

POLICY CONCEPT FORM

Name and UO Title/Affiliation:	Kassy Fisher, Asst VP for Admin and COS, Finance & Administration Ryan McBride, Policy Coordinator, Human Resources
Policy Title & Policy :	Criminal Background Checks
Submitted on Behalf Of:	Jamie Moffitt, VPFA & CFO
Responsible Executive Officer:	Vice President for Finance and Administration
Current Policy # (if applicable):	OAR 580.023

SELECT ONE: New Policy Revision Repeal

Click the box to select

HAS THE OFFICE OF GENERAL COUNSEL REVIEWED THIS CONCEPT: Yes No

If yes, which attorney(s): Kevin Reed

GENERAL SUBJECT MATTER

Include the policy name and number of any existing policies associated with this concept.

This OAR (OAR 580.023, <http://policies.uoregon.edu/criminal-background-checks-0>) details the kinds of positions/duties for which a criminal or financial background check will be conducted and how the results may be applied.

RELATED STATUTES, REGULATIONS, POLICIES, ETC.

List known statutes, regulations, policies (including unit level policies), or similar related to or impacted by the concept. Include hyperlinks where possible, excerpts when practical (e.g. a short statute), or attachments if necessary. Examples: statute that negates the need for or requires updates to an existing policy; unit level policy(ies) proposed for University-wide enactment; or existing policies used in a new, merged and updated policy.

The UO has its own policy on this subject, UO POLICY 03.09.01. See text below.

Link:

<https://policies.uoregon.edu/policy/by/1/0309-recruitment-and-selection/criminal-credit-and-related-background-checks-applicants>

STATEMENT OF NEED

What does this concept accomplish and why is it necessary?

Repeal of this OAR does not impact anyone. UO Policy 03.09.01 "Criminal, Credit and Related Background Checks," is in effect and addresses criminal background checks. The UO policy is presently being updated to ensure it is current and accurate.

AFFECTED PARTIES

Who is impacted by this change, and how?

Repeal of this OAR does not impact anyone as there is a UO-specific policy on the same subject.

CONSULTED STAKEHOLDERS

Which offices/departments have reviewed your concept and are they confirmed as supportive? (Please do not provide a list of every individual consulted. Remain focused on stakeholders (e.g. ASUO, Office of the Provost, Registrar, Title IX Coordinator, etc.).)

Name	Office	Date
Staff	Human Resources	
VPFA/CFO	Office of the VPFA	January 2017
Staff	Office of the General Counsel	January 2017

TEXT OF POLICY PROPOSED FOR REPEAL (FORMER OAR):

Link: <http://policies.uoregon.edu/criminal-background-checks-0>

A. Purpose

(1) This policy applies retroactively to applications submitted on or after January 1, 2008. The University of Oregon (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 Board of Trustees (Board) delegates to the President electing to conduct criminal records checks responsibility for adopting rules governing the conduct of criminal records checks.

(2) Any policies adopted under subsection (1) must be consistent with Policy 580.023, applicable Oregon state laws, and federal law.

B. Definitions

(1) "Criminal records check" means a fingerprint-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) "Fingerprint-based criminal records check" means a criminal records check using a subject individual's fingerprints. Fingerprint-based criminal record records checks may only be requested from the Oregon State Police for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the University may request that the Oregon State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(4) "University" means the University of Oregon.

(5) "Subject individual" means a person from whom the University may require criminal records checks as a condition to provide services as a contractor, employee, or volunteer. Subject individuals include persons currently serving as a contractor, employee, or volunteer, or persons who seek appointment as

an employee, volunteer, or engagement as a contractor to a position that is designated as a critical or security-sensitive position. The categories of critical or security-sensitive positions for which the University 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.

C. Criminal Records Check Process

- (1) The University 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 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) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement.
- (3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimum qualification of the position. The fact that a subject individual may be approved as fit on the basis of a criminal records check does not guarantee the individual a position as an employee, contractor, or vendor.

D. Criminal Records Check Notice to Applicants

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

E. Confidentiality of Criminal Records Checks

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

F. Refusal to Consent to Criminal Records Check and Incomplete Fitness Determination

- (1) The University 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 OAR 580-023-0215(1) [note, OAR 580-023-215(1) did not exist as of 07/01/2104];
 - (c) The University cannot locate or contact the subject individual;

(d) The University 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 Section I to challenge the closing of an incomplete fitness determination.

(3) If a subject individual refuses to consent to a criminal records check, the University 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.

G. Fitness to Hold Position Based on Criminal Records Check

(1) The University must use these policies, and any rules adopted at the institutional level, 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 provide under OAR 580-023-0215(1), and on any false statement made regarding the subject individual's criminal history. In making the fitness determination, the University must consider [note, OAR 580-023-215(1) did not exist as of 07/01/2104]:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment of that indicate the making of a false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services or employment; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include, but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(2) Crimes Relevant to a Fitness Determination

(a) All felonies;

(b) All Class A misdemeanors;

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

(d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection (2) pursuant to ORS 161.405, 161.435, or 161.450; and

(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection (2).

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

(4) Notwithstanding subsections (2) and (3) of this section G or OAR 580-023-0200(2), the University may adopt policies setting forth which crimes will be considered relevant to a fitness determination.

[Note, OAR 580-023-200(2) did not exist as of 07/01/2104.]

H. Notice of Adverse Fitness Determination Based on Criminal Records Check

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

I. 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 OAR 580-023-0260 within fourteen (14) calendar days of the date in the notice. The University may extend the time to appeal if the University determines the delay was caused by factors beyond the reasonable control of the subject individual. [Note, OAR 580-023-0260 did not exist as of 07/01/2104.]

(2) Challenging Criminal Offender Information. A subject individual may not use the hearing process established by this policy 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 University is entitled to rely on the criminal offender information supplied by the Oregon State Police, the Federal Bureau of Investigation or other entities until the University is notified that the information has been changed or corrected.

(4) Any hearing under this policy 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 University be required to place a subject individual in any position, nor shall the University be required to accept services or enter into a contractual agreement with a subject individual.

(6) Hearing Process. Upon receiving valid notice under subsection (1) of this section of the policy, the President of the University shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the President or his/her designee.

(a) Prehearing Conferences. Prior to the hearing, the hearing officer may, in its 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 its 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 University to support its action;

(B) The statement and evidence of the subject individual determined to be unfit to support its position;

(C) Any rebuttal evidence; and

(D) Any closing arguments.

(d) The hearing officer shall have the authority to question witnesses and set reasonable time limits for oral presentation. The hearing officer may exclude cumulative, repetitious, or immaterial matter.

(e) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

- (f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the hearing officer.
- (g) The hearing officer shall draft a proposed order for the consideration of the President, to include the following:
- (A) Findings of fact;
 - (B) Conclusions of law;
 - (C) Order.
- (h) Within twenty-one (21) calendar days of receiving the proposed order from the hearing officer, the President must:
- (A) Adopt the proposed order as the final order for the case; or
 - (B) Amend the proposed order as the final order for the case.
- (i) The final order from the President is final. The final order shall be delivered to the subject individual in writing, via certified mail.
- (j) Notwithstanding OAR 580-023-0265, the University may adopt policies outlining the hearing process required to challenge a fitness determination. [Note, OAR 580-023-0265 did not exist as of 07/01/2104.]
- (7) Appealing a fitness determination under Section I(1) of this section of this policy, or challenging criminal offender information with the agency that provided the information, will not delay or postpone the University's hiring process or employment decisions.

J. Fees

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

TEXT OF POLICY TO REMAIN IN EFFECT (Former UO POLICY 03.09.01):

Link: <https://policies.uoregon.edu/policy/by/1/0309-recruitment-and-selection/criminal-credit-and-related-background-checks-applicants>

Text:

The university will conduct criminal, credit and related background checks on finalists for designated positions as necessary to ensure a safe and secure work environment in which university faculty, staff, students, resources and assets are protected. In addition to the background checks described here, reference checks on employment history and other checks will also be conducted as appropriate. Note: the criminal background checks covered by this policy do not include nationwide fingerprint-based criminal records checks.

The University of Oregon, Office of Human Resources will be responsible for administering, interpreting, and maintaining this policy. Questions regarding this policy should be directed to the Assistant Director of Human Resources, 463 Oregon Hall, Eugene, OR 97403.

Applicability:

This policy will apply to finalists for job searches conducted after August 1, 2008 on:

- Applicants for designated positions in unclassified, classified, graduate teaching fellow, and student employment; volunteers.
- Current employees applying for internal promotion or transfer to designated positions. (See SEIU Collective Bargaining Agreement, LOA "Criminal Background Checks Policy Implementation" for classified employees.)

Types of background checks and designated positions:

Criminal background checks will be conducted to ensure that the candidate does not have relevant criminal convictions that would make him or her unsuitable or ineligible to perform the responsibilities of a specific position. A conviction includes a plea of no contest, plea of guilty, or court determination of guilt.

Criminal background checks will be conducted for positions that include the following access and/or with the following responsibilities:

- Unsupervised access to children (does not include university students under 18) and vulnerable adults (persons 18 years of age or older who have substantial mental or functional impairments and are unable to protect themselves).
- Access to computer infrastructure, systems or applications that have data deemed to be sensitive, as well as anyone involved in providing computer security services;
- Broad and extensive access to personally identifying information about students, faculty, staff, alumni, donors, or research subjects;
- Direct access to and handling of cash and cash equivalents (i.e., checks, credit card receipts, negotiable securities);
- Ability to modify business or financial records after transactions have been processed through regular approval queues and/or review processes;
- Public safety and campus security;
- Unrestricted access to building master keys, security systems or areas where people have reasonable expectation of privacy;
- Direct access to controlled substances and potentially hazardous chemicals; and
- Access to animal research facilities.

Credit background checks will be conducted to ensure that the candidate's background has no financial irregularities that would make the individual unsuitable or ineligible to perform the responsibilities of a specific position. (Note: Federal law prohibits discrimination as a result of bankruptcy.) Credit background checks will be conducted as appropriate for positions with the following responsibilities:

- Broad and extensive access to personally identifying information about students, faculty, staff, alumni, donors, or research subjects;
- Direct access to and handling of cash and cash equivalents (i.e., checks, credit card receipts, negotiable securities);
- Public safety and campus security.

Designated positions:

The Associate Vice President (AVP) for Human Resources, the Assistant Director of Human Resources, or the Human Resources Employment Manager, will designate those positions requiring criminal and/or credit background checks, using the criteria described above and in consultation with the hiring supervisor. The designation will be applied after reviewing specific job duties and requirements and, in most cases, will not be applied generally to all jobs in a classification or employment category. This process will apply to both criminal and credit background checks.

Determination of relevance of criminal and credit background information: Not all criminal convictions or financial problems will preclude applicants from university employment. The criminal and/or credit background report(s) will be reviewed for the type of offense (if any) and its relevance to the position and a determination made if the information received in the background check disqualifies the

candidate from that specific job. This decision will be made by at least two of the following: the AVP for Human Resources, the Assistant Human Resources Director, and/or the Employment Manager in consultation with the hiring supervisor. In addition, staff in the Department of Public Safety, Business Affairs Office, and/or Office of Affirmative Action and Equal Opportunity may be consulted.

An unsuccessful finalist will be informed that he/she is not eligible to fill the position based on the unsatisfactory results of a check and notified of the appeal process.

Position posting notification and release authorization:

Recruitment announcements and job postings for positions designated as requiring one or more background check will include a standard statement notifying potential applicants of the intent to conduct a criminal and/or credit background check(s).

A finalist for a position requiring criminal and/or credit background check(s) must sign the university release authorization form. The release form will inform the applicant that criminal convictions do not necessarily preclude employment. In addition, the release form will provide the finalist a summary of rights, including the right of access to credit and/or criminal background check(s) information and a description of the appeal process.

As part of the recruitment process, applicants will be informed of the university policy on confidential handling of documents related to background checks.

Confidentiality and restricted access to records:

Information received from criminal and credit background checks will be considered sensitive and disclosure will be restricted. Files pertaining to background checks will be maintained in Human Resources.

Appeal Process:

Applicants who are denied employment based on unsatisfactory results will receive notification of rights under the Fair Credit Reporting Act, including his/her right to review the results and obtain information about contacting agencies that provided the background check(s) results.

Unsuccessful applicants will also be given the opportunity to submit a statement in writing to the AVP for Human Resources describing how the information in the report is incorrect or irrelevant to the position in question. In consultation with the appropriate vice president or designee, the AVP will make the final determination of the appeal.

Legally mandated checks:

Some university positions carry legally mandated background check requirements imposed by outside entities. The university will ensure that these checks are conducted for those engaged to work in these positions, which include, but are not limited to, the following programs:

- Child care centers;
- Programs that work with children (e.g., Youth Enrichment/TAG, Psychology research labs working with minors, and Child and Family Center); and
- Communication Disorders and Sciences
- Programs that involve work requiring background checks by federal or state agencies such as Homeland Security, Drug Enforcement Agency, or the Nuclear Regulatory Agency.

