

# Criminal Background Checks

<b>Section:</b>	V: Human Resources
<b>Chapter:</b>	12
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## 12.1 Criminal Background Check Requirements

### 12.1.1 Purpose

The University of Texas at El Paso is committed to promoting a safe and secure environment. To that end, this policy sets forth requirements for criminal background checks.

## 12.2 Applicability

This policy and requirements for criminal background checks applies to, at a minimum in the following situations:

**12.2.1 Statutorily Required Criminal Background Check.** Where 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, the University will comply with such laws. To the extent such laws impose criminal background check requirements that are more extensive or substantially similar, the University may rely on compliance with the statute to satisfy the requirements of this policy.

Similarly, the University may rely on the 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 the University receives documentation from that federal agency showing that the federal agency conducted a background check, including a criminal background check with a sex offender registry check.

**12.2.2 Applicants for Employment.** A criminal background check will be conducted on any applicant, internal or external, who is under final consideration, following the normal screening and selection processes, for employment whether for a full-time, part-time, regular, temporary or student position of employment with the University. The University may rely on a criminal background check conducted at the University 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. The authorization form may be found on the [Human Resources](#) website under the HR Forms section. For student applicants to a position requiring student status,

the University may rely on a criminal background check performed at the University 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 University will obtain an authorization form signed by the applicant before the University requests the check. The form must conform to applicable State and Federal law.

I. Sources of criminal background check for applicants for employment. Any or all of the following background check sources may be used, as appropriate:

- i. The Texas Department of Public Safety (DPS) Crime Records Service – Secure and/or Public Site;
- ii. A private vendor that offers national criminal background check services; or
- iii. Other state, national, and international sites.

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

**12.2.3 Current Employees.** A criminal background check will be conducted on a current employee:

- a. who is under consideration for a promotion to a position that requires a criminal background check based on the University’s policy; or
- b. for whom the University has not previously obtained a criminal background check; or
- c. for whom, at the discretion of the President, or the President’s designee, determines that obtaining such information serves an official or business purpose to further the goals of the University.

I. Sources of criminal background check for current employees. Any or all of the following background check sources may be used, as appropriate:

- i. The Texas Department of Public Safety (DPS) Crime Records Service – Public Site;
- ii. Other public state, national, and international sites; or
- iii. A private vendor that offers national criminal background check services.

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

**12.2.4 Contractors.** A criminal background check will be conducted on individuals or employees of companies or entities contracted by the University, where these individuals or employees will perform duties or services on the University premises. The University will require the contractor to conduct the criminal background check for their employees who work on University property. In addition, a criminal background check may be required of contractors' employees, at the sole discretion of the University, taking into account the nature of the services to be provided by the contractor (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). The criminal background check must include a sex offender registration check.

**12.2.2.4.1 Contractors for Child Care and Youth Camps.** Criminal Background Checks shall be conducted in compliance with the provisions specifically noted below in 12.2.6 and 12.2.7.

**12.2.5 Without Salary Faculty Appointees.** A criminal background check will 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](#).

I. Sources of criminal background check for without salary faculty appointees. Any or all of the following background check sources may be used, as appropriate:

- i. The Texas Department of Public Safety (DPS) Crime Records Service – Public Site;
- ii. Other public state, national, and international sites; or
- iii. A private vendor that offers national criminal background check services. The criminal background check must include a sex offender registration check.

**12.2.6 Child-Care Centers.** 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 operated by, on the property of, or in the facilities of the University.

**12.2.6.1 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.

I. Sources of criminal background check by the Center for those individuals identified in 12.2.6.1 above. The following criminal background check sources are to be used, as appropriate:

- i. Texas Department of Public Safety (DPS) and Federal Bureau of Investigation fingerprint-based criminal background checks;
- 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 Center 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.

**12.2.6.2 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.

I. Sources of criminal background check by the Center for those individuals identified in 12.2.6.2 above. The following criminal background check sources are to be used, as appropriate:

- i. 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.

- v. An appropriate out-of-state check for anyone who has lived outside the state of Texas since the age of 17.

**12.2.7 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 youth camps operated by, on the property of, or in the facilities of the University. A criminal background check will be conducted each year, 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. The check must be conducted prior to permitting an individual to work, volunteer or be present at the camp. Volunteers and students observers who are subject to the check must not have unsupervised access to campers.

I. Sources for criminal background information for youth camp employees, final applicants, volunteers and student observers. The following criminal 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 Director of the Camp 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.

**12.2.8 Volunteers in Health Care Facilities.** A criminal background check will be conducted on volunteers, who will regularly or frequently be a volunteer in University health care facilities, including a student health center. Such check will be conducting prior to permitting the individual to volunteer. Any volunteer who has not been subject to a check must not be allowed unsupervised access to patients.

I. Sources of criminal background information for Volunteers in Health Care Facilities. Any or all of the following background check sources may be used:

- i. The Texas Department of Public Safety (DPS) Crime Records Service Secure or Public Site check;
- ii. Other public state, national, and international sites; and
- iii. A private vendor that offers national criminal background check services. The criminal background check must include a sex offender registration check.

**12.2.9 Students.** A criminal background check, including a sex offender registration check, must be conducted on:

**12.2.9.1** Students in an educational program that includes assignment to a clinical health care facility or may require work with patients.

**12.2.9.2** Students who are subject to the criminal background check as established in this section 12.2.9 subject to the University's Student Background Check Policy located on the College of Health Sciences Clinical Compliance website under the Compliance Resources section.

**12.2.10** Unless otherwise specified in this chapter, the criminal background information should be obtained from sources that would include such information for states where the applicant has resided and/or been employed during the period of no less than the previous seven (7) years.

### **12.3 Obtaining Criminal Background Check Information**

**12.3.1 Applicants.** The hiring official will be responsible for requesting that an applicant (internal or external) who is the finalist complete the Criminal Background Check Form. The hiring official will forward the completed and signed form to the Office of Human Resources (HR). An applicant who refuses to complete, sign, and submit the form will be removed from further consideration for the position.

**12.3.1.1** In the event criminal record check is unavailable for an applicant position, the University reserves the right to obtain a complete set of fingerprints. If the applicant fails to provide a complete set of fingerprints on request, the applicant will not be considered for the position for which he or she has applied.

**12.3.2 Current Employees.** Human Resources will be responsible for obtaining a criminal background check on a current employee (not otherwise an internal applicant). Human Resources may request, but is not required to do so, that the current employee complete the Criminal Background Check Form. If a current employee refuses to complete, sign and submit the Criminal Background Check Form in response to a request made in accordance with this policy, appropriate action, in accordance with University policies, may be taken including

reassignment, discipline or discharge.

**12.3.3** Only HRS is authorized to initiate requests for criminal background check information. Any criminal background information received by the University from the Texas Department of Public Safety and/or a designated third party vendor authorized to conduct the criminal background check will be reviewed, and analyzed by the University Police Department. The University Police Department will notify HRS of the results of the investigation, and HRS will, in turn, notify the hiring official of the results.

## **12.4 Use of Criminal Background Check Information**

**12.4.1** Criminal background check information will be used only to evaluate applicants for employment as stated in this policy, and shall in no way be used to discriminate on the basis of race, color, national origin, religion, sex, disability, sexual orientation, or age. Criminal record information obtained pursuant to this policy will be regarded as confidential as required by law and will not be made part of the applicant's file or the employee's personnel file when prohibited by law or communicated to any unauthorized person. Under *Texas Government Code* § 411.085, the unauthorized release of criminal background information is a *criminal offense* and, consequently, the institution should seek legal advice with respect to any requested release of such information.

**12.4.2 Notice Requirement.** When HRS receives a report indicating that an applicant for employment or a current employee has a criminal record, HRS 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 with the agency that provided the report and to submit additional information relating to the criminal record and why it should not affect an employment decision.

## **12.5 Employment Decisions and Actions**

**12.5.1** If circumstances require that an offer be made before the completion of an investigation, the offer must be in writing and contain the following statement: *"This offer is contingent on the completion of a satisfactory criminal background investigation."* The individual to whom the position is offered may not begin work until the requirements of this chapter have been met.

**12.5.2 Notice Requirement.** If HRS advises the hiring official that the results of the criminal background check indicate that the applicant may be unacceptable for the position being filled or for continued employment, HRS will provide an applicant with a copy of the report upon which this advice is based, 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. A hiring official may not extend an offer to the applicant that HRS has advised may be unacceptable.

**12.5.3** Should a criminal background investigation indicate that a current employee may be unsuitable for continued employment, HRS will recommend to the division Vice President, or their respective designee, that appropriate action, including termination of employment, be taken. HRS will provide the employee with a copy of the report upon which this advice is based, 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.

**12.5.4 No Automatic Disqualification**. Except as outlined in section 12.5.4.1 below, the University does not automatically disqualify all applicants or current employees with a criminal background from employment or continued employment, appointment or privileges. In the event the investigation reveals a criminal background, the hiring official and/or the divisional Vice President when a current employee, must consult with the Office of Human Resources in these circumstances and determine, on a case by case basis, whether the individual is qualified based on factors such as:

- i. specific duties of the position;
- ii. number of offenses;
- iii. nature of each offense;
- iv. length of time intervening between the offense and the employment decision;
- v. employment history;
- vi. efforts at rehabilitation; and
- vii. accuracy of the information that the individual provided on the employment application.

The ultimate responsibility of the decision to hire or reject an applicant or continue employment of a current employee will rest with the hiring official and the divisional Vice President, after consulting with the Office of Human Resources.

**12.5.4.1** The University 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, Human Resources and the University's Chief of Police concur, and 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 institution's Chief of Police.

**12.5.4.2** University's criminal background check procedures must include a review of the criminal background information by both Human Resources and the University's Chief of Police to determine whether there is a disqualifying offense under this section 12.5.4.

## **12.6 Opportunity to Respond to Adverse Action.**

**12.6.1 External Applicants for Employment and Volunteers.** The decision of the institution is final and may not be appealed.

**12.6.2 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.

**12.6.3 Use of Private Vendors.** If the University 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 University must comply with all applicable FCRA disclosure and notice requirements.

## **12.7 Post Application/Employment: Self-Report of Charges or Convictions Required.**

**12.7.1 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.

**12.7.2 Current Employees.** 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. Subject to standard grievance and disciplinary procedures as applicable, failure to report is a violation of policy and may lead to disciplinary action as appropriate.

**12.7.3 Department Head Obligation.** The University official receiving a self report as required under this section must provide the information to HRS and the University's Chief of Police and consult regarding the individual's suitability for the position.

**12.7.4 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 University policy and shall lead to disciplinary action.

## **12.8 General Responsibilities**

**12.8.1** The hiring official has the following responsibilities:

- a. to ensure that the appropriate criminal background check is completed before a job offer is extended, unless the offer is made contingent on the completion of a satisfactory investigation;
- b. to remove from consideration for employment any applicant whose criminal background information proves to be unacceptable, given the nature and responsibilities of the position and based on a case-by-case analysis. This decision must be made upon consultation with the Office of Human Resources, and the divisional Vice President.

**12.8.2** The University Police Department has the following responsibilities:

- a. to review and analyze criminal background information obtained by Human Resources from the Texas DPS Crime Record Service sites (secure or Public), other state, national or international sites, or a designated third-party vendor authorized to conduct the criminal background check in compliance with applicable law;
- b. to communicate the review and analysis of the information to HRS;
- c. subject to applicable state and federal law, to retain in a secure place the criminal background check information and, at the expiration of 180 days after the date that the investigating official obtained the criminal background check information, to destroy that documentation. After the expiration of the probationary term of the individual's employment, the Chief of Police, or his/her designee shall destroy all criminal background information that UTEP has obtained about the individual. If the position is one that does not have a probationary period, then the Chief of Police, or his/her designee shall destroy the information 180 days after the University obtains it.

**12.8.3.** Criminal Background Check Records shall be handled and retained in compliance with applicable State and Federal Laws.

**12.8.4** The Office of Human Resources has the following responsibilities:

- a. to enter the appropriate data from an applicant's criminal background check form into the Texas Department of Public Safety database and/or a designated third-party vendor database, as applicable;
- b. to assist and educate hiring officials on their responsibilities and liabilities with respect to criminal background investigations and the information contained in such investigation

reports; and

- c. to monitor compliance with requirements of this policy and procedure and to monitor changes in the law applicable to the subject of this policy.

## 12.9 Definitions

**12.9.1 Appropriate** means 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.

**12.9.2 Frequently present** means more than two non-continuous visits at the center in a 30-day period.

**12.9.3 Human Resources (HR)** means the University's Office of Human Resources to include the Associate Vice President, Director or other HRS designated official with responsibility for administration of this policy.

**12.9.4 Non-continuous visit** means 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.

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

**12.9.6 Regularly** means on a scheduled basis.

**12.9.7 Unsupervised** access means the person is allowed to be with children without the presence of a qualified caregiver.

**12.9.8 Youth Camp** means 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

## 12.10 Authority

The statutory authority for this policy and procedure is provided by:

- i. Texas Education Code Section 51.215. Access to Police Records of Employment Applicants
- ii. Texas Government Code Section 411.081 et seq. Criminal History Clearinghouse
- iii. Texas Government Code Section 411.094. Access to Criminal History Record

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- iv. Texas Government Code Section 411.135. Access to Certain Information by Public. v. Fair Credit Reporting Act 15 U.S.C. §1681 *et. seq.*
- vi. Texas Human Resources Code - Chapter 42. Regulation of Child Care Services
- vii. Texas Administrative Code – Chapter 745 Department of Family and Protective Services, Licensing
- viii. Texas Health and Safety Code – Chapter 141 – Youth Camps

Questions regarding compliance and other issues related to security-sensitive positions should be addressed to the UTEP Office of Human Resources and the Office of Institutional Compliance.