Rule Statement

Criminal background checks must be performed on all new employees and may be performed on current employees.

Reason for Rule

This rule provides guidance for performing and analyzing criminal background information. Criminal history records shall not be used to discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, age, genetic information, veteran status, or disability.

Procedures and Responsibilities

1. GENERAL

1.1 This rule supplements System Regulation 33.99.14, Criminal History Record Information - Employees and Applicants (hereinafter, the Regulation). In an effort to provide a safe environment for students, visitors, faculty, and staff, and enhance the security of physical resources, Texas A&M University-Corpus Christi shall conduct criminal background checks on applicants selected for hire and on current employees.

1.2 The President has determined that all positions, including student, adjunct, part-time and temporary positions at the University fall under the category of security-sensitive positions, as defined in the Regulation.

1.3 Additional information regarding the ongoing criminal background check process for employees involved in youth initiatives can be found in 24.01.06.C1 Youth Initiatives.

1.4 Vacancy announcements, advertisements for positions, and employee job descriptions will identify the security-sensitive nature of the positions. Applicants will be informed that employment requires an acceptable background investigation.
1.5 Every applicant for university 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 University.

2. CRIMINAL HISTORY BACKGROUND CHECKS

2.1 If circumstances require that an offer or decision be made before the completion of the investigation, the offer must state that employment is contingent on the completion of an acceptable criminal background investigation.

2.2 Human Resources will obtain an authorization form from final candidates and new employees who have been extended a conditional offer of employment. The authorization form includes a notice that individuals will have the opportunity to request, receive, review and correct information collected using the authorization, as permitted by law. Individuals refusing to sign the authorization form for the background investigation will not be eligible for employment. The criminal history authorization form can be found here.

2.3 Any applicant who has criminal history record information indicating a conviction for an offense other than a felony may be hired only after a recommendation by the department/unit head, in consultation with the Director of Human Resources and the Chief of Police.

2.4 The approval of the President/CEO is required to employ an individual who has a conviction for:

2.4.1 A felony, as defined by state or federal law, or equivalent offenses under the law of another jurisdiction; or

2.4.2 Any offense requiring registration as a sex offender.

2.5 An applicant for university 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.

2.6 Use of a third party provider to conduct criminal background investigations, not processed by Human Resources, must be approved in advance by the divisional VP. The process should include notification of and coordination with Human Resources. If a third party provider is used, the hiring manager will communicate the results to the Director of Human Resources. Any and all related records submitted by a third party provider will be forwarded to Human Resources. Any use of a third party provider must comply with the Federal Fair Credit Reporting Act (FCRA).

3. CRIMINAL HISTORY RECORDS

3.1 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. The Chief of University Police will be the custodian of records related to criminal background investigations conducted by the University Police Department. If a criminal background investigation is conducted by a third-party provider, the department/unit head will forward any information received to the Chief of University Police.

3.2 All criminal history record information obtained about an individual shall be destroyed as soon as practicable: for applicants, after the position has been filled and the individual reports to his/her first day of work; for employees, after the criminal history record information has been analyzed and any resulting action taken under this rule. Note, however, that Human Resources shall maintain completed background check authorization/consent forms as provided in the system records retention schedule.

4. FALSIFICATION OR FAILURE TO DISCLOSE CRIMINAL HISTORY

4.1 Falsification or failure to disclose criminal activity at any point during the application process or period of employment will be addressed as outlined in section 4 of the Regulation.

5. POST-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

5.1 Employees are Subject to Periodic Checks

5.1.1 Employee’s criminal history record information is subject to review at any time as permitted by law. Periodic criminal history information record checks shall be conducted at the discretion of the University with approval of the President. The President has delegated this authority to the Vice Presidents for units not reporting directly to the President.

5.1.2 Criminal background information may also be required for an employee who is under consideration for a transfer, demotion or promotion.

5.2 Current 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.

6. ANALYSIS OF CRIMINAL HISTORY RECORD INFORMATION AND SUBSEQUENT ACTION

6.1 Upon finding criminal history record information indicating a conviction, criminal charge or an arrest, the Human Resources office and the University Police Department shall conduct the analysis found in Section 6 of the Regulation.

6.2 If, after completing the analysis with respect to a conviction, Human Resources and the University Police Department reasonably conclude the applicant’s or employee’s criminal conduct evidences he or she is unsuitable for the position in
question, Human Resources may recommend that the department/unit reject the applicant or dismiss the employee. If the department/unit disagrees with the conclusion of Human Resources and wishes to employ or continue the employment of the individual, the department/unit must receive approval from the President/CEO or designee. With the exception of convictions listed in Section 2.4, the President has delegated this authority to the Vice Presidents for units not reporting directly to the President.

6.3 If, upon conclusion of the analysis required in Section 6 of the Regulation with respect to a criminal charge or arrest, Human Resources concludes that the applicant’s or employee’s misconduct evidences the person is unsuitable for the position in question or should be disciplined, Human Resources may recommend that the department/unit reject the applicant or discipline or dismiss the employee. If the department/unit disagrees with the conclusion of Human Resources and wishes to employ, continue the employment of, or not discipline the individual, the department/unit must receive approval from the President/CEO or designee. The President has delegated this authority to the Vice Presidents for units not reporting directly to the President.

7. **APPEALS**

7.1 An external applicant rejected for university employment under this rule has no appeal unless the individual alleges unlawful discrimination, sexual harassment and/or retaliation. Such appeals must be filed in accordance with university rule 08.01.01, Civil Rights Compliance.

7.2 Faculty employees may appeal action taken under this rule by following the applicable provisions of university procedure 32.01.01.C0.01, Complaint and Appeal Procedure for Faculty Members or university rule 08.01.01.C1, Civil Rights Compliance.

7.3 Non-faculty employees may appeal action taken under this rule by following the applicable provisions of university procedure 32.01.02.C0.01, Complaint and Appeal Process for Nonfaculty Employees or university rule 08.01.01.C1, Civil Rights Compliance.

7.4 The President has delegated authority to review and approve appeal investigation findings to the Vice Presidents for units not reporting directly to the President.

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**Related Statutes, Policies, or Requirements**

- Tex. Gov't Code Ch. 411, Subchapter F
- Tex. Gov't Code Ch. 559
- Fair Credit Reporting Act, as amended, 15 U.S.C. §§ 1681 – 1681u
- 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
• System Regulation 32.01.02 Complaint and Appeal Process for Nonfaculty Employees
• System Regulation 33.99.14 Criminal History Record Information - Employees and Applicants
• University Rule 08.01.01.C1 Civil Rights Compliance
• University Rule 24.01.06.C1 Youth Initiatives
• University Rule 32.01.01.C0.01 Complaint and Appeal Procedures for Faculty Member
• University Rule 32.01.02.C0.01 Complaint and Appeal Process for Nonfaculty Employees

Definitions

Applicant – an individual applying for a position with the university, 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.

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. 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

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