

Policy HR-E-PO1

Criminal Background Checks

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I. Title

Criminal Background Checks

II. Policy

- A. The University of Texas at Arlington (UT Arlington) is committed to promoting the safety and security of personnel and UT Arlington property consistent with the requirements of the law. To that end, it is the policy of the UT Arlington to require that a criminal background check be performed for employment, for volunteers and interns, and contractor employees who are assigned to perform work on UT Arlington owned or controlled property(s).
- B. These procedures provide requirements and guidelines for the conduct of criminal background checks in employment decisions, pursuant to the University of Texas System Administration (UT System) requirement that each University of Texas System institution (UT institution) shall adopt and include in its Handbook of Operating Procedures (HOP) a policy and related procedures for the administration of criminal background checks ([UT System Policy UTS124](#)).
- C. **Procedures**
 - 1. **Criminal Background Check Required.** UT Arlington requires that a criminal background check be obtained on:
 - a. **Applicants for Employment:** A background check must be conducted on any applicant, internal or external, who is under final consideration, following normal screening and selection processes, for employment, whether for a full-time, part-time, regular, temporary or student position of employment with the

University. UT Arlington may rely on a criminal background check conducted 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. This provision does not authorize relying on a criminal background check conducted at another UT System institution. ***All required checks must be conducted before the employee begins work.***

- b. **Current Employees:** A criminal background check must be conducted on:
 - i. a current employee who is under consideration for a promotion that requires a criminal background check based on UT Arlington policy;
 - ii. a current employee, if the institution has not previously obtained a criminal background check on the employee; and
 - iii. a current employee, when the president, or his or her designee, determines it is necessary to further the goals of the University.
- c. **Faculty Appointees Without Salary:** A criminal background check must 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](#).
- d. **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 child-care centers and youth camps operated by, on the property of, or in the facilities of UT Arlington.
 - i. Youth camps shall ensure that 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 are subject to a criminal background check each year. The check shall be conducted *prior to permitting an individual to work, volunteer or be present*. Further, volunteers and student observers who are not subject to a check must not have unsupervised access to campers.
 - ii. An international check for any foreign national who the Camp 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 during the year.).

- e. **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).

- f. **Sex Offenders:** A criminal background check must include a sex offender registration check; and an individual with a sex offense cannot be authorized for employment or appointment unless all of the following are met:
 - i. a low risk assessment (made pursuant to the Code of Criminal Procedure or in the absence of such by the Chief of Police);
 - ii. a compelling reason articulated by the hiring official;
 - iii. concurrence by both the Vice President of Human Resources (or Designee) and Chief of Police; and
 - iv. Concurrence by the President.

- g. **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, UT Arlington will comply with such laws. To the extent such laws impose criminal background check requirements that are more extensive or substantially similar; UT Arlington may rely on compliance with the statute to satisfy the requirements of this policy. Similarly, UT Arlington may rely on the criminal background check conducted by an agency of the federal government to satisfy the requirements of this policy for an individual on assignment from an agency of the federal government, if UT Arlington receives documentation from that federal agency showing that a background check, including a criminal background check with a sex offender registration check, has been conducted by the federal agency.

2. **A criminal background check is not required for the following current UT Arlington employees:**

- a. **Staff.** When there is a change in job title with no change in current responsibilities, or for a promotion or other advancement that is part of an employee's normal career progression under the responsibility of the same Vice President.
 - b. **Faculty.** When there is a promotion or other advancement that is part of the faculty member's normal career progression such as current faculty promoted to tenure, or from Associate Professor to Full Professor.
3. **Job Descriptions, Advertisements, and Postings.** UT Arlington Office of Human Resources will ensure that all job advertisements and postings for UT Arlington include a statement that the position requires a criminal background check including criminal history record information.
4. **Conducting a Criminal Background Checks**
- a. The hiring department will now be asked to create a request using form 3-9 that will be submitted to a special email address (cbc@uta.edu) that has been created to handle CBC requests. *Criminal Background Check (Form 3-9)* will need the following information filled out; the name of the applicant, applicant's email address, job posting number, position, name of department, and name of hiring manager. The Human Resources representative will generate an electronic email to the applicant in which he/she will be asked to go to a secure website to fill out electronic CBC form. An applicant who fails to complete and submit the form will be removed from further consideration for the position. In addition, if the applicant is a current staff member, refusal to submit the completed form will be grounds for disciplinary action (with the exception for employees as noted in Part A ii .1)
 - b. The applicant will receive an email with a link to a secure website to authorize running the check electronically. The form will go directly to our third-party vendor for processing.
 - c. The criminal background check will include states where the applicant has resided and/or been employed during the period of no less than seven (7) years (if available) immediately preceding the date the individual submitted *Criminal Background Check (Form 3-9)*.
 - d. The human resource representative will notify the hiring department of the results.
 - e. If there is an issue with the background check the Vice President of Human Resources, Designee or the Chief of UTA Police will review any information found on the official criminal record, and communicate the findings to the hiring manager. Conviction information **must** be considered on a case-by-case basis taking into consideration the type and severity of the offense, the time

passed since the offense, and whether the offense is relevant to the duties of the position.

5. Conducting a Criminal Background Check on Current Employees.

- a. UT Arlington will utilize a third party vendor who uses TxDPS Crime Records Service - Public Site, National Sex offense registry, and/or other publically available local, state, or federal criminal record sources to perform these checks to obtain criminal conviction record information and other publically available information.
- b. If there is an issue with the background check the Vice President of Human Resources or his/her designee, or the Chief of UTA Police will review any information found on the official criminal record, and communicate the findings to the hiring department. In the case of a faculty member the Vice President of Human Resources or his/her designee will notify the Provost and Vice President for Academic Affairs (Provost) and Dean of the School or College.

6. No Automatic Disqualification for Criminal Background. For the purposes of this section, hiring official(s) at UT Arlington shall be as follows for the areas indicated: President, Provost, Vice Presidents and Deans.

UT Arlington will not automatically disqualify from employment all individuals with conviction records. In the event the criminal history check investigation reveals criminal convictions or other relevant information, the designated hiring official(s) will determine on a case-by-case basis whether the individual is qualified based on a number of factors including, but not limited to:

- 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.

7. Notice Requirement.

- a. Because UT Arlington uses 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). If such a report is relied on to deny employment, deny a promotion, reassign, or terminate an employee, the individual will be provided with a specific pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," a document prescribed by the Federal Trade Commission. The credit reporting agency that furnishes the individual's report is required to give UT Arlington the summary of consumer rights (<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf>).

- b. Within five business days following the receipt of the report as provided in Section II.C.f.i, the individual may submit additional information to the hiring manager relating to the criminal record and why it should not affect the employment decision. Before the hiring manager makes a final employment decision, he/she will review all information provided to him/her with the Vice President for Human Resources or *Designee*, and UT Arlington's Chief of Police (and in the case of a faculty member, with the Provost and Dean) and consult about whether to proceed with an offer of employment or an adverse employment action. If either Human Resources or UT Arlington's Chief of Police (or in the case of a faculty member, the Provost and Dean) is of the opinion that the results of the criminal background check indicate that the individual may be unacceptable for the position being filled or for continued employment, then the hiring manager may not extend an offer to or continue employment of the individual without the prior written approval of the applicable executive officer or his or her designee.

8. **Opportunity to Respond.**

- a. **External Applicants for Employment.** The decision of UT Arlington is final and may not be appealed.
- b. **Current Staff.** Staff grievance procedures are available to challenge the decision. If the criminal record leads to termination, the applicable staff member discipline and discharge procedure will be used.
- c. **Current Faculty.** Within five business days following their receipt of the report (unless an extension has been granted by the Dean because the faculty member is on leave and unable to respond in the five day period), the current faculty member may submit additional information to the Dean of their College or School relating to the criminal record and why it should not affect their employment. If the current faculty member so requests in writing, before the employment decision is made, the Dean will review the information with an officially designated faculty committee and obtain a written recommendation from the committee about whether to proceed with an offer or adverse employment decision. The faculty committee will be constituted

completely by tenured faculty appointed by the President from a list of faculty provided by the Faculty Senate to serve on faculty hearing tribunals in accordance with UT Arlington Policies. After the panel makes its recommendation, the affected faculty member may present a grievance, in person or through a representative, as described in UT Arlington grievance procedures. The Provost shall meet with the faculty member and then issue a written determination on the grievance. The decision of the Provost is final and shall not be subject to further review. A current faculty member may invoke the procedures available under [Regents' Rules and Regulations, Rule 31008](#) related to termination and non-renewal where applicable.

- d. **Post-Decision Disclosure When Private Vendor Services are Used to Conduct Criminal Background Check.** If a consumer report has been relied on to deny employment, deny a promotion, reassign, or terminate an employee after the institution has taken an adverse action, the individual must be given notice that the action has been taken. It must include:
- i. the name, address, and phone number of the credit reporting agency that supplied the report;
 - ii. a statement that the credit reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
 - iii. a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

9. **Self-Reporting.**

- a. **Applicants for Employment.** Applicants must report in writing any criminal complaint, information, indictment, no contest plea, guilty plea, deferred adjudication, or convictions, excluding traffic offenses punishable only by fine, occurring after the date of application within five business days.
- b. **Current Employees.** UT Arlington employees are required to report to their department head in writing, within five business days, any criminal complaint, information, indictment, no contest plea, guilty plea, deferred adjudication, or criminal conviction, excluding those for misdemeanor offenses punishable only by fine. Failure to do so is a violation of policy and may lead to disciplinary action as appropriate.
- c. **Department Head Obligation.** The UT Arlington department head receiving a self-report as required under this section must provide the information to the Vice President of Human Resources and UT Arlington's Chief of Police and consult with these offices about the individual's suitability for the position. In

the case of a faculty member, the department head should advise the Vice President for Human Resources, UT Arlington's Chief of Police, and Provost.

10. **Retention of Criminal Background Check Records.**

- a. **Confidential Records.** Records obtained from a criminal background check database 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. The information will be kept in a separate secure file and will not be communicated to any unauthorized person.
- b. **Criminal History Record Information.** Under *Texas Government Code* Section 411.085, the unauthorized release of criminal history record information, information obtained from the TxDPS secure site consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, is a criminal offense and, consequently, UT Arlington officials in possession of such information shall seek legal advice with respect to any requested release of such information.
- c. **Destruction of Records Obtained from a Criminal Background Check Database.** UT Arlington's Chief of Police shall destroy all records obtained from a criminal background check database regarding an individual six months after it is obtained.
- d. **Self- Reports.** Self-reports of charges or convictions as required by this policy will be maintained with the employee's personnel file in Human Resources in accordance with UT Arlington's records retention schedule.

11. **Other Background Checks.** This policy and procedure addresses criminal background checks only and does not limit the UT Arlington's authority to conduct other background checks as permitted by law.

III. **Definitions**

Applicant: an individual who applies for a position with UT Arlington, whether the individual is an outside candidate or a current employee.

Criminal Conviction Record Information: public information maintained by the Department of Public Safety, as provided in [Texas Government Code Section 411.135](#).

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 Section 411.082](#).

National Criminal History Record Check (NCHRC): a criminal history record check obtained from both the Texas Department of Public Safety and the Federal Bureau of Investigation based on fingerprint identification information, or a criminal record check obtained from a private vendor based on national criminal records.

Position: both full-time and part-time positions, whether the position is filled or is to be filled by a regular or a temporary worker or requires student status as a condition of holding the position, 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.

Unsupervised access: The person is not allowed to be with children without the presence of a qualified caregiver.

Youth Camp: 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.

IV. **Relevant Federal and State Statutes and Rules**

[Texas Education Code Section 51.215 - Access to Police Records of Employment Applicants](#)

[Texas Government Code Section 411.081 et seq. - Criminal History Clearinghouse](#)

[Texas Government Code Section 411.094 - Access to Criminal History Record Information: Institution of Higher Education](#)

[Texas Government Code Section 411.135 - Access to Certain Information by Public Fair Credit Reporting Act, 15 U.S.C. Section 1681 et seq.](#)

[Human Resources Code Sections - Chapter 42. - Regulation of Child Care Services](#)

[Texas Administrative Code - Chapter 745 - Department of Family and Protective Services, Licensing](#)

[Texas Health and Safety Code - Chapter 141 - Youth Camps](#)

V. **Relevant UT System and UT Arlington Policies, Procedures and Forms**

Criminal Background Check ([Form 3-9](#)) - Job Applicants

[UT System Policy UTS 124](#)

[Regents' Rules and Regulations, Rule 31001](#)

[Regents' Rules and Regulations, Rule 31008](#)

VI. **Who Should Know**

This policy and these procedures are applicable to each of UT Arlington's colleges, schools, divisions or departments plus all applicants, employees, and students of the institution.

VII. **UT Arlington Officer(s) Responsible for Policy**

The Vice President for Human Resources is responsible for the official interpretation of this policy and is responsible for making revisions as necessary to meet the changing needs of UT Arlington, The University of Texas System, and statutory requirements.

VIII. **Dates Approved or Amended**

January 16th, 2015

IX. **Contact Information**

Questions or comments about this policy should be directed to: Jean M. Hood, Vice President of Human Resources at jmhood@uta.edu, 817-272-7091.