

1 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
2 **INSURANCE DIVISION**

3
4 **DIVISION 72**

5
6 **LICENSING GENERALLY**

7
8 **Criminal Records Check**
9

10
11 **836-072-0001**

12 **Applicability of and authority for OAR 836-072-0001 to 836-072-0045**

13 (1) OAR 836-072-0001 to 836-072-0045 are adopted to carry out the authority of the
14 Department of Consumer and Business Services under ORS 181.534 to request an Oregon
15 LEADS-based criminal history check, a fingerprint-based Oregon criminal history check or a
16 nationwide criminal history check and, pursuant to ORS 705.141, to require fingerprints of an
17 applicant for any of the following licenses:

- 18 (a) Adjuster license.
19 (b) Insurance consultant license.
20 (c) Insurance producer license.
21 (d) Viatical settlement provider license.
22 (e) Viatical settlement broker license.

23 (2) OAR 836-072-0001 to 836-072-0045 apply to an application for a licenses set forth in
24 section (1) of this rule submitted on and after September 1, 2009.

25 (3) The fact that the Department approves an applicant as fit to be a licensee under OAR
26 836-072-0001 to 836-072-0045 does not guarantee that the Department will issue or amend the
27 license of the applicant.
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29 Stat. Auth.: ORS 181.534, 705.135, and 731.244

30 Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326
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32 **836-072-0005**

33 **Definitions**

34 (1) “Applicant” means an applicant applying for any of the following:

- 35 (a) An initial resident license.
36 (b) A renewal of a resident license.
37 (c) An additional line of authority under an existing resident license when a criminal
38 history record check has not been obtained.

39 (d) A resident license under a change of resident license application pursuant to ORS
40 744.067.

41 (2) “Authorized designee” means a Department employee authorized to obtain and
42 review criminal offender information and other criminal records information about an applicant
43 through criminal records checks and other means, and to conduct a fitness determination in
44 accordance with OAR 836-072-0015.

45 (3) “Criminal records check” means a fingerprint-based Oregon criminal history check or
46 a nationwide criminal history check..

1 (4) "LEDS" means the Law Enforcement Data System.

2
3 Stat. Auth.: ORS 181.534, 705.135, and 731.244

4 Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326

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6
7 **836-072-0010**

8 **Criminal records check process**

9 (1) An authorized designee:

10 (a) Shall conduct a LEDS-based criminal history check and request that the Oregon
11 Department of State Police conduct a criminal records check for all applicants for an initial
12 license; and

13 (b) May conduct a LEDS-based criminal history check, or request that the Oregon
14 Department of State Police conduct, a criminal records check of an applicant for renewal of a
15 license to whom OAR 836-072-0001 to 836-072-0045 apply.

16 (2) Prior to a LEDS-based criminal history check or a criminal records check, an
17 applicant to whom OAR 836-072-0001 to 836-072-0045 apply shall complete and sign the
18 DCBS Criminal Records Request form and, if requested by the Department, a fingerprint card.
19 The applicant shall submit the form, and the card if requested, within three business days of
20 receiving them. The Department may extend the deadline for good cause.

21 (3) An applicant to whom OAR 836-072-0001 to 836-072-0045 apply must provide
22 identifying information requested by the DCBS Criminal Records Request form and fingerprint
23 card, which includes but is not limited to name, birth date, Social Security number, physical
24 characteristics, marital status, driver's license or identification card number and current address,
25 and information about prior residences as requested in the DCBS Criminal Records Request
26 form. The applicant shall submit the information and obtain the fingerprints in accordance with
27 directions provided by the Department. An applicant, with the written consent of the authorized
28 designee, may submit the materials necessary for the authorized designee to conduct a LEDS-
29 based criminal history check or a criminal records check up to six months before the applicant
30 intends to submit an application for a new license or for renewal of an existing license.

31 (4) If the Department and a vendor agree by contract that the vendor will perform duties
32 of obtaining fingerprints of applicants and submitting the fingerprints for Oregon or nationwide
33 criminal history checks, an applicant shall submit the fingerprint card according to the
34 requirements and instructions of the vendor.

35 (5) Within a reasonable period of time established by an authorized designee, an
36 applicant shall disclose additional information as requested by the Department to resolve an issue
37 hindering the completion of either a LEDS-based criminal history check or a criminal records
38 check, such as providing additional proof of identity.

39 (6) When an authorized designee determines under section (1) of this rule that a criminal
40 records check is needed:

41 (a) The authorized designee shall conduct a LEDS -based criminal records check as part
42 of any fitness determination conducted in regard to an applicant.

43 (b) The authorized designee may request that the Oregon Department of State Police
44 conduct an Oregon criminal history check when:

1 (A) The authorized designee determines that an Oregon criminal history check is
2 warranted after review of the information provided by the applicant, the results of a LEADS-based
3 criminal history check or other criminal records information;

4 (B) The authorized designee requests a nationwide criminal history check; or

5 (C) Upon application for renewal, the Director has reason to believe an additional check
6 is necessary based on information obtained by the Insurance Division.

7 (7) An authorized designee may request that the Oregon Department of State Police
8 conduct a nationwide criminal history check when:

9 (a) An applicant for license issuance has lived outside Oregon continuously for nine
10 years;

11 (b) An applicant for resident license renewal has lived outside Oregon for 60 or more
12 consecutive days during the previous three years;

13 (c) For a renewal application, the Director has reason to believe an additional check is
14 necessary based on information obtained by the Insurance Division;

15 (d) Information provided by the applicant or the results of a LEADS-based criminal history
16 check or Oregon criminal history check gives reason to believe, as determined by an authorized
17 designee, that the applicant has a criminal history outside of Oregon;

18 (e) As determined by an authorized designee, there is reason to question the identity of,
19 or information provided by, an applicant, including but not limited to failure to disclose a Social
20 Security Number, disclosure of a Social Security Number that appears to be invalid or lack of an
21 Oregon driver's license or identification card; or

22 (f) A check is required by federal law or regulation, by state law or administrative rule, or
23 by contract or written agreement with the Department.

24 Stat. Auth.: ORS 181.534, 705.135, and 731.244

25 Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326

26
27 **836-072-0015**

28 **Fitness determination**

29 (1) An authorized designee shall make a fitness determination about an applicant based
30 on information provided by the applicant under OAR 836-072-0010, any LEADS-based criminal
31 history check or other criminal history check conducted and any false statements made by the
32 applicant.

33 (2) When making a fitness determination about an applicant, an authorized designee shall
34 also consider the factors in this section in relation to information provided by the applicant under
35 OAR 836-072-0010, any LEADS-based criminal history report or criminal offender information
36 obtained through a criminal records check and any false statement made by the applicant. To
37 assist in considering these factors, the authorized designee may obtain other criminal records
38 information from the applicant or any other source, including law enforcement agencies or courts
39 within or outside of Oregon. To acquire other criminal offender information from the applicant,
40 an authorized designee may request a meeting with the applicant and may request from the
41 applicant written materials or authorization to obtain criminal offender information. The
42 applicant must meet with the authorized designee if requested and provide additional information
43 or authorization within a reasonable period of time, as established by the authorized designee.
44 The authorized designee shall use all collected information in considering the following factors:

45 (a) Whether the applicant has been convicted of, found guilty except for insanity (or a
46 comparable disposition) of, or has a pending indictment for a crime listed in OAR 836-072-0020;

1 (b) The nature of any crime identified under subsection (a) of this section;
2 (c) The facts that support the conviction, finding of guilty except for insanity or pending
3 indictment;
4 (d) The facts that indicate the applicant made a false statement;
5 (e) The relevance, if any, of a crime identified under subsection (a) of this section or of a
6 false statement made by the applicant to the specific requirements of the applicant's present or
7 proposed employment; and
8 (f) The following intervening circumstances, to the extent that they are relevant to the
9 responsibilities and circumstances of the license application or renewal for which the fitness
10 determination is being made:
11 (A) The passage of time since the commission or alleged commission of a crime
12 identified under subsection (a) of this section;
13 (B) The age of the applicant at the time of the commission or alleged commission of a
14 crime identified under subsection (a) of this section;
15 (C) The likelihood of a repetition of offenses or of the commission of another crime;
16 (D) The subsequent commission of another crime listed in OAR 836-072-0020;
17 (E) Whether a conviction identified under subsection (a) of this section has been set aside
18 or pardoned, and the legal effect of setting aside the conviction or of a pardon;
19 (F) A recommendation of an employer;
20 (G) The disposition of a pending indictment identified under subsection (a) of this
21 section;
22 (H) Whether the applicant has been arrested for or charged with a crime listed under
23 OAR 836-072-0020 within the last five years;
24 (I) Whether the applicant is being investigated, or has an outstanding warrant, for a crime
25 listed under OAR 836-072-0020;
26 (J) Whether the applicant is currently on probation, parole or another form of post-prison
27 supervision for a crime listed under OAR 836-072-0020;
28 (K) Whether the applicant has a deferred sentence or conditional discharge or is
29 participating in a diversion program in connection with a crime listed under OAR 836-072-0020;
30 (L) Whether the applicant has been adjudicated in a juvenile court and found to be within
31 the court's jurisdiction for an offense that would have constituted a crime listed in OAR 836-
32 072-0020 if committed by an adult, unless that adjudication has been reversed or set aside by a
33 subsequent court decision;
34 (M) Periods of incarceration of the applicant;
35 (N) Whether the applicant has a history of drug or alcohol abuse that relates to the
36 applicant's criminal activity, and the applicant's history of treatment or rehabilitation for such
37 abuse; and
38 (O) The education and work history (paid or volunteer) of the applicant since the
39 commission or alleged commission of a crime.
40 (3) The following are possible outcomes of a final fitness determination:
41 (a) An authorized designee shall approve an applicant if the authorized designee
42 determines pursuant to sections (1) and (2) of this rule that:
43 (A) No credible evidence that the applicant has been convicted of, or found guilty except
44 for insanity (or comparable disposition) of a crime listed as a permanent review crime in OAR
45 836-072-0020;

1 (B) No credible evidence that the applicant had been convicted of, or found guilty except
2 for insanity (or comparable disposition) of a crime listed as a ten-year review crime in OAR 836-
3 072-0020 within ten years of the date that the applicant signed the DCBS Criminal Records
4 Request form;

5 (C) No credible evidence that the applicant had been convicted of, or found guilty except
6 for insanity (or comparable disposition) of a crime listed as a five-year review crime in OAR
7 836-072-0020(3) within five years of the date that the applicant signed the DCBS Criminal
8 Records Request form;

9 (D) No credible evidence that the applicant has a pending indictment for a crime listed in
10 OAR 836-072-0020;

11 (E) No credible evidence of the applicant having made a false statement; and

12 (F) No discrepancies exist between the criminal offender information, other criminal
13 records information and information obtained from the applicant.

14 (b) An authorized designee shall deny issuance or renewal of a license to an applicant:

15 (A) If a fitness determination under this rule shows credible evidence of any of the
16 factors identified in subsection (a) of this section and, after evaluating the information described
17 in sections (1) and (2) of this rule, an authorized designee concludes that the applicant acting in
18 the scope of the license for which the fitness determination is being conducted would pose a risk
19 of harm to the insurance-buying public.

20 (B) If the applicant refuses to submit or consent to a criminal records check including
21 fingerprint identification.

22
23 Stat. Auth.: ORS 181.534, 705.135, and 731.244

24 Stats. Implemented: ORS 181.534, 744.001, 744.059, and 744.326

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26 **836-072-0020 Crimes Relevant to a Fitness Determination**

27 The following crimes are relevant to a fitness determination under OAR 836-072-0001 to
28 836-072-0045, to the extent not inconsistent with ORS 670.280:

29 (1) Permanent review crimes.

30 ORS 162.015, Bribe giving;

31 ORS 162.025, Bribe receiving;

32 ORS 162.065, Perjury;

33 ORS 162.117, Public investment fraud;

34 ORS 162.235, Obstructing governmental or judicial administration;

35 ORS 162.265, Bribing a witness;

36 ORS 162.275, Bribe receiving by a witness;

37 ORS 162.285, Tampering with a witness;

38 ORS 162.305, Tampering with public records;

39 ORS 162.325, Hindering prosecution;

40 ORS 162.355, Simulating legal process;

41 ORS 162.365, Criminal impersonation;

42 ORS 162.367, Criminal impersonation of peace officer;

43 ORS 162.405, Official misconduct II;

44 ORS 162.415, Official misconduct I;

45 ORS 162.425, Misuse of confidential information;

46 ORS 163.005, Criminal homicide;

1 ORS 163.095, Aggravated murder;
2 ORS 163.115, Murder;
3 ORS 163.118, Manslaughter I;
4 ORS 163.125, Manslaughter II;
5 ORS 163.145, Criminally negligent homicide;
6 ORS 163.160, Assault IV;
7 ORS 163.165, Assault III;
8 ORS 163.175, Assault II;
9 ORS 163.185, Assault I;
10 ORS 163.187, Strangulation;
11 ORS 163.200, Criminal mistreatment II;
12 ORS 163.205, Criminal mistreatment I;
13 ORS 163.207, Female genital mutilation;
14 ORS 163.208, Assault of Public Safety Officer;
15 ORS 163.225, Kidnapping II;
16 ORS 163.235, Kidnapping I;
17 ORS 163.257, Custodial interference I;
18 ORS 163.275, Coercion;
19 ORS 163.355, Rape III;
20 ORS 163.365, Rape II;
21 ORS 163.375, Rape I;
22 ORS 163.385, Sodomy III;
23 ORS 163.395, Sodomy II;
24 ORS 163.405, Sodomy I;
25 ORS 163.408, Unlawful Sexual penetration II;
26 ORS 163.411, Unlawful Sexual penetration I;
27 ORS 163.425, Sexual abuse II;
28 ORS 163.427, Sexual abuse I;
29 ORS 163.452, Custodial sexual misconduct I;
30 ORS 163.454, Custodial sexual misconduct II;
31 ORS 163.465, Public indecency;
32 ORS 163.479, Unlawful contact with child;
33 ORS 163.515, Bigamy;
34 ORS 163.525, Incest;
35 ORS 163.535, Abandonment of a child;
36 ORS 163.537, Buying or selling a person under 18 years of age;
37 ORS 163.547, Child neglect I;
38 ORS 163.670, Using child in display of sexually explicit conduct;
39 ORS 163.684, Encouraging child sexual abuse I;
40 ORS 163.686, Encouraging child sexual abuse II;
41 ORS 163.687, Encouraging child sexual abuse III;
42 ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
43 ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
44 ORS 163.732, Stalking;
45 ORS 164.055, Theft I;
46 ORS 164.057, Aggravated theft I;

1 ORS 164.075, Theft by extortion;
2 ORS 164.085, Theft by deception;
3 ORS 164.095, Theft by receiving, if a felony;
4 ORS 164.125, Theft of services;
5 ORS 164.135, Unauthorized use of a vehicle;
6 ORS 164.140, Criminal possession of rented or leased personal property, if a felony;
7 ORS 164.162, Mail theft or receipt of stolen mail;
8 ORS 164.170, Laundering a monetary instrument;
9 ORS 164.172, Engaging in a financial transaction in property derived from unlawful
10 activity;
11 ORS 164.215, Burglary II;
12 ORS 164.225, Burglary I;
13 ORS 164.325, Arson I;
14 ORS 164.377, Computer crime;
15 ORS 164.395, Robbery III;
16 ORS 164.405, Robbery II;
17 ORS 164.415, Robbery I;
18 ORS 165.007, Forgery II;
19 ORS 165.013, Forgery I;
20 ORS 165.017, Criminal possession of a forged instrument II;
21 ORS 165.022, Criminal possession of a forged instrument I;
22 ORS 165.032, Criminal possession of a forgery device;
23 ORS 165.042, Fraudulently obtaining a signature;
24 ORS 165.055, Fraudulent use of a credit card;
25 ORS 165.065, Negotiating a bad check, if a felony;
26 ORS 165.070, Possessing fraudulent communications device;
27 ORS 165.074, Unlawful factoring of payment card transaction;
28 ORS 165.080, Falsifying business records;
29 ORS 165.085, Sports bribery;
30 ORS 165.090, Sports bribe receiving;
31 ORS 165.095, Misapplication of entrusted property;
32 ORS 165.100, Issuing a false financial statement;
33 ORS 165.577, Cellular counterfeiting III;
34 ORS 165.579, Cellular counterfeiting II;
35 ORS 165.581, Cellular counterfeiting I;
36 ORS 165.692, Making false claim for health care payment, if a felony;
37 ORS 165.800, Identity theft;
38 ORS 165.810, Unlawful possession of a personal identification device;
39 ORS 165.813, Unlawful possession of fictitious identification;
40 ORS 166.155, Intimidation II;
41 ORS 166.165, Intimidation I;
42 ORS 166.270, Possession of weapons by certain felons;
43 ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and
44 firearm silencers;
45 ORS 166.350, Unlawful possession of armor piercing ammunition;

1 ORS 166.370, Possession of firearm or dangerous weapon in public building or court
2 facility; exceptions; discharging firearm at school;
3 ORS 166.410, Manufacturing, importation or sale of firearms;
4 ORS 166.429, Firearms used in felony;
5 ORS 166.720, Racketeering activity unlawful;
6 ORS 167.167, Cheating
7 ORS 167.212, Tampering with drug records;
8 ORS 181.599, Failure to report as sex offender;
9 ORS 192.852/865, Prohibition on obtaining or disclosing of protected information;
10 ORS 475.840, Prohibited acts generally (regarding drug crimes);
11 ORS 475.904, Unlawful manufacture or delivery of controlled substance within 1000 feet
12 of school;
13 ORS 475.906, Penalties for distribution to minors;
14 ORS 475.908, Causing another person to ingest a controlled substance;
15 ORS 475.910, Application of controlled substance to the body of another person;
16 ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy;
17 regarding felony crimes);
18 ORS 475.916, Prohibited acts involving records and fraud;
19 ORS 475.918, Falsifying drug test results;
20 ORS 475.920, Providing drug test falsification equipment;
21 ORS 475.967, Possession of precursor substance with intent to manufacture controlled
22 substance;
23 Any felony under the Oregon Labor Code (ORS Chapters 651-663), the Oregon Vehicle
24 Code (ORS Chapter 801-826), or the Occupations and Professions Code (ORS Chapters 670-
25 704);
26 Any federal crime, US Military crime, or international crime;
27 Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this
28 rule;
29 Any other felony under the statutes of Oregon or any other jurisdiction not listed
30 elsewhere in this rule that the authorized designee determines is relevant to performance of the
31 applicant within the scope of the license for which issuance or renewal has been applied, subject
32 to ORS 670.280;
33 Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section
34 pursuant to ORS 161.405, 161.435, or 161.450;
35 Any crime based on criminal liability for conduct of another pursuant to ORS 161.155,
36 when the underlying crime is listed in this section;
37 Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon
38 crimes listed in this section as determined by the authorized designee;
39 (2) Ten-year review crimes:
40 ORS 133.076, Failure to appear on criminal citation;
41 ORS 162.075, False swearing;
42 ORS 162.085, Unsworn falsification;
43 ORS 162.145, Escape III;
44 ORS 162.175, Unauthorized departure;
45 ORS 162.185, Supplying contraband;
46 ORS 162.195, Failure to appear II;

1 ORS 162.205, Failure to appear I;
2 ORS 162.247, Interfering with a peace officer or parole & probation officer;
3 ORS 162.295, Tampering with physical evidence;
4 ORS 162.369, Possession of false law enforcement identification card;
5 ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
6 ORS 163.245, Custodial interference II;
7 ORS 163.415, Sexual abuse III;
8 ORS 163.435, Contributing to the sexual delinquency of a minor;
9 ORS 163.445, Sexual misconduct;
10 ORS 163.467, Private indecency;
11 ORS 163.476, Unlawfully being in a location where children congregate;
12 ORS 163.545, Child neglect II;
13 ORS 163.555, Criminal nonsupport;
14 ORS 163.575, Endangering the welfare of a minor;
15 ORS 163.693, Failure to report child pornography;
16 ORS 163.700, Invasion of personal privacy;
17 ORS 163.750, Violating court's stalking protective order;
18 ORS 164.043, Theft III;
19 ORS 164.045, Theft II;
20 ORS 164.095, Theft by receiving, if a misdemeanor;
21 ORS 164.140, Criminal possession of rented or leased personal property, if a
22 misdemeanor;
23 ORS 164.235, Possession of burglar's tools or theft device;
24 ORS 164.255, Criminal trespass I;
25 ORS 164.265, Criminal trespass while in possession of firearm;
26 ORS 164.272, Unlawful entry into motor vehicle;
27 ORS 164.315, Arson II;
28 ORS 164.335, Reckless burning;
29 ORS 164.354, Criminal Mischief II;
30 ORS 164.365, Criminal Mischief I;
31 ORS 165.037, Criminal simulation;
32 ORS 165.065, Negotiating a bad check, if a misdemeanor;
33 ORS 165.102, Obtaining execution of documents by deception;
34 ORS 165.540, Obtaining contents of communication;
35 ORS 165.543, Interception of communications;
36 ORS 165.570, Improper use of emergency reporting system;
37 ORS 165.572, Interference with making a report;
38 ORS 165.577, Cellular counterfeiting III;
39 ORS 165.579, Cellular counterfeiting II;
40 ORS 165.692, Making false claim for health care payment, if a misdemeanor;
41 ORS 166.065, Harassment;
42 ORS 166.076, Abuse of a memorial to the dead;
43 ORS 166.190, Pointing firearm at another;
44 ORS 166.220, Unlawful use of weapon;
45 ORS 166.240, Carrying of concealed weapon;
46 ORS 166.250, Unlawful possession of firearms;

1 ORS 166.382, Possession of destructive device prohibited;
2 ORS 166.416, Providing false information in connection with a transfer of a firearm;
3 ORS 167.065, Furnishing obscene materials to minors;
4 ORS 167.070, Sending obscene materials to minors;
5 ORS 167.075, Exhibiting an obscene performance to a minor;
6 ORS 167.080, Displaying obscene materials to minors;
7 ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
8 ORS 167.222, Frequenting a place where controlled substances are used;
9 ORS 167.322, Aggravated animal abuse I;
10 ORS 411.630, Unlawfully obtaining public assistance;
11 ORS 411.640, Unlawfully receiving public assistance;
12 ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
13 ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
14 Any Class A misdemeanor under the Oregon Labor Code (ORS Chapters 651-663), the
15 Oregon Vehicle Code (ORS Chapter 801-826), or the Occupations and Professions Code (ORS
16 Chapters 670-704);
17 Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes
18 and not listed elsewhere in this rule;
19 Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not
20 listed elsewhere in this rule that the authorized designee determines is relevant to performance of
21 the applicant within the scope of the license for which application is made, subject to ORS
22 670.280;
23 Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section
24 pursuant to ORS 161.405, 161.435, or 161.450;
25 Any crime based on criminal liability for conduct of another pursuant to ORS 161.155,
26 when the underlying crime is listed in this section;
27 Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon
28 crimes listed in this section as determined by the authorized designee;
29 (3) Five-year review crimes.
30 ORS 162.365, Criminal impersonation;
31 ORS 162.375, Initiating a false report;
32 ORS 163.190, Menacing;
33 ORS 163.195, Recklessly endangering another person;
34 ORS 164.243, Criminal trespass II by a guest;
35 ORS 164.245, Criminal trespass II;
36 ORS 164.345, Criminal mischief III;
37 ORS 166.180, Negligently wounding another;
38 ORS 412.074, Unauthorized use and custody of records of temporary assistance for
39 needy families program;
40 ORS 412.099, Sharing assistance prohibited;
41 ORS 416.990, False or fraudulent statements/information;
42 ORS 830.053, Fraudulent report of theft of boat;
43 ORS 830.475(1), Failure to perform the duties of an operator (boat);
44 ORS 830.730, False information to peace officer or State Marine Board;
45 Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section
46 pursuant to ORS 161.405, 161.435 or 161.450;

1 Any crime based on criminal liability for conduct of another pursuant to ORS 161.155,
2 when the underlying crime is listed in this section;

3 Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon
4 crimes listed in this section as determined by the authorized designee.

5 (4) An authorized designee shall evaluate a crime on the basis of Oregon laws and, if
6 applicable, federal laws or the laws of any other jurisdiction in which a criminal records check
7 indicates an applicant may have committed a crime, as those laws are in effect at the time of the
8 fitness determination.

9 (5) An applicant may not be denied issuance or renewal of a license on the basis of the
10 existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and
11 419A.262.

12
13 Stat. Auth.: ORS 181.534, 705.135, and 731.244

14 Stats. Implemented: ORS 181.534(9), 705.141, 744.001, 744.059, and 744.326.

15 16 **836-0072-0025**

17 **Incomplete Fitness Determination.**

18 (1) The Department may close a final fitness determination as incomplete when:

19 (a) Circumstances change so that an applicant is no longer subject to OAR 836-072-0001
20 to 836-072-0045;

21 (b) The applicant does not provide materials or information under OAR 836-072-0020
22 within the time required under that rule;

23 (c) An authorized designee cannot locate or contact the applicant;

24 (d) The applicant fails or refuses to cooperate with an authorized designee's attempts to
25 acquire other criminal records information under OAR 836-072-0015; or

26 (e) The Department determines that the applicant is not eligible or not qualified for the
27 license for a reason unrelated to the fitness determination process.

28 (2) An applicant does not have a right to a contested case hearing under OAR 836-072-
29 0035 to challenge the closing of a fitness determination as incomplete.

30
31 Stat. Auth.: ORS 181.534, 705.135, and 731.244

32 Stats. Implemented: ORS 181.534(9), 705.141, 744.001, 744.09, and 744.326.

33 34 **836-072-0030**

35 **Notice to Applicant of Fitness Determination.**

36 (1) An authorized designee shall provide, in a format approved by the Department,
37 written notice to an applicant upon completion of a final fitness determination that denies
38 issuance or renewal of a license, or upon the closing of a fitness determination due to
39 incompleteness. In addition:

40 (a) The authorized designee shall record on the notice the date on which the fitness
41 determination was either closed as incomplete or completed.

42 (b) A notice pertaining to a completed final fitness determination must be accompanied
43 by a separate notice addressing the applicant's right to appeal the Department's determination
44 under OAR 836-072-0035 and containing the information required by OAR 137-003-0505.

45 (2) An authorized designee shall provide for hand delivery or first class mail delivery of
46 the notice under section (1) of this section as soon as possible after completion or closure of a

1 fitness determination, but in no case later than 14 calendar days after the date of completion or
2 closure, to the address provided by the applicant on the DCBS Criminal Records Request form,
3 or to an updated address as provided in writing by the applicant.

4
5 Stat. Auth.: ORS 181.534, 705.135, and 731.244

6 Stats. Implemented: ORS 181.534(9), 705.141, 744.001, 744.059, and 744.326.

7
8 **836-072-0035**

9 **Appealing a Fitness Determination**

10 (1) This rule establishes a contested case hearing process by which an applicant may
11 appeal a completed final fitness determination made under OAR 836-072-0015 that the applicant
12 is fit or not fit for a license described in OAR 836-072-0001 on the basis of information obtained
13 as the result of a LEDS-based criminal history check or criminal records check conducted by or
14 at the request of the Department pursuant to ORS 181.534.

15 (2) An applicant may appeal a fitness determination by submitting a written request for a
16 contested case hearing to the address specified in the notice provided under OAR 836-072-0030.
17 To be timely, a request for hearing must be received by the Department not later than the 10th
18 day after the date of the notice. The Department shall address a request received after the 10th
19 day as provided under OAR 137-003-0528.

20 (3) When a timely request is received by the Department under section (2) of this rule, a
21 contested case hearing shall be conducted by an administrative law judge assigned by the Office
22 of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules,
23 "Procedural Rules, Office of Administrative Hearings," OAR 137-003-0501 to 137-003-0700, as
24 supplemented by this rule.

25 (4) An applicant's timely hearing request under section (2) of this rule constitutes a
26 discovery request for any records that the applicant may inspect under OAR 836-072-0040(2)(e).
27 The Department or the administrative law judge may protect information made confidential by
28 ORS 181.534(15) or other applicable laws as provided in OAR 137-003-0570(7) or (8).

29 (5) A contested case hearing on a fitness determination under this rule is closed to non-
30 participants.

31 (6) After a hearing, the administrative law judge shall issue a proposed order.
32 Exceptions, if any, are due not later than the 14th day after service of the proposed order. The
33 proposed order must provide an address to which exceptions may be sent.

34 (7) A completed final fitness determination made under OAR 836-072-0015 constitutes a
35 final order without a hearing as provided under OAR 137-003-0672.

36 (8) An applicant may not use the appeals process established by this rule to challenge the
37 accuracy or completeness of information provided by the Oregon Department of State Police, the
38 Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of
39 State Police or the Federal Bureau of Investigation. To challenge the accuracy or completeness
40 of any such information, an applicant may use any process made available by the agency that
41 provided the information.

42 (9) If an applicant successfully challenges the accuracy or completeness of information
43 provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an
44 agency reporting information to the Oregon Department of State Police or the Federal Bureau of
45 Investigation, the applicant may request that the Department conduct a new criminal records

1 check and re-evaluate the original fitness determination made under OAR 836-072-0015 by
2 submitting a new DCBS Criminal Records Request form.

3 (10) An appeal of a fitness determination under this rule, a challenge of criminal offender
4 information with the agency that provided the information or a request for a new LEDS-based
5 criminal history check or criminal records check and re-evaluation of the original fitness
6 determination under section (9) of this rule does not delay or postpone a licensing decision by the
7 Department unless the authorized designee decides that a delay or postponement should occur.

8
9 Stat. Auth.: ORS 181.534, 705.135, and 731.244

10 Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326

11
12 **836-072-0040**

13 **Recordkeeping and Confidentiality**

14 (1) An authorized designee must document in writing a preliminary or final fitness
15 determination or the closing of a fitness determination due to incompleteness.

16 (2) All records that the Department receives from the Oregon Department of State Police
17 resulting from a criminal records check, including but not limited to LEDS reports and state or
18 federal criminal offender information originating with the Oregon Department of State Police or
19 the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal
20 laws and regulations.

21 (3) Within the Department, only authorized designees may have access to records the
22 Department receives from the Oregon Department of State Police resulting from a criminal
23 records check.

24 (4) An authorized designee has access to records received from the Oregon Department
25 of State Police in response to a criminal records check only if the authorized designee has a
26 demonstrated and legitimate need to know the information contained in the records.

27 (5) An authorized designee must maintain and disclose records received from the Oregon
28 Department of State Police resulting from a criminal records check in accordance with applicable
29 requirements and restrictions in ORS chapter 181 and other applicable federal and state laws,
30 rules adopted by the Oregon Department of State Police pursuant to ORS chapter 181 (see OAR
31 chapter 257, division 15), OAR 836-072-0001 to 836-072-0045, federal regulations and any
32 written agreement between the Department and the Oregon Department of State Police.

33 (6) If a fingerprint-based criminal records check was conducted with regard to an
34 applicant, the Department shall permit the applicant to inspect the applicant's own state and
35 federal criminal offender information, unless prohibited by federal law.

36 (7) If an applicant asks to inspect criminal offender information under section (6) of this
37 rule requests, the Department shall provide the applicant with a copy of the applicant's own state
38 and federal criminal offender information, unless prohibited by law. The Department shall
39 require sufficient identification from the applicant to determine the applicant's identity before
40 providing the criminal offender information to the applicant. The Department shall require that
41 the applicant sign a receipt confirming the applicant's receipt of the criminal offender
42 information, except that if the criminal offender information is provided through discovery under
43 OAR 836-072-0035, the Department must keep a record of the information provided to the
44 applicant.

45 (8) The Department shall treat all records received or created under OAR 836-072-0001
46 to 836-072-0045 that concern the criminal history of an applicant, other than records received

1 from the Oregon Department of State Police, including DCBS Criminal Records Request forms
2 and fingerprint cards, as confidential pursuant to ORS 181.534(15). Within the Department, only
3 authorized designees may have access to the records. An authorized designee may have access to
4 the records only if the authorized designee has a demonstrated and legitimate need to know the
5 information contained in the records.

6 (9) Except as otherwise provided by law, an applicant shall have access to the records
7 referred to in section (8) of this section pursuant to the terms of the Public Records Law, ORS
8 192.410 to 192.505.

9
10 Stat. Auth.: ORS 181.534, 705.135, and 731.244

11 Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326

12
13 **836-072-0045**

14 **Authorized Designees**

15 (1) Authorized designees shall be employees holding positions within the Department
16 that have been designated by the Director to include the responsibilities of an authorized
17 designee.

18 (2) Appointment to a position designated under section (1) of this rule is contingent upon
19 approval of the employee under the Department's nationwide criminal history check and fitness
20 determination processes and any process required by the Department of Oregon State Police or
21 Federal Bureau of Investigations rules, regulations or policies. An appointment under this section
22 is at the Director's discretion.

23 (3) The Director and Deputy Director may also serve as authorized designees, contingent
24 on being approved under the Department's nationwide criminal history check and fitness
25 determination processes and any process required by Department of Oregon State Police or
26 Federal Bureau of Investigation rules, regulations or policies.

27 (3) An authorized designee may not participate in a fitness determination or review any
28 information associated with a fitness determination for an applicant if either of the following is
29 true:

30 (a) The authorized designee is related to the applicant; or

31 (b) The authorized designee has a financial or close personal relationship with the
32 applicant. If an authorized designee is uncertain whether a relationship with an applicant
33 qualifies as a financial or close personal relationship under this subsection, the authorized
34 designee must consult with the authorized designee's supervisor before taking any action that
35 would violate this rule if such a relationship were determined to exist.

36 (4) When an authorized designee's employment in a designated position ends, the
37 authorized designee's status as an authorized designee is automatically terminated.

38 (5) The Department shall suspend or terminate a Department employee's appointment to
39 a designated position and suspend or terminate the employee's status as an authorized designee
40 if:

41 (a) The employee fails to comply with OAR 836-072-0001 to 836-072-0045 in
42 conducting criminal history checks and fitness determinations;

43 (b) The employee loses access to LEDS or criminal offender information received from
44 the Department of Oregon State Police or the Federal Bureau of Investigation; or

45 (c) The employee is prohibited by section (3) of this rule.

1 (6) An authorized designee must immediately report to the authorized designee's
2 supervisor if the authorized designee is arrested for or charged with, is being investigated for or
3 has an outstanding warrant or pending indictment for a crime listed in OAR 836-072-0020.
4 Failure to make the required report is grounds for termination of the applicant's appointment to a
5 designated position and termination of status as an authorized designee.

6 (7) The Department must review and update an authorized designee's eligibility for
7 service in a designated position and may require a new criminal history check and fitness
8 determination:

9 (a) Every three years; or

10 (b) At any time the Department has reason to believe that the authorized designee has
11 violated OAR 836-072-0001 to 836-072-0045, has committed a crime listed in OAR 836-072-
12 0020, or is or may no longer be eligible to serve in the current position or as an authorized
13 designee.

14 Stat. Auth.: ORS 181.534, 705.135, and 731.244

15 Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326

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