

Office of Recovery Services Volume One: All Employee Background Investigation	Policy Number	ORS 507
	Issued Date	05/31/2012
	Revision Date	10/25/2016
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1.0 Purpose

The purpose of this policy is to establish policies and procedures for conducting background investigations on employees of the Office of Recovery Services (ORS). Background checks will be conducted to meet internally-identified agency needs as well as to meet requirements placed on ORS by the Department of Human Services (DHS) and external agencies that provide data to ORS. In any areas where there are conflicting standards placed on ORS by various agencies, the stricter standard must be adopted by ORS as the minimum standard.

DHS has established minimum background standards for its employees to protect the physical safety, as well as the financial and personal identification information, of clients served Department-wide.

The Department of Workforce Services (DWS) has established a minimum background standard for employees of external agencies who access eRep, eShare, eFind, or any similar eligibility data. The standards are set forth in the contract between ORS and DWS containing the terms for access to the DWS system.

The Bureau of Criminal Identification (BCI), as directed by the Federal Bureau of Investigation (FBI), has established minimum standards for users of information obtained from the Utah Criminal Justice Information System (UCJIS). Because data obtained from UCJIS is entered in ORSIS, all ORS employees are subject to the BCI standards for “users” of UCJIS information, regardless of whether an employee has personal access and a password to directly access the UCJIS system.

Internal Revenue Service (IRS) Publication 1075 (subsections 5.1.1 and 9.3.13.3) requires agencies with access to Federal Tax Information (FTI) to conduct background screenings prior to granting access to FTI to ORS employees, contractors, or subcontractors.

Due to the IRS Publication 1075 requirements, this policy must be reviewed annually, effective September, 2016.

2.0 Persons Affected

All ORS employees and contractors should be familiar with this policy.

3.0 Definitions

Conditional offer of employment: An offer of employment which is conditioned upon successfully passing the necessary background checks.

Moral turpitude: A legal term indicating “conduct that is considered contrary to community standards of justice, honesty or good morals.” (West’s Encyclopedia of American Law, as quoted by legal-dictionary.thefreedictionary.com.)

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Non-access User of BCI information: Any person who obtains UCJIS records from a person who has direct access. A non-access user is still considered a “user” of BCI information. All ORS employees are considered non-access users as a minimum classification.

Prospective employee: A person who is applying for employment with ORS.

Rapback: A digital fingerprint storage solution maintained by the FBI which continually monitors for new legal infractions associated with the stored fingerprints.

Terminal Agency Coordinator (TAC): The ORS contact person for BCI on UCJIS-related issues. Because the TAC is already required to perform background checks on all employees for BCI purposes, this position will also be used to conduct or coordinate all background checks for ORS. ORS also has an Alternate TAC for back-up purposes. Although this policy refers to the ORS TAC, the Alternate TAC performs the same duties. Contact the CSS Policy Analyst Supervisor if you are unsure who the current TAC or Alternate TAC for ORS is.

User of BCI information: Any person working for or with an agency who has direct access to any UCJIS information. This includes active users and non-access users.

Utah Criminal Justice Information System (UCJIS): A locate resource used by ORS but maintained by BCI that contains information from a variety of criminal justice databases.

4.0 Policy

4.1 Frequency

DHS has the strictest requirement regarding frequency of background checks; therefore, the frequency of background checks (as determined by DHS requirements) is as follows:

--All prospective employees must undergo a background check upon being given a conditional offer of employment with ORS.

--All existing ORS employees must undergo a complete initial background check by September 30, 2015, which will count as the first “annual” background check for calendar year 2015. Beginning in January, 2016, all existing employees must submit to an annual background check based on the employee’s birth month (provided by the Department of Human Resource Management--DHRM) or the employee’s bi-annual UCJIS recertification date (whichever comes first within the calendar year). After 2016, all existing employees must submit to an annual background check based on the employee’s birth month provided by DHRM.

--All ORS employees being promoted or moving to new positions must undergo a complete background check, if their fingerprints are not already stored in “Rapback,” or a partial background check, if a complete check has already been completed including “Rapback” storage (ORS requirement).

Note: If fingerprints have been obtained on or after July 1, 2015 (and are permanently stored in digital form by BCI as part of “Rapback”), employees are not expected to be required to submit additional fingerprints as part of subsequent background checks unless new prints are specifically requested by

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BCI. BCI will attempt to convert prints obtained after January 1, 2014 into the “Rapback” system; however, new prints may be required if the conversion is unsuccessful.

4.2 Standards

The standards listed below are provided as a guideline. The lists of legal offenses provided are not intended to be all-inclusive. Each external agency setting its standards for background checks, as well as the ORS, has the right to change its standards without prior notice. In addition, as specific background checks return results which have not been anticipated by the standards below, each standard-setting agency has the right to follow through with the employee action deemed appropriate, regardless of the standards listed below.

4.2.1 Bureau of Criminal Identification

BCI automatically denies “user” (both direct “user” and “non-access user”) status to any individual with a Class B Misdemeanor or higher, regardless of the length of time since the infraction.

4.2.2 Department of Human Services

(The information below is the proposed criteria for DHS. Final DHS policy is pending.)

Automatic Denial Criteria

- Automatic denial for offenses outlined in U.C.A. 62A-2-120(5)(a)
- Any felony convictions within the past five (5) years

Reviewable Criteria

- All other circumstances outlined in U.C.A. 62A-2-120(6)(a)
- Any misdemeanor convictions and pending misdemeanor charges over five (5) years
- Any MIS supported and substantiated findings

4.2.3 Office of Recovery Services

ORS employees have a high level of access to money, financial information, restricted information and other personal identification for the clients served. Because of this, ORS has established the following standards, so far as they do not conflict with any external agency criteria. These standards will also be used to determine if ORS will assist with or pursue appeals or reviews by external agencies that may have stricter criteria than that listed below.

Automatic Denial Criteria

- Felonies of moral turpitude within 10 years
- Felony drug charges within 10 years
- Misdemeanors (Class B or higher) of moral turpitude within 5 years

Reviewable Criteria

- Other convictions MAY be reviewed. Consideration may be given based on some of the criteria suggested in U.C.A. 62A-2-120(6)(b), and any additional criteria found to be relevant specifically to ORS, for example:
 - The date of the offense
 - The nature and seriousness of the offense

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The circumstances under which the offense or incident occurred
The age of the perpetrator when the offense or incident occurred
Whether the offense was isolated or repeated
Whether the offense or incident directly relates to abuse of a child or vulnerable adult
Relationship of offense to present job or information access

Convictions in any of the areas below or any other legal area not anticipated below but found to cause concern due to the job duties or information which is available to ORS employees will be reviewed, regardless of the time that has passed since the conviction.

Convictions for felonies or misdemeanors committed outside of Utah, that if committed in Utah, would constitute a violation of an offense described in this policy will be reviewed as if the violation had been committed in Utah. [Based on U.C.A. 62A-2-120(5)(a)(ix).]

The following list is not all-inclusive, but provides an idea of crimes which are considered crimes of moral turpitude.

Fraud:

U.C.A. 76-6-506 to 506.6 "Financial transaction card offenses";
U.C.A. 76-6-506.7 "Obtaining encoded information on a financial transaction card with the intent to defraud the issuer, holder, or merchant";
U.C.A. 76-6-511 "Defrauding creditors";
U.C.A. 76-6-517 "Making a false credit report";
U.C.A. 76-6-518 "Criminal simulation";
U.C.A. 76-6-521 "Fraudulent insurance act";
U.C.A. 76-6-1102 "Identity fraud crime";
U.C.A. 76-6-1203 "Mortgage fraud";

Public Employee Misconduct

U.C.A. 76-6-504 "Tampering with records - Penalty";
U.C.A. 76-6-513 "Definitions - Unlawful dealing of property by a fiduciary - Penalties";
U.C.A. 76-8-103 "Bribery or offering a bribe";
U.C.A. 76-8-104 "Threats to influence official or political action";
U.C.A. 76-8-105 "Receiving or soliciting bribe or bribery by public servant";
U.C.A. 76-8-201 "Official misconduct – Unauthorized acts or failure of duty";
U.C.A. 76-8-202 "Official misconduct – Unlawful acts based on 'inside' information";
U.C.A. 76-8-306 "Obstruction of justice in criminal investigations or proceedings – Elements – Penalties - Exceptions";
U.C.A. 76-8-308 "Acceptance of bribe or bribery to prevent criminal prosecution - Defense";
U.C.A. 76-8-402 "Misusing public monies";
U.C.A. 76-8-403 "Failure to keep and pay over public monies";
U.C.A. 76-8-412 "Stealing, destroying, or mutilating public records by custodian";
U.C.A. 76-8-413 "Stealing, destroying, or mutilating public records by one not custodian";
U.C.A. 76-8-414 "Recording false or forged instruments";
U.C.A. 76-8-502 "False or inconsistent material statements";
U.C.A. 76-8-503 "False or inconsistent statements";
U.C.A. 76-8-504 "Written false statement";

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- U.C.A. 76-8-504.6 “False or misleading information”;
- U.C.A. 76-8-508 “Tampering with witness – Receiving or soliciting a bribe”;
- U.C.A. 76-8-509 “Extortion or bribery to dismiss criminal proceeding”;
- U.C.A. 76-8-511 “Falsification or alteration of government record - Penalty”;

Computer Crimes

- U.C.A. 76-6-703 “Computer crimes and penalties”;

Crimes Incident to Any Type of Office

- U.C.A. 76-6-404 “Theft - Elements”;
- U.C.A. 76-6-404.5 “Wrongful appropriation - Penalties”;
- U.C.A. 76-6-501 “Forgery and producing false identification – Elements of offense - Definitions”;

Some crimes may not appear on the list above if committed only once; however, if repeated, the infraction may become a felony and then be considered a crime of moral turpitude.

4.3 Consent

Consent to a background investigation must be given by the employee (or prospective employee, if not yet employed by ORS) prior to conducting any background investigation. Refusing to consent to a background investigation will render the employee ineligible for new or continued ORS employment, system access, or promotion.

Consent for a background investigation is documented on two forms: the “Authorization and Waiver for Criminal Background Check” (form APBC), which contains the language and requirements outlined for background checks for UCJIS users; and the DHS Background Check Authorization, which contains the DHS’s background check language and gathers additional information for the required MIS check conducted by the Office of Licensing.

4.3.1 New Employees

At the point where a conditional offer of employment has been approved by ORS Administration and by DHRM:

The hiring official will obtain a completed form APBC-Preprint “Authorization and Waiver for Criminal Background Check” and a completed “DHS Background Check Authorization” from the prospective employee. (Note: These forms cannot be obtained until after the conditional offer of employment has been made to the prospective employee due to the personal information requested.)

The original forms must be personally delivered to the ORS TAC or sent to the assigned ORS TAC through state mail. Due to the sensitive information contained on the forms, they should not be submitted to the TAC by e-mail. Faxing these forms is discouraged due to the potential of misdialing; however, in an emergency situation, if arrangements can be made with the ORS TAC to wait by the fax machine to receive the documents immediately, the ORS Director may approve an exception.

4.3.2 Current ORS Employees

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The TAC will initiate the background check process using the APBC “Authorization and Waiver for Criminal Background Check” form in Adobe Workspace.

The employee will complete the APBC form, found in the employee’s Adobe Workspace “To Do,” queue within a week. The employee must also complete the “DHS Background Check Authorization” form and route the form to the TAC through state mail or personal delivery within a week. Due to the sensitive information contained on the forms, they should not be submitted to the TAC by e-mail. Faxing these forms is discouraged due to the potential of misdialing; however, in an emergency situation, if arrangements can be made with the ORS TAC to wait by the fax machine to receive the documents immediately, the ORS Director may approve an exception.

4.4 Background Check procedures

4.4.1 Sources Checked

The following groups will be involved in performing a complete background check for ORS employees:

4.4.1.1 ORS/UCJIS Terminal Agency Coordinators (TAC)

The TAC will initiate the background check process for current ORS employees. The TAC may complete a full or a partial background check based on the criteria below.

A full background check will be completed for new employees or existing ORS employees whose fingerprints have not yet been added to the FBI “Rapback” system. In a full background check, the TAC will review the sources available within UCJIS as well as contact BCI to check the Interstate Identification Index (commonly referred to as “Triple I”) system.

A partial background check will be completed for existing ORS employees whose fingerprints have been added to the FBI “Rapback” system as part of a previously completed full background check. In a partial background check, the TAC will review the sources available within UCJIS, at a minimum, although “Triple I” or FBI may be checked if needed.

New employees/probationary employees: If the UCJIS or “Triple I” sources produce any information which would yield a denial by BCI for “user” status, the conditional offer will be withdrawn, and no other portions of the background check will be completed.

The TAC will also coordinate the Department background check efforts with the Office of Licensing.

4.4.1.2 Office of Licensing

The Office of Licensing will complete its portion of the background check on all new employees and annually on all current ORS employees.

Upon completion of the full or partial background check by the TAC, the “DHS Background Check Authorization” form will be forwarded to the Office of Licensing to review the Department of Child and Family Services’ Management Information System (MIS). Pursuant to U.C.A. 62A-1-118, the Office of

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Licensing will be searching for adjudications of abuse or neglect or substantiated findings of abuse or neglect.

New employees/probationary employees: If the MIS yields any information which would require a DHS review, the conditional offer will be withdrawn, and no other portions of the background check will be completed.

4.4.1.3 Federal Bureau of Investigation (FBI)

Upon completion of the MIS check, the TAC will provide instructions to the employee to submit fingerprints to BCI for the final background check by the FBI.

Fingerprints obtained after July 1, 2015 have been entered into the FBI’s “Rapback” system. “Rapback” continually monitors for new infractions. If new infractions are found for ORS employees, “Rapback,” in conjunction with the FBI and BCI, will notify ORS. Fingerprints are maintained in the “Rapback” system until ORS notifies BCI that an individual is no longer employed by ORS (i.e., is no longer a “User” or “Non-access User” of BCI information).

New employees/probationary employees: Fingerprints should be submitted to BCI within the first week of employment. Until the results are provided by the FBI, employment remains conditional. If the FBI check produces any information which would yield an automatic denial by BCI for “user” status, the conditional employment will be terminated.

4.5 Appeals

4.5.1 New or Probationary Employees

New employees or probationary employees: Because of the investment of resources required to file appeals with BCI or undergo the DHS Review process, ORS has adopted the general position that it will not appeal or submit for review any infraction which is automatically denied by BCI for “user” status when found on prospective employees or probationary employees. Conditional offers of employment will be rescinded and probationary employment will be terminated.

4.5.2 Current employees

Current employees with infractions that appear on a background check may no longer meet the minimum standards for employment by ORS and may be subject to personnel actions in conjunction with the Department of Human Resource Management.

Separate appeals to background check results must be filed with the applicable external agencies that have imposed standards upon ORS employees. Some external agencies require ORS to file the appeal (or request the review) on behalf of the employee. ORS will utilize its standards explained above, in combination with the external agency’s standards, to determine if an appeal will be filed by the agency.

4.5.2.1 Appeals to Bureau of Criminal Identification

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Appeals to BCI must be filed by ORS Administration, not directly by the employee. ORS Administration will review the infraction(s) listed on the background check results against the criteria provided in this policy and determine if an appeal is appropriate.

If it is determined that an appeal will be filed by ORS Administration pursuant to this policy, the employee will be required to provide all documentation related to the infraction(s) and resolution of the infraction(s) that is required by BCI as part of the appeal process. ORS Administration will submit the appeal request and the supporting documentation to BCI. The decision of BCI will be final. If the appeal is not granted by BCI, the matter will be referred to the Department of Human Resource Management to assist with the next appropriate step.

If it is determined that an appeal by ORS Administration is not appropriate pursuant to this policy, or if the employee fails to provide the necessary documentation to support the appeal, the matter will be referred to the Department of Human Resource Management to assist with the next appropriate step.

4.5.2.2 Appeals to Department of Human Services

Potential personnel actions as a result of background checks are handled by ORS Administration, the Department of Human Resource Management, and the DHS Executive Director’s Office. Any situation that merits personnel action in conjunction with DHRM will outline the appeal process available to the employee within the documentation that is issued to the employee.

4.6 IRS Publication 1075 Background Check Requirements

Pursuant to IRS Publication 1075, Section 5.1.1 (quoted text is from IRS Publication 1075 followed by an explanation of how ORS meets the stated requirement):

- “State and local agencies which are not required to implement the federal background investigation standards must establish a personnel security program that ensures a background investigation is completed at the appropriate level for any individual who will have access to FTI using the guidance below as the minimum standard and a reinvestigation conducted within 10 years at a minimum.

“Agencies must develop a written policy requiring that employees, contractors, and sub-contractors (if authorized), with access to FTI must complete a background investigation that is favorably adjudicated.”

-This policy serves as the written policy for this requirement.

- “The written background investigation policy must establish a result criterion for each required element which defines what would result in preventing or removing an employee’s or contractor’s access to FTI.”

-This policy contains the criteria for “passing” a background check.

- “Agencies must initiate a background investigation for all employees and contractors prior to permitting access to FTI.”

- As described in this policy, passing a background check is a condition of employment at ORS, and therefore, a condition of gaining access to FTI. Contractors must also pass a background check prior to being granted access to FTI.
- “State agencies must ensure a reinvestigation is conducted within 10 years from the date of the previous background investigation for each employee and contractor requiring access to FTI.”

-The “Rapback” system provides continual monitoring of fingerprinted employees and the proposed DHS schedule for reverifying background checks (currently being followed by ORS) is annually.
 - “Agencies must make written background investigation policies and procedures as well as a sample of completed employee and contractor background investigations available for inspection upon request.”

-This policy serves as the documentation of background investigation policies and procedures. ORS background check forms for ORS employees are stored in Content Manager in the limited-access Item Type “HR Forms.” Access is limited to the ORS Director when there is a “hit” and further investigation is required on a background check. Background check procedures and samples for contractors must be obtained directly from the contractors when needed.
 - “Background investigations for any individual granted access to FTI must include, at a minimum:
 - “FBI fingerprinting.”

-This is included in a background check for access to UCJIS data which applies to all ORS employees.
 - “Check of local law enforcement agencies where the subject has lived, worked, and/or attended school within the last 5 years, and if applicable, of the appropriate agency for any identified arrests.”

-The UCJIS background check includes local law enforcement agencies as well as a Triple I check for incidents in other states.
 - “Citizenship/residency – Validate the subject’s eligibility to legally work in the United States. . . .”

-The Department of Human Resource Management guides hiring authorities through the citizenship verification and Form I-9 process as part of the onboarding procedures for all new employees.

5.0 Forms

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APBC—Authorization and Waiver for Criminal Background Check: This form provides information related to the UCJIS background check and requests the employee information required to complete the UCJIS background check process. ORS employees will complete this form in Adobe Workspace. The ORS TAC will initiate the Adobe Workspace process which sends this form to the employee’s “To Do” queue when a background check is required. Contractors and conditional ORS employees will complete a hard-copy version of the form described below.

APBC-Preprint—Authorization and Waiver for Criminal Background Check: This form provides information related to the UCJIS background check and requests the employee information required to complete the UCJIS background check process. This form is available on the ORS shared drive at I:\FORMS\APBC-Preprint-Authorization and Waiver for Criminal Background Check.

DHS Background Check Authorization: (Pending finalization by DHS).

6.0 Related Policies or Key Documents

6.1 State or Department Policy

U.C.A. 53-10-108

Utah Administrative Code: R722-900-4

DHS Policy is being developed. The ORS policy has been reviewed with consideration given to the DHS policy under development and has been approved for use while DHS policy is pending.

6.2 ORS Policy

6.3 Bureau Policy

CS RSRC 280 Utah Criminal Justice Information System (UCJIS)

6.4 Other Documents

BCI Operations Manual (available only through the UCJIS program’s TAC Website).

IRS Publication 1075 (Particularly Section 5.1.1 and 9.3.13.3. Revised 09-2016.)

National Crime Information Center (NCIC) Operating Manual (available only through the UCJIS program’s TAC Website).

7.0 Revision History

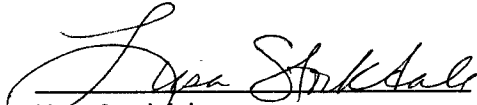
Effective Date	Change
05/31/2012	New policy.
05/21/2013	Revision. Add that a background check is necessary prior to system access.

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06/30/2015	Revision. Change in format. Update background check procedures per changes requested from Bureau of Criminal Identification and Department of Human Services. Approval from Department obtained 06/30/2015.
10/14/2015	Add Executive Approval signature pursuant to IRS Publication 1075 requirements. Added information about Rapback. Removed need to check Triple I for existing employees who have already had fingerprints added to Rapback system (full or partial background check). Clarified that Office of Licensing portion of background check will be completed for new employees and annually for current employees.
10/25/2016	Specifically examining the requirements of IRS Publication 1075 and explaining how ORS meets the new requirements released in September, 2016.

8.0 Executive Approval

ORS 507 ALL Employee Background Investigation 2016-10-25 is approved.


 Liesa Stockdale
 Director Office of Recovery Services

 10/25/2016
 Date