AGENDA

1. CALL TO ORDER/ROLL CALL/WELCOME

2. ACTION ITEM
   a. Approval of Permanent Administrative Rule (580-023-0005 through 0065) Criminal Background Checks (Rawlins) ................................................................. 1

3. ADJOURNMENT

Note: All docket materials are available on the OUS website at: http://www.ous.edu/board/meetingmaterials.htm. Please contact the Board’s office at (541) 346-5749 if you have any questions regarding these materials. This agenda may be amended at any time prior to 24 hours before the Board meeting. Estimated starting times for the agenda items are indicated; however, discussions may commence, or action may be taken, before or after the suggested times. Any item on the agenda may be considered at any time out of order at the discretion of the President of the Board. During the meeting, the Board may convene in Executive Session to receive legal advice regarding any item on the agenda or for any reasons permitted under Oregon law.
Approval of Oregon Administrative Rule (580-023-0005 through 0065) Criminal Background Checks

Staff Report:
House Bill 2157 (Oregon Laws 2005) permitted the State Board of Higher Education to adopt rules to conduct criminal background checks. The proposed temporary rules were approved by the Board and have been effective since June 2, 2006. The temporary rules expire November 30, 2006. A public hearing was held November 15, 2006, and the period for public comment ends November 22, 2006, at 5:00 p.m. No one appeared at the hearing. The proposed permanent rules have been circulated for comment to all institutional directors of human resources. Additional public comment has been received from the SEIU.

The permanent rules are the same as the temporary rules and authorize each OUS institution to establish policies to conduct criminal background checks on an employee, contractor, vendor, or volunteer who will be working or providing services in a capacity that is designated as “critical” or “security sensitive.”

Staff Recommendation to the Board:
Staff recommends the Board approve the permanent establishment of these rules.

(Board action required: roll call vote.)
OREGON UNIVERSITY SYSTEM
DIVISION 23
CRIMINAL BACKGROUND CHECKS

580-023-0005
Purpose
The Oregon University System is committed to protecting the security, safety, and health of faculty, staff, students, and others, as well as safeguarding the assets and resources of OUS and each of its universities. To meet these objectives, the Board delegates to the Chancellor and president of each university electing to conduct criminal records checks responsibility for developing institutional policies governing the conduct of criminal records checks. Institutional policies must be consistent with this rule and applicable Oregon state laws and federal law.
Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0010
Definitions
(1) “Criminal records check” means the process used by the Chancellor’s Office and OUS institutions to conduct criminal records background checks on candidates to verify that candidate does not have any undisclosed criminal convictions or pending criminal charges and accurately states the disposition of criminal charges. A conviction includes a plea of no contest, plea of guilty, or any court determination of guilt. Criminal offender information will be obtained using computerized and/or fingerprint-based processes. Statewide criminal records checks will be performed by the Oregon State Police (OSP) using the Oregon Law Enforcement Data System. A nationwide criminal records check and/or a state-specific criminal records check may be obtained from the OSP through the Federal Bureau of Investigation (FBI).
(2) “Critical” or “Security-Sensitive Position” means and is limited to positions or contracts for services in which a 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.  

(3) “Fingerprint-based criminal record check” means a criminal records check using subject individual’s fingerprints. Fingerprint-based criminal record checks and criminal records checks may only be requested from the OSP for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the Chancellor’s Office or OUS institutions may request that the OSP conduct the check, including fingerprint identification, through the FBI.  
(4) “OUS institution” means an institution of higher education in the state of Oregon under the authority of the Oregon State Board of Higher Education.  
(5) “Subject individual” means a person from whom the Chancellor’s Office or OUS institutions may require criminal records checks as a condition to provide services as a contractor, vendor, employee, or volunteer. Subject individual includes persons currently serving as a contractor, vendor, employee, or volunteer who seek appointment as an employee, volunteer, or engagement as a contractor or vendor to a position that is designated as a critical or security-sensitive position.

Stat. Auth.: ORS 181.534, ORS 352.012  
Stats. Implemented: ORS 181.534, ORS 352.012  

Hist:

580-023-0015
Criminal Records Check Policy
(1) The Chancellor’s Office and OUS institutions are authorized to conduct criminal records checks only on subject individuals who seek to provide services as an employee, contractor, vendor, or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.  
(2) Criminal records checks may not be performed on employees who are involuntarily transferred to a new position, unless the position is designated as a critical or security-sensitive position and requires a determination of fitness based on criminal records check.  
(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimal qualification of the position.

Stat. Auth.: ORS 181.534, ORS 352.012  
Stats. Implemented: ORS 181.534, ORS 352.012  

Hist:

580-023-0020
Obtaining Criminal Offender Information
Any criminal records check policy instituted by the Chancellor’s Office or OUS institution must be in consultation with the OSP and must be implemented through institution specific policies that include but need not be limited to:
(1) Specifying categories of subject individuals who are subject to criminal records checks.
(2) Specifying the information that may be required from a subject individual to permit a criminal record check.
(3) Specifying which programs or services are subject to the checks.
(4) Specifying the types of crimes that may be considered in reviewing criminal offender information of the subject individual.
(5) Specifying when a nationwide fingerprint-based criminal records check must be conducted. If a nationwide fingerprint-based criminal records check is to be required, the Chancellor’s Office or OUS institution must take into consideration the additional cost associated with the check.
(6) Establish fees, if any, in an amount not to exceed the actual cost of acquiring and furnishing criminal records. An established fee may be waived by an appropriately designated official of the employer.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0025
Criminal Records Check Notice to Applicants
Application forms and solicitations for contract and vendor services must give notice to any prospective employee, contractor, vendor, or volunteer if the position requires a fingerprint-based criminal record check or criminal records check.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0030
Confidentiality of Criminal Records Checks
Any information obtained in the criminal records check is confidential. The Chancellor’s Office and OUS institutions in adopting policies must restrict dissemination of information obtained in the criminal records check. Only those persons, as identified by the Chancellor’s Office or OUS institutions, with a demonstrated and legitimate need to know the information may have access to criminal records check records.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0035
Subject Individual’s Access to Criminal Offender Records
The Chancellor’s Office and OUS institutions must permit a subject individual for whom a criminal records check was conducted to inspect the individual’s own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual’s own state and national criminal offender records.

Stat. Auth.: ORS 181.534, ORS 352.012
Pre-employment Status
The Chancellor's Office and OUS institutions must establish policies that specify when and under what conditions a subject individual will be hired, promoted, transferred, participate in training or orientation or engage in activities required of a critical or security-sensitive position or contract pending results of a criminal records check. These policies shall be clearly communicated as part of the Criminal Records Check Notice to Applicants pursuant to OAR 580-023-0025.

False Statements or Refusal to Consent to Criminal Records Check
(1) The Chancellor's Office and OUS institutions must determine whether a subject individual is fit to hold a position, provide services, or be employed if the criminal records check evidences that the applicant made a false statement regarding the background information provided.
(2) If a subject individual refuses to consent to a criminal records check or refuses to be fingerprinted, the Chancellor's Office or OUS institution 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.

Fitness to Hold Position Based on Criminal Records Check
The Chancellor's Office and OUS institutions must use these rules and resulting policies to determine whether the subject individual is fit to hold a position, provide a service, or be employed based upon the criminal records check obtained, or on any false statement made regarding criminal history. In making the fitness determination, the Chancellor's Office or OUS institution must consider:
(1) The nature of the crime;
(2) The facts that support the conviction or pending indictment or that indicate the making of the false statement;
(3) 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
(4) 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.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0055
Contested Case Process for Criminal Records Check
The Chancellor’s Office and OUS institutions must establish a contested case process pursuant to ORS Chapter 183 by which a subject individual may appeal the determination that the individual is not fit to hold a position, provide services, or be employed on the basis of information obtained as a result of a criminal records check. Challenges to the accuracy or completeness of information provided by the OSP, the FBI, and agencies reporting information to the OSP or FBI must be made through the OSP, FBI, or reporting agency and not through the contested case process. Subject individuals may provide information that is contrary to that contained in the records received.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0060
Notice of Adverse Fitness Determination Based on Criminal Records Check
The Chancellor’s Office or OUS institutions shall inform the subject individual who has been determined not to be fit, via certified mail, of such disqualification. The notice will indicate that the subject individual:
(1) Has a right to inspect and challenge their Oregon criminal offender information in accordance with the OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035.
(2) May challenge the accuracy or completeness of any entry on the subject individual’s criminal records obtained from the FBI by filing a challenge with the FBI in accordance with Title 28 Code of Federal Regulations Part 16.34 (28 CFR 16.34) or the then current regulation; and
(3) May appeal the determination of fitness through the process described in this rule.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist:

580-023-0065
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 contested case hearing.
(1) The subject individual must notify the Chancellor’s Office or OUS institution in writing of his/her intent to challenge the fitness determination and to request a contested case hearing not later than 14 calendar days from the date of the denial notice. The Chancellor’s Office or OUS institution may extend the time to appeal if the Chancellor’s Office or OUS institution determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) The Chancellor’s Office and OUS institution has no jurisdiction over allegations that the criminal offender information received from OSP, the FBI, or other entities is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) The Chancellor’s Office and OUS institution is entitled to rely on the criminal offender information supplied by OSP, the FBI, or other entities until the Chancellor’s Office or OUS institution is notified that the information has been changed or corrected.

(4) Any contested case hearing under this rule is not open to the public.

(5) The issues at a contested case hearing shall be limited to whether the Chancellor’s Office or OUS institution considered the relationship of the facts that support the conviction and all intervening circumstances to the position at issue in determining the fitness of the subject individual to hold the position, provide a service or be employed.

(6) The Chancellor or 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 Chancellor or president or his/her designee.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist: