



SUB-TOPIC

CRIMINAL BACKGROUND CHECKS

I. PURPOSE

The purpose of this policy and related procedures is to promote campus safety and the security of personal or University property, consistent with the requirements of the law and prudent financial and programmatic practices.

II. POLICY

It is the policy of The University of Texas at Dallas:

- A. To obtain 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;
- B. To obtain 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
- C. To obtain 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.
- D. To obtain criminal conviction information on current employees, students, and volunteers whose assignments involve contact with minors on a regular basis outside the scope of faculty/student instruction. Examples of types of activities involving minors that would require criminal background checks are summer camps, research involving human subjects, volunteer activities, etc.
- E. To use such criminal history record or criminal conviction information for the purpose of evaluating applicants for employment in security sensitive positions. The information will not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age or sexual orientation.
- F. To regard such criminal history or criminal conviction information as confidential as required by law. Such information will not be made a part of the applicant's file, or the employee's personnel file, or communicated to any unauthorized person when prohibited by law. The release of such information must be authorized in writing by the Vice President for Business Affairs. The disclosure of criminal history record information to unauthorized persons is a criminal offense under *Texas Government Code §411.085*.
- G. That nothing in this policy shall be construed to prevent a hiring official from discussing with the applicant or employee information from the criminal background or history check for purposes of verification or clarification.

III. DEFINITIONS

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



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- D. *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*.
- E. *Hiring Official:* The Dean, in the Division of Academic Affairs, the Department Head, in other Divisions; or the equivalent administrative official responsible for the decision to offer employment to an applicant for, or to promote, transfer or reclassify an employee to, a security sensitive position; or the administrative position responsible for the decision to engage a student or volunteer in an assignment involving contact with minors on a regular basis.
- F. *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 a volunteer, 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.
- G. *Security Sensitive Position:* Security sensitive positions are those UTD 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. Security Sensitive Positions will include all senior level administrator positions; positions that have responsibility for providing patient care or for providing childcare in a childcare facility, as that term is defined in *Texas Human Resources Code §42.002 (3)*, as it may be amended from time to time; positions that have contact with minors on a regular basis and positions that have direct access to, or responsibility for, pharmaceuticals, select agents, or controlled substances.
- H. *Select Agent:* This term has the meaning assigned in *18 U.S.C. §175b*, as that section may be amended from time to time.
- I. *Minor:* A person under the age of 18 years.
- J. *Contact with minors on a regular basis:* This term means having contact with minors for one hour or more in any 30-day period outside the scope of student instruction.

IV. PROCEDURES

- A. The President has designated the Executive Vice President and Provost as the official responsible for designating which faculty positions or areas are security sensitive, and the Vice President for Business Affairs as the official responsible for designating which non-faculty positions or areas are security sensitive.
- B. Security sensitive positions will be identified as such in job descriptions and vacancy advertisements.
- C. Hiring officials are responsible for requesting that an applicant who is the finalist for a security sensitive position or other individuals for whom a criminal background check is required under this policy complete the appropriate UTD Criminal Background Check Form. The Forms are attached to this Policy and include the notice required by Texas Government Code § 559.003, as it may be amended from time to time. The hiring official will forward the completed form and, if applicable, a copy of the criminal convictions section of the finalist's employment application to the University Police Department. An individual who refuses to complete, sign and submit the form will be removed from further consideration for the position.



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- D. Only the Chief of Police is authorized to initiate requests for criminal history information or criminal Conviction record information from the Texas Department of Public Safety or other law enforcement agencies.
- E. Upon receipt of a signed UTD Criminal Background Check Form, the Chief of Police will promptly obtain and review the individual's criminal history record information or the individual's criminal conviction record information. The Chief will notify the hiring official of the results of the investigation and cause the UTD Police Department section of Criminal Background Check Form to be completed. No other notes are to be made on that form.
- F. If the results of an applicant's criminal background investigation indicate that the applicant may be a security risk, the hiring official may, at his or her discretion, consult with the Chief of Police, the Director of Human Resources, and/or the appropriate Vice President about the risk. However, it is the responsibility of the hiring official to evaluate the risk and make the final hiring decision. The evaluation should be based on such factors as the duties of the position, the nature and number of offenses, the dates of the offenses, employment and rehabilitation history, accuracy of the information on the employment application, and other job-related factors.
- G. After the Chief of Police has notified the hiring official of the results of the investigation and completed the Criminal Background Check Form, the Chief will return the completed form to the hiring official. The hiring official must include the completed form with the other search and new hire documents sent to the Office of Human Resources, in the case of an employee; or the hiring official will maintain the form in the departmental office in the case of a student or a volunteer. After the expiration of the employee's probation, the Chief will destroy all criminal history record information about the individual. If the position is one that does not have a probationary period, then the Chief will destroy the information 180 days after the position is filled.
- H. Employment offers may not be made until the criminal background check process is completed.
- I. In order to comply with the provisions of this policy, communication with applicants who are not hired should be limited to notification that a more qualified candidate was selected. Applicants with questions about their criminal history or criminal conviction information must be referred to the Texas Department of Public Safety or the equivalent law enforcement agency of another jurisdiction.
- J. Questions regarding compliance and other issues related to security sensitive positions should be addressed to the Executive Vice President and Provost or to the Vice President for Business Affairs, as appropriate.
- K. Those whose assignments require them to have contact with minors on a regular basis outside the scope of faculty/student instruction will be required by the department making the assignment to complete the "Contact with Minors Background Check Form" prior to the initial contact with minors, and on a biennial basis as directed by the Chief of Police.



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- L. For persons doing human subject research involving minors, the Institutional Review Board (IRB) will require that a criminal background check be conducted on the principle investigators (PI's) and any other persons having regular contact with minors as a part of the research project. After initial approval of the research project by the IRB, PI's are responsible for insuring that criminal background checks are conducted on students and others working on the research project and having regular contact with minors.
- M. The Chief will conduct checks as authorized by law, and communicate findings as outlined in this procedure. The hiring official will be responsible for allowing the person to have contact with minors on a regular basis after considering the results of the affidavit and any background checks.

V. AUTHORITY

Texas Education Code § 51.215 Access to Police Records of Employment Applicants

Texas Government Code § 411.094 Access to Criminal History Record Information: Institution of Higher Education

Texas Government Code § 411.135 Access to Certain Information by Public