



## ***Policy & Procedure***

***Number: PER-26***

***Date Issued: February 1, 2013***

***Section: Employee Services***

***Subject: CRIMINAL BACKGROUND CHECKS***

***Approved: (Signed by Jean Straight 2/1/13)***

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### ***Applicability:***

This policy applies to all Department of Consumer and Business Services (DCBS) and Workers' Compensation Board (WCB) employees (hereinafter referred to as department) who apply for a promotion, transfer, or voluntary demotion to a position within the department. For information regarding applicability for volunteers, outside job seekers, contractors, and vendors please see Employee Services (ES).

### ***Policy:***

It is the policy of the department to provide for the reasonable screening of individuals to determine their fitness for a position covered by [OAR 440-007-0230\(2\)\(a\)-\(h\)](#). Only employees who apply for a promotion, transfer, or voluntary demotion within the department will be subject to this background check process. The background check process for new hires is set out in [OAR 440-007](#).

### ***Guidelines:***

#### **1. General:**

Pursuant to the applicable state laws and administrative rules, the department is authorized to conduct criminal background checks and to make fitness determinations based on those checks. Department approval of an employee's fitness does not guarantee the individual a position with the department.

#### **2. Grandfathering of Current Employees:**

All employees employed by the department as of the effective date of [OAR 440-007](#) will be grandfathered into their current positions without a criminal background check.

#### **3. Application:**

- a. On or after the effective date of [OAR 440-007](#), all employees who apply for a promotion, transfer, or voluntary demotion to a position subject to a criminal background check will be required to complete a criminal background check as described in this policy and in applicable rules.
- b. Recruitment announcements will indicate whether a criminal background check will be required as a part of the application procedure.

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## **4. When Criminal Background Checks May be Conducted**

The department may only conduct a criminal background check on an employee when that individual is applying for a promotion, transfer, or voluntary demotion into a position in which the person will be:

- a. Providing information technology services and controlling or accessing information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;
- b. Accessing information that is confidential under state or federal laws, rules, or regulations;
- c. Performing payroll functions; receiving, receipting, or depositing money or negotiable instruments; performing billing, collections, or other financial transactions; purchasing or selling property; having access to property held in trust or to private property in the temporary custody of the state;
- d. Performing mailroom duties as a primary duty or job function;
- e. Auditing the department;
- f. Performing personnel or human resources functions as a primary responsibility;
- g. Accessing social security numbers, dates of birth, or criminal background information of employees or members of the public; or
- h. Accessing tax or financial information about individuals or business entities.

Temporary changes in work assignments lasting 10 working days or less will not be subject to background checks.

## **5. Which Criminal Background Check Will Be Conducted:**

The department will conduct fingerprint-based criminal background checks and may conduct Law Enforcement Data System (LEDS) checks in addition to or instead of fingerprint-based criminal background checks.

## **6. Potentially Disqualifying Crimes or Conditions:**

A conviction of any felony or misdemeanor or any federal, United States Military, or international crime is potentially disqualifying and will be evaluated as described below; however, conviction of a crime will not automatically disqualify an individual from employment.

## **7. Criteria for Fitness Determination:**

The department may use the following criteria in determining whether an employee may hold a position with the department:

- a. An employee who does not consent to criminal background check or, if requested, fails to provide criminal history information or fingerprints within the specified period of time, shall immediately be disqualified for promotion, transfer, or voluntary demotion.

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- b. An employee who makes false statements regarding his or her criminal history, or fails to disclose criminal history shall immediately be disqualified for promotion, transfer, or voluntary demotion. An employee may also be subject to discipline, up to and including dismissal, for making false statements in connection with a criminal background check.
- c. Criminal history may be evaluated based on the following:
  - The nature of the crime.
  - The facts that support the conviction.
  - The relevancy of the criminal conviction history to the specific requirements of the position.
  - Intervening and mitigating circumstances, such as:
    - Passage of time since the commission of the crime.
    - The individual's age at the time the crime was committed.
    - The likelihood of a repetition of offenses.
    - The commission of other crimes.
    - The recommendation of a current or recent employer.

### **8. Hiring on a Preliminary Basis:**

If the department elects to conduct a criminal background check, it has discretion to place an employee in a position on a preliminary basis, pending completion of a criminal background check, when:

- The individual has provided all information (including a fingerprint card, if requested) as required by the department; and
- The department determines that it is in the department's best interests to hire, or appoint, the individual on a preliminary basis.

An employee who is placed in a position on a preliminary basis may participate in training, orientation, or work activities as deemed appropriate by the department.

The department is not required to place an employee in a position on a preliminary basis. An employee placed in a position on a preliminary basis who is later determined to be not fit, based on a final fitness determination, will be immediately removed from the position.

### **9. Potential Effect of Fitness Determination on Current Employment**

If an employee who applied for a promotion, transfer, or voluntary demotion is determined to be not fit for the position and, based on the results of the criminal background check, is determined to also be not fit to continue in his/her current position, discipline or discharge may apply in accordance with applicable collective bargaining agreements or Department of Administrative Services (DAS) and department policies.

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### **10. Appealing an Adverse Fitness Determination:**

An employee who is determined not fit is entitled to challenge the fitness determination. To do so, the employee must request a contested case hearing in writing, which must be *received* by the department's ES office within 10 working days from the date on the fitness determination notice or the postmark date, whichever is later.

Any employee may request a meeting with ES to discuss the information from the criminal record used in the determination. Bargaining Agreements outline the process for represented employees. Such meeting will not extend the timeline to request a contested case hearing.

The only remedy available to an employee who challenges the fitness determination is a determination that the employee is fit or not fit. The department will not be required to place or maintain an employee in any position. No hiring decision will be delayed as a result of an appeal request.

The department has no jurisdiction over allegations that the criminal history information received from Oregon State Police (OSP), the Federal Bureau of Investigations (FBI), or other entities is inaccurate, incomplete, or maintained in violation of any federal or state law. The employee must make any such challenge directly to the reporting agency. Any challenge will be done at the employee's own expense.

### **11. Fees:**

The department will not charge a fee to current employees for conducting criminal background checks for use in making a final fitness determination.

### ***Record keeping and Confidentiality:***

Any information obtained in the criminal background check is confidential. The department must restrict the dissemination of information obtained in the criminal background check. Only those persons as identified by the department with a demonstrated and legitimate need to know may have access to criminal background check information.

### ***Procedure:***

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|-------------------------|----|--|
| Division                | 1. | Determines and maintains which positions are subject to the criminal background checks.            |
| Division Hiring Manager | 2. | Sends Recruitment Request to ES, marking the box for criminal records check for subject positions. |
| Recruitment Specialist  | 3. | Posts announcement which includes statement regarding requirement of criminal background check.    |
| Division Hiring Manager | 4. | Holds interviews, determines finalists, and notifies ES.   |

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| Background Check Coordinator | 5. Conducts appropriate criminal background check on each finalist.   |
|                              | 6. Reviews the record to determine nexus to job, conferring if necessary with division administrator or deputy.   |
|                              | 7. Informs hiring manager via e-mail that the finalist(s) is fit or not fit for the position applied.   |
|                              | 8. If not fit, sends each finalist a letter explaining that they have been determined not fit for the position applied for and includes information on how to contest the outcome. If employee is also determined not fit for their current position, ES will work with the Division to address the situation. Bargaining Agreements outline the process for represented employees. |
| Division Hiring Manager      | 9. Makes job offer.   |
| Background Check Coordinator | 10. Destroys all criminal records check related information within 90 days of the approval date of the final selected candidate, final disposition, or closure of any appeal.   |

### ***References:***

ORS Chapter [705.141](#), [181.534](#)

[OAR 440-007](#)

Service Employees International Union (SEIU Local 503) [Collective Bargaining Agreement](#).

American Federation of State, County and Municipal Employees (AFSCME) [Collective Bargaining Agreement](#).

### ***Attachments:***

- A. [Criminal Background Check Request Form](#)
- B. [Contested Case Hearing Request Form](#)