

33.99.14 Criminal History Record Information – Employees and Applicants

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Regulation Statement

Members of The Texas A&M University System (system) shall perform criminal background checks of current employees and applicants for employment as provided by this regulation.

Reason for Regulation

This regulation provides minimum procedures to be used by system members in performing criminal background checks of current employees and applicants for employment.

Procedures and Responsibilities

1. GENERAL

- 1.1 The system is committed to protecting the safety and welfare of employees and the general public, preserving state property and upholding the reputation and integrity of the system for the citizens of Texas. To achieve these goals, members of the system may obtain, at any time, criminal history record information on any applicant for employment or any current employee. Criminal history record information may be used to make employment decisions affecting the applicant or employee as provided by this regulation.
- 1.2 This regulation applies to all applicants for employment positions and all employees of the system including, but not limited to, graduate assistants and agency employees with faculty titles who are not in tenure track positions. This regulation does not apply to system member campus police departments obtaining criminal history record information for a criminal justice purpose under Chapter 411, Subchapter F, Texas Government Code.
- 1.3 Each system member will determine what employment positions for that member contain job duties that require the position to be designated “security sensitive.” This determination will result in a position being designated security sensitive unless the analysis reveals a complete absence of duties including handling currency, having

access to a computer terminal, having access to the personal information or identifying information of another person, having access to the financial information of the employer or another person, having a master key or working in an area designated as a security-sensitive area. The designation of a position as “security sensitive” determines the member’s authority to obtain criminal history record information from the Texas Department of Public Safety (DPS) Crime Records Secure Site. A security-sensitive position shall be identified as such in the job description and any advertisement for the position.

- 1.4 Each system member shall have a rule addressing the implementation of this regulation.
- 1.5 It is a criminal offense to knowingly or intentionally obtain criminal history record information in an unauthorized manner, use the information for an unauthorized purpose or disclose the information to a person who is not entitled to the information; or violate DPS rules published in accordance with Chapter 411, Subchapter F, of the Government Code. *See* Tex. Gov’t Code § 411.085.
- 1.6 To ensure compliance with EEOC standards and policy guidance, applicants with a criminal history will not be automatically disqualified from system employment, and a system employee’s criminal history will not result in automatic disciplinary action or dismissal. The analysis found in Section 6 of this regulation shall be used to determine whether an individual’s criminal history will affect the individual’s potential or continued system employment.
- 1.7 Criminal history records shall not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age, genetic information or veteran status.
- 1.8 This regulation is for guidance purposes only, and it does not create any right to procedural or substantive due process of law beyond that mandated by federal and state laws, if any, nor does it create any contract rights to an employee unless those rights exist outside of the regulation. This regulation does not alter the at-will status of system non-faculty employees, as defined in System Policy *32.02, Discipline and Dismissal of Employees*. Failure by the system to follow the steps outlined in this regulation or an associated system member rule or procedure shall not form the basis of an applicant’s appeal of his or her denial of employment or an employee’s appeal of disciplinary sanctions, including termination. The discipline or dismissal of a faculty employee under this regulation must comply with System Policy *12.01, Academic Freedom, Responsibility and Tenure*, and any related system member rules or procedures.
- 1.9 Every applicant for system employment and current employee will have, as permitted by law, the opportunity to request, receive, review and correct information about that applicant or employee collected by or on behalf of the member.

2. PRE-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

- 2.1 Every offer of system employment shall be conditioned on receipt of an acceptable criminal history record information check. Every finalist for system employment will be required to complete and sign a background check authorization/consent form. An

applicant's failure to consent to a criminal background check is grounds for the rejection of the applicant.

- 2.2 Any system member finding criminal history record information for an applicant indicating a conviction, criminal charge or an arrest shall conduct the analysis found in Section 6 of this regulation to determine whether the information will affect the individual's eligibility for potential or continued employment.
- 2.3 Any applicant who has criminal history record information indicating a conviction for an offense listed in this subsection may be hired only after a recommendation by the system member's department/unit head and approval by the chief executive officer (CEO) or designee. A conviction for any of the following offenses requires such approvals:
 - (a) a felony, as defined by state or federal law, or equivalent offenses under the law of another jurisdiction; or
 - (b) any offense requiring registration as a sex offender.
- 2.4 An applicant for system employment is required to promptly report any arrest, criminal charge or conviction occurring after his or her application is submitted. This reporting obligation for applicants exists until the individual: (a) receives notice that he or she will not be hired; or (b) is hired and first reports to work.

3. SOURCES OF CRIMINAL HISTORY RECORD INFORMATION

Members can access, as permitted by law, the following sources to obtain criminal history record information:

- (a) DPS Crime Records Service Public Site or any other publicly available local, state, federal or international source;
- (b) DPS Crime Records Service Secure Site; and/or
- (c) a third-party vendor (in accordance with the federal Fair Credit Reporting Act).

A system member that obtains criminal history record information about an individual shall destroy all such information within its control as soon as practicable: for applicants, after the position has been filled and the individual or the successful candidate reports to his or her first day of work; for employees, after the criminal history record information has been analyzed and any resulting action taken under this regulation. Note, however, that system members shall maintain completed background check authorization/consent forms as provided in the system records retention schedule.

3.1 DPS Crime Records Service Public Site

This database contains criminal history record information maintained by DPS that relates to certain sex-offender information, and the conviction of or grant of deferred adjudication to a person for any criminal offense, including arrest information that relates to the conviction or grant of deferred adjudication. Members are permitted to

use this information for any purpose and release the information to any person. *See* Tex. Gov't Code § 411.135.

3.2 DPS Crime Records Service Secure Site

Members are entitled to obtain from the DPS secure site criminal history record information maintained by DPS that relates to a person who is an applicant for a security-sensitive position. This database contains criminal history record information maintained by DPS that relates to all arrests and all dispositions so it is broader and more inclusive than the public site. The secure site shall not be accessed to obtain criminal history record information for any other applicants or current employees unless permitted by state law. The information obtained from the secure site may be used only for the purpose of evaluating applicants for employment in security-sensitive positions. NOTE: the information obtained from the secure site may not be released or disclosed to any person except on court order OR with the consent of the person who is the subject of the criminal history records information. *See* Tex. Gov't Code § 411.094.

4. FALSIFICATION OR FAILURE TO DISCLOSE CRIMINAL HISTORY

4.1 Applicant. If it is determined prior to employment that an applicant has falsified or failed to disclose the individual's criminal history in his or her employment application, the applicant may be rejected for system employment.

4.2 Employee. If it is determined at any time after employment that an employee falsified or failed to disclose the individual's criminal history on his or her employment application, the employee may be subject to disciplinary action, including dismissal.

4.3 A decision to reject an applicant or discipline/dismiss an employee for falsification or failure to disclose criminal history need not take into account the factors set forth in Section 6 of this regulation.

5. POST-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

5.1 Employees are Subject to Periodic Checks

Each system employee's criminal history record information is subject to review at any time as permitted by law. Periodic criminal history information record checks may be conducted at the discretion of a member.

5.2 Employee Reporting of Arrests, Charges, or Convictions

5.2.1 System employees must report to their supervisor, within twenty-four (24) hours or at the earliest possible opportunity thereafter, any criminal arrests, criminal charges or criminal convictions, excluding misdemeanor traffic offenses punishable only by fine. Failure to make the report required by this section shall constitute grounds for disciplinary action, including dismissal.

- 5.2.2 The employee's supervisor must report the arrest(s), criminal charge(s) or conviction(s) to the head of the department/unit and the member human resources department.
- 5.2.3 An employee who has been arrested is subject to immediate suspension with pay pending the outcome of an administrative review of the facts surrounding the arrest, charges or conviction by the member human resources department and/or investigation by the appropriate law enforcement agency. The employee shall cooperate fully during the review process.
- 5.2.4 The member human resources department (or provost or designee for faculty employees) will conduct the analysis outlined in Section 6 of this regulation and will assist the employee's department/unit in determining appropriate disciplinary action in such cases, including dismissal, depending on the facts and circumstances surrounding the arrest or conviction.

6. ANALYSIS OF CRIMINAL HISTORY RECORD INFORMATION AND SUBSEQUENT ACTION

In situations where criminal history record information is found for an applicant (Section 2) or an employee (Section 5), the following analysis shall be conducted to determine whether an applicant is eligible for potential or continued employment or whether to discipline or dismiss an employee.

6.1 Conviction Records

- 6.1.1 The member human resources department (or provost or designee for faculty applicants or employees) that proposes to reject an applicant or discipline or dismiss an employee based on criminal history record information consisting of conviction records must justify the action as job-related and consistent with business necessity. In making its decision, the member human resources department (or provost or designee) must consider the following factors:
 - (a) The nature and gravity of the offense(s);
 - (b) The time that has passed since the conviction and/or completion of the sentence;
 - (c) The nature of the job sought or held; and
 - (d) The legitimate interest of protecting the safety and welfare of employees and the general public, preserving state property and upholding the reputation and integrity of the member for the citizens of Texas.
- 6.1.2 A conviction on a person's criminal history record constitutes reliable evidence that the person engaged in the activity alleged since convictions require proof beyond a reasonable doubt and/or a plea of guilty or no contest to the charges. Therefore, when considering a person's conviction records, the member human resources department (or provost or designee) need not evaluate whether the applicant or employee actually engaged in the misconduct.

6.1.3 If, after considering all the circumstances and the factors listed in Subsection 6.1.1, the member human resources department (or provost or designee) reasonably concludes the applicant's or employee's criminal conduct evidences he or she is unsuitable for the position in question, the member human resources department (or provost or designee) may recommend that the department/unit reject the applicant or dismiss the employee. If the department/unit disagrees with the conclusion of the member human resources department (or provost or designee) and wishes to employ or continue the employment of the individual, the department/unit must receive approval from the CEO or designee.

6.2 Records of a Criminal Charge or Arrest

6.2.1 The member human resources department (or provost or designee for faculty applicants or employees) that proposes to reject an applicant or discipline or dismiss an employee based on criminal history record information consisting of a criminal charge or arrest must justify the action as job-related and consistent with business necessity and must evaluate whether the applicant or employee actually engaged in the misconduct. In making its decision, the member human resources department (or provost or designee) must consider the following factors:

- (a) The nature and gravity of the activity for which the individual was charged or arrested;
- (b) The time that has passed since the charge or arrest and/or disposition of the offense;
- (c) The nature of the job sought or held;
- (d) The legitimate interest of protecting the safety and welfare of employees and the general public, preserving state property and upholding the reputation and integrity of the member for the citizens of Texas;
- (e) The applicant's or employee's explanation of his or her charge or arrest coupled with follow-up inquiries necessary to evaluate his or her credibility; and
- (f) Whether the reason for the charge or arrest violated a system policy or regulation, or member rule or procedure.

6.2.2 A criminal charge or an arrest without a conviction does not establish that the person actually engaged in the alleged activity. Therefore, when considering records of a person's criminal charge or arrest, the member human resources department (or provost or designee) must evaluate whether the applicant or employee actually engaged in the misconduct. **NOTE: If the human resources department (or provost or designee) is unable to determine that the applicant or employee actually engaged in the misconduct, any rejection of the applicant or discipline or dismissal of the employee cannot be based on the criminal charge or arrest.**

6.2.3 If, after considering all the circumstances and the factors listed in Subsections 6.2.1 and 6.2.2, the member human resources department (or provost or

designee) reasonably concludes that the applicant's or employee's misconduct evidences the person is unsuitable for the position in question or should be disciplined, the member human resources department (or provost or designee) may recommend that the department/unit reject the applicant or discipline or dismiss the employee. If the department/unit disagrees with the conclusion of the member human resources department (or provost or designee) and wishes to employ, continue the employment of or not discipline the individual, the department/unit must receive approval from the CEO or designee.

7. APPEALS

- 7.1 An external applicant rejected for system employment under this regulation has no appeal unless the individual alleges unlawful discrimination, sexual harassment and/or retaliation. Such appeals must be filed in accordance with System Regulation *08.01.01, Civil Rights Compliance*. Section 7.2 or 7.3 of this regulation, as applicable, addresses an internal applicant's appeal.
- 7.2 Faculty employees can appeal action taken under this regulation by following the applicable provisions of System Policy *12.01, System Regulation 32.01.01, Complaint and Appeal Procedures for Faculty Members*, or System Regulation *08.01.01*, and related member rules or procedures.
- 7.3 Non-faculty employees can appeal action taken under this regulation by following the applicable provisions of System Regulation *32.01.02, Complaint and Appeal Process for Nonfaculty Employees*, or System Regulation *08.01.01*, and related member rules or procedures.

Related Statutes, Policies, or Requirements

[Texas Government Code Chapter 411, Subchapter F](#)

[Texas Education Code § 51.215](#)

[Texas Government Code Chapter 559](#)

[Fair Credit Reporting Act, as amended, 15 U.S.C. §§ 1681 – 1681u](#)

[Federal Trade Commission informational document about the Fair Credit Reporting Act – Using Consumer Reports: What Employers Need to Know](#)

[System Policy 12.01, Academic Freedom, Responsibility and Tenure](#)

[System Policy 32.02, Discipline and Dismissal of Employees](#)

[System Regulation 08.01.01, Civil Rights Compliance](#)

[System Regulation 32.01.01, Complaint and Appeal Procedures for Faculty Members](#)

Definitions

Applicant – an individual applying for a position with the system, whether an external candidate or current employee.

Arrest – to detain in legal custody.

Conviction – a finding of guilt after a trial, a plea of guilty, or a plea of nolo contendere (or no contest), or placement on deferred adjudication or some other type of pretrial diversion, for offenses other than misdemeanor traffic offenses punishable only by fine.

Conviction record – criminal history data reported by criminal justice agencies and includes arrests, prosecutions and dispositions of cases for persons arrested for a Class B misdemeanor or greater violation as defined by state law or equivalent offenses under the law of another jurisdiction.

Criminal charge – a formal written instrument such as an indictment or information accusing an individual of a criminal offense.

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, informations, and other formal criminal charges and their dispositions. It does not include driving record information maintained by DPS under Chapter 521 of the Texas Transportation Code. *See* Tex. Gov't Code § 411.082.

Security-sensitive position – any position in which an employee handles currency, has access to a computer terminal, has access to the personal information or identifying information of another person, has access to the financial information of the employer or another person, has access to a master key, or works in an area designated as a security-sensitive area. *See* Tex. Gov't Code § 411.094(a)(2); *See* Tex. Educ. Code § 51.215(c).

Contact Office

Office of General Counsel
(979) 458-6120