



## UT System Administration Policy Library – Policy UTS124 **Criminal Background Checks for Security- Sensitive Positions**

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## **POLICY STATEMENT**

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It is the policy of The University of Texas System to obtain:

1. Criminal history record information on applicants who are under final consideration, following normal screening and selection processes, for a position that is designated as a security sensitive position;
2. Criminal conviction record information on a current employee who is under consideration for a transfer, promotion or reclassification from a non-security sensitive position to a position designated as a security sensitive position; and
3. Criminal conviction record information on a current employee who is under consideration for a transfer, promotion or reclassification from one security sensitive position to another security sensitive position and on whom the institution did not previously obtain either criminal history record information or criminal conviction record information.

Each institution, at its option, may exempt from the requirements of subparts 2 and 3 above: (a) position reclassifications that result in a title change with no change in current responsibilities; (b) career progression promotion occurring within the current department (e.g., associate professor to full professor or staff assistant to senior staff assistant); and (c) involuntary transfers or reclassifications.

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## **RATIONALE**

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To promote campus safety and the security of personal or System property, consistent with the requirements of the law and prudent financial and programmatic practices, each institution and System Administration shall adopt a policy and procedures for the administration of criminal background checks. The policy and procedures, at a minimum, shall comply with this policy and will become effective upon approval by the Office of General Counsel and the Vice Chancellor for Administration. The approved policy and procedures shall be published in the institutional *Handbook of Operating Procedures*

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## **SCOPE**

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All institutions and UT System Administration

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## WEBSITE ADDRESS FOR THIS POLICY

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<http://www.utsystem.edu/policy/policies/uts124.html>

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## RELATED STATUTES, POLICIES, REQUIREMENTS OR STANDARDS

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UT System Administration Policies & Standards	Other Statutes, Policies & Standards
	<p><i>Texas Education Code</i> § <a href="#">51.215. Access to Police Records of Employment Applicants</a></p> <p><i>Texas Government Code</i> § <a href="#">411.094. Access to Criminal History Record Information: Institution of Higher Education</a></p> <p><i>Texas Government Code</i> § <a href="#">411.135. Access to Certain Information by Public</a></p>

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## CONTACTS

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If you have any questions about UT System Administration Policy UTS 124, *Criminal Background Checks for Security-Sensitive Positions*, contact the following offices:

Subject	Office Name	Telephone Number	Email/URL
	Office of General Counsel	512.499.4462	<a href="http://www.utsystem.edu/ogc/">http://www.utsystem.edu/ogc/</a>
	Vice Chancellor for Administration	512.499.4709	<a href="http://www.utsystem.edu/administration/">http://www.utsystem.edu/administration/</a>

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## DEFINITIONS

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**Applicant:** An individual who applies for a position within The University of Texas System, whether the individual is an outside candidate or a current employee of The University of Texas System. Each institution, at its option, may elect to exclude from this definition current employees who, at the time of application, are in positions designated as security sensitive and on whom the institution previously obtained criminal history record information.

**Controlled Substance:** This term has the meaning assigned in *Texas Health & Safety Code* § 481.002, as that section may be amended from time to time.

**Criminal Conviction Record Information:** Public information maintained by the Department of Public Safety, as provided in *Texas Government Code* § 411.135.

**Criminal History Record Information:** Information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, as more fully described in *Texas Government Code* § 411.082.

**Position:** Both full-time and part-time positions, whether the position is filled or to be filled by a regular or a temporary worker, but not including a position filled by a temporary worker provided by a temporary employment agency; the employment agency should be expected to conduct and held responsible for conducting the criminal background check.

**Select Agent:** This term has the meaning assigned in *18 U.S.C.* § 175b, as that section may be amended from time to time.

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## RESPONSIBILITIES

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### Hiring Official

- Identifies security sensitive positions as such in their job descriptions.
- Verifies that a criminal background check has been conducted and the results considered prior to making a job offer. If job offer must be made before background check is complete, states to the applicant in writing that the offer is contingent on the completion of a satisfactory background check.

### **Identified Responsible Party at Hiring Institution**

- Authorizes the background checks.
- Obtains the completed authorization form from the applicant
- Conducts the background checks
- Makes decisions about employment, promotion or transfer to security sensitive positions.

### **Applicant**

- Signs and returns authorization form for background check.

### **Chief of Police**

- Destroys all criminal history record information about applicant after probationary period is completed.

### **Chief Administrative Officer (or his/her designee)**

- Determines which areas to designate as security sensitive.

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## **PROCEDURES**

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### **1. Security Sensitive Positions**

Security sensitive positions shall be restricted to those positions described in *Texas Education Code* § 51.215(c) and *Texas Government Code* § 411.094(a)(2), as those sections may be amended from time to time. The chief administrative officer of the institution, or that officer's designee, will designate which positions or areas are security sensitive for that institution.

### **2. Required Elements**

The policy and procedures adopted by each institution shall implement the requirements stated in this policy and the definitions herein.

#### **2.1 Security sensitive positions designated by the institution shall include the following:**

- a) All senior level administrator positions. For System Administration, "senior level administrator positions" are all executive officers and System administrative officials. For an institution, "senior level administrator positions" are that institution's executive officers and administrative officers, as identified in the institution's Handbook of Operating Procedures.

- b) Positions that have responsibility for providing patient care or for providing child-care in a child-care facility, as that term is defined in *Texas Human Resources Code* § 42.002(3), as it may be amended from time to time.
- c) Positions that have direct access to, or responsibility for, pharmaceuticals, select agents, or controlled substances.

**2.2** A security sensitive position shall be so identified in the job description and advertisement for the position.

**2.3** The responsible party or parties must be identified for the following key actions:

- a) Obtaining the authorization form to conduct the background investigation;
- b) Conducting the background investigation;
- c) Making the decision to offer employment to an applicant for a security sensitive position; and
- d) Making the decision to promote, transfer or reclassify an employee to a security sensitive position.

**2.4** The institution must receive a signed authorization form before the institution requests the background information. The format of the authorization form should be specified in the institution's policy and procedures and must include the notice required by *Texas Government Code* § 559.003, as it may be amended from time to time.

**2.5** Criminal history record information obtained by the institution may be used only for the purpose of evaluating applicants for employment in security sensitive positions and shall in no way be used to discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.

**2.6** Criminal history record information, including conviction information contained therein, will be regarded as confidential as required by law and will not be made a part of the applicant's file or the employee's personnel file or communicated to any unauthorized person. Under *Texas Government Code* § 411.085, the unauthorized release of criminal history record information is a criminal offense and, consequently, the institution should seek legal advice with respect to any requested release of such information.

**2.7** The institution shall conduct the criminal history record information or criminal conviction record information investigation before the hiring official makes the employment decision. If circumstances require that an offer be made before the completion of an investigation, the offer must be in writing and state that the offer is contingent on the completion of a satisfactory criminal background investigation.

**2.8** After the expiration of the probationary term of the individual's employment, the chief of police of the institution shall destroy all criminal history record information that the institution obtained about the individual. If the position is one that does not have a probationary period, then the chief of police shall destroy the information 180 days after the institution obtains it.

### **3 Guidelines**

In adopting its policy and procedures, each institution should consider the following matters.

**3.1** In determining which areas to designate as security sensitive, the chief administrative officer or his or her designee should consider offices which perform functions that may pose increased risks at that institution, such as those areas with:

- a) Direct responsibility for the care, safety or security of humans or the safety or security of personal or UT System property;
- b) Responsibility for operating, in the course of normal job duties, UT System-owned or leased vehicles, machinery or toxic systems that could cause death, injury or health problems;
- c) Significant inventory control responsibilities, including receipt and release of inventory;
- d) Direct access to, or responsibility for, cash, checks or UT System property, disbursements or receipts;
- e) Responsibility for execution or approval of financial transactions;
- f) Direct access to, or responsibility for, classified information pertaining to the national defense;
- g) Unsupervised access to UT System, employee or student property, including access to student dorm rooms, in the course of normal job duties;
- h) Responsibility for the preparation, maintenance or approval of the financial, payroll, personnel or purchasing systems;
- i) Direct access to sensitive data, including data protected by Federal or State law, medical records, personnel records, other personal data or confidential criminal justice information, or to critical data processing systems.

**3.2** The institution's policy and procedures should not automatically disqualify from employment all individuals with conviction records. The procedures should provide that,

in the event the investigation reveals criminal convictions or other relevant information, the hiring official will determine on a case-by-case basis whether the individual is qualified based on factors such as:

- a) Specific duties of the position;
- b) Number of offenses;
- c) Nature of each offense;
- d) Length of time intervening between the offense and the employment decision;
- e) Employment history;
- f) Efforts at rehabilitation; and
- g) Accuracy of the information that the individual provided on the employment application.

**3.3** The institution's policy and procedures should specify the time period that will be reviewed with respect to the individual's prior place(s) of employment and residence in order to determine from which jurisdictions background information will be obtained.

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## **FORMS AND TOOLS/ONLINE PROCESSES**

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None

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## **APPENDIX**

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None

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Keywords: background checks, security, criminal records, criminal record, background check, criminal

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