



Handbook of Operating Procedures

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CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT

A. Purpose

The purpose of this policy is to provide requirements and guidelines for the conduct of criminal background checks with respect to employment decisions at The University of Texas-Pan American.

B. Persons Affected

This policy applies to employment of individuals in security-sensitive positions at the University including faculty, staff, work-study, direct wage, part-time and full-time positions. It does not restrict other investigations allowed by law.

C. Policy

The policy of the University is to promote campus safety and the security of personnel and University property, including data or network assets, consistent with the requirements of the law and prudent financial and programmatic practices, including The University of Texas System [UTS124 Criminal Background Checks for Employment](#). All positions of employment at the University have been designated security-sensitive and a criminal background check will be run on persons filling all regular and temporary positions. To further this policy, The University of Texas-Pan American will obtain criminal background checks on:

1. Applicants for Employment

- a. Criminal background check will be obtained on any applicant, internal or external, who is under final consideration, following normal recruitment and selection processes, for regular and temporary positions of employment.
- b. An authorization form must be signed and received from the applicant before the criminal background check is performed. The authorization form is available at http://portal.utpa.edu/utpa_main/dba_home/ba_forms#HR_index.
- c. Any or all of the following background check sources may be used, as appropriate, on applicants for employment:
 - i. The Texas Department of Public Safety Crime Records Service - Secure Site.
 - ii. A private vendor that offers national criminal background check services.



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- iii. Other state, national, and international sites.
 - d. No individual may begin employment with the University until criminal background check procedures under this policy have been performed and proper employment documents have been processed and approved accordingly.
2. Current Regular and Temporary Employees
- a. A criminal background check will be obtained on a current regular employee who is under consideration for a promotion that requires a criminal background check under this policy. Faculty promotions are excluded from this provision.
 - b. A criminal background check will be obtained on current regular and temporary employees if the University did not previously obtain a criminal background check on the employees under this policy. No authorization form is required.
 - c. A criminal background check will be obtained on a current regular employee when the President, or his/her designee, determines it is necessary to further the goals of the University.
 - d. Any or all of the following background check sources may be used, as appropriate, on current regular employees:
 - i. The Texas Department of Public Safety Crime Records Service - Public Site.
 - ii. Other public state, national, and international sites.
 - iii. A private vendor that offers national criminal background check services.
3. Statutorily Required Criminal Background Check
- a. 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, the University will comply with such laws.

To the extent such laws impose criminal background checks that are more extensive or substantially similar, the University will rely on compliance with the statute to satisfy the requirements of this policy.

D. Definitions



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1. *Applicant.* An individual who applies for a position, including a work-study or direct wage position, within the University, whether the individual is an outside candidate or a current employee of the University.
2. *Criminal conviction record information.* Public information maintained by the Department of Public Safety, as provided in [Texas Government Code §411.135](#).
3. *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](#).
4. *Employment Decision or Determination.* A decision regarding an offer of employment to an applicant (internal or external) and/or a decision regarding an employment action against a current employee.
5. *Hiring official.* The administrative official seeking to fill a vacant position, whether regular or temporary.
6. *Position.* Both full-time and part-time positions, whether the position is filled or to be filled by a regular or a temporary worker including work-studies and direct wage employees, 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 be held responsible for conducting the criminal background check.
7. *Promotion.* An evaluation of the qualifications and advancement of an individual involving a change of classification within the same department/administrative unit or within or between budgetary units that may or may not involve a salary increase. This does not include faculty promotions.
8. *Regular Position.* A full-time and/or a part-time position that entails employment for at least 20 hours per week for a period of at least four and one-half (4 ½) continuous months, excluding students employed in positions that require student status as a condition for employment. For purposes of this policy, faculty employees must be appointed for at least fifty percent (50%) time for at least four and one half (4 ½) months.
9. *Security-sensitive Position or Area.* A position or area as 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; positions that have responsibility for providing patient



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care or for providing childcare in a childcare facility as described in [Texas Human Resources Code §42.002](#) (3) as it may be amended from time to time; and positions that have direct access to or responsibility for pharmaceuticals, select agents, or controlled substances; or physical areas such as laboratories or facilities on the university campus that have been designated as security-sensitive by the administrative officer or faculty member responsible for them.

10. *Temporary Position.* A position that is not defined as a Regular Position including positions requiring student status as a condition for employment.

E. Responsibilities

1. The University Police Department is responsible for conducting the criminal background check and for reviewing and analyzing criminal history or conviction information obtained, communicating the review and analysis of the information to Human Resources and/or hiring official in accordance with this policy, retaining in a secure place the criminal background information, and destroying this information in accordance with this policy.
2. Human Resources shall obtain the authorization form to conduct the background investigation from finalists for all regular staff positions.
3. The hiring official, in the case of faculty, work-study and direct wage applicant finalists, is responsible for obtaining the background check authorization form and delivering it to the University Police Department prior to making a hiring decision. Digital transmission of authorization forms to the University Police Department is acceptable. Forms may not be sent via campus mail.
4. If the check discloses a criminal record which may result in an adverse employment decision on applicants for staff positions (regular and temporary), the Assistant Vice President/Director of Human Resources, in consultation with the hiring official and the Chief of Police or designee, shall be responsible for making the employment determination based upon the criminal background check information.
5. If the check discloses a criminal record which may result in an adverse employment decision on applicants for faculty positions (regular and temporary), the Provost, in consultation with the hiring official, Dean, and Chief of Police or designee, shall be responsible for making the employment determination.
6. If the check discloses a criminal record which may result in an adverse employment decision on a current regular staff employee, the Vice President for Business Affairs, in



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consultation with the Assistant Vice President/Director of Human Resources, hiring official, and the Chief of Police or designee, shall be responsible for making the employment decision.

7. If the check discloses a criminal record which may result in an adverse employment decision on a current regular faculty employee, the Provost, in consultation with the hiring official, Dean, and the Chief of Police or designee, shall be responsible for making the employment decision.

F. Procedures

1. The University must receive an authorization form signed by applicants for employment before the background information is requested. The authorization form includes the notice required by [Texas Government Code 559.003](#), as it may be amended from time to time. The authorization form will either be included as part of the UTPA Application for Employment packet in the case of regular staff positions or be provided by the hiring department in the case of faculty, temporary, including work-study and direct wage positions. Refusal to sign the authorization form will eliminate the applicant from consideration to fill the position.
2. Upon receipt of the authorization form, the University Police Department will conduct the background investigation before an employment decision is made. The University Police Department will communicate with the appropriate officials as stated in Subsections E.4. through E.7 on the results of the investigation. Additionally, an individual will be provided notice of the results in accordance with F.5. If circumstances require that an employment offer be made to an applicant before the completion of an investigation, the offer must be in writing and state that the offer is contingent on the satisfactory completion of a criminal background investigation.
3. Criminal history record information obtained by the University may be used only for the purpose of making employment decisions on regular and temporary positions and shall in no way be used to discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.
4. The University, in making employment decisions, will not automatically disqualify all individuals with criminal records. In the event the investigation reveals criminal records or other relevant information, it will be determined on a case-by-case basis whether the individual is qualified based on factors such as:
 - a. Specific duties of the position;



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- 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.

5. Notice Requirement

a. External Applicants

- i. If the University receives a report indicating that an applicant has a criminal record, the Police Department will notify the appropriate officials as stated in Subsections E.4. and E.5.
- ii. The Police Department will notify the applicant that such a report has been received and notify the applicant of the right, within three (3) business days, to:
 - (a) challenge, in writing, the accuracy and completeness of the report,
 - (b) to submit additional information relating to the criminal record, and
 - (c) to explain why it should not affect an employment decision.

b. Current Staff Employees

- i. If the University receives a report indicating that a current staff employee has a criminal record, the Police Department will notify the appropriate officials as stated in Subsection E.6.
- ii. The hiring official will notify the employee that such a report has been received and notify the employee of the right to challenge in writing 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 within three (3) business days.

c. Current Faculty Employees



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- i. If the University receives a report indicating that a current faculty employee has a criminal record, the Police Department will notify the appropriate officials as stated in Subsection E.7.
- ii. The hiring official will notify the employee that such a report has been received and notify the employee of the right to challenge in writing 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 within three (3) business days.

6. Opportunity to Respond to Adverse Action

a. Current Staff Employees

A challenge to the decision of the University will be subject to standard University grievance procedures in [Handbook of Operating Procedures Section 7.7.1](#).

b. Current Faculty Employees

A challenge to the decision of the University will be subject to standard University grievance procedures in [Handbook of Operating Procedures Section 6.2.8](#).

c. External Applicants

The decision of the University is final and may not be appealed.

7. Self-reporting

a. Current Employees

- i. Current employees must report to their supervisor in writing, within five (5) business days of conviction, any criminal convictions, excluding misdemeanor offenses punishable only by fine.
- ii. Failure to self-report within the required period is a violation of this policy and may lead to disqualification from eligibility for their position or disciplinary action as appropriate.
- iii. Information provided by self-report will be subject to verification, as appropriate, from the sources listed in Subsection C.2. of this policy.



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b. Applicants for Employment

- i. Applicants must report to the Police Department any charges or convictions, excluding misdemeanor offenses punishable only by fine, occurring after the date of the application. The Police Department will notify the appropriate officials as stated in Subsections E.4. and E.5.
- ii. Failure to self-report may lead to disqualification from eligibility for employment with the University.

c. Hiring Officials/Supervisors

- i. A hiring official and/or supervisor receiving a self-report from an employee as required under this subsection must provide the information to the Police Department.
- ii. The Police Department will notify the appropriate officials as stated in Subsection E.6. through E.7.

8. Use of Private Vendors

- a. If a check performed by a credit reporting agency discloses a criminal record that would result in an adverse action, the Police Department will provide a copy of the report to the selected applicant along with the “Summary of Rights under the Fair Credit Reporting Act” written by the Federal Trade Commission prior to taking adverse action. The purpose of the notice is to give the selected applicant an opportunity to dispute or explain any inaccurate or incomplete information.
- b. The selected applicant will have three (3) days to respond to the Police Department. If during this process it is determined that the selected candidate provided false or incomplete information during the application process, the review may terminate and any contingent offer of employment withdrawn.
- c. If an adverse hiring decision is made based on the criminal background check, the selected applicant must be provided the name of and contact information for the entity that issued the criminal background report as well as a statement that the entity did not make the adverse decision and cannot explain why it was made.
- d. When a criminal history record check is performed by a credit reporting agency, under Federal Trade Commission Regulation 16 CFR Section 681.1, if a Notice of Address Discrepancy is received from the credit reporting agency about an



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individual, the University Police Department will compare the information contained in the report with the information provided by the individual. Based on this review, the University Police Department will attempt to form a reasonable belief that the report from the credit reporting agency relates to the subject individual. If it is unable to form such a belief, the University Police Department will contact the subject individual to determine if the information in the report relates to the subject individual.

- i. If a reasonable belief cannot be formed accordingly, the report cannot be used by the University in evaluating the subject individual.
- ii. If a reasonable belief can be formed that the report does relate to the subject individual, the Police Department will report a Verified Address to the credit reporting agency if the University establishes a continuing relationship with the subject individual and if the University regularly and in the ordinary course of business furnishes information to the credit reporting agency that sent the Notice of Address Discrepancy.
- iii. The Verified Address will be reported to the credit reporting agency as part of the information the University sends to the agency for the reporting period in which the University establishes a continuing relationship with the subject individual.
- iv. In determining whether an address is a Verified Address, the University Police Department may:
 - (a) verify the address with the subject individual; or
 - (b) review information about the subject individual; or
 - (c) utilize other methods which the University Police Department has determined are reasonable.

9. Criminal Background Check Records

- a. 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.
- b. Under [Texas Government Code §411.085](#), the unauthorized release of criminal history record information is a criminal offense, and consequently, the University should seek legal advice with respect to any requested release of such information.



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- c. After the expiration of the probationary term of the individual's employment, the University Police Department shall destroy all criminal history record information that was obtained about the individual. If the position is one that does not have a probationary period, then the University Police Department shall destroy the information 180 days after the University obtains it.
 - d. Criminal history record information under Subsection F.10.b. below will not be retained if they do not result in convictions or if the applicant is not hired. Criminal history record information under Subsection F.10.a. below, when verified from an appropriate source in accordance with Subsection C.2. above, will be maintained in the same way as other criminal history record information from these sources.
10. Criminal Background Checks Jurisdiction
The criminal background check shall include the jurisdictions in which the individual has resided and/or worked within the seven years preceding the date of employment or application at the University.

G. Review

The Divisional Head for this policy is the Vice President for Business Affairs and this policy shall be reviewed every five years or sooner if necessary by the following Stakeholders:

1. Assistant VP Business Affairs and Director of Human Resources – Senior Reviewer
2. Chief of Police
3. Director Student Financial Services
4. Staff Senate Chair
5. Faculty Senate Chair
6. Academic Affairs Executive Team