

<b>Policy Title:</b>	FAD.050 Criminal Background Checks
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<b>Governing Body:</b>	Southern Oregon University	<b>Date Approved:</b>	
<b>Policy Contact:</b>	Director of Human Resources	<b>Approved By:</b>	President
<b>Custodial Office:</b>	Human Resources		
<b>Related Policy:</b>			

**A. Definition(s)**

1. "Criminal records check" means a national, demographic-based criminal records check.
2. "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere (no contest), or any determination of guilt.
3. "Demographic-based criminal records check" means a criminal records check using a subject individual's name, date of birth, address history and other pieces of identifying information to locate criminal court records in county and federal jurisdictions as well as on national offender registries. Demographic-based criminal records checks may only be requested from licensed and accredited professional background screening providers. Oregon State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.
4. "Subject individual" means a person from whom the President's Office or designee may require criminal records checks as a condition to provide services as a contractor, employee, vendor, or volunteer. A subject individual includes a person currently serving as a contractor, employee, or volunteer, or a person who seeks appointment as an employee, volunteer, or engagement as a contractor to a position that is designated as a critical or security-sensitive position. The categories of critical or security-sensitive positions for which the President's Office or designee may conduct criminal records checks include those in which the person:
  - a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;
  - b) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;
  - c) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;
  - d) Has access to property where chemicals, hazardous materials and other items controlled by state or federal laws or regulations are located;
  - e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;
  - f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or

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

## **B. Policy Statement**

### **A. Criminal Records Check Process**

1. The President's Office or designee may require the subject individual to complete a criminal records request form and provide any additional information necessary to complete the criminal records check in a reasonable period of time.
2. The President's Office or designee 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) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement.
3. A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimum qualification of the position. The fact that a subject individual may be approved as fit on the basis of a criminal records check does not guarantee the individual a position as an employee, contractor, volunteer or vendor.

### **B. Criminal Records Check Notice to Applicants**

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

### **C. Confidentiality of Criminal Records Checks**

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

### **D. Refusal to Consent to Criminal Records Check and Incomplete Fitness Determination**

1. The President's Office or designee will close a fitness determination as incomplete when:
  - (a) Circumstances change so that a person no longer meets the definition of a "subject individual";
  - (b) The subject individual does not provide materials or information under 580-023-0116(1);
  - (c) The President's Office or designee cannot locate or contact the subject individual;
  - (d) The President's Office or designee determines that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer for a reason unrelated to the fitness determination process; or
  - (e) The position is no longer open.
2. A subject individual does not have the right to a hearing under 580-023-0146 to challenge the closing of an incomplete fitness determination.

3. If a subject individual refuses to consent to a criminal records check, the President's Office or designee shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted services. A subject individual may not appeal any determination made on the basis of a refusal to consent.

#### E. Fitness to Hold Position Based on Criminal Records Check

1. The institution must use these rules, and any other applicable university policies, to determine whether the subject individual is fit to hold a position, provide a service, or be employed based on the criminal records check obtained, including any additional information provided under 580-023-0116(1), and on any false statement made regarding the subject individual's criminal history. In making the fitness determination, the President's Office or designee must consider:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment or that indicate the making of a false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services or employment; and
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include, but are not limited to:
  - A. The passage of time since the commission of the crime;
  - B. The age of the subject individual at the time of the crime;
  - C. The likelihood of a repetition of offenses or of the commission of another crime;
  - D. The subsequent commission of another relevant crime;
  - E. Whether the conviction was set aside and the legal effect of setting aside the conviction; and
  - F. A recommendation of an employer.

#### 2. Crimes Relevant to a Fitness Determination

- (a) All felonies;
- (b) All Class A misdemeanors;
- (c) Any United States Military crime or international crime;
- (d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection E2 pursuant to ORS 161.405, 161.435, or 161.450; and
- (e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection E2.

3. Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

4. Notwithstanding subsections E2 and E3 of this rule Or 580-023-136, the institution may adopt rules setting forth which crimes will be considered relevant to a fitness determination.

#### F. Notice of Adverse Fitness Determination Based on Criminal Records Check

The President's Office or designee shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via a pre-adverse action / adverse action notification process.

## G. Challenging a Fitness Determination

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

1. The subject individual may appeal a final fitness determination made on the basis of a criminal records check by submitting a written request for a hearing to the address specified in the notice provided under 580-023-0141 within fourteen (14) calendar days of the date in the notice. The President's Office or designee may extend the time to appeal upon a determination that the delay was caused by factors beyond the reasonable control of the subject individual.
2. Challenging Criminal Offender Information. A subject individual may not use the hearing process established by this rule to challenge the accuracy, completeness or lawfulness of information provided by the Oregon State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon State Police or the Federal Bureau of Investigation.
3. The President's Office or designee is entitled to rely on the criminal offender information supplied by the Oregon State Police, the Federal Bureau of Investigation or other entities until notified that the information has been changed or corrected.
4. Any hearing under this rule is not open to the public.
5. Remedy. The only remedy that may be awarded under this hearing process is a determination that the subject individual is fit. Under no circumstance shall the President's Office or designee be required to place a subject individual in any position, nor be required to accept services or enter into a contractual agreement with a subject individual.
6. Hearing Process. Upon receiving valid notice under subsection G1 of this rule, the President shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the President or his/her designee.
  - (a) Prehearing Conferences. Prior to the hearing, the hearing officer may, in his/her discretion, conduct one or more prehearing conferences to facilitate the conduct of and resolution of the case. The hearing officer may convene the conference on his/her own initiative or at a party's request.
  - (b) The purposes of a prehearing conference may include, but are not limited to the following:
    - (A) To facilitate discovery and to resolve disagreements about discovery;
    - (B) To identify, simplify, and clarify issues;
    - (C) To eliminate irrelevant issues;
    - (D) To obtain stipulations of fact;
    - (E) To provide the hearing officer and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;
    - (F) To authenticate documents;
    - (G) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;
    - (H) To discuss settlement or other resolution or partial resolution of the case.
  - (c) Conducting the Hearing. The hearing shall be conducted, subject to the discretion of the hearing

officer, so as to include the following:

- (A) The statement and evidence of the President's Office or designee to support its action;
  - (B) The statement and evidence of the subject individual determined to be unfit to support his/her position;
  - (C) Any rebuttal evidence; and
  - (D) Any closing arguments.
- (d) The hearing officer shall have the authority to question witnesses and set reasonable time limits for oral presentation. The hearing officer may exclude cumulative, repetitious, or immaterial matter.
- (e) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
- (f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the hearing officer.
- (g) The hearing officer shall draft a proposed order for the consideration of the President, to include the following:
- (A) Findings of fact;
  - (B) Conclusions of law;
  - (C) Order.
- (h) Within twenty-one (21) calendar days of receiving the proposed order from the hearing officer, the President or designee must:
- (A) Adopt the proposed order as the final order for the case; or
  - (B) Amend the proposed order as the final order for the case.
- (i) The final order from the President or designee is final. The final order shall be delivered to the subject individual in writing, via certified mail.
- (j) Notwithstanding 580-023-0146, the institution may adopt rules outlining the hearing process required to challenge a fitness determination.

7. Appealing a fitness determination under section G1 of this rule, or challenging criminal offender information with the agency that provided the information, will not delay or postpone the institution's hiring process or employment decisions.

## H. Fees

The institution 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 by the Oregon State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon approval.

## C. Relevant Authority

Division 23, 580-023-0106 Purpose

1. This rule applies retroactively to applications submitted on or after January 1, 2008. Southern Oregon University (SOU) 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 Board delegates to the

President responsibility for adopting rules governing the conduct of criminal records checks.

2. Any rules adopted under subsection 1 must be consistent with applicable Oregon state laws and federal law.

This policy was transferred to SOU by operation of law on July 1, 2015 from Oregon Administrative Rule 580, Division 023. Revisions to the text of the policy were posted for campus comment on June 21, 2016.

#### **D. Other Information**

This policy codifies and revises as Southern Oregon University Policy the rules previously adopted by the State Board of Higher Education at Oregon Administrative Rule 580, Division 023 and transferred to SOU by operation of law on July 1, 2015.

The Policy Contact, defined above, will write and maintain the procedures related to this policy and these procedures will be made available within the Custodial Office.