



Title	Criminal Records	Former Title(s)	N/A
Policy #	4.4	Former Policy #	HR-195
Section	4. Employment		
Revision Date	<u>December 13, 2023</u> July 30, 2021 June 26, 2019 March 23, 2016 December 9, 2015	Policy Owner	Legal Services

Purpose

The purpose of this policy is to identify those categories of applicants or employees who may be subject to criminal background checks, the types of offenses that may disqualify an applicant or employee from employment or a promotion, and to set out the appeal procedure.

Scope

This policy applies to (1) all bus and LIFT operators, (2) any other position for which the applicant or employee would have access to critical infrastructure or security sensitive facilities or information, and (3) any other position TriMet has determined is subject to a criminal background check based on business necessity, unless otherwise modified by the terms of the Working and Wage Agreement. The employment terms set out in this policy work in conjunction with, and do not replace, amend or supplement any terms or conditions of employment stated in any collective bargaining agreement. This policy is administered by the Labor Relations & Human Resources Division (LRHR).

Policy

TriMet will conduct Oregon State Police (OSP) and Federal Bureau of Investigation (FBI) criminal records checks on all: (1) applicants for employment with TriMet or current TriMet employees seeking to operate motor vehicles of the District or operate motor vehicles for the transportation of passengers in the public transportation system of the District; and (2) applicants for employment with TriMet whose position requires access to critical infrastructure or security sensitive facilities or information. [ORS 267.237](#). In addition, (3) TriMet will conduct lower level (non-OSP and non-FBI) criminal records checks on all applicants whose position TriMet has determined requires access to sensitive financial or confidential business information. Checks under (1) and (2) are based on TriMet’s statutory authority; Checks under (3) are based on business necessity.

The category of applicants whose position meets TriMet’s determination of business necessity includes those positions that have access to sensitive financial or confidential business information. The list of jobs that fall within this category is maintained by each respective Executive Director.

TriMet will also conduct Fair Credit Reporting Act (FCRA) checks, which may include criminal background information, on all applicants for employment with TriMet or current TriMet employees seeking a position where obtaining the person’s credit history information is substantially job related and the position’s essential function requires access to sensitive financial information.

For the criminal background checks, TriMet will make an individualized assessment of criminal conviction history that considers the nature of the crime, the facts that support the conviction or pending indictment or that indicate a false statement regarding the individual’s criminal history, the

relevancy of the crime or false statement to the position requirements, and any intervening relevant circumstances, discussed further below. On a post-conditional offer, pre-employment basis, TriMet will obtain these checks and conduct an individualized assessment after informing the applicant that the applicant's past criminal conduct may exclude the applicant from the position. If the applicant's past criminal conduct excludes him/her from the position, he/she has the right to appeal this determination, discussed further below.

ORS 267.237 requires criminal records checks and fingerprinting of certain individuals who operate motor vehicles for the public and who are employed by mass transit districts, transportation districts, or a transportation contractor provide transit service under a contract. For individuals who will operate motor vehicles, screening applies to current employees, prospective employees (job applicants), and individuals under contract who transport the general public, including children, the elderly, individuals with disabilities, and clients eligible for Accessible Transportation Programs (ATP).

ORS 267.237 also allows TriMet to conduct criminal records checks and fingerprinting of individuals who may have access to critical infrastructure or security sensitive facilities or information. For individuals who have or will have access to critical infrastructure or security sensitive facilities or information, screening applies only as follows: (1) for represented positions, only to prospective employees (job applicants); or (2) for non-represented positions, to both prospective employees (job applicants) and employees applying for a promotion or lateral move to the non-represented position. Criminal background checks are in addition to other criteria, such as safe driving records.

This policy implements TriMet Board Resolutions 99-09-58, approved on September 22, 1999, ~~and~~ TriMet Board Resolution 15-12-71, approved on December 9, 2015, and TriMet Board Resolution 23-12-XX, approved on December 13, 2023 and establishes the guidelines for assessing the fitness of all persons employed who operate motor vehicles for the transportation of passengers in the public transportation system of the District, or who have access to critical infrastructure or security sensitive facilities or information. This policy covers current TriMet employees, prospective TriMet employees, and contract personnel whose jobs may require them to transport persons other than TriMet employees, i.e., members of the public, or whose jobs require them to have access to critical infrastructure or security sensitive facilities or information. For those applicants for employment with TriMet or employees who are subject to criminal background checks because they have access to sensitive financial or confidential business information, or who are subject to FCRA checks, please contact the Human Resources department for further information.

This document defines how TriMet will screen current and prospective employees, and explains the mechanics of its program.

Guidelines

ORS 267.237 requires that transit agencies enact a resolution that establishes certain rules of compliance and refines certain definitions contained in ORS 267.237. In consultation with the Department of State Police & affected provider groups, TriMet has adopted Resolutions 99-09-58 ~~and~~ 15-12-71 and 23-12-XX to implement ORS 267.237.

ORS 267.237 Requirements	TriMet’s Policy and Procedures
<p>✧ Categories of individuals subject to criminal background checks</p>	<p>All persons employed by, under contract with, or used by the district who operate motor vehicles to transport passengers for regular routes, ATP, or who may transport members of the public in their professional capacity, are subject to criminal records checks. In addition, all persons who will have access to critical infrastructure or security sensitive facilities or information.</p> <p><u>If TriMet offers a program whereby customers may opt into the provision of rides fulfilled by a private for hire vehicle operator affiliated with a transportation network company (“TNC Driver”) as an alternative to ATP, a TNC Driver may transport passengers without a TriMet criminal background check if the TNC Driver obtained approval to operate within the District as required by Portland City Code regulations governing TNC Drivers, which requires a national and local criminal background check in order to be approved as a TNC Driver and the TNC Driver is operating in compliance with all ordinances, rules, and regulations promulgated by the City of Portland regarding background checks.</u></p>
<p>✧ Information (including fingerprints) that will be required</p>	<p>Driver qualification requirements include current TriMet criteria and the requirements outlined in ORS 267.237 and defined in this document.</p> <p>An individual who refuses a criminal records check or fingerprinting, or who makes false statements regarding the individual’s criminal history is disqualified from TriMet employment, or from providing service for TriMet under contract, and, if applicable, that individual’s employment will be terminated.</p>
<p>✧ Criteria for determining whether a person is fit to operate motor vehicles to transport agency passengers, or to have access to critical infrastructure or security sensitive facilities or information</p>	<p>TriMet’s hiring criteria includes, but is not limited to, customer service experience, driving record, work experience, drug screening, and criminal history.</p> <p>Initial hiring is provisional, based on the above screening. The new employee or contractor receives and must complete extensive training and must demonstrate competency.</p>

ORS 267.237 Requirements	TriMet's Policy and Procedures
<ul style="list-style-type: none"> ✧ Which services or entities are qualified to determine fitness for a position, service, license, certification, registration or employment 	<p>TriMet is authorized to evaluate criminal records to determine fitness for employment or service pursuant to this policy. TriMet may contract this service through an intergovernmental agreement with the Oregon Department of Human Services or other suitable agency.</p>
<ul style="list-style-type: none"> ✧ Employees authorized to make criminal record inquiries 	<p>The Executive Director of Labor Relations and Human Resources has authorized the following staff positions to request criminal background checks, each of whom may then delegate to an authorized individual: Director of Business Programs, Human Resources Recruiter and Human Resources Business Partner, and the General Counsel.</p>
<ul style="list-style-type: none"> ✧ Which crimes may be considered in reviewing criminal offender information 	<p>Convictions for crimes with an impact upon public safety, property, or life, or other factors related to the person's position may disqualify the person from employment or from providing contracted service. For the full guidelines, see the <i>General Guidelines Crimes Affecting Fitness for Employment</i>, below. These include in-state and out-of-state convictions.</p>
<ul style="list-style-type: none"> ✧ When to request a nationwide criminal records check through the State Police 	<p>The district submits fingerprint cards, plus Oregon and FBI processing fees, to the Oregon State Police (OSP) for processing prior to the time a final employment decision is made.</p>
<ul style="list-style-type: none"> ✧ Development of an agency system to maintain criminal records check data 	<p>To maintain criminal records check data and ensure the privacy of data within the system, the Executive Director of Labor Relations and Human Resources has determined that criminal history records check data is maintained in Human Resources or in ATP or in offsite storage.</p>
<ul style="list-style-type: none"> ✧ When a previous criminal records check (information maintained by the district) may be used in lieu of a completely new check 	<p>The agency will not accept previous criminal records checks in lieu of a new check. For each new situation requiring a criminal background check, there will be a new check.</p>

ORS 267.237 Requirements	TriMet's Policy and Procedures
<p>✧ Conditions under which persons may participate in training, orientation, or work, pending completion of a criminal records check</p>	<p>The criminal records check occurs on two levels — state and national. The preliminary check is at the state level; the second check is national (FBI), with both results provided in about 7-10 business days. All hiring or approval to provide contract services is provisional until both checks have been completed and a fitness for hire determination has been made. TriMet observes these procedures as follows:</p> <p>New employees or contract staff personnel are actively supervised at all times when they have direct or indirect contact with children, the elderly, or persons with disabilities until the preliminary check is received.</p> <ul style="list-style-type: none"> ▷ If the preliminary check shows no criminal background, the person may work, under continued active supervision, but regular employment or continued service provision by contract staff is contingent on a review of the national check and the requirements set forth in this policy. ▷ If there is any indication of criminal activity on the preliminary check, TriMet will not make the final hiring decision until the national criminal check has been completed. If the preliminary check has not disqualified the individual under this policy, and there are no other indications of criminal behavior, the employee or contract personnel may continue to work, under active supervision, with the final decision about employment to be made after the national check is received and a review is performed.
<p>✧ Rights of notification and appeal</p>	<ul style="list-style-type: none"> ▷ Notification: A statement on the job application informs applicants that a criminal records check & fingerprints are required for employment to drive a vehicle for public transport, and for employment in a position that allows access to critical infrastructure or security sensitive facilities or information. The applicant signs a release authorizing the criminal check and fingerprinting. ▷ Notification & Appeal: A statement of individual rights and the appeals process is attached to the job application. ▷ Appeals: The appeals process outlined in this document is available to anyone to whom employment with TriMet or other entity covered by this policy is affected by or denied based on a criminal background.

Criminal Offenses that Affect Qualification for Employment or Contract Service

Criminal offenses that affect employment are convictions for crimes committed in any jurisdiction, including but not limited to those against persons, public safety, property, or life. Criminal offenses may disqualify the person from hire, continued employment, or providing services for specified periods of time. In determining fitness for hire, continued employment or provision of TriMet service, TriMet or its designee will consider:

- the nature of the crime
- the facts that support the conviction or pending indictment or that indicate a false statement
- the relevancy of the crime or false statement to the position requirements
- intervening circumstances which are relevant to the responsibilities and circumstances of the position (examples include the passage of time, age at time of commission, restitution, likelihood of recurrence, subsequent commission of another relevant crime, or an employer’s recommendation)

For all crimes **except** offenses against person, the General Manager may consider mitigating circumstances or other information in making exceptions to the general guidelines set forth below.

General Guidelines are listed on the chart below. *Time Frame to Consider* (column 3) begins with the date of conviction.

General Guidelines Crimes Affecting Fitness for Employment		
Type of Offense	Class of Offense	Time Frame to Consider
Offenses against persons*	Class A felony or unclassified crimes Class B or C felony Class A, B or C misdemeanor	Forever 15 years 10 years
Offenses against property	Class A felony Class B or C felony Class A, B or C misdemeanor	15 years 10 years 5 years
Offenses involving fraud or deception	Class A, B, or C felony Class A, B or C misdemeanor	10 years 5 years
Offenses against public order; firearms and other weapons; racketeering	Class A felony Class B or C felony Class A, B or C misdemeanor	15 years 10 years 5 years
Offenses against public health, decency, and animals	Class A felony Class B or C felony Class A, B or C misdemeanor	15 years 10 years 5 years
Controlled substances, illegal drug cleanup, paraphernalia, precursors	Class A felony Class B or C felony Class A, B or C misdemeanor	15 years 10 years 5 years

Offenses against the State and Public Justice	Class A felony Class B or C felony Class A, B, or C misdemeanor or a violation	15 years 10 years 5 years
All other crimes under Oregon Revised Statutes (ORS)	Class A, B, or C felony Class A, B or C misdemeanor Traffic Crime	10 years 5 years 5 years
<p>* For offenses marked by an asterisk, the General Manager will not make exceptions to the <i>General Guidelines</i> set forth above.</p> <p>* For offenses that occur in other jurisdictions and do not have an exact equivalent, TriMet will make a determination on an appropriate comparable, in consultation with Human Resources and Legal.</p>		

Active Warrants

In determining fitness for hire or provision of TriMet service, TriMet will not consider applicants if their criminal record check reports an active warrant issued for any jurisdiction. The indication of an active warrant poses a significant safety and security concern to TriMet’s service and operations. TriMet shall verify if the warrant is active with the issuing jurisdiction. TriMet may also submit the applicant’s information to the issuing jurisdiction if required by law.

If TriMet is informed of a current employee with an active warrant, TriMet will suspend that employee from employment until the warrant is resolved. TriMet may also submit the employee’s information to the issuing jurisdiction if required by law. If the active warrant is in one of the jurisdictions TriMet services, TriMet may also cooperate with law enforcement if required by law.

Disclosure by TriMet Employees

All individuals employed by or under contract with TriMet who operate motor vehicles, as well as all individuals employed by TriMet who have access to critical infrastructure or security sensitive facilities or information must disclose to TriMet when they are convicted of a crime listed under *Criminal Offenses that Affect Qualification* not later than five calendar days after the guilty finding, plea, or conviction. Failure to voluntarily disclose by the 5th day may result in discipline up to and including termination.

NOTE: Pursuant to federal law and internal operating procedures, any TriMet employee in a CDL-required job classification is required to notify his/her supervisor or manager within 30 days of conviction for any traffic violation, except parking, no matter what type of vehicle was being driven. In addition, any TriMet employee in a CDL-required job classification is required to notify his/her supervisor or manager within one business day if his/her license is suspended, revoked, or cancelled, or if he/she is disqualified from driving for any reason.

Criminal Record Check Procedures

Driver applicants are required to have a full background check that includes a review of ten years of employment, ten years of driving records, and a criminal background check. Verification that a criminal background check has been completed is required for all drivers, whether they drive fixed

routes or for ATP. Similarly, applicants who will have access to critical infrastructure or security sensitive facilities or information are required to have a full background check that includes a review of ten years of employment and a criminal background check.

TriMet's Executive Director of Labor Relations and Human Resources or designee approves the process & procedures for background reviews for all fixed route and ATP, as well as for all applicants who will have access to critical infrastructure or security sensitive facilities or information. The request for approval will be uniformly documented and submitted, with a central filing system maintained according to Human Resources protocol.

Procedures for obtaining & evaluating criminal background information are shown below:

Fixed Route Drivers

1. Applicants must provide the dates, cities, counties and states for any time they resided outside Oregon within the last ten years.
2. TriMet sends applicant information to one of the following sources for verification:
 - Oregon State Police (OSP) record checks
 - Oregon Judicial Information Network (OJCIN/OECI) review
 - third party agencies (ADP Screening and Selection Services)
 - any federal, state or local law enforcement agency whose verification procedure will provide a comprehensive review of Oregon criminal records
3. TriMet prepares a fingerprint card and sends the card and processing fees to the Oregon State Police, who will check state criminal records.
4. Criminal records check verification is permanent, except fingerprint cards, which must be destroyed, with no copies kept.

Accessible Transportation Drivers – ATP

1. Applicants must provide a ten year employment history.
2. The ATP contractor may send applicant information to one of the following sources for verification:
 - Oregon State Police (OSP) record checks
 - Oregon Judicial Information Network (OJCIN/OECI) review
 - any federal, state or local law enforcement agency whose verification procedure will provide a comprehensive review of Oregon criminal records
3. TriMet prepares a fingerprint card and sends the card and processing fees to the Oregon State Police, who will check state criminal records.
4. TriMet sends applicant information to one of the following sources for verification:
 - Oregon State Police (OSP) record checks
 - Oregon Judicial Information Network (OJCIN/OECI) review

- third party agencies (Avert or CIS)
- any federal, state or local law enforcement agency whose verification procedure will provide a comprehensive review of Oregon criminal records

5. TriMet ATP personnel reviews the material received from OSP, FBI, and other sources, determines eligibility based upon TriMet established guidelines, and notifies contractor of the acceptability of the driver applicant.

6. TriMet ATP personnel maintain records for each driver applicant. The records include the documented record that absence of criminal background has been verified or that existing criminal background information has been reviewed. Criminal records check verification is permanent, except fingerprint cards, which must be destroyed, with no copies kept.

Employees with Access to Critical Infrastructure or Security Sensitive Facilities or Information

Applicants must provide the dates, cities, counties and states for any time they resided outside Oregon within the last ten years.

1. TriMet may send applicant information to one of the following sources for verification:

Oregon State Police (OSP) record checks

- Oregon Judicial Information Network (OJCIN/OECI) review
- third party agencies (ADP Screening and Selection Services)
- any federal, state or local law enforcement agency whose verification procedure will provide a comprehensive review of Oregon criminal records

2. TriMet prepares a fingerprint card and sends the card and processing fees to the Oregon State Police, who will check state criminal records.

Criminal records check verification is permanent, except fingerprint cards, which must be destroyed, with no copies kept.

Employees with Access to Sensitive Financial or Confidential Business Information

Applicants must provide the dates, cities, counties and states for any time they resided outside Oregon within the last ten years.

TriMet may send applicant information to a third party agency, such as ADP Screening and Selection Services, to conduct criminal history searches contained in the county, state, and federal level repositories. This search may include criminal history searches for felony and misdemeanor crimes. A report will be produced and provided to TriMet’s Labor Relations & Human Resources Division.

Appeals

1) Disputing the Accuracy of Completeness of the Criminal Record Information

If the individual believes that criminal offender information is inaccurate or incomplete, he/she must request a review with the source of the information:

Oregon State Police Oregon State Police procedures adopted pursuant to ORS 181.555(3) the individual the right to inspect, challenge, and correct his/her own criminal offender information. A

written request for review, with proof of identity (name, date of birth, and fingerprints) is required within 15 calendar days. Mail or deliver the request to:

Oregon State Police
Identification Services Section
3772 Portland Road, SE
Salem, OR 97303

The OSP division and the person will have a pre-hearing meeting to review information and determine the need for a hearing.

Federal Bureau of Investigation Under federal law, an individual can challenge the report, but cannot review or obtain a copy of the actual FBI record. To challenge the accuracy or completeness of any entry obtained from an FBI criminal records check, file a challenge with:

FBI Criminal Justice Information Services (CJIS) Division
Attn: Criminal History Analysis Team 1
1000 Custer Hollow Road
Clarksburg, WV, 26306

Consumer Reporting Agency (CRA) If criminal background information was obtained through a CRA, as disclosed in the letter of disqualification, the individual may contact that agency directly to question the information:

Oregon Judicial Information Network
(OJCIN/OECI)

1163 State Street
Salem, OR 97310
Phone: (503) 986-5594

ADP-Screening & Selection Services

PO Box 645177
Cincinnati, OH 45264-5177
Phone: 888-606-7868

2) Disputing the Decision by TriMet

An applicant or employee who has been disqualified for a position or employment or licensing based on a criminal record has the right to appeal. The primary issue for applicants who will transport the public or who have access to critical infrastructure or security sensitive facilities or information is fitness for employment as prescribed and intended by ORS 267.237. The balance of the evidence must weigh in favor of protecting our customers, many of whom are vulnerable Oregonians.

When employment or approval to provide TriMet service is denied based on information from a criminal record check, the individual receives a written notice (via email or via U.S. mail) of disqualification and a packet with instructions for appealing the decision.

When an employee is terminated, or employment (including by contract) is denied based on information from a criminal records check, the individual will receive written notice (via email or via U.S. mail) and a packet with instructions for appealing the decision.

The appeal process allows applicants for employment, current employees, or contract service providers to gather additional information that will help TriMet determine whether the disqualification from employment or from providing TriMet service based on criminal records check should stand.

A written appeal affords the person a reasonable opportunity to present relevant information, evidence and supporting statements. A written appeal must be submitted within ten calendar days after receiving the disqualification or termination letter. For purposes of this section, a person is deemed to have received the disqualification or termination letter within five calendar days after its deposit into U.S. regular, first-class mail, or if via email, as of the date stamp on the email. Failure to timely submit a written appeal constitutes waiver of the right to an appeal.

The procedure for appeal under the criminal records policy follows.

Procedures for Written Appeal Process

Instructions for the appeal process accompany the letter of disqualification.

The appeal procedure is as follows:

➤ The appeal must be in writing and contain the name, address, telephone number of the person(s) requesting reconsideration, a statement of the reason(s) why it is believed that a termination or disqualification is invalid, and the signature of the requester. The appeal must be date stamped not later than ten calendar days after receiving written notice of termination or disqualification. For purposes of this section, a person is deemed to have received the termination or disqualification letter not later than five calendar days after its deposit into U.S. regular, first-class mail, or if via email, as of the date stamp on the email. If an appeal is not timely filed, the person will be deemed to have waived the right of appeal.

The individual may attach documents and other evidence to be included with the record and considered in deciding the appeal. Documentation must be complete before submitting it to the Human Resources Department. If documentation is incomplete, the appeal may not be processed. The appeal should be mailed to:

TriMet
Attn: Human Resources Department / Criminal Record Appeal
1800 SW First Ave., Ste. 300
Portland, Oregon 97201

➤ Upon timely receipt of an appeal, the Executive Director of Labor Relations and Human Resources, or designee, will review and research the appeal, and may consult with the Deputy District Attorney, TriMet police commander, the Executive Director of Safety and Security, and any other appropriate personnel.

➤ The Executive Director of Labor Relations and Human Resources, or designee, will then prepare a recommendation for the Appeal Panel, which may include the Executive Director of Transportation, the Executive Director of Maintenance, the General Counsel, or other appropriate personnel.

➤ The Appeal Panel will review the appeal material, including the recommendation from the Executive Director of Labor Relations and Human Resources, or designee, and submit a recommendation to the General Manager or designee.

➤ The General Manager or designee will then decide whether to adopt the recommendation from the Appeal Panel. The decision of the General Manager or designee is final.

➤ The Executive Director of Labor Relations and Human Resources, or designee, will then convey the final decision to the applicant or employee. TriMet will keep an electronic and paper record of the appeal, findings, and final decision.

NOTE: The General Manager may modify or waive any of these rules regarding an appeal in the interest of fairness or justice for good cause shown.

Resources/Forms

[ORS 267.237](#)