

<b>Policy Title:</b>	Criminal Records Check Requirements for Relative Caregivers, Foster Parents, Adoptive Resources, and Other Persons in the Household -- OAR		
<b>Policy Number:</b>	I-G.1.4 413-120-0400 thru 0475		<b>Effective Date:</b> 6/26/12 (M/F, # %/%)

Approved By: *on file*

Date Approved:

These rules were moved into a new format on 9/1/15 without amendment.

These rules after 9/1/15 are available at [http://www.dhs.state.or.us/policy/childwelfare/cross\\_index\\_history\\_main.htm](http://www.dhs.state.or.us/policy/childwelfare/cross_index_history_main.htm)

Policy Forms, etc. Definitions References Contact

**Reference(s):**

- OAR 407-007-0200 to 407-007-0370
- ORS 181.537
- ORS 181.010 to 181.560
- Title 42 USC 671
- I-G.1.3, Adoption Applications  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-g13.htm](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-g13.htm)
- I-G.2.1, Minimum Standards for Adoptive Homes  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-g21.htm](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-g21.htm)
- II-B.1, Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_2/ii-b1.htm](http://www.dhs.state.or.us/policy/childwelfare/manual_2/ii-b1.htm)
- II-B.1.1, Responsibilities for Certification and Supervision of Foster Parents, Relative Caregivers and Approval of Potential Adoptive Resources  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_2/ii-b11.htm](http://www.dhs.state.or.us/policy/childwelfare/manual_2/ii-b11.htm)
- Criminal History tools  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-g14tools.htm](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-g14tools.htm)

**Form(s) that apply:**

- FD 258, "Fingerprint Card"
- CF 1011F, "Consent for Criminal Records and Fingerprint Check"
- DHS 1011D "Criminal History Exception Request"  
[http://dhsresources.hr.state.or.us/WORD\\_DOCS/CE1011d.doc](http://dhsresources.hr.state.or.us/WORD_DOCS/CE1011d.doc)

**Rules:**

**413-120-0400**

## Purpose

- (1) These rules (OAR 413-120-0400 to 413-120-0475) describe the *criminal records check* requirements for those seeking to provide relative care, foster care, or *respite care* to children in the care or custody of the Department, be approved as adoptive resources for children in the custody of the Department, or be *approved* as an *other person in the household*.
- (2) These rules set forth the criminal convictions which disqualify a subject individual from being a *relative caregiver, foster parent, adoptive resource, or other person in the household*.
- (3) These rules outline the process by which the Department determines the fitness of a *subject individual* convicted of or arrested for certain felony and misdemeanor crimes to be a *relative caregiver, foster parent, adoptive resource, or other person in the household*.
- (4) These rules must be used in conjunction with other applicable standards when determining a subject individual's fitness to provide relative care, foster care, or *respite care* for children in the care or custody of the Department, or to be *approved* as an *other person in the household*.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

## 413-120-0420

### Definitions

For purposes of these rules (OAR 413-120-0400 to 413-120-0475):

- (1) "Authorized designee" means a Department employee who is designated and authorized by the Department to receive and process *criminal records check* request forms from subject individuals, receive criminal records information from the Background Check Unit, and make fitness determinations as described in these rules.
- (2) "Battery" means the use of physical force to injure, damage, or abuse or to cause offensive physical contact.
- (3) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a *child or young adult* in the care or custody of the Department.
- (4) "Child" means an individual under the age of 18.
- (5) "Contested case hearing" means a hearing conducted under ORS Chapter 183 and applicable administrative rules.
- (6) "Criminal records check" means obtaining and reviewing criminal records as required by

these rules and includes any or all of the following:

- (a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of *other criminal records information* obtained from other sources.
  - (b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of *other criminal records information*.
  - (c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or *other criminal records information* sources located in, or regarding, a state or jurisdiction outside Oregon.
- (7) "Department" means the Department of Human Services.
- (8) "Fitness determination" means the decision made by an *authorized designee*, with regard to information obtained through a *criminal records check*, to either approve or deny a *subject individual* under these rules. A *subject individual* who is approved following a criminal records based fitness determination may still be denied approval to be a *relative caregiver, foster parent, adoptive resource* or an *other person in the household* if the *subject individual* does not meet other requirements contained in Department rules governing relative care, foster care, and adoption.
- (9) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.
- (10) "OSP" means the Oregon State Police.
- (11) "Other criminal records information" means information obtained and used in the *criminal records check* process that is not criminal offender information from OSP. "Other criminal records information" includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the background check requests, disclosures by a *subject individual*, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a *fitness determination*.
- (12) "Other person in the household" means any individual described in one or more of the following subsections:
- (a) An individual 18 years of age or older, who is not in the care and custody of the Department pursuant to ORS 418.015, who is living in the home of --

- (A) An applicant to adopt a *child* in the custody of the Department as described in Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption"(OAR 413-120-0190 to 413-120-0246); or
  - (B) An applicant to be a *foster parent, relative caregiver, or adoptive resource* as described in Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" (OAR 413-200-0301 to 413-200-0396).
- (b) A *respite care* provider.
  - (c) A person who volunteers or is employed by a *foster parent or relative caregiver* to assist with the care of the children placed in the home.
  - (d) Any of the following individuals if there is reason to believe the individual may pose a risk to children placed in the home: A member of the household under 18 years of age, a babysitter, or a person who frequents the home.
- (13) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related *child or young adult* who is placed in the home by the Department.
- (14) "Respite care" means a formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of a *child or young adult* in the home of the respite provider or *certified family*. "Respite care" must be less than 14 consecutive days.
- (15) "Subject individual" means an individual who:
- (a) Applies to adopt a *child* in the custody of the Department as described in Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption", OAR 413-120-0190 to 413-120-0246;
  - (b) Applies to be a *foster parent, relative caregiver, or adoptive resource* as described in Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396; or
  - (c) Is an *other person in the household*.
- (16) "Violence" means the use of physical force to injure, damage, or abuse.
- (17) "Weighing test" means the process in which an *authorized designee* considers available information to make a *fitness determination* when a *subject individual* has potentially disqualifying convictions, arrests, or conditions.
- (18) "Young adult" means an individual aged 18 through 20 years.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

#### **413-120-0440**

### **Circumstances in which a Criminal Records Check Must Occur and Types of Records Checks Required**

- (1) Circumstances in which the Department conducts criminal records checks.
  - (a) When a family applies to be certified as a *relative caregiver* or *foster parent* under OAR 413-200-0270 to 413-200-0296, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.
  - (b) When a family applies to adopt a *child* under OAR 413-120-0190 to 413-120-0246, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.
  - (c) When a *subject individual* who has not previously been approved as an *other person in the household* of a *certified family* seeks approval to be an *other person in the household*, the Department must conduct a *criminal records check* on the *subject individual*. Notwithstanding this requirement, when a person who lives in the household turns 18 years of age during the time that a family is certified, or after a family has been approved as a potential adoptive resource, a *criminal records check* is not required on the person who turned 18 until the family is being evaluated for renewal of certification or until a previously approved adoption home study is being amended or updated.
  - (d) When a *certified family* is being assessed to determine whether or not the certification will be renewed under OAR 413-200-0287, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.
  - (e) When a previously approved home study is being amended or updated within the 12 months prior to an adoption placement selection as required by OAR 413-120-0246, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.
- (2) In addition to the required criminal records checks described in section (1) of this rule, the Department may conduct a *criminal records check* on any *subject individual* at any time, if deemed necessary by the Department to protect child safety.
- (3) Each *criminal records check* conducted under section (1) of this rule must include a fingerprint-based check of records maintained by the Federal Bureau of Investigation (FBI) unless one of the following subsections applies:
  - (a) The *criminal records check* is being conducted for purposes of a certification

renewal or an update to a previously approved home study as described in subsections (1)(d) and (1)(e) of this rule, and the *subject individual* --

- (A) Has not lived outside of Oregon for more than 60 consecutive days after the subject individual's last *criminal records check*;
- (B) Has not been arrested since the family was last certified to provide foster care or relative care or approved as a potential adoptive resource; and
- (C) Previously had a fingerprint-based check of records maintained by FBI in order to be approved under these rules to live in the home that is being assessed for certification renewal.

(b) The *criminal records check* is being conducted for purposes of approval of a *subject individual* to provide *respite care*, and the *subject individual* --

- (A) Has not lived outside the state of Oregon for more than 60 consecutive days in the last five years;
- (B) Does not disclose any history of arrests or convictions;
- (C) Is not determined, following a review of the results of a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS), to have a history of arrests or convictions; and
- (D) Is not determined, as a result of review of information received from any other source, to have a history of arrests or convictions.

(c) The *criminal records check* is being conducted for purposes of approval of a *subject individual* to be an *other person in the household*, and the *subject individual* --

- (A) Is under the age of 18;
- (B) Is a babysitter; or
- (C) Frequents the home but is not a respite provider nor a care-giving employee or volunteer.

(d) The Department determines that the *subject individual* is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to the *subject individual* or staff, and the District Manager in the District where the *criminal records check* was initiated provides written approval to forego the fingerprint-based check. The District Manager's written approval, and written documentation of the circumstances that lead to the decision to forego fingerprinting, must be kept with other documents pertaining to the subject individual's *criminal records check*.

(4) Notwithstanding subsections (3)(a) to (3)(c) of this rule, the Department may require a

fingerprint-based check of records maintained by FBI as part of the *criminal records check* for any *subject individual* if deemed necessary by the Department to protect child safety.

- (5) Each *criminal records check* conducted under these rules must include a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS) regardless of whether a fingerprint-based check of records maintained by FBI is conducted or not.
- (6) A *criminal records check* under this rule may also include a review of records obtained from other law enforcement entities, courts, or any other source of criminal information.
- (7) A *subject individual* who is required under these rules (OAR 413-120-0400 to 413-120-0475) to undergo a fingerprint-based check of records maintained by FBI may be approved following a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS). When an approved *subject individual* is subsequently determined to have arrests or convictions which were unknown at the time of their approval, the *subject individual* must be approved following a new *fitness determination* in order to continue to function in the capacity for which the *subject individual* was previously approved.
  - (a) The new *fitness determination* is required regardless of the severity of the previously unknown criminal history, the length of time since the arrests or convictions occurred, or any other factor pertaining to the history.
  - (b) The new *fitness determination* must occur as soon as possible after any new criminal history has been discovered, and no later than 14 working days after the history has been discovered.
  - (c) The new *fitness determination* must occur regardless of when previously unknown criminal history is discovered and regardless of whether the history is discovered as a result of information obtained from LEDS, the FBI, or any other credible information source.
  - (d) The same Department employee who made the original *fitness determination* must also make the new *fitness determination*, unless the severity of the newly discovered history requires approval at a higher level of the Department's organizational structure or unless the person who made the original determination is no longer in the position she or he occupied at that time or is otherwise unavailable.
  - (e) Following the discovery of previously unknown criminal history, and pending a new *fitness determination*, the Department may permit a *subject individual* to continue to function in the capacity for which the individual was previously approved. If the newly discovered history includes any convictions that require a *fitness determination* by the District Manager, or the Child Welfare Director or Chief Operating Officer, written approval from the District Manager must be obtained within 24 hours in order for the *subject individual* to continue in her or

his current capacity pending the outcome of the new *fitness determination*.

- (f) Notwithstanding subsections (a) to (c) of this section, when a *criminal records check* is being conducted for the purpose of approval of an adoptive resource or for the initial non-child-specific certification of a foster family, the *subject individual* must undergo both a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS) and a fingerprint-based check of records maintained by FBI before a *fitness determination* is made and before the *subject individual* may be approved.
- (8) A *subject individual* who was previously approved as a respite provider or as an *other person in the household* must undergo a new *criminal records check* and *fitness determination*, including a fingerprint-based check of records maintained by FBI, when applying to adopt a *child* or to be a *foster parent* or *relative caregiver*.
- (9) When a family currently certified as child-specific caregivers seeks to become a non-child-specific *certified family*, and the household includes a *subject individual* who was previously approved following a criminal records related *fitness determination*, written approval must be granted prior to the family becoming non-relative foster parents. In these circumstances, decisions regarding approval must be made by the Department employees involved in the original fitness determinations or by employees in positions at the same level of the Department's organizational structure.
- (10) A *subject individual* may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

#### **413-120-0450**

#### **Disqualifying and Potentially Disqualifying Criminal Convictions**

- (1) The Department must determine the fitness of individuals who have been convicted of crimes, or who have been arrested for but not convicted for certain crimes, to be relative caregivers, foster parents, *respite care* providers, adoptive resources, or an *other person in the household*.
- (2) An *authorized designee* employed by the Department must make all fitness determinations.
- (3) A *subject individual* convicted of any crime described in subsections (a) to (h) of this section may not be a *relative caregiver*, *foster parent*, adoptive resource, or an *other person in the household* regardless of how long ago the *subject individual* was convicted or any other factors or circumstances that exist. An *authorized designee* making a *fitness determination* under these rules must deny any *subject individual* who has been convicted in Oregon or any other jurisdiction of a felony crime that involves --

- (a) *Violence*, including rape, sexual assault, and homicide, but not including other physical assault or *battery*;
- (b) Intentional starvation or torture;
- (c) Abuse or neglect of a *child*;
- (d) Spousal abuse;
- (e) Aiding, abetting, attempting, soliciting, or conspiring to cause the death of a *child*;
- (f) Sodomy or sexual abuse;
- (g) A *child* as the victim (including child pornography); or
- (h) The following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:
  - (A) ORS 162.155 - Escape in the second degree, if the crime involves *violence*;
  - (B) ORS 162.165 - Escape in the first degree, if the crime involves *violence*;
  - (C) ORS 162.325 - Hindering prosecution, if the crime involves *violence*;
  - (D) ORS 163.095 - Aggravated murder;
  - (E) ORS 163.115 - Murder;
  - (F) ORS 163.118 - Manslaughter in the first degree;
  - (G) ORS 163.125 - Manslaughter in the second degree;
  - (H) ORS 163.145 - Criminally negligent homicide;
  - (I) ORS 163.149 - Aggravated vehicular homicide;
  - (J) ORS 163.160 - Assault in the fourth degree, if classified as a felony, and the victim is a *child* or the subject individual's spouse;
  - (K) ORS 163.165 - Assault in the third degree if the victim is a *child* or the subject individual's spouse;
  - (L) ORS 163.175 - Assault in the second degree if the victim is a *child* or the subject individual's spouse;
  - (M) ORS 163.185 - Assault in the first degree if the victim is a *child* or the subject individual's spouse;

- (N) ORS 163.205 - Criminal mistreatment in the first degree if the victim is a *child* or the subject individual's spouse, or if the crime involves *violence*;
- (O) ORS 163.207 - Female genital mutilation;
- (P) ORS 163.213 - Unlawful use of an electrical stun gun, tear gas, or mace in the first degree;
- (Q) ORS 163.225 - Kidnapping in the second degree if the victim is a *child* or the subject individual's spouse, or if the crime involves *violence*;
- (R) ORS 163.235 - Kidnapping in the first degree if the victim is a *child* or the subject individual's spouse, or if the crime involves *violence*;
- (S) ORS 163.245 - Custodial interference in the second degree if the victim is a *child*;
- (T) ORS 163.257 - Custodial interference in the first degree if the victim is a *child*;
- (U) ORS 163.355 - Rape in the third degree;
- (V) ORS 163.365 - Rape in the second degree;
- (W) ORS 163.375 - Rape in the first degree;
- (X) ORS 163.385 - Sodomy in the third degree;
- (Y) ORS 163.395 - Sodomy in the second degree;
- (Z) ORS 163.405 - Sodomy in the first degree;
- (AA) ORS 163.408 - Unlawful sexual penetration in the second degree;
- (AB) ORS 163.411 - Unlawful sexual penetration in the first degree;
- (AC) ORS 163.425 - Sexual abuse in the second degree;
- (AD) ORS 163.427 - Sexual abuse in the first degree;
- (AE) ORS 163.432 - Online sexual corruption of a child in the second degree;
- (AF) ORS 163.433 - Online sexual corruption of a child in the first degree;
- (AG) ORS 163.452 - Custodial sexual misconduct in the first degree;
- (AH) ORS 163.479 - Unlawful contact with a child;

- (AI) ORS 163.525 - Incest, if the victim of the offense is a *child*;
- (AJ) ORS 163.535 - Abandonment of a child;
- (AK) ORS 163.537 - Buying or selling a person under 18 years of age;
- (AL) ORS 163.547 - Child neglect in the first degree;
- (AM) ORS 163.555 - Criminal nonsupport;
- (AN) ORS 163.670 - Using a child in display of sexually explicit conduct;
- (AO) ORS 163.684 - Encouraging child sexual abuse in the first degree;
- (AP) ORS 163.686 - Encouraging child sexual abuse in the second degree;
- (AQ) ORS 163.688 - Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (AR) ORS 163.689 - Possession of materials depicting sexually explicit conduct of a child in the second degree;
- (AS) ORS 164.125 - Theft of services, if the theft involves *violence* and is for services valued at \$750 or more;
- (AT) ORS 164.225 - Burglary in the first degree if the crime involves *violence*;
- (AU) ORS 164.395 - Robbery in the third degree if the crime involves *violence*;
- (AV) ORS 164.405 - Robbery in the second degree if the crime involves *violence*;
- (AW) ORS 164.415 - Robbery in the first degree if the crime involves *violence*;
- (AX) ORS 166.015 - Riot if the crime involves *violence*;
- (AY) ORS 166.165 - Intimidation in the first degree if the crime involves *violence*;
- (AZ) ORS 166.220 - Unlawful use of a weapon if the crime involves *violence*;
- (BA) ORS 167.017 - Compelling prostitution, if the victim is a *child* or the subject individual's spouse; or
- (BB) ORS 167.057 - Luring a minor.

(4) An *authorized designee* making a *fitness determination* under these rules must deny any *subject individual* who has been convicted in Oregon or any other jurisdiction of a felony crime within the last five years preceding the date of the *fitness determination*, if

the felony crime involves --

- (a) Physical assault, *battery*,
- (b) A drug-related offense; or
- (c) Any of the following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:
  - (A) ORS 163.160 - Assault in the fourth degree, if classified as a felony.
  - (B) ORS 163.165 - Assault in the third degree.
  - (C) ORS 163.175 - Assault in the second degree.
  - (D) ORS 163.185 - Assault in the first degree if the crime involved *violence*.
  - (E) ORS 163.208 - Assaulting a public safety officer.
  - (F) ORS 167.212 - Tampering with drug records.
  - (G) ORS 167.262 - Adult using minor in commission of controlled substance offense, if classified as a felony.
  - (H) ORS 475.846 - Unlawful manufacture of heroin.
  - (I) ORS 475.848 - Unlawful manufacture of heroin within 1,000 feet of school.
  - (J) ORS 475.850 - Unlawful delivery of heroin.
  - (K) ORS 475.852 - Unlawful delivery of heroin within 1,000 feet of school.
  - (L) ORS 475.854 - Unlawful possession of heroin.
  - (M) ORS 475.856 - Unlawful manufacture of marijuana.
  - (N) ORS 475.858 - Unlawful manufacture of marijuana within 1,000 feet of school.
  - (O) ORS 475.860 - Unlawful delivery of marijuana, if classified as a felony.
  - (P) ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school.
  - (Q) ORS 475.864 - Unlawful possession of marijuana, if classified as a felony.
  - (R) ORS 475.866 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine.

- (S) ORS 475.868 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.
- (T) ORS 475.870 - Unlawful delivery of 3,4-methylenedioxy-methamphetamine.
- (U) ORS 475.872 - Unlawful delivery of 3,4-methylenedioxy-methamphetamine within 1,000 feet of school.
- (V) ORS 475.874 - Unlawful possession of 3,4-methylenedioxy-methamphetamine.
- (W) ORS 475.876 - Unlawful manufacture of cocaine.
- (X) ORS 475.878 - Unlawful manufacture of cocaine within 1,000 feet of school.
- (Y) ORS 475.880 - Unlawful delivery of cocaine.
- (Z) ORS 475.882 - Unlawful delivery of cocaine within 1,000 feet of school.
- (AA) ORS 475.884 - Unlawful possession of cocaine.
- (AB) ORS 475.886 - Unlawful manufacture of methamphetamine.
- (AC) ORS 475.888 - Unlawful manufacture of methamphetamine within 1,000 feet of school.
- (AD) ORS 475.890 - Unlawful delivery of methamphetamine.
- (AE) ORS 475.892 - Unlawful delivery of methamphetamine within 1,000 feet of school.
- (AF) ORS 475.894 - Unlawful possession of methamphetamine.
- (AG) ORS 475.904 - Unlawful manufacture or delivery of controlled substance within 1,000 feet of school.
- (AH) ORS 475.908 - Causing another person to ingest a controlled substance.
- (AI) ORS 475.910 - Application of controlled substance to the body of another person, if the controlled substance is in Schedule I, II, III, or IV.
- (AJ) ORS 475.914 - Prohibited acts for registrants related to Schedule I controlled substances.
- (AK) ORS 475.962 - Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance.

(AL) ORS 475.967 - Possession of precursor substance with intent to manufacture controlled substance.

(AM) ORS 475.977 - Possessing or disposing of methamphetamine manufacturing waste.

(5) In addition to any other requirements pertaining to fitness determinations:

(a) Any fitness determinations made with regard to crimes identified in subsection (b) of this section must adhere to the following requirements:

(A) Approval of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:

(i) The Department's Child Welfare Director; or

(ii) The Department's Child Welfare and Self Sufficiency Chief Operating Officer; or

(iii) An Administrator or Manager who does not work in the district in which the *criminal records check* was initiated and who is designated by the Department's Child Welfare Director.

(B) Denial of any *subject individual* convicted of a crime identified in this section may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator.

(b) Crimes to which subsection (a) of this section applies are as follows:

(A) Any misdemeanor crime of *violence* against a *child*.

(B) Any felony involving *violence*, unless the offense meets the criteria under sections (3) or (4) of this rule.

(C) A felony drug-related offense, unless the offense meets the criteria under sections (3) or (4) of this rule.

(D) The following crimes under Oregon law or substantially similar crimes in Oregon or any other jurisdiction:

(i) ORS 162.155 - Escape in the second degree, if the crime involves the threatened use of *violence*. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(ii) ORS 162.165 - Escape in the first degree, if the crime involves the threatened use of *violence* or the threatened use of a dangerous or

deadly weapon. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

- (iii) ORS 163.160 - Assault in the fourth degree, if the conviction is classified as a felony. (If the conviction occurred within five years before the *fitness determination* or if the victim was a *child*, the *subject individual* must be denied.)
- (iv) ORS 163.160 - Assault in the fourth degree if the conviction is a misdemeanor and the victim is a *child*. (If the conviction is a felony and the victim is a *child*, the *subject individual* must be denied.)
- (v) ORS 163.165 - Assault in the third degree. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)
- (vi) ORS 163.175 - Assault in the second degree. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)
- (vii) ORS 163.185 - Assault in the first degree. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)
- (viii) ORS 164.395 - Robbery in the third degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)
- (ix) ORS 164.405 - Robbery in the second degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)
- (x) ORS 164.415 - Robbery in the first degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)
- (xi) ORS 166.015 - Riot. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)
- (xii) ORS 166.165 - Intimidation in the first degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)
- (xiii) ORS 166.220 - Unlawful use of weapon. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)
- (xiv) ORS 167.017 - Compelling prostitution. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be

denied.)

- (xv) ORS 167.212 - Tampering with drug records. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xvi) ORS 475.846 - Unlawful manufacture of heroin. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xvii) ORS 475.848 - Unlawful manufacture of heroin within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xviii) ORS 475.850 - Unlawful delivery of heroin. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xix) ORS 475.852 - Unlawful delivery of heroin within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xx) ORS 475.854 - Unlawful possession of heroin. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxi) ORS 475.856 - Unlawful manufacture of marijuana. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxii) ORS 475.858 - Unlawful manufacture of marijuana within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxiii) ORS 475.860 - Unlawful delivery of marijuana if the conviction is a felony. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxiv) ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxv) ORS 475.864 - Unlawful possession of marijuana if the conviction is a felony. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxvi) ORS 475.866 - Unlawful manufacture of 3,4 methylenedioxymethamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be

denied.)

- (xxvii) ORS 475.868 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxviii) ORS 475.870 - Unlawful delivery of 3,4-methylenedioxymethamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxix) ORS 475.872 - Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxx) ORS 475.874 - Unlawful possession of 3,4-methylenedioxymethamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxi) ORS 475.876 - Unlawful manufacture of cocaine. (If the conviction meets the criteria in section (4) of this rule, the subject individual must be denied.)
- (xxxii) ORS 475.878 - Unlawful manufacture of cocaine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxiii) ORS 475.880 - Unlawful delivery of cocaine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxiv) ORS 475.882 - Unlawful delivery of cocaine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxv) ORS 475.884 - Unlawful possession of cocaine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxvi) ORS 475.886 - Unlawful manufacture of methamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxvii) ORS 475.888 - Unlawful manufacture of methamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

- (xxxviii) ORS 475.890 - Unlawful delivery of methamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xxxix) ORS 475.892 - Unlawful delivery of methamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xl) ORS 475.894 - Unlawful possession of methamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xli) ORS 475.904 - Unlawful manufacture or delivery of controlled substance within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xlii) ORS 475.908 - Causing another person to ingest a controlled substance. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)
- (xliii) ORS 475.910 - Application of controlled substance to the body of another person. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)
- (xliv) ORS 475.962 - Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xliv) ORS 475.967 - Possession of precursor substance with intent to manufacture controlled substance. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)
- (xlvi) ORS 475.977 - Possessing or disposing of methamphetamine manufacturing waste. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(6) In addition to any other requirements pertaining to fitness determinations:

(a) Any fitness determinations made with regard to crimes identified in subsection (b) of this section must adhere to the following requirements:

(A) Approval of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:

- (i) An Administrator designated by the Department's Child Welfare Director.
  - (ii) A District Manager.
  - (iii) If permitted by the District Manager in the District in which the *criminal records check* was initiated, a Child Welfare Program Manager.
- (B) Denial of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator designated by the Department's Child Welfare Director.
- (b) Crimes to which subsection (a) of this section applies are as follows:
- (A) Any felony conviction for a crime which is not described in sections (3), (4), or (5) of this rule.
  - (B) A conviction for any crime involving domestic violence and which is not described in sections (3), (4), or (5) of this rule.
- (7) In addition to any other requirements pertaining to fitness determinations:
- (a) Any fitness determinations made with regard to crimes identified in subsection (b) of this section must adhere to the following requirements:
    - (A) Approval of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:
      - (i) An Administrator designated by the Department's Child Welfare Director.
      - (ii) A District Manager.
      - (iii) If permitted by the District Manager in the District in which the *criminal records check* was initiated, a Child Welfare Program Manager or a Child Welfare Supervisor.
    - (B) Denial of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator designated by the Department's Child

Welfare Director.

- (b) Subsection (a) of this section applies to any misdemeanor conviction for a crime which is not described in sections (3) to (6) of this rule.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

#### **413-120-0455**

##### **Potentially Disqualifying Arrests**

- (1) Behavior that results in an arrest or a history of arrests may raise concerns about the fitness of a *subject individual* to be a *relative caregiver*, a *foster parent*, an adoptive resource, or an *other person in the household*. If a *subject individual* has a history of one or more arrests for any of the following offenses, the Department determines if, considering the behavior that resulted in the arrest, the *subject individual* is fit to be a *relative caregiver*, *foster parent*, adoptive resource, or *other person in the household*:
- (a) Child abuse or neglect.
  - (b) Domestic violence.
  - (c) A crime against a *child*, including pornography.
  - (d) A crime involving *violence*, including rape, sexual abuse, manslaughter, or homicide.
  - (e) Physical assault.
  - (f) *Battery*.
  - (g) A drug or alcohol related offense.
  - (h) A weapons-related offense.
- (2) If a *subject individual* has been arrested for any of the offenses listed in section (1) of this rule, the Department must make a *fitness determination* and approve or deny the *subject individual*.
- (3) Approval of any *subject individual* arrested for a crime identified in section (1) of this rule may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:
- (a) An Administrator designated by the Department's Child Welfare Director.
  - (b) A District Manager.
  - (c) If permitted by the District Manager in the District in which the *criminal records*

*check* was initiated, a Child Welfare Program Manager or a Child Welfare Supervisor.

- (4) Denial of any *subject individual* arrested for a crime identified in section (1) of this rule may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator designated by the Department's Child Welfare Director.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

### **413-120-0457**

#### **Weighing Test**

When making a *fitness determination* with regard to a *subject individual* with a history of potentially disqualifying crimes or conditions, the *authorized designee* must consider any of the following factors that apply to the *subject individual* or the subject individual's situation:

- (1) Circumstances regarding the nature of potentially disqualifying convictions and conditions, including but not limited to:
  - (a) The details of the incidents that led to potentially disqualifying convictions, arrests, or other disqualifying conditions.
  - (b) The age of the *subject individual* at the time of the incidents that led to potentially disqualifying convictions, arrests, or other disqualifying conditions.
  - (c) The passage of time since the incidents that led to potentially disqualifying convictions, arrests, or other disqualifying conditions.
  - (d) The facts that support the convictions, arrests, or potentially disqualifying conditions.
  - (e) Whether or not the *subject individual* was charged with or indicted for a crime related to a potentially disqualifying arrest.
  - (f) The disposition of any charge or indictment related to a potentially disqualifying arrest.
  - (g) Consideration of state and federal laws, including regulations and rules which address crimes or conditions that potentially disqualify a person from being a *relative caregiver, foster parent, adoptive resource, or an other person in the household.*
- (2) Other factors when available including but not limited to:
  - (a) Other information related to criminal activity including charges, arrests, pending

indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

- (b) Periods of incarceration.
  - (c) Status of and compliance with parole, post-prison supervision, or probation.
  - (d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.
  - (e) Evidence of treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.
  - (f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior.
  - (g) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:
    - (A) History of high school, college, or other education related accomplishments.
    - (B) Work history (employee or volunteer).
    - (C) History regarding licensure, certification, or training for licensure or certification.
    - (D) Written recommendations from current or past employers, including Department client employers.
  - (h) Indication of the subject individual's cooperation, honesty, or the making of a false statement during the *criminal records check* process.
  - (i) Acknowledgment and acceptance of responsibility for criminal activity and potentially disqualifying conditions.
  - (j) When the *subject individual* is seeking to provide care for a specific *child* or *young adult*, whether or not denial of the *subject individual* would create emotional harm to the *child* or *young adult* and placement of the *child* or *young adult* with the *subject individual* would be a safe placement that is in the best interest of the *child* or *young adult*.
- (3) The *authorized designee* must consider the relevancy of the subject individual's criminal activity or potentially disqualifying conditions to the subject individual's fitness to be *relative caregiver, foster parent, adoptive resource, or other person in the household*.

## **413-120-0460**

### **Contesting a Fitness Determination**

- (1) If the Department determines that a *subject individual* cannot be certified or approved as a *relative caregiver, foster parent, or adoptive resource* based on a negative *fitness determination*, unless the *subject individual* voluntarily withdraws from the process, the Department must notify the *subject individual* in writing that the *subject individual*:
  - (a) Has a right to inspect and challenge his or her Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035;
  - (b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC 20537-9700; and
  - (c) May appeal the Department's determination of unfitness or indicate an intent to challenge information in the OSP or FBI report by requesting a *contested case hearing* pursuant to ORS chapter 183 and OAR 413-010-0500 to 413-010-0535 provided that the Department receives the request for a *contested case hearing* in writing within 30 days from the date of mailing the notice.
  
- (2) Upon the determination of the Department that an applicant for relative care, foster care, or adoption of a *child* in the custody of the Department cannot be approved due to the denial of an *other person in the household*, the certifier or adoption worker must inform --
  - (a) The *other person in the household*, who was denied, of the right to inspect and challenge the subject individual's Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035 and the person's rights under ORS 181.557(2)(b);
  - (b) The *other person in the household*, who was denied, of the right to challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC 20537-9700; and
  - (c) The *relative caregiver, foster parent, or adoption applicant* whose approval is affected by the denial of the *other person in the household*, in writing, that:
    - (A) Based on the other person in the household's denial, the Department may not certify or approve the *relative caregiver, foster parent, or adoption applicant* as long as the *other person in the household* remains in the home or provides care to a *child or young adult* in the home; and

- (B) The *relative caregiver, foster parent*, or adoption applicant may appeal in a *contested case hearing* the Department's denial, provided that the Department receives the applicant's request for a *contested case hearing* in writing within 30 days from the date of mailing the notice to the applicant.
- (3) Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535 describes the requirements and process for requesting a *contested case hearing* due to the denial or revocation of a Certificate of Approval or a denial of approval to be an adoptive resource, including denials based on the criminal history, or false statement with regard to criminal history, of an applicant or *other person in the household*.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

### **413-120-0475**

#### **Record Keeping, Confidentiality**

- (1) All LEDS reports are confidential, and the *authorized designee* must maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).
  - (a) LEDS and FBI reports are confidential and may only be received or viewed by an *authorized designee*.
  - (b) LEDS and FBI and any photocopies may be shared with another *authorized designee* only if there is a need to know consistent with these rules.
- (2) The results of a national *criminal records check* provided by the FBI or the OSP are confidential and may not be disseminated by the Department, except in the following circumstances:
  - (a) If a fingerprint-based *criminal records check* was conducted on the *subject individual*, the *subject individual* is provided a copy of the results if requested.
  - (b) The state and national criminal offender information may be provided as exhibits during a *contested case hearing*.
- (3) All completed background check requests, other criminal records information, and other records collected or developed during the background check or contested case process must be kept confidential and disseminated only on a need-to-know basis.
- (4) The Department must retain and destroy all *criminal records check* documents pursuant to federal law and records retention schedules published by Oregon State Archives.
- (5) Documents may be requested and reviewed by the Oregon State Police for the purposes of determining and ensuring compliance with these rules (OAR 413-120-0400

to 413-120-0475).

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

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### **Policy History**

- 12/29/95
- 03/22/99
- 01/14/00 thru 07/12/00
- 07/13/00
- 07/01/01
- [09/13/02 thru 03/12/03](#)
- [03/13/03](#)
- [01/28/05 thru 07/27/05](#)
- [07/28/05](#)
- [01/01/08 thru 05/14/08](#)
- [05/15/08](#)
- [10/01/08 thru 03/30/09](#)
- [02/02/09](#)
- [12/28/11 thru 06/25/12](#)