

Standard No. 576-055-0000

CRIMINAL HISTORY CHECK

Purpose and Applicability

(1) Oregon State University is committed to protecting the security, safety, and health of faculty, staff, students and others, as well as safeguarding the assets and resources of the University. To meet these objectives, the University may require a criminal history check as a condition prior to any applicant, employee, or volunteer providing services in a critical or security-sensitive position.

(2) A criminal history check may be required of a person currently serving as an employee or volunteer if he or she seeks appointment to position that is designated as a critical or security-sensitive position, or if 576-055-0160 applies.

(3) Criminal history checks for employment and services purposes are limited to position categories identified herein.

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576-055-0010

Definitions

(1) "Criminal history 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, or a plea of nolo contendere (no contest).

(3) "Fingerprint-based criminal history check" means a criminal history check using a subject individual's fingerprints for a critical or security-sensitive designated position as described in 576-055-0020(1)(a) through (g).

(4) "Non-fingerprint-based criminal history check" means a criminal history check using a subject individual's personally identifiable information, excluding fingerprints, for a critical or security-sensitive designated position as described in 576-055-0020(a) through (h).

(5) "Subject individual" means a person currently serving as an employee or volunteer, or a person who seeks appointment as an employee or volunteer, to a position that is designated as critical or security-sensitive.

(6) "Youth Program" means an activity or event specifically directed to children 17 years of age or younger. Youth Programs include activities and events directed towards achieving goals of

youth development, academic enrichment, recreation, or enrollment in postsecondary education. Such activities and events may be conducted on- or off-campus by University faculty, staff and approved volunteers.

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Critical or Security-Sensitive Designated Positions

The categories of critical or security-sensitive designated positions for which the University may conduct criminal history checks include those in which the person:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) Has access to property where hazardous materials and other items controlled by state or federal laws or regulations are located;
- (5) 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;
- (6) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities;
- (7) 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; or
- (8) Has access to or responsibility for the care, safety and security of animals.

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Designation of Critical and Security-Sensitive Positions

The Assistant Vice President for Human Resources will designate positions requiring a criminal history check using the criteria described in 576-055-0020 of this policy and in consultation with the hiring supervisor. The designation will be applied based on a position-by-position review of specific job duties and requirements.

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Notice to Subject Individuals

All solicitations, application forms, and announcements for positions designated as critical or security-sensitive will include a statement notifying potential applicants of the intent to request consent to conduct a criminal history check and the fact that such consent will be required for employment or service consideration.

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Criminal History Check Process

(1) Oregon State University may conduct, or request that the Oregon State Police conduct, a criminal records check, when:

(a) An individual meets the definition of "subject individual"; or

(b) A criminal records check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement.

(2) Oregon State University may require the subject individual to provide personally identifiable information such as names, current and former addresses, social security number, date of birth, a completed disclosure notice and authorization for background investigation form, and fingerprints.

(3) A fingerprint-based criminal history check may be necessary to verify identity of the subject individual and his or her criminal history; when a subject individual elects not to disclose his or her social security number; or when it may be necessary to obtain nationwide criminal records through the Federal Bureau of Investigation if the subject individual has lived outside the state of Oregon in the last seven (7) years. Except as specifically noted otherwise, fingerprint-based criminal history check results are subject to the same rules and procedures outlined for criminal history check results herein.

(4) A non-fingerprint-based criminal history check may be conducted for critical and security sensitive positions as identified in 576-055-0020(1)(a) through (h). A fingerprint-based criminal history check may be conducted only for critical and security sensitive positions as identified 576-055-0020(1)(a) through (g).

(5) A non-fingerprint-based criminal history check may be conducted every two years following date of hire, initial service date, or position assignment for an employee or volunteer providing service in a University-sponsored Youth Program or more frequently pursuant to 576-055-0160. A fingerprint-based criminal history check may be conducted in these follow-up checks if subsection (3) of this rule applies.

(6) The University may elect to waive the criminal history check requirement for a subject individual if, as a pre-requisite to providing service or participating in a program, the subject individual is required to submit to a criminal history check and meet a fitness determination as required and conducted by a state or federal agency. The Assistant Vice President for Human Resources is responsible for determining if the state or federal agency's criminal history check meets the University's requirement for critical or security-sensitive designated positions. If not, the subject individual may be subject to a criminal history check conducted by the University.

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576-055-0060

Determination of Fitness to Hold Position Based on Criminal History Check

(1) A criminal history check is intended to verify that the subject individual does not have criminal convictions related to position responsibilities that would make the individual unfit to perform the responsibilities of the position.

(2) The Assistant Vice President for Human Resources will review the criminal history check information in determining the subject individual's fitness to hold the position. The existence of a criminal history will not automatically preclude a subject individual from employment or service with the University. In making the fitness determination, the Assistant Vice President for Human Resources must consider the following:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment 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 employment or service position;

(d) Intervening circumstances relevant to the responsibilities or circumstances of the position including but not limited to: the passage of time since the commission of the crime, the age of the subject individual at the time of the crime, the likelihood of a repetition of offenses or of the

commission of another crime, the subsequent commission of another relevant crime, whether the conviction was set aside and the legal effect of setting aside the conviction, a recommendation of an employer and a recommendation of a criminal justice system representative.

(3) Crimes relevant to determining the subject individual's fitness:

(a) All felonies;

(b) All Class A misdemeanors;

(c) Class B misdemeanors of the following kind: unsworn falsification; disorderly conduct; harassment; telephonic harassment; carrying a concealed weapon; animal abuse; animal neglect; animal abandonment; distribution of a controlled substance to a minor; and falsifying drug test results;

(d) Any United States Military crime or international crime;

(e) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection (3) pursuant to ORS 161.405, 161.435, or 161.450; and

(f) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection (3).

(4) The Assistant Vice President for Human Resources 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 conviction.

(5) A determination of fitness is considered a minimum qualification of a critical or security-sensitive position. However, a positive determination of fitness on the basis of a criminal records check does not guarantee the subject individual a position as an employee or volunteer.

(6) A subject individual who misrepresents or provides misleading or false information, or withholds information as part of the criminal history check process, will be disqualified from further consideration. If misleading or false information is discovered after an individual has been appointed, the individual may be disciplined, up to and including termination of employment or service appointment, or rescinding of tenure appointment, pursuant to University policy and governing rules.

(7) An open criminal case may preclude a final candidate from eligibility for employment or service depending on the relevancy of the charge(s) to the job responsibilities. The Assistant Vice President for Human Resources is responsible for determining relevance in these situations.

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Refusal to Consent to Criminal History Check

Refusal to consent shall cause the University to deny the subject individual employment or service as a volunteer, and current employees who refuse to consent may be disciplined, up to and including termination consistent with other University rules, policies or collective bargaining agreements. A subject individual may not appeal a termination of candidacy due to refusal to consent to a criminal history check.

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Incomplete Fitness Determination

(1) The University will close a fitness determination as incomplete when:

- (a) The person no longer meets the definition of a “subject individual”;
- (b) The subject individual does not provide information or materials under 576-055-0050;
- (c) The University cannot locate or contact the subject individual;
- (d) The University determines that the individual is not eligible or qualified for employment or service 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 pursuant to 580-023-0146 to challenge the closing of an incomplete fitness determination.

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Offer of Employment or Service

Appointment of an applicant, current employee or volunteer to a position designated as critical or security-sensitive is contingent on the University’s determination of fitness based on the criminal history check. No subject individual for a critical or security-sensitive position will commence employment or service until the criminal history check process has been completed and a satisfactory determination of fitness to hold the position has been made unless an exception has been approved by the President, in consultation with the Assistant Vice President for Human Resources.

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576-055-0100

Notice of Pre-Adverse Fitness Determination

Before making an adverse fitness determination, a subject individual will be provided notice by the University either by electronic or certified mail to the address provided by the subject individual. The notice will include a copy of the individual's criminal history check report and a summary of his or her rights under the federal Fair Credit Reporting Act.

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576-055-0110

Notice of Adverse Fitness Determination

A subject individual who has been determined not to be fit based at least in part on information contained in a criminal history check will be notified by certified mail to the most current address provided by the subject individual. The notification will provide information regarding the individual's appeal rights and rights under the federal Fair Credit Reporting Act.

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576-055-0120

Appeal Process for Fingerprint-Based Criminal History Check

- (1) A subject individual may appeal an adverse fitness determination based on a fingerprint-based criminal history check.
- (2) The appeal process for a subject individual who is not currently employed by the University will be conducted pursuant to the contested case process set forth in 580-023-0146.
- (3) A subject individual who is currently employed by the University and who is determined not to be fit for a position on the basis of information obtained as the result of a fingerprint-based criminal records check may appeal the determination through the contested case process set forth in 580-023-0146 or applicable personnel rules, policies and collective bargaining provisions. An individual's decision to appeal a determination through personnel rules, policies or 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.
- (4) The subject individual may not use the appeal process to challenge the accuracy, completeness or lawfulness of the information provided to the University by the Oregon State Police, the Federal Bureau of Investigation, agencies reporting to either of these organizations, or

consumer reporting agency(s) engaged by the University for the purposes of providing background information. Such challenges are to be made to the reporting agencies themselves.

(5) The only remedy available to the subject individual under the appeal process is a determination that the applicant is fit. Under no circumstances will the University be required to place a subject individual in any position or be required to accept the individual's services in any capacity.

(6) Appealing a fitness determination or challenging criminal offender information with the reporting agency will not cause delay or postponement of the University's hiring process or decisions regarding employment or service to the institution.

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576-055-0130

Appeal Process for Non-Fingerprint-Based Criminal History Check

(1) A subject individual who is currently employed by the University and who is determined not to be fit for a position on the basis of information obtained as the result of a non-fingerprint-based criminal records check may appeal the determination through applicable personnel rules, policies and collective bargaining provisions.

(2) A subject individual who is not currently employed by the University and who is determined not to be fit for a position on the basis of information obtained as the result of a non-fingerprint-based criminal records check may appeal the determination by writing a letter within fourteen (14) days to the Assistant Vice President for Human Resources stating the reasons for appeal.

(3) The subject individual may not use the appeal process to challenge the accuracy, completeness or lawfulness of the information provided to the University by the Oregon State Police, the Federal Bureau of Investigation, agencies reporting to either of these organizations, or consumer reporting agency(s) engaged by the University for the purposes of providing background information. Such challenges are to be made to the reporting agencies themselves.

(4) The only remedy available to the subject individual under the appeal process is a determination that the applicant is fit. Under no circumstances will the University be required to place a subject individual in any position or be required to accept the individual's services in any capacity.

(5) Appealing a fitness determination or challenging criminal offender information with the reporting agency will not cause delay or postponement of the University's hiring process or decisions regarding employment or service to the institution.

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Restricted Access to and Maintenance of Criminal History Records

(1) Access to information obtained in the criminal records check is restricted. The University restricts access to and dissemination of that information to only those University employees with a demonstrated and legitimate need to know the information. Criminal history record files will be maintained in the Office of Human Resources or the Department of Public Safety.

(2) Supervisors and other University employees will generally not be provided information regarding a subject individual's criminal history check and will be informed only that the subject individual either has a satisfactory or unsatisfactory fitness determination. Criminal history information will only be disclosed to a hiring supervisor or other University employees where the Assistant Vice President for Human Resources believes that person has a demonstrated and legitimate need to know the information and he/she specifically approves the disclosure.

(3) Criminal history records will be retained in accordance with OAR 166-475-0095(17).

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Fees Associated with Conducting Criminal History Check

The University hiring or service department is responsible for fees associated with conducting a criminal history check.

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Required Employee and Volunteer Notification to the University of Convictions

(1) A criminal history check and determination of fitness will only be required of a current employee or volunteer in his or her position if required by the following: law; rule; regulation; ordinance; applicable court or agency legal or regulatory opinion; grant, as required in writing by a funding or regulatory entity; if necessary to confirm crimes taking place while the current employee is serving in a critical or security sensitive position pursuant to 576-055-0160(2) or (3) below; as permitted by 576-055-0050 to provide service in a University-sponsored Youth Program; or, as required by the assignment of new duties that causes the employee's position to be designated as critical or security-sensitive. Fitness determinations and employment or volunteer service decisions based thereon will be made consistent with this Division and any other applicable University rules, policies or collective bargaining agreements.

(2) All employees and volunteers whose position descriptions have been designated as critical or security sensitive are required to notify the Assistant Vice President or Associate Director of the

Office of Human Resources if they are convicted of a crime relevant to determination of fitness as identified in 576-055-0060 while serving in these positions. If the Assistant Vice President of Human Resources determines that the conviction is pertinent to the employee or volunteer's fitness to carry out the duties or functions of his or her position, the University may require the employee or volunteer to consent to a criminal history check. The results of this check will be handled pursuant to the remaining sections of this Division and other applicable University rules and policies. If the University makes an adverse fitness determination, the employee or volunteer will be removed from the position where consistent with other University rules, policies or collective bargaining agreements.

(3) Failure to report relevant crimes and convictions pursuant to this Section may result in disciplinary action, up to and including termination. If the University receives a report of a relevant conviction that is disputed by the employee, the University may require a criminal history check to confirm the report. The Assistant Vice President for Human Resources, or his/her designee, will take all such matters under advisement with University General Counsel.

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