

33.99.14 Criminal History Record Information- Employees and Applicants



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Regulation Statement

Members of The Texas A&M University System shall perform criminal background checks of current employees and applicants for employment as provided by this regulation.

Reason for Regulation

This regulation provides minimum procedures to be used by A&M System Members in performing criminal background checks of current employees and applicants for employment.

Procedures and Responsibilities

1. GENERAL

- 1.1 The Texas A&M University System is committed to protecting the safety and welfare of employees and the general public, preserving state property, and upholding the reputation and integrity of the A&M System for the citizens of Texas. To achieve these goals, Members of the A&M System may obtain, at any time, criminal history record information on any applicant for employment or any existing employee. Criminal history record information may be used to make employment decisions affecting the applicant or employee as provided by this regulation.
- 1.2 This regulation applies to all applicants for employment positions and all employees of the A&M System, including graduate assistants and agency employees with faculty titles who are not in tenure track positions. This regulation does not apply to A&M System Member campus police departments obtaining criminal history record information for a criminal justice purpose under Chapter 411, Subchapter F, Texas Government Code.
- 1.3 Each A&M System Member will determine what employment positions for that Member contain job duties that require the position to be designated “security sensitive.” This determination will result in a position being designated security sensitive unless the analysis reveals a complete absence of duties including

handling currency, having access to a computer terminal, a master key, or working in an area designated as a security-sensitive area.

- 1.4 Each A&M System Member shall have a rule addressing any operational requirements for performing criminal history background checks within the parameters of this regulation.
- 1.5 It is a criminal offense to knowingly or intentionally obtain criminal history record information in an unauthorized manner, use the information for an unauthorized purpose, or disclose the information to a person who is not entitled to the information; provide a person with a copy of his or her criminal history record information obtained from the Texas Department of Public Safety (DPS) Crime Records Service-Secure Site; or violate DPS rules published in accordance with Chapter 411, Subchapter F, of the Government Code. *See* Tex. Gov't Code § 411.085.
- 1.6 Individuals with a criminal history will not be automatically disqualified for employment with the A&M System except as provided by this regulation. It is the practice of the A&M System not to employ or to continue the employment of individuals who may be deemed unsuited for service by reason of certain convictions, or conduct leading to arrest or conviction. While an arrest or conviction of a crime, in and of itself, may not be an automatic bar to employment, if conduct leading to arrest or conviction relates to suitability of the individual to perform duties in a particular position, such person may be denied employment.
- 1.7 Criminal history records shall not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, or age.
- 1.8 This regulation is for guidance purposes only, and it does not create any right to procedural or substantive due process of law beyond that mandated by federal and state laws, if any, nor does it create any contract rights to an employee unless those rights exist outside of the regulation. This regulation does not alter the at-will status of A&M System non-faculty employees, as defined in System Policy 32.02. Failure by the A&M System to follow the steps outlined in this regulation or an associated A&M System Member rule or procedure shall not form the basis of an applicant's appeal of his or her denial of employment or an employee's appeal of disciplinary sanctions, including termination. The discipline or dismissal of a faculty employee under this regulation must comply with System Policy 12.01 and any related A&M System Member rules or procedures.

2. PRE-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

- 2.1 Every offer of A&M System employment shall be conditioned on receipt of an acceptable criminal history record information check. Failure of an applicant to consent to a criminal background check is grounds for rejection of the applicant.
- 2.2 Applicants shall be ineligible for A&M System employment if the applicant has criminal history indicating a conviction for:

- a) any second-degree, first-degree, or capital felony as defined by state law or equivalent offenses under the law of another jurisdiction; or
- b) any offense requiring registration as a sex-offender.

2.3 Any applicant who has criminal history record information indicating a conviction for a felony (other than those listed in Section 2.2 of this regulation) may be hired only after a recommendation by the A&M System Member's department/unit head and approval by the Chief Executive Officer (CEO) or designee. An A&M System Member finding criminal history record information for an applicant indicating a conviction (other than those listed in Section 2.2 of this regulation) or an arrest shall conduct the analysis found in Section 6 of this regulation.

2.4 Applicants are required to report arrests made between the application for employment and the A&M System Member's decision to hire the applicant for employment.

3. SOURCES OF CRIMINAL HISTORY RECORD INFORMATION

A&M System Members can access, as permitted by law, the following sources to obtain criminal history record information: (a) the Texas Department of Public Safety's Crime Records Service-Public Site or any other publicly available local, state or federal source; (b) the Texas Department of Public Safety's Crime Records Service-Secure Site. Members of the A&M System may also utilize the services of a third party vendor(s) to obtain criminal history record information. 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 regulation.

3.1. DPS Crime Records Service-Public Site

This database contains criminal history record information maintained by DPS that relates to certain sex-offender information, and the conviction of or grant of deferred adjudication to a person for any criminal offense, including arrest information that relates to the conviction or grant of deferred adjudication. The A&M System Members are permitted to use this information for any purpose and release the information to any other person. *See* Tex. Gov't Code § 411.135.

3.2 DPS Crime Records Service-Secure Site

The A&M System Members are entitled to obtain from the DPS secure site criminal history record information maintained by DPS that relates to a person who is an applicant for a security-sensitive position. This database contains criminal history record information maintained by DPS that relates to all arrests and all dispositions so it is broader and more inclusive than the public site. The secure site shall not be accessed to obtain criminal history record information for any other applicants or existing employees unless permitted by state law. The

information obtained may only be used for the purpose of evaluating applicants for employment in security-sensitive positions; it may not be released or disclosed to any person except on court order. *See* Tex. Gov't Code § 411.094(e).

4. FALSIFICATION OR FAILURE TO DISCLOSE CRIMINAL HISTORY

- 4.1 Applicant. If it is determined prior to employment that an applicant has falsified his or her criminal history in his or her application for employment, the applicant will not be eligible for employment with the A&M System. If it is determined prior to employment that an applicant has failed to disclose his or her criminal history in his or her application for employment, the applicant may not be eligible for employment with the A&M System.
- 4.2 Employee. If it is determined any time after employment that an employee falsified or failed to disclose his or her criminal history on his or her application for employment, the employee may be subject to disciplinary action, including dismissal.
- 4.3 A decision to reject an applicant or discipline/terminate an employee for falsification or failure to disclose criminal history need not take into account the factors set forth in Section 6 of this regulation.

5. POST-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

5.1 Employees are Subject to Periodic Checks

5.1.1 Each A&M System 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 A&M System Member.

5.2 Employee Reporting of Arrests, Charges, or Convictions

5.2.1 A&M System employees must report to their supervisor, within 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, up to and including termination.

5.2.2 The employee's supervisor must report the arrest(s), criminal charge(s), or conviction(s) to the head of the department/unit and the A&M System Member human resources department.

5.2.3 An employee who has been arrested is subject to immediate suspension with pay pending the outcome of an administrative review of the facts surrounding the arrest, charges, or conviction by the A&M System Member human resources department and/or investigation by the

appropriate law enforcement agency. The employee shall cooperate fully during the review process.

- 5.2.4 The A&M System Member human resources department (or Provost or designee for faculty employees) will conduct the analysis outlined in Section 6 of this regulation and will assist the employee's department or unit in determining appropriate disciplinary action in such cases, up to and including termination of employment, depending on the facts and circumstances surrounding the arrest or conviction.

6. ANALYSIS OF CRIMINAL HISTORY RECORD INFORMATION AND SUBSEQUENT ACTION

In situations where criminal history record information is found for an applicant for employment (Section 2.3) or an employee (Section 5), the following analysis should be initiated prior to finding an applicant ineligible for employment or prior to disciplining or terminating an employee. This analysis is not required in situations where criminal history record information is found under Section 2.2 of this regulation.

6.1 Conviction Records

- 6.1.1 The A&M System Member human resources department (or Provost or designee for faculty applicants or employees) that proposes to reject an applicant or discipline or terminate an employee based on criminal history record information consisting of conviction records must justify the action as job-related and consistent with business necessity. To support its decision, the A&M System Member human resources department (or Provost or designee) must consider the following factors:

- (a) The nature and gravity of the offense(s).
- (b) The time that has passed since the conviction and/or completion of the sentence.
- (c) The nature of the job sought or held.
- (d) The number of offenses committed by the individual.
- (e) The legitimate interest of protecting the safety and welfare of employees and the general public, preserving state property, and upholding the reputation and integrity of the A&M System Member for the citizens of Texas.

- 6.1.2 A conviction on a person's criminal history record constitutes reliable evidence that the person engaged in the activity alleged since convictions require proof beyond a reasonable doubt and/or a plea of guilty or no contest to the charges. Therefore, when considering a person's conviction records, the A&M System Member human resources department (or

Provost or designee) need not evaluate whether the applicant or employee actually engaged in the misconduct.

- 6.1.3 If, after considering all the circumstances and the factors listed in Subsection 6.1.1, the A&M System Member human resources department (or Provost or designee) reasonably concludes the applicant's or employee's criminal conduct evidences he or she is unsuitable for the position in question, the A&M System Member human resources department (or Provost or designee) may recommend that the department/unit reject the applicant or terminate the employee. If the department/unit disagrees with the conclusion of the A&M System Member human resources department (or Provost or designee) and wishes to employ or continue the employment of the individual, the department/unit must receive approval from the CEO or designee.

6.2 Arrest Records

- 6.2.1 The A&M System Member human resources department (or Provost or designee for faculty applicants or employees) that proposes to reject an applicant or discipline or terminate an employee based on criminal history record information consisting of arrest records must justify the action as job-related and consistent with business necessity and must evaluate whether the applicant or employee actually engaged in the misconduct. To support its decision, the A&M System Member human resources department (or Provost or designee) must consider the following factors:
- (a) The nature and gravity of the activity for which the individual was arrested.
 - (b) The time that has passed since the arrest and/or disposition of the offense.
 - (c) The nature of the job sought or held.
 - (d) The number of times the individual has been arrested.
 - (e) The legitimate interest of protecting the safety and welfare of employees and the general public, preserving state property, and upholding the reputation and integrity of the A&M System Member for the citizens of Texas.
 - (f) The applicant's or employee's explanation of his or her arrest record coupled with follow-up inquiries necessary to evaluate his or her credibility.
 - (g) Whether the reason for the arrest violated an A&M System policy or regulation, or A&M System Member rule or procedure, regardless of whether the arrest resulted in a conviction.

- 6.2.2 An arrest without a conviction does not establish that the person actually engaged in the alleged activity. Therefore, when considering a person's arrest records, the A&M System Member human resources department (or Provost or designee) must evaluate whether the applicant or employee actually engaged in the misconduct. When analyzing arrest records, the A&M System Member human resources department (or Provost or designee) must consider two additional elements, items (f) and (g), before deciding whether an applicant or employee is suitable for the position in question.
- 6.2.3 If, after considering all the circumstances and the factors listed in Subsection 6.2.1, the A&M System Member human resources department (or Provost or designee) reasonably concludes the applicant's or employee's criminal activity evidences he or she is unsuitable for the position in question, the A&M System Member human resources department (or Provost or designee) may recommend that the department/unit reject the applicant or terminate the employee. If the department/unit disagrees with the conclusion of the A&M System Member human resources department (or Provost or designee) and wishes to employ or continue the employment of the individual, the department/unit must receive approval from the CEO or designee.
- 6.2.4 In the event an employee is unable to report to work as a result of an arrest, the employee may be subject to discharge for absenteeism under System Regulation 32.02.02, or other applicable A&M System regulations or A&M System Member rules and procedures.

7. APPEALS

- 7.1 Applicants have no appeal available to them unless they allege they have been discriminated against for an unlawful reason (race, color, national origin, religion, sex, disability, or age.) Applicants alleging unlawful discrimination must present written data or documentation of the specific actions or basis of the allegation to the A&M System Member equal employment opportunity officer within 10 business days from the date of rejection of their application. Upon receipt of this documentation, the A&M System Member equal employment opportunity officer or designee, will investigate the complaint and issue a written report of findings to the CEO or designee for approval. The rejected applicant and department/unit head will receive a copy of the approved report within 14 business days of CEO or designee approval.
- 7.2 Faculty employees can appeal action taken under this regulation by following the applicable provisions of System Policy 12.01, System Regulation 32.01.01 and any related A&M System Member rules or procedures. Non-faculty employees can appeal action taken under this regulation by following the provisions of System Regulation 32.01.02 and related A&M System Member rules or procedures.

Related Statutes, Policies, or Requirements

Tex. Gov't Code Chapter 411, Subchapter F

<http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>

Tex. Educ. Code § 51.215

<http://tlo2.tlc.state.tx.us/statutes/docs/ED/content/htm/ed.003.00.000051.00.htm>

System Policy *12.01, Academic Freedom, Responsibility and Tenure*

<http://www.tamus.edu/offices/policy/policies/pdf/12-01.pdf>

System Policy *32.02, Discipline and Dismissal of Employees*

<http://www.tamus.edu/offices/policy/policies/pdf/32-02.pdf>

System Regulation *32.01.01, Complaint and Appeal Procedures for Faculty Members*

<http://www.tamus.edu/offices/policy/policies/pdf/32-01-01.pdf>

System Regulation *32.01.02, Complaint and Appeal Process for Nonfaculty Employees*

<http://www.tamus.edu/offices/policy/policies/pdf/32-01-02.pdf>

System Regulation *32.02.02, Discipline and Dismissal of Nonfaculty Employees*

<http://www.tamus.edu/offices/policy/policies/pdf/32-02-02.pdf>

System Regulation *33.99.01, Employment Practices*

<http://www.tamus.edu/offices/policy/policies/pdf/33-99-01.pdf>

Definitions

“Applicant” means an individual applying for a position with The Texas A&M University System, whether an external candidate or current employee.

“Arrest” means detain in legal custody.

“Arrest record” means arrest history data generated as a result of detention in legal custody.

“Criminal history record information” means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, 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.

“Conviction” as used in this regulation means 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.

“Conviction record” means criminal history data reported by criminal justice agencies and includes arrests, prosecutions and dispositions of cases for persons arrested for a Class B misdemeanor or greater violation as defined by state law or equivalent offenses under the law of another jurisdiction.

“Job-related” means an activity resulting in arrest or conviction where a relationship exists between the activity resulting in the arrest or conviction and the employee’s work performance, or if such activity may adversely affect the mission of The Texas A&M University System.

“Security-sensitive position” means any position in which an employee handles currency, has access to a computer terminal, has access to a master key, or works in an area designated as a security-sensitive area. *See* Tex. Gov’t Code § 411.094(2); *See* Tex. Educ. Code § 51.215(c).

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