

1. Title

Criminal Background Checks

2. Policy

Sec. 1 Purpose and Policy Statement. The University of Texas System Administration is committed to promoting the safety and security of personnel and U. T. System property consistent with the requirements of the law. To that end, it is the policy of the U. T. System Administration to require that a criminal background check be performed for employment, for volunteers and interns, and contractor employees who are assigned to perform work on the premises of the U. T. System Administration complex in Austin.

Sec. 2 Criminal Background Check Required. U. T. System Administration requires that a criminal background check be obtained on the following categories.

2.1 Applicants for Employment. A background check must be conducted on any applicant, internal or external, who is under final consideration, following normal screening and selection processes, for any position of employment with U. T. System Administration. U. T. System Administration may rely on a criminal background check conducted at U.T. System Administration within the past twelve (12) months, if there is not a break in service of more than six (6) months and the criminal background check relied on is appropriate for the position sought.

Any or all of the following background check sources may be used, as appropriate, on applicants for employment:

- (a) The Texas Department of Public Safety (TxDPS) Crime Records Service – Secure Site.
- (b) A private vendor that offers national criminal background check services.
- (c) Other state, national, and international sites.

The criminal background check must include a sex offender registration check.

- 2.2 Current Employees. A background check must be conducted on:
- (a) a current employee who has applied for and is a finalist for a new position (a new background check is not required for a promotion as part of the normal career progression under the responsibility of the same Executive Officer;
 - (b) all current employees, volunteers, and interns if U. T. System Administration has not previously obtained a criminal background check; and
 - (c) a current employee when the Chancellor, or his/her designee, determines it is necessary to further the goals of U. T. System Administration.

The criminal background check must include a sex offender registration check.

Any or all of the following background check sources may be used, as appropriate, on current employees:

- (a) The TxDPS Crime Records Service – Public Site.
 - (b) Other public state, national, and international sites.
 - (c) A private vendor, subject to compliance with the Fair Credit Reporting Act.
- 2.3 Statutorily Required Criminal Background Check. Where State or federal law requires that a position be subject to a criminal background check using a specific source of criminal background check information and/or certain procedures, U. T. System Administration will comply with such laws.
- 2.4 Contractors and Their Employees. U. T. System Administration requires that a criminal background check be performed on individuals or employees of companies or entities contracted by U. T. System Administration, when these individuals or employees will perform duties or services on the premises of the University of Texas System Administration Complex in Austin. Additionally, a provision requiring criminal background checks will be included in U. T. System Administration contracts unless the U. T. System Administration official over the office requesting the contract, in consultation with the Office of

General Counsel, determines that it is not required after taking into account the nature of the services to be provided by the contractor (i.e. access to university information resources; access to confidential information; access to currency; access to vulnerable populations).

U. T. System Administration generally requires the contractor to perform the criminal background check.

Sec. 3. Job Descriptions, Advertisements, and Postings. U. T. System Administration Office of Employee Services (OES) will ensure that all job advertisements and postings for U. T. System Administration include a statement that the position is security sensitive and the employer is authorized to obtain a criminal background check including criminal history record information.

Sec. 4. Conducting a Criminal Background Check for Applicants.

- 4.1 A criminal background check will not be performed until OES receives and forwards to the Office of the Director of Police (ODOP) a completed, signed Criminal Background Check Form (see Forms). The hiring official is responsible for directing the individual to complete, sign, and deliver the form to OES. An applicant who fails to complete, sign, and submit the form will be removed from further consideration for the position. In addition, if the applicant is a current employee, such refusal is grounds for disciplinary action.
- 4.2 OES will send the completed Criminal Background Check Form and, if applicable, a copy of the finalist's employment application to ODOP.
- 4.3 The criminal background check should include states where the applicant has resided and/or been employed during the period of no less than seven years immediately preceding the date the individual signed the Criminal Background Check Form.
- 4.4 ODOP will promptly obtain and review the criminal background information and will notify the hiring official and the appropriate OES representative of the results of the investigation.
- 4.5 ODOP will conduct the criminal background check before the hiring official makes the employment decision. However, if circumstances require that an offer of employment be made before the completion of the criminal background check, the offer must be in writing and contain a statement that the offer is

contingent on the completion of a satisfactory criminal background investigation.

Sec. 5 Conducting a Criminal Background Check on Current Employees.

- 5.1 U. T. System Administration will utilize the TxDPS Crime Records Service – Public Site and/or other publically available local, state, or federal criminal record sources to perform these checks to obtain criminal conviction record information and other publically available information. The TxDPS secure site will not be used for these checks.
- 5.2 OES will determine a procedure to identify the current U. T. System Administration employees for whom a criminal background check has not previously been obtained and provide such information to ODOP.
- 5.3 U. T. System Administration may conduct a public site search without an employee's consent. No form is required to be completed by an employee prior to conducting a public records search, including a public search on the TxDPS public site. However, OES may require an employee to complete, sign, and deliver a criminal background check form to OES. An employee's refusal to comply is grounds for disciplinary action.
- 5.4 ODOP will promptly obtain and review the criminal background information and will notify the department head and the appropriate OES representative of a criminal record, if any.

Sec. 6 No Automatic Disqualification for Criminal Background.

- 6.1 Except as provided in 6.2, an individual with a criminal record will not automatically be disqualified from employment, promotion or appointment. In the event the investigation reveals criminal record information, the hiring official, in consultation with OES and ODOP, 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.
- 6.2 U. T. System will not hire, continue to employ, appoint or assign an individual if information is obtained that the individual has been convicted or placed on deferred adjudication for an offense that would require:
- (a) the individual to register as a sex offender under Chapter 62, Code of Criminal Procedure, which includes, but is not limited to, such offenses as Continuous Sexual Abuse of Young Child; Sexual Assault; Aggravated Sexual Assault; or
 - (b) an offense under the laws of another state or federal law that is equivalent to an offense requiring such registration unless the hiring/appointing official as appropriate articulates a compelling justification, the Director of OES and the Director of Police concur, the Chancellor concurs and the individual has no higher than a level one (low) risk as determined by the risk assessment screening tool implemented pursuant to Chapter 62, Code of Criminal Procedure. If no such risk level is assigned, then the risk level cannot exceed a low risk as determined by the Director of Police.
- Sec. 7 Falsification or Omission of Criminal Record Information. Falsification of an application or omission of criminal record information required to be reported is grounds to reject an applicant or discipline/terminate an employee.
- Sec. 8 Notice Requirement.
- 8.1 If U. T. System Administration receives a report indicating that an applicant or a current employee has a criminal record, the individual will be notified, provided with a copy of the report, except as provided by law or DPS policy or procedure, informed of the right to challenge the accuracy and completeness of the report with the agency that provided the report, and informed that he/she has the opportunity to submit additional information relating to the criminal record and why it should not affect an employment decision.

- 8.2 If U. T. System Administration has used a third-party vendor credit reporting agency to conduct criminal record checks, the resulting report is considered a "consumer report" under the Fair Credit Reporting Act (FCRA). If such a report is relied on to deny employment, deny a promotion, reassign, or terminate an employee, the individual will be provided with a specific pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," a document prescribed by the Federal Trade Commission. The credit reporting agency that furnishes the individual's report is required to give U. T. System Administration the summary of consumer rights (<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf>).

Sec. 9 Opportunity to Respond.

- 9.1 Within five business days following the receipt of the report as provided in Section 8.1, the individual may submit additional information to the hiring official/supervisor relating to the criminal record and why it should not affect the employment decision. Before the hiring official/supervisor makes a final employment decision, he/she will review all information provided to him/her with OES and ODOP and consult about whether to proceed with an offer or adverse employment action. If either OES or ODOP is of the opinion that the results of the criminal background check indicate that the individual may be unacceptable for the position being filled or for continued employment, then the hiring official may not extend an offer to or continue employment of the individual without the prior written approval of the applicable executive officer or his or her designee. If the results indicate the individual has an offense described in 6.2(a) or (b), the individual is not qualified for employment or appointment unless the conditions in 6.2 are met and the approval of the officials in 6.2 are obtained.
- 9.2 External Applicants for Employment. The decision of U. T. System Administration is final and may not be appealed.
- 9.3 Current Employees. If the individual is a current employee subject to a criminal background check, standard employee grievance procedures are available to challenge the decision. If the criminal record leads to termination, the applicable employee discipline and discharge procedure will be used.

- 9.4 Post-Decision Disclosure When Private Vendor Services Used to Conduct Criminal Background Check. If a consumer report has been relied on to deny employment, deny a promotion, reassign, or terminate an employee after the institution has taken an adverse action, the individual must be given notice that the action has been taken. It must include:
- (a) the name, address, and phone number of the credit reporting agency that supplied the report;
 - (b) a statement that the credit reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
 - (c) a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

Sec. 10 Self-Reporting.

- 10.1 Applicants for Employment. Applicants must report in writing any criminal complaint, information, indictment, no contest plea, guilty plea, deferred adjudication, or convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding traffic offenses punishable only by fine, occurring after the date of application within five business days.
- 10.2 Current Employees. U. T. System Administration employees are required to report to their department head in writing, within five business days, any criminal complaint, information, indictment, no contest plea, guilty plea, deferred adjudication, or criminal conviction (and whether registered as a sex offender or will be required to register as a sex offender), excluding those for misdemeanor offenses punishable only by fine. Failure to do so is a violation of policy and may lead to disciplinary action as appropriate. (A self-disclosure form link is provided in this Policy.)
- 10.3 Department Head Obligation. The U. T. System Administration department head receiving a self-report as required under this section must provide the information to OES and ODOP and consult about the individual's suitability for the position.

- 10.4 Falsification or Omission of Criminal Record Information. Subject to standard grievance and disciplinary procedures as applicable, falsification or omission of records or failure to report as required by this policy or law is a violation of policy and will lead to disciplinary action.

Sec. 11 Retention of Criminal Background Check Records.

- 11.1 Confidential Records. Records obtained from a criminal background check database 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. The information will be kept in a separate secure file and will not be communicated to any unauthorized person.

- 11.2 Criminal History Record Information. Under *Texas Government Code* Section 411.085, the unauthorized release of criminal history record information, information obtained from the TxDPS secure site consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, is a criminal offense and, consequently, U. T. System Administration officials in possession of such information shall seek legal advice with respect to any requested release of such information.

- 11.3 Destruction of Records Obtained from a Criminal Background Check Database. ODOP shall destroy all records obtained from a criminal background check database about the individual six months after it is obtained.

- 11.4 Self-Reports. Self-reports of charges or convictions as required by this policy will be maintained with the employee's personnel file in OES in accordance with U. T. System Administration's records retention schedule.

- Sec. 12 Other Background Checks. This policy and procedure addresses criminal background checks only and does not limit the U. T. System Administration's authority to conduct other background checks as permitted by law.

3. Definitions

Applicant - an individual who applies for a position with U. T. System Administration, whether the individual is an outside candidate or a current employee.

Appropriate - using a database(s) that is authorized, takes into consideration the nature of the position, information obtained from the US government in connection with the Visa process as well as one that includes data for permanent, temporary and educational residences for anyone who has lived outside the State of Texas since the age of 17.

Criminal Conviction Record Information - public information maintained by the Department of Public Safety, as provided in *Texas Government Code* Section 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* Section 411.082.

National Criminal History Record Check (NCHRC) - a criminal history record check obtained from both the Texas Department of Public Safety and the Federal Bureau of Investigation based on fingerprint identification information, or a criminal record check obtained from a private vendor based on national criminal records.

Position - both full-time and part-time positions, whether the position is filled or to be filled by a regular or a temporary worker or requires student status as a condition of holding the position, 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.

4. Relevant Federal and State Statutes

[Texas Education Code Section 51.215, Access to Police Records of Employment Applicants](#)

[Texas Government Code Section 411.081 et seq., Criminal History Clearinghouse](#)

[Texas Government Code Section 411.094, Access to Criminal History Record Information: Institution of Higher Education](#)

[Texas Government Code Section 411.135, Access to Certain Information by Public](#)

[Fair Credit Reporting Act, 15 U.S.C. Section 1681 et seq.](#)

5. Relevant System Policies, Procedures, and Forms

[Criminal Background Check Form](#)

[Sample FRCA Disclosure and Authorization](#)

6. System Administration Office(s) Responsible for Policy

Office of Business Affairs
Office of General Counsel

7. Dates Approved or Amended

July 26, 2002
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