determined by the authorized designee.
- (u) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (3) as determined by the authorized designee.
- (4) Evaluation Based on Oregon 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.
- (5) Expunged Juvenile Record. 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.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.  
Stats. Implemented: ORS 181.534(9).

**125-007-0280 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 125-007-0220;
  - (b) the subject individual does not provide materials or information under OAR 125-007-0230(1) within the timeframes established under that rule;
  - (c) an authorized designee cannot locate or contact the subject individual;
  - (d) the subject individual fails or refuses to cooperate with an authorized designee’s attempts to acquire other criminal records information under OAR 125-007-0260(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) for a reason unrelated to the fitness determination process.
- (2) A subject individual does not have a right to a contested case hearing under OAR 125-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.  
Stats. Implemented: ORS 181.534(9).

**125-007-0290 Notice to Subject Individual of Fitness Determination.**

- (1) An authorized designee shall provide, in a format approved by the Department, written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.
  - (a) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed.
  - (b) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual’s right to request a contested case hearing to appeal the Department’s determination and containing the information required by OAR 137-003-0505.

- (2) An authorized designee shall provide for hand delivery or first class mail delivery of the notice as soon as possible after completion or closure of a fitness determination, but in no case later than 14 calendar days after the date of completion or closure, to the address provided by the subject individual on the DAS Criminal Records Request form, or to an updated address as provided in writing by the subject individual.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

### **125-007-0300 Appealing a Fitness Determination**

- (1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determination made under OAR 125-007-0260 that he or she is fit or not fit to hold a position with, or provide services to the Department as an employee, volunteer, contractor, or vendor. Section (6) of the rule identifies an alternative appeal process available only to current DAS employees.
- (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 125-007-290(1)(b), 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.
- (c) The Department shall provide the subject individual or the subject individual's legal representative with all of the information required under OAR 137-003-0510 in writing before the hearing.
- (d) As provided in OAR 137-003-0510(3), if participating in a contested case hearing, the Department and the subject individual may agree to use a collaborative method of dispute resolution designed to encourage them to work together to develop a mutually agreeable solution, such as negotiation or a settlement conference.

(3) Discovery

- (a) A subject individual's hearing request under section (2)(a) of this rule shall constitute a discovery request for the following records:
  - (A) any records the subject individual has a right to inspect under OAR 125-007-0310(2)(e), and
  - (B) in accordance with the Public Records Law, any records described in OAR 125-007-0310(3)(a).
- (b) 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. If the subject individual or subject individual's legal counsel does not file written exceptions with the Department within 14 calendar days after service of the proposed order, the proposed order shall become the final order.
  - (b) Exceptions. If the subject individual or the subject individual's legal counsel files timely written exceptions to the proposed order with the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.
  - (c) Default. A completed final fitness determination made under OAR 125-007-260 shall constitute a final order without a hearing as provided under OAR 137-003-0672.
- (6) Alternative Process. A subject individual currently employed by DAS may choose to appeal a 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) 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 (7), a subject individual may use any process made available by the providing agency.
- (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 records check and re-evaluate the original fitness determination made under OAR 125-007-0260 by submitting a new DAS Criminal Records Request form.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **125-007-0310 Recordkeeping and Confidentiality**

- (1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.
- (2) 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 records check, including but not limited to LEDS 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 authorized designees shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.
  - (c) An authorized designee shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.
  - (d) Authorized designees shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records 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.

- (e) If a fingerprint-based criminal records 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.
- (f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, 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.
- (3) 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 DAS Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).
  - (b) Within the Department, only authorized designees shall have access to the records identified under subsection (a).
  - (c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.
  - (d) A subject individual shall have access to records identified under subsection (a) pursuant to the terms of the Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

### **125-007-0320 Authorized Designees**

- (1) Appointment.
  - (a) The Department Director or the Director's designee shall designate positions within the Personnel Unit of the Department's Operations Division as including the responsibilities of an authorized designee.
  - (b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.



- (c) Appointments shall be made by the Department Director or the Director's designee at his or her discretion.
- (2) The Department Director and Deputy Director may also serve as authorized designees, contingent on being approved under the Department's criminal records check and fitness determination process.
- (3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:
  - (a) The authorized designee is related to the subject individual; or
  - (b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.
- (4) Termination of Authorized Designee Status.
  - (a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.
  - (b) The Department shall suspend or terminate a Department employee's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby suspend or terminate his or her status as an authorized designee, if the employee fails to comply with OAR 125-007-0200 thru OAR 125-007-310 in conducting criminal records checks and fitness determinations.
  - (c) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 125-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby termination of his or her status as an authorized designee.
  - (d) The Department will review and update an authorized designee's eligibility for service in a designated position within the Personnel Unit of the Department's Operations Division, during which a new criminal records check and fitness determination may be required:

- (A) Every three years; or
- (B) At any time the Department has reason to believe that the authorized designee has violated these rules or no longer is eligible to serve in his or her current position within the Personnel Unit of the Department's Operations Division.
- (5) A denial under OAR 125-007-0260(3) related to a designated position within the Personnel Unit of the Department's Operations Division is subject to the appeal rights provided under OAR 125-007-0300.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

#### **125-007-0330 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 or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.
- (3) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 184.340 and 184.365.

Stats. Implemented: ORS 181.534(9).

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