



TEXAS SOUTHERN UNIVERSITY
MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES

SECTION: Human Resources
AREA: Recruitment and Employment

Number: 02.01.03

SUBJECT: Background Check Policy

I. PURPOSE AND SCOPE

The purpose of this policy and procedure is to outline the requirements and guidelines for the conduct of criminal background checks at Texas Southern University (TSU).

II. DEFINITIONS

- A. Applicant: An individual who applies for an open position with TSU, whether the individual is an outside candidate or a current employee of TSU. This could also include an individual involved in a reclassification action. Volunteers working in a security sensitive position are subject to this policy. It does not include contractors.
- B. Controlled Substance: This term has the meaning assigned in Texas Health & Safety Code, Section 481.002, as that section may be amended from time to time.
- C. Criminal Conviction Record Information: Public information by the Department of Public Safety, as provided in Texas Government Code, Section 411.135.
- D. 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 the Texas Government Code, Section 411.082.
- E. Hiring Official: Appointed by the Vice President of the department and charged with the responsibility to ensure criminal background checks are performed when required and the results reviewed before job offers or other personnel decisions are made or executed.
- F. Position: Both full-time and part-time positions, in all university programs, regardless of the funding source, whether the position is filled or to be filled by a regular or a temporary worker, 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.

- G. Security Sensitive Positions: Positions identified in Section V below and those positions described in Texas Education Code, Section 51.215 (c) and Texas Government Code, Section 411.094 (a) (2), as those sections may be amended from time to time.
- H. Select Agent: This term has the meaning assigned in 18 U.S.C., Section 175b, as that section may be amended from time to time.

III. POLICY PROVISIONS

- A. In an effort to provide and maintain the safest possible environment for students, visitors, faculty, and staff, and enhance the security of physical resources, TSU shall, consistent with the requirements of the law and prudent practices, conduct criminal background investigations and obtain criminal history record information on applicants or current employees in a security sensitive position, or designated as such, and who are under final consideration for a position that has been designated as security sensitive. A background investigation may be conducted on any current employee on an annual basis, or as deemed appropriate by the Executive Director of Human Resources.
- B. It is the policy of TSU to obtain:
 - 1. Criminal history record information, including convictions information contained therein, on applicants who are under final consideration, following normal screening and selection processes, for a position that is designated as a security sensitive position.
 - 2. Criminal history record information, including convictions contained therein, on a current employee who is under consideration for a transfer, promotion or reclassification from a non-security position to a position designated as a security sensitive position; and
 - 3. Criminal history record information, including convictions contained therein, on a current employee who is under consideration for a transfer, promotion, or reclassification from one security sensitive position to another security sensitive position and on whom the institution did not previously obtain either criminal history record information or criminal conviction record.
 - 4. Criminal history record information, including convictions contained therein, on current employees in security sensitive positions or a position designated as such.
- C. Exemptions: The following personnel actions are exempt from the requirements of subparts B.2 and B.3 above:

- i. Position reclassifications that result in a title change with no change in current responsibilities;
- ii. Career progression promotion occurring within the current department (e.g., associate professor to full professor or administrative assistant I to administrative assistant II); and
- iii. Involuntary transfers or reclassifications.

D. Optional Background Checks

The President or President's designee may request a criminal background check (criminal conviction record) on a current employee who is not a party to a job transfer or reclassification. Management will prepare, in writing, a business case that substantiates the need to conduct the investigation and submit it to the appropriate Vice President (or the President's designee) who will approve the request for a criminal background check (criminal conviction record). Once approved, the Vice President (or President's designee) will submit it to Human Resources (HR) who will coordinate with the TSU Police to request that the investigation be completed. If the current employee refuses to complete, sign and submit the Criminal Background Check Form in response to a request made in accordance with this policy, management may take appropriate action.

IV. PROCEDURES

The President of TSU or the President's delegate will designate which positions or areas are security sensitive.

A. Responsible Parties

- i. The department hiring official is responsible for notifying applicants during the interview process or the current employee that the position is security sensitive and subject to a criminal history record investigation, including criminal convictions contained therein. The department hiring official is responsible for obtaining a signed authorization form for those persons requiring a criminal background check before requesting the investigation. The authorization form is linked to this policy and includes the notice required by Texas Government Code 559.003, as it may be amended from time to time. Individuals refusing to sign the authorization are eliminated from further consideration for employment.
- ii. The Office of Human Resources, in conjunction with the TSU Police, is responsible for conducting the criminal background investigation. The Office of Human Resources is responsible for communicating the results to the hiring official. All data obtained in the criminal history record investigation, including criminal convictions contained therein, will be privileged and confidential.

- iii. The Office of Human Resources in conjunction with the TSU Chief of Police will report that the applicant or current employee has “no criminal history” or has a “positive criminal history” and will provide information as to the nature of any positive criminal history, including criminal convictions contained therein.
- iv. The Office of Human Resources will evaluate any positive criminal history, including criminal convictions contained therein, against job-related criteria and will make a recommendation as to whether the person is “employable” or “not recommended for employment.” An applicant with no criminal history will be recommended as “employable.”
- v. If the applicant or current employee is “not recommended for employment,” the Office of Human Resources will issue a report to the department hiring official, who may accept the recommendation and reject the employment of the person, or may request permission to hire. A request for permission to hire will be submitted to the President. Only the President, or designee, can authorize hiring of someone with a positive criminal history. The President, or designee, will notify the Office of Human Resources and the designated hiring official of the hiring decision. The designated hiring official will either proceed to finalize the hiring process, or in the case of a decision not to hire, will notify the conditional employee of the decision and select another applicant. In the latter case, the conditional employee will be terminated immediately.
- vi. The department hiring official, in conjunction with the Vice President, or his designee, makes the decision to offer employment to an applicant or to promote, transfer or reclassify an employee, after a criminal background check has been conducted and results reviewed against any job related criteria.
- vii. If circumstances require that an offer or decision be made before the completion of the investigation, the offer must be in writing from the designated hiring official and state that the offer is contingent on the completion of a satisfactory criminal background investigation.
- viii. The department hiring official may not conduct any part of the investigation, nor talk with the candidate about the specific findings of the criminal history record investigation, including criminal convictions contained therein.
- ix. A department hiring official or employee of TSU may be subject to disciplinary action, up to and including termination, for any breach of

confidentiality regarding information obtained from a criminal history investigation.

- B. All positions designated to be security sensitive shall be so identified in the job description, job posting, position requests and advertisements with the sentence: "This position is security sensitive" or "This position is in a security sensitive area."
- C. HR will be responsible for maintaining records of positions designated as security sensitive. Hiring authorities desiring to designate a regular position as security sensitive may do so when creating the position, filling a vacant position or reclassifying a position.
- D. The criminal history record information, including convictions contained therein, obtained by TSU may be used only for the purpose of evaluating applicants for employment, reclassification and in managing business risks. This policy does not automatically exclude from consideration for employment all individuals with criminal convictions. TSU shall in no way use that information to discriminate on the basis of race, color, national origin, religion, sex, disability or age.
- E. 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 except as provided in this policy or procedure or by law. Under Texas Government Code, Section 411.085, the unauthorized release of criminal history record information is a criminal offense and, consequently, the institution should seek legal advice with respect to any requested release of such information.
- F. After the expiration of the probationary term of the individual's employment, the TSU Police shall destroy all criminal history record information that the institution obtained about the individual. If the position is one that does not have a probationary period, then the chief of police shall destroy the information 180 days after it is obtained.

V. GUIDELINES

- A. In determining which areas to designate as security sensitive, the Vice Presidents should reference the criteria as outlined below.
- B. Security-sensitive positions designated by TSU shall include:
 - i. All senior level administrator positions. Senior level administrator positions are executive officers and administrative officers;

- ii. Positions that have responsibility for providing child-care in a child-care facility, as defined in Texas Human Resources Code §42.002(3), as it may be amended from time to time;
 - iii. Positions that have direct access to, or responsibility for pharmaceuticals, select agents, or controlled substances;
 - iv. Positions that have routine access to building master control and key systems;
 - v. Positions that have access to confidential information and or have the capability to create, delete, or alter records in any of the university student, financial, personnel, payroll, or related computer databases or in research databases that may contain trade secrets.
- C. Security sensitive positions as defined in Section II-G of this policy and procedure.
- D. The President or his designee should consider offices which perform functions that may pose increased risks at the institution, such as those areas with:
- i. Direct responsibility for the care, safety or security of humans or the safety or security of TSU property;
 - ii. Responsibility for operating, in the course of normal job duties, TSU owned or leased vehicles, machinery or toxic systems that could cause death, injury or health problems;
 - iii. Significant inventory control responsibilities, including receipt and release of inventory;
 - iv. Direct access to, or responsibility for, cash, checks or TSU property, disbursements or receipts;
 - v. Responsibility for execution or approval of financial transactions;
 - vi. Direct access to, or responsibility for, classified information pertaining to the national defense;
 - vii. Unsupervised access to TSU employee or student property, including access to student dorm rooms, in the course of normal job duties;
 - viii. Responsibility for the preparation, maintenance or approval of the financial, payroll, personnel or purchasing systems;

- ix. Direct access to sensitive data, including data protected by Federal or State law, medical records, personnel records, other personal data or confidential criminal justice information, or to critical data processing systems.

VI. AUTHORITY

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

- A. Texas Education Code, Section 51.215, Access to Police Records of Employment Applicants
- B. Texas Government Code, Section 411.094, access to Criminal History Record Information: Institution of Higher Education
- C. Texas Government Code, Section 411.135, Access to Certain Information by Public

Questions regarding the Criminal Background Investigations should be directed to the Human Resources Department at 713-313-7521 or email: hrinfo@tsu.edu.

VII. REVIEW AND RESPONSIBILITY

Responsible Party: Executive Director of Human Resources *6/17/09*

Review: Every three years, on or before December 1

VIII. APPROVAL

Jim McShaw

Vice President for Finance

John M. Rudley

President

Date of President's Approval: *06/24/09*