

1. Title

Criminal Background Checks

2. Policy

Sec. 1 Purpose. The University of Texas System is committed to promoting a safe and secure environment at all of its institutions. To that end, this policy sets forth requirements for criminal background checks.

The U.T. System Administration (U.T. System) and each U.T. System institution (U.T. institution) shall adopt and include in its *Handbook of Operating Procedures* (HOP) a policy and related procedures for the administration of criminal background checks.

Sec. 2 Criminal Background Check Required. U.T. System and U.T. institutions must obtain criminal background checks¹, at a minimum, in the following situations².

2.1 Statutorily Required Criminal Background Check. If state or federal law requires that a position/individual be subject to a criminal background check using a specific source of criminal background check information and/or certain procedures, U.T. System and its institutions will comply with such laws. If such laws impose criminal background check requirements that are more extensive or substantially similar, U.T. System and U.T. institutions may rely on compliance with those laws to satisfy the requirements of this policy.

Similarly, U.T. System and U.T. institutions may rely on a criminal background check conducted by a federal government agency to satisfy the requirements of this policy for an individual on assignment from a federal agency, if U.T. System or the U.T. institution receives documentation from that federal agency showing that the federal agency conducted a background check, including a criminal background check with a sex offender registration check.

2.2 Applicants for Employment. A criminal background check must be conducted on any applicant, internal or external, who is under final consideration, following normal screening

¹ This policy addresses criminal background checks only and does not limit the University's authority to conduct other background checks permitted by law.

² Note: Use of non-public criminal background check sites may require additional notice and other prerequisites. Institutions must consult with legal counsel before using.

and selection processes, for employment, whether for a full-time, part-time, regular, temporary or student position of employment with the U.T. System or a U.T. institution. U.T. System and U.T. institutions may rely on a criminal background check conducted at that institution 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. For student applicants to a position requiring student status, the institution may rely on a criminal background check performed at that institution within the past sixty (60) months as long as the student has maintained continuous enrollment during the long semesters, the student is employed in the same job or one with the same criminal background check requirements, and the student is required to report any charges or convictions (including current or upcoming registry as a sex offender), excluding misdemeanor offenses punishable only by fine.

The institution must receive an authorization form signed by the applicant before the institution requests the check. The format of the authorization form must be specified in the institution's HOP and must conform to applicable state and federal law. (See Item 5, below, for sample form.)

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 (DPS) Crime Records Service – Secure and/or Public Site.
- (b) A private vendor that offers national criminal background check services. (See Sec. 6, below.)
- (c) Other state, national, and international sites.

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

2.3 Current Employees. A criminal background check must be conducted on:

- (a) a current employee who is under consideration for a promotion that requires a criminal background check based on the institution policy;

- (b) a current employee, if the institution has not previously obtained a criminal background check on the employee; and
- (c) a current employee, when the president, or his or her designee, determines it is necessary to further the goals of the institution.

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

- (a) The Texas Department of Public Safety (DPS) Crime Records Service – Public Site.
- (b) Other public state, national, and international sites.
- (c) A private vendor that offers national criminal background check services. (See Sec. 6, below.)

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

2.4 Without Salary Faculty Appointees. A criminal background check must be conducted on individuals prior to their receiving a without salary appointment to a position with a faculty academic title authorized under Regents' Rules and Regulations, Rule 31001. Any or all of the following background check sources may be used as appropriate:

- (a) The Texas Department of Public Safety (DPS) Crime Records Service – Public Site.
- (b) Other public state, national, and international sites.
- (c) A private vendor that offers national criminal background check services. (See Sec. 6, below.)

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

2.5 Child-Care Centers and Youth Camps. In addition to fully complying with all applicable state and federal laws relating to criminal background checks, the following provisions apply to all child-care centers and youth camps operated by, on the property of, or in the facilities of U.T. System or a U.T. institution.

- (a) Child-Care Centers Fingerprint Checks. Child-care centers shall ensure that criminal background checks are conducted prior to permitting the individual to work or spend time at the center and at least every two years thereafter for:
- employees;
 - final applicants;
 - professionals;
 - each person 14 years of age or older, other than a client in care who is 1) counted in child-to-caregiver ratios or 2) has unsupervised access to children in care at the operation;
 - interns; and
 - each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at the center, if the person has 1) lived in another state any time during the previous 5 years, or 2) there is reason to suspect criminal history in another state. The check required under this section applies even if the individual has only supervised access to the children.

The center will process the check so that the following criminal background check sources are used as appropriate:

- (i) Texas Department of Public Safety (DPS) name and Federal Bureau of Investigation fingerprint-based criminal background check;
- (ii) A Department of Family and Protective Services (DFPS) central registry check;
- (iii) A sex offender registration check; and
- (iv) An international check for any foreign national who the Director has reason to believe lived outside the United States after the age of 14, unless the person's visa issuance or renewal

occurred after implementation of the U.S. Patriot Act on October 24, 2011. (Reasonable efforts will be used to obtain such check, and it need only be conducted initially if the individual does not live outside the United States since last checked.).

- (b) Child-Care Centers Name Checks. Child-care centers shall ensure that criminal background checks are conducted prior to permitting the individual to work or spend time at the center and at least every two years thereafter for all people 14 years or older, excluding clients in care, who are 1) not required to have fingerprinting, and 2) who will regularly or frequently be present at the center while children are in care. This applies to, but is not limited to volunteers, including parent volunteers, and student observers.

The center will process the check so that the following criminal background check sources are used as appropriate:

- (i) A DPS name-based check;
 - (ii) A DFPS central registry check;
 - (iii) A sex offender registration check;
 - (iv) An international check for any foreign national who the Director has reason to believe lived outside the United States after the age of 14, unless the person's visa issuance or renewal occurred after implementation of the U.S. Patriot Act on October 24, 2011. (Reasonable efforts will be used to obtain such check, and it need only be conducted initially if the individual does not live outside the United States since last checked.); and
 - (v) An appropriate out-of-state check for anyone who has lived outside the state of Texas since the age of 17.
- (c) Youth camps. Youth camps shall ensure that for all employees and final applicants who will work at the

camp, and all volunteers and student observers, who will regularly or frequently be at the camp are subject to a criminal background check each year. The check shall be conducted prior to permitting an individual to work, volunteer or be present. Further, volunteers and student observers who are not subject to a check must not have unsupervised access to campers. The following background check sources may be used as appropriate:

- (i) The Texas Department of Public Safety (DPS) Crime Records Service Secure or Public Site check;
- (ii) A sex offender registration check;
- (iii) An appropriate out-of-state check; and
- (iv) An international check for any foreign national who the Camp Director has reason to believe lived outside the United States after the age of 14, unless the person's visa issuance or renewal occurred after implementation of the U.S. Patriot Act on October 24, 2011. (Reasonable efforts will be used to obtain such check, and it need only be conducted initially if the individual does not live outside the United States during the year.).

2.6 Volunteers in Health Care Facilities. A criminal background check must be conducted on volunteers, who will regularly or frequently be at the hospital, prior to permitting such individual to volunteer in UT System health care facilities, including a student health center. Further, any volunteer who has not been subject to a check must not be allowed unsupervised access to patients. Any or all of the following background check sources, as appropriate, may be used:

- (a) The Texas Department of Public Safety (DPS) Crime Records Service – Public Site.
- (b) Other public state, national, and international sites.
- (c) A private vendor that offers national criminal background check services. (See Sec. 6, below.)

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

- 2.7 Students. A criminal background check, including a sex offender registration check, must be conducted on a student in an educational program that includes assignment to a clinical health care facility or whose assignment may require work with patients.

Each U.T. institution shall adopt and include in its HOP a student criminal background check policy requiring an appropriate criminal background check, notice to a student who is subject to the check of the use of the information to deny program participation, and the secure maintenance and disposition of records. (A model can be found at the OGC website, see link at Item 5, below.)

Sec. 3 No Automatic Disqualification for Criminal Background.

- 3.1 Except as outlined in 3.2, an individual with a criminal record will not automatically be disqualified from employment, appointment or privileges; however, U.T. System and U.T. institution policies and procedures must require that a case-by-case analysis be conducted.
- 3.2 U.T. System and UT institutions 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 Human Resources and the Chief of Police concur, the President 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 U.T. institution's Chief of Police.

3.3 Institutional criminal background check procedures must include a review of the criminal background information by both the Director of Human Resources and the Chief of Police to determine whether there is a disqualifying offense under this section.

Sec. 4 Notice Requirement. An institution receiving a report indicating that an applicant for employment or a current employee has a criminal record will notify the individual that such a report has been received, provide the individual with a copy of the report, except as provided by law or DPS policy, and notify the individual of the right to challenge the accuracy and completeness of the report and to submit additional information relating to the criminal record and why it should not affect an employment decision.

Sec. 5 Opportunity to Respond to Adverse Action.

5.1 External Applicants for Employment and Volunteers. The decision of the U.T. institution is final and may not be appealed.

5.2 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 procedures will be used.

Sec. 6 Use of Private Vendors. If a U.T. institution elects to use 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), and the institution must comply with all applicable FCRA disclosure and notice requirements.

Sec. 7 Self Reporting.

7.1 Applicants for Employment. Applicants must report in writing any charges or convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding misdemeanor offenses punishable only by fine, occurring after the date of application.

- 7.2 Current Employees. U.T. institution employees must report to their supervisor in writing, within five business days, any criminal complaint, information, indictment, no contest plea, guilty plea or criminal convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding misdemeanor offenses punishable only by fine.
- 7.3 Department Head Obligation. The U.T. institution official receiving a self-report as required under this section must provide the information to HR and the Chief of Police and consult about the individual's suitability for the position.
- 7.4 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. 8 Contractors Other Than Child-Care and Youth Camp Contractors For Whom The Above Provisions Apply. U.T. institution policies will include a procedure for reviewing proposed contracts to determine whether the contract should include a criminal background check requirement for individuals or employees of the company or entity being contracted. The policies and procedures must require that the following be considered in determining which contracts will have a criminal background check requirement: where the service will be performed (i.e., on or off-campus; access to the university community); and the nature of the services provided (i.e., access to university information resources; access to confidential information; access to currency; access to pharmaceuticals, select agents or controlled substances; responsibility for care of patients or vulnerable populations).

Sec. 9 Criminal Background Check Records. Criminal background check records shall be handled and retained in compliance with applicable state and federal laws.

3. Definitions

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.

Frequently present: More than two non-continuous visits at the center in a 30-day period.

Non-continuous visit: Being physically present at an operation for a period of time of less than 24 hours. Multiple or periodic visits to an operation within the same day is one visit.

Professional: Individuals such as doctors, psychologists, and Early Childhood Intervention workers who are at the child-care operation in an official capacity.

Regularly: On a scheduled basis.

Unsupervised access: The person is allowed to be with children without the presence of a qualified caregiver.

Youth Camp: A program that:

- (a) is operated by or on the campus;
- (b) offers recreational, athletic, or educational activities for at least 5 campers who:
 - are not enrolled at the institution;
 - attend or temporarily reside at the camp for all or part of at least four days; and
- (c) is not a day camp or youth camp required to be licensed by the Department of Family and Protective Services.

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. § 1681 et seq.](#)

[Texas Human Resources Code Sections Chapter 42, Regulation of Child Care Services](#)

[Texas Administrative Code Chapter 745, Department of Family and Protective Services, Licensing](#)

[Texas Health and Safety Code Chapter 141, Youth Camps](#)

5. Relevant System Policies, Procedures, and Forms

Sample [Criminal Background Check Form](#)

[Sample FRCA Disclosure and Authorization](#)

[Model Student Background Check](#)

6. System Administration Office(s) Responsible for Policy

Office of Business Affairs
Office of Academic Affairs
Office of Health Affairs
Office of General Counsel

7. Dates Approved or Amended

November 26, 2002
Amended August 31, 2010
Editorially Amended September 20, 2010
Amended October 28, 2010
Amended March 26, 2012
Amended September 4, 2013
Amended June 10, 2015

8. Contact Information

Questions or comments about this policy should be directed to:

- OGC_Intake@utsystem.edu