

Handbook of Operating Procedures

EMPLOYEE CRIMINAL BACKGROUND CHECK

A. Purpose

The purpose of this policy is to provide for the administration of criminal background checks with respect to employment decisions at The University of Texas Rio Grande Valley (UTRGV).

B. Persons Affected

This policy applies to employment of individuals in security-sensitive positions at UTRGV including faculty, staff, work-study, direct wage, part-time and full-time positions. It does not restrict other investigations allowed by law.

C. Definitions

1. Applicant - An individual who applies for a position, including a work-study or direct wage position, within UTRGV, whether the individual is an outside candidate or a current employee of UTRGV.
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. Employment Decision or Determination - A decision regarding an offer of employment to an applicant (internal or external) or a decision regarding an employment action against a current employee.
5. Hiring official - The administrative official seeking to fill a vacant position, whether regular or temporary.
6. 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.
7. Promotion - An evaluation of the qualifications and advancement of an individual involving a change of classification within the same department or administrative unit, or within or between budgetary units, that may or may not involve a salary increase. This does not include faculty promotions.
8. Regular Position - A full-time or a part-time position that entails employment for at least 20 hours per week for a period of at least four and one-half (4 ½) continuous months, excluding

students employed in positions that require student status as a condition for employment. For purposes of this policy, faculty employees must be appointed for at least fifty percent (50%) time for at least four and one half (4 ½) months.

9. Security-sensitive Area - physical locations at UTRGV designated by the Office of Human Resources. All employees working in these locations are in security-sensitive positions.
10. Securing-sensitive Position - refers to senior-level administrative positions; positions with authority for committing UTRGV financial resources; positions whose duties including the handling of currency; positions with access to information resources; positions with access to a master key; positions with responsibility for providing patient care; positions with responsibility for providing child care in a child-care facility; positions with access to or responsibility for pharmaceuticals, other controlled substances or hazardous substances, or the shipping, transporting, possession, receipt, or access to any select agent (or access to where these items are stored, used, disposed of, or are present); positions which provide access to areas which have been designated security-sensitive areas; or all faculty, volunteer faculty, administrative and professional, classified, or student-employee positions.
11. Supervisor - The person to whom a current employee directly reports.
12. Temporary Position - A position that is not defined as a regular position including positions requiring student status as a condition for employment.

D. Policy

UTRGV is committed to providing a safe and secure environment for its students, visitors, faculty and staff, as well as for its physical resources (including data and network assets). In an effort to maintain a safe environment and meet all federal and state regulatory requirements, UTRGV requires background checks on applicants under final consideration for all positions of employment UTRGV which have been designated security-sensitive, consistent with the requirements of law and prudent practice. To further this policy, UTRGV will obtain criminal background checks on:

1. *Applicants for Employment:*
 - a. A criminal background check will be obtained on any applicant, internal or external, who is under final consideration, following normal recruitment and selection processes, for regular and temporary positions of employment. UTRGV may rely on a criminal background check conducted by UTRGV within the last 12 months if there has not been break in service of more than six consecutive months and the information relied upon is appropriate for the position sought.
 - b. An authorization form must be signed and received from the applicant before the criminal background check is performed. An applicant who refuses to submit an authorization form will not be considered for future employment. Falsifying

application materials, including a failure to disclose criminal convictions, is grounds for non-selection of an applicant.

- c. No individual may begin employment with UTRGV until criminal background check procedures under this policy have been performed and proper employment documents have been processed and approved accordingly.

2. *Current Regular and Temporary Employees:*

- a. A criminal background check will be performed on internal applicants for promotions or transfers; however, a check will not be performed under the following circumstances: a position reclassification that results in a title change with no change in current responsibilities; a career-progression promotion within the employee's current department (e.g., associate professor to full professor, or staff assistant to senior staff assistant, etc.); or an involuntary transfer or reclassification.
- b. A criminal background check will be obtained on current regular and temporary employees if UTRGV did not previously obtain a criminal background check on the employees under this policy. No authorization form is required.
- c. For safety, security, or regulatory purposes, or as necessary to further the goals of UTRGV, a criminal background check will be obtained on a current regular employee as needed to verify the employee's continued eligibility for employment. The Office of Human Resources will recommend appropriate action to the President of UTRGV or designee if a background check indicates a current employee may be unsuitable for continued employment. Appropriate action may include termination of employment according to applicable policies.

3. *Any or all of the following background check sources may be used, as appropriate:*

- a. The Texas Department of Public Safety Crime Records Service - Public Site.
- b. Other reliable public state, national, and international sites.
- c. A reputable private vendor that offers national criminal background check services.

4. *Statutorily Required Criminal Background Check:*

- a. Where state or federal law requires that a position be subject to a criminal background check using a specific source of criminal background check information or certain procedures, UTRGV will comply with such laws.
- b. To the extent such laws impose criminal background checks that are more extensive or substantially similar, UTRGV may rely on compliance with the statute to satisfy the requirements of this policy.

E. Procedures

1. UTRGV must receive an authorization form signed by applicants for employment before the background information is requested. The authorization form should include 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 UTRGV Application for Employment packet in the case of regular staff positions or be provided by the hiring department in the case of faculty, temporary, including work-study and direct wage positions. Refusal to sign the authorization form will eliminate the applicant from consideration to fill the position.

2. Upon receipt of the authorization form, the Office of Human Resources will conduct the background investigation before an employment decision is made. The Office of Human Resources will communicate with the appropriate officials as stated in Subsections F.4 through F.7 on the results of the investigation. Additionally, an individual will be provided notice of the results in accordance with 6.a.ii. If circumstances require that an employment offer be made to an applicant 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.
3. Criminal history record information obtained by UTRGV may be used only for the purpose of making employment decisions on regular and temporary positions and shall in no way be used to discriminate on a basis prohibited by applicable state or federal laws.
4. In making employment decisions, a finding that an applicant has a criminal history does not necessarily disqualify the applicant from employment, promotion, transfer, or reclassification. Determinations for suitability of employment will be made on a case-by-case basis. When considering an applicant with a criminal history, the relevancy of any conviction to the responsibilities that the applicant would hold; the number and nature of the offenses; employment history; efforts at rehabilitation; the length of time that has elapsed since the conviction occurred; and the accuracy of the information the individual provided on the employment application must be considered.
5. UTRGV may 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:
 - a. that would require the individual to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure, which includes without limitation such offenses as Continuous Sexual Abuse of Young Child; Sexual Assault; Aggravated Sexual Assault; or
 - b. under the laws of another state or federal law that is equivalent to an offense requiring such registration;

unless the hiring official recommending hire articulates a compelling justification; there is concurrence from the Office of Human Resources, the Chief of Police for UTRGV, and the President of UTRGV; 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 of the Texas Code of Criminal Procedure. If no such risk level is assigned, then the risk level cannot exceed a low risk as determined by the Chief of Police of UTRGV.

6. *Notice Requirement:*

a. External Applicants

- i. If UTRGV receives a report indicating that an applicant has a criminal record, the Office of Human Resources will notify the appropriate officials as stated in Subsections F.4 and F.5.
- ii. The Office of Human Resources will notify the applicant that such a report has been received, provide the applicant with a copy of the report except where prohibited by law or Department of Public Safety policy, and notify the applicant of the right, within ten (10) business days, to:
 - ii.i challenge, in writing, the accuracy and completeness of the report,
 - ii.ii to submit additional information relating to the criminal record, and
 - ii.iii to explain why it should not affect an employment decision.
 - ii.iv Extensions of time to challenge the report, submit additional information, or explain why the report should not affect an employment decision shall not be unreasonably withheld.

b. Current Staff Employees

- i. If UTRGV receives a report indicating that a current staff employee has a criminal record, the Office of Human Resources will notify the appropriate officials as stated in Subsection H6.
- ii. The supervisor will notify the employee that such a report has been received, provide the applicant with a copy of the report except where prohibited by law or Department of Public Safety policy, and notify the employee of the right, within 10 business days to:
 - ii.i challenge, in writing, the accuracy and completeness of the report,
 - ii.ii to submit additional information relating to the criminal record, and
 - ii.iii to explain why it should not affect an employment decision.
 - ii.iv Extensions of time to challenge the report, submit additional information, or explain why the report should not affect an employment decision shall not be unreasonably withheld

c. Current Faculty Employees

- i. If UTRGV receives a report indicating that a current faculty employee has a criminal record, the Office of Human Resources will notify the appropriate officials as stated in Subsection H.7.

- ii. The supervisor will notify the employee that such a report has been received, provide the applicant with a copy of the report except where prohibited by law or Department of Public Safety policy, and notify the employee of the right within ten (10) business days to:
 - ii.i challenge, in writing, the accuracy and completeness of the report,
 - ii.ii to submit additional information relating to the criminal record, and
 - ii.iii to explain why it should not affect an employment decision.
 - ii.iv Extensions of time to challenge the report, submit additional information, and/or explain why the report should not affect an employment decision shall not be unreasonably withheld

7. Opportunity to Respond to Adverse Action:

- a. Current Staff Employees
A challenge to the decision of UTRGV will be subject to standard UTRGV staff grievance procedures.
- b. Current Faculty Employees
A challenge to the decision of UTRGV will be subject to standard UTRGV faculty grievance procedures.
- c. External Applicants
The decision of UTRGV is final and may not be appealed.

8. Self-reporting:

- a. Current Employees
 - i. Current employees must report to their supervisor in writing, within five business days, any criminal complaint, information, indictment, no contest plea, deferred adjudication, or criminal conviction (and whether registered as a sex offender or will be required to register as a sex offender), excluding those for misdemeanor offenses punishable only by fine.
 - ii. Failure to self-report within the required period is a violation of this policy and may lead to disqualification from eligibility for their position or disciplinary action (up to and including termination or non-renewal of appointment) as appropriate.
 - iii. Information provided by self-report will be subject to verification, as appropriate, from the sources listed in Subsection D. 3 of this policy.

b. Applicants for Employment

- i. Applicants must report in writing to the Office of Human Resources any criminal complaint, information, indictment, no contest plea, guilty plea, deferred adjudication, or convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding traffic offenses punishable only by fine, occurring after the date of the application within five business days. The Office of Human Resources will notify the appropriate officials as stated in Subsections F.4 and F.5.
- ii. Failure to self-report may lead to disqualification from eligibility for employment with UTRGV.

c. Hiring Officials/Supervisors

- i. A hiring official or supervisor receiving a self-report from an applicant or current employee as required under this subsection must provide the information to the Office of Human Resources and evaluate the employee/applicant's suitability for the position held or sought.
- ii. The Office of Human Resources will notify the appropriate officials as stated in Subsection F.6 through F.7.

9. *Use of Private Vendors:*

- a. If a check performed by a credit reporting agency discloses a criminal record that could result in an adverse action, the Office of Human Resources will provide a copy of the report to the applicant or current employee 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 applicant or current employee an opportunity to dispute or explain any inaccurate or incomplete information.
- b. The applicant or current employee will have 10 days to respond to the Office of Human Resources. If during this process it is determined that the candidate provided false or incomplete information during the application process, the review may terminate and any contingent offer of employment withdrawn.
- c. If an adverse hiring decision is made based on the criminal background check, the applicant or current employee 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.
- d. 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.

- i. If a reasonable belief cannot be formed, the report cannot be used by UTRGV in evaluating the individual.
- ii. If a reasonable belief can be formed that the report does relate to the candidate, the Office of Human Resources will report a Verified Address to the credit reporting agency if UTRGV establishes a continuing relationship with the individual and if UTRGV regularly and in the ordinary course of business furnishes information to the credit reporting agency that sent the Notice of Address Discrepancy.
- iii. The Verified Address will be reported to the credit reporting agency as part of the information UTRGV sends to the agency for the reporting period in which UTRGV establishes a continuing relationship with the individual.
- iv. In determining whether an address is a Verified Address, the Office of Human Resources may:
 - ii.i verify the address with the individual; or
 - ii.ii review information about the individual; or
 - ii.iii utilize other methods which the Office of Human Resources has determined are reasonable.

10. Criminal Background Check Records:

- a. 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.
- b. Under *Texas Government Code* §411.085, the unauthorized release of criminal history record information is a criminal offense, and consequently, UTRGV should seek legal advice with respect to any requested release of such information.
- c. After the expiration of the probationary term of the individual's employment, the Office of Human Resources shall destroy all criminal history record information that was obtained about the individual. If the position is one that does not have a probationary period, then the Office of Human Resources shall destroy the information 180 days after UTRGV obtains it.

- d. Criminal history record information under Subsection E.10 will not be retained if they do not result in convictions or if the applicant is not hired. Criminal history record information under Subsection E.10, when verified from an appropriate source in accordance with Subsection D.3 above, will be maintained in the same way as other criminal history record information from these sources.

11. Criminal Background Checks Jurisdiction:

The criminal background check shall include the jurisdictions in which the individual has resided or worked within the seven years preceding the date of employment or application at UTRGV.

F. Responsibilities

1. The Office of Human Resources is responsible for conducting the criminal background check and for reviewing and analyzing criminal history or conviction information obtained, communicating the review and analysis of the information to the hiring official in accordance with this policy, retaining in a secure place the criminal background information, and destroying this information in accordance with this policy.
2. The Office of Human Resources shall obtain the authorization form to conduct the background investigation from finalists for all regular staff positions.
3. The hiring official, in the case of faculty, work-study and direct wage applicant finalists, is responsible for obtaining the background check authorization form and delivering it to the Office of Human Resources prior to making a hiring decision. Digital transmission of authorization forms to the Office of Human Resources is acceptable. Forms may not be sent via campus mail.
4. If the check discloses a criminal record which may result in an adverse employment decision on applicants for staff positions (regular and temporary), the Chief Human Resources Officer, in consultation with the hiring official and the Chief of Police or designee, shall be responsible for making the employment determination based upon the criminal background check information.
5. If the check discloses a criminal record which may result in an adverse employment decision on applicants for faculty positions (regular and temporary), the Provost, in consultation with the hiring official, Dean, and Chief of Police or designee, shall be responsible for making the employment determination.
6. If the check discloses a criminal record which may result in an adverse employment decision on a current regular staff employee, the Chief Human Resources Officer, in consultation with the supervisor, and the Chief of Police or designee, shall be responsible for making the employment decision.
7. If the check discloses a criminal record which may result in an adverse employment decision on a current regular faculty employee, the Provost, in consultation with the supervisor, Dean, and the Chief of Police or designee, shall be responsible for making the employment decision.

G. Relevant Federal and/or State Statute(s), Board of Regents' Rule(s), UTS Policy(ies), and/or Coordinating Board Rule(s)

Texas Government Code §411.135, *Access to Certain Information by Public*

Texas Government Code §411.082, *Application of Subchapter*

Texas Government Code §411.085, *Unauthorized Obtaining, Use, or Disclosure of Criminal History*

Texas Government Code §411.094, *Access to Criminal History Record Information*

Texas Government Code 559.003, *State Government Privacy Policies*

Texas Education Code §51.215, *Access to Police Records of Employment Applicants*

Texas Human Resources Code §42.002, *Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services*

UTS124 Criminal Background Checks for Employment

Texas Code of Criminal Procedure Chapter 62, *Criminal History Record System*

Summary of Rights under the "Fair Credit Reporting Act", Federal Trade Commission

H. Dates Reviewed or Amended

May 13, 2022 - Reviewed and amended (non-substantive: updated responsible executive)