



# **Handbook of Operating Procedures**

**Section:** 4.1.2  
Originally Approved: 04/14/2003  
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## **EMPLOYEE CRIMINAL BACKGROUND CHECKS FOR SECURITY SENSITIVE POSITIONS**

### **A. Purpose**

The purpose of this policy is to provide requirements and guidelines for the conduct of criminal background checks with respect to filling security sensitive positions 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 Security-Sensitive Positions](#).

All positions of employment at the University have been designated security sensitive and a criminal background check will be run on persons filling these positions.

To further this policy The University of Texas-Pan American will obtain:

1. criminal history record information on applicants who are under final consideration, following normal screening and selection processes; and
2. criminal conviction record information on a current employee who is under consideration for a transfer, promotion, or reclassification and on whom the institution did not previously obtain either criminal history record information or criminal conviction record information within the past two (2) years.

Criminal conviction record information will not be obtained for:

- a. position reclassifications that result in a title change with no change in current responsibilities;
- b. career progression promotions occurring within the current department (e.g., associate professor to full professor or secretary to senior secretary);



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- c. involuntary transfers or reclassifications; and
- d. former University employees with a break in service of less than 120 days.

### **D. Definitions**

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. *Hiring official.* The official responsible for the decision to offer employment to an applicant or to promote, transfer or reclassify an employee.
5. *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.

### **E. Responsibilities**

1. The Office of Human Resources is responsible for ensuring the criminal background is conducted.
2. The Office of Human Resources shall obtain the authorization form to conduct the background investigation from finalists for all positions except work-study and direct wage positions and where required by the Fair Credit Reporting Act (FCRA), 15 USC 1681 provide the finalist with a Summary of Rights Under the FCRA.
3. The hiring official, in the case of work-study and direct wage applicant finalists, is responsible for obtaining the background check authorization form and submitting it to the Office of Human Resources prior to announcing a hiring decision.



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4. If the check discloses a criminal record, the Director of Human Resources, in consultation with the hiring official, shall be responsible for making the determination to hire, promote, transfer, or reclassify an employee, work- study or direct wage based upon the criminal background check information.

### **F. Procedures**

1. The University shall identify in the job description and the advertisement for staff and faculty positions that the position is security-sensitive by including the following statement in the job advertisement:

“This position is security-sensitive and subject to *Texas Education Code* §51.215, which authorizes the employer to obtain criminal history record information;”

and including the following statement in the job description:

“This position is security-sensitive and thereby subject to the provisions of *Texas Education Code* §51.215.”

2. The University must receive an authorization form signed by the applicant 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 or be provided by the hiring department. Refusal to sign the authorization form will eliminate the applicant from consideration to fill the position. The hiring official will notify the Office of Human Resources of the name of the selected candidate.
3. The Office of Human Resources will conduct the background investigation on the recommended candidate(s) before the hiring official makes the employment decision. If circumstances require that an offer be made 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.
4. Criminal history record information obtained by the University may be used only for the purpose of evaluating applicants for employment positions and shall in no way be used to discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.
5. The University will not automatically disqualify from employment positions all individuals with conviction records. In the event the investigation reveals criminal



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convictions 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;
  - 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. If a check performed by a credit reporting agency discloses a criminal record that would result in an adverse action, the University will provide a copy of the report to the selected candidate 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 candidate an opportunity to dispute or explain any inaccurate or incomplete information. The selected candidate will have three (3) days to respond to the Office of Human Resources. 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. If an adverse hiring decision is made based on the Criminal History Background check, the selected candidate 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.
7. 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. 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. After the expiration of the probationary term of the individual’s employment, the University Police shall destroy all criminal history record information



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that was obtained about the individual. If the position is one that does not have a probationary period, then the University Police shall destroy the information 180 days after the University obtains it.

8. 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 at the University.
9. 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 individual, the Office of Human Resources will compare the information contained in the report with the information provided by the individual. Based on this review, the Office of Human Resources 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 Office of Human Resources will contact the subject individual to determine if the information in the report relates to the subject individual.
  - a. If a reasonable belief cannot be formed accordingly, the report cannot be used by the University in evaluating the subject individual.
  - b. If a reasonable belief can be formed that the report does relate to the subject individual, the Office of Human Resources 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.
  - c. 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.
  - d. In determining whether an address is a Verified Address, the Office of Human Resources may:
    - i. verify the address with the subject individual; or
    - ii. review information about the subject individual; or
    - iii. utilize other methods which the Office of Human Resources has determined are reasonable.



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#### **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. Council of Deans