

33.99.14 Criminal History Record Information – Employees and Candidates for Employment



Revised [May 11, 2022](#)
Next Scheduled Review: May 11, 2027
Click to review [Revision History](#).

Regulation Summary

Members of The Texas A&M University System (system) must perform criminal background checks of current employees and candidates for employment as provided by this regulation.

Definitions

Click to review [Definitions](#).

Regulation

1. GENERAL

- 1.1 The 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 system for the citizens of Texas. To achieve these goals, members may obtain, at any time, criminal history record information on any candidate for employment or any current employee. Criminal history record information may be used to make employment decisions affecting the candidate for employment or employee as provided by this regulation.
- 1.2 This regulation applies to all candidates for employment and all system employees including, but not limited to, graduate assistants and agency employees with faculty titles who are not in tenure track positions. This regulation does not apply to 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 member determines what employment positions for that member contain job duties that require the position to be designated “security sensitive.” This determination results 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, having access to the personal information or identifying information of another individual, having access to the financial information of the employer or another individual, having access to a master key or working in an area designated as a security-

sensitive area. The designation of a position as “security sensitive” determines the member’s authority to obtain criminal history record information from the Texas Department of Public Safety (DPS) Crime Records Secure Site. A security-sensitive position must be identified as such in the job description and any advertisement for the position.

- 1.4 Each member must have a rule addressing the implementation 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 an individual who is not entitled to the information, or violate DPS rules published in accordance with Chapter 411, Subchapter F, Texas Government Code.
- 1.6 To ensure compliance with EEOC standards and policy guidance, candidates for employment with a criminal history are not automatically disqualified from system employment, and a system employee’s criminal history does not result in automatic disciplinary action or dismissal. The analysis found in Section 6 must be used to determine whether an individual’s criminal history will affect the individual’s potential or continued system employment.
- 1.7 Criminal history records must not be used for illegal discrimination. *See System Policy 08.01, Civil Rights Protections and Compliance.*
- 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 system non-faculty employees, as defined in System Policy 32.02, *Discipline and Dismissal of Employees*. Failure by the system to follow the steps outlined in this regulation or an associated member rule or procedure will not form the basis of a candidate for employment’s appeal of 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, *Academic Freedom, Responsibility and Tenure*, and any related member rules or procedures.
- 1.9 Every candidate for employment and current employee have, as permitted by law, the opportunity to request, receive, review and correct information about that candidate or employee collected by or on behalf of the member.

2. PRE-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS FOLLOWING CONDITIONAL OFFER

- 2.1 Every offer of system employment must be conditioned on receipt of an acceptable criminal history record information check. Every candidate for employment is required to complete the background check authorization/consent process. A candidate for employment’s failure to consent to a criminal background check is grounds for the rejection of that candidate. Except as required or otherwise provided by law, a member will not request the disclosure of criminal history record information regarding an applicant before the member extends a conditional offer of employment to the applicant.

- 2.2 Any member finding criminal history record information for a candidate for employment indicating a conviction, criminal charge or an arrest must conduct the analysis found in Section 6 to determine whether the information will affect the individual's eligibility for potential or continued employment.
- 2.3 Any candidate for employment who has criminal history record information indicating a conviction for an offense listed in this subsection may be hired only after a recommendation by the member's department/unit head and approval by the chief executive officer (CEO) or designee. A conviction for any of the following offenses requires such approvals:
 - (a) a felony, as defined by state or federal law, or equivalent offenses under the law of another jurisdiction; or
 - (b) any offense requiring registration as a sex offender.
- 2.4 A candidate for employment is required to report any arrest, criminal charge or conviction as provided for during the background check process. This reporting obligation exists until the candidate for employment: (a) receives notice of not being hired; or (b) is hired and first reports to work.

3. SOURCES OF CRIMINAL HISTORY RECORD INFORMATION

Members can access, as permitted by law, the following sources to obtain criminal history record information:

- (a) DPS Crime Records Service Public Site or any other publicly available local, state, federal or international source;
- (b) DPS Crime Records Service Secure Site; and/or
- (c) a third-party vendor (in accordance with the federal Fair Credit Reporting Act).

A member that obtains criminal history record information about an individual must destroy all such information within its control as soon as practicable: for candidates for employment, after the position has been filled and the individual or the successful candidate reports to work; for employees, after the criminal history record information has been analyzed and any resulting action taken under this regulation. Note, however, that members must maintain completed background check authorization/consent forms as provided in the system records retention schedule.

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 an individual for any criminal offense, including arrest information that relates to the conviction or grant of deferred adjudication. Members are permitted to use this information for any purpose and release the information to any individual.

3.2 DPS Crime Records Service Secure Site

Members are entitled to obtain from the DPS secure site criminal history record information maintained by DPS that relates to a candidate for employment in 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 must not be accessed to obtain criminal history record information for any other applicants or current employees unless permitted by state law. The information obtained from the secure site may be used only for the purpose of evaluating candidates for employment in security-sensitive positions. **NOTE: The information obtained from the secure site may not be released or disclosed to any individual except on court order OR with the consent of the individual who is the subject of the criminal history records information.**

3.3 Third-Party Vendor

Members are entitled to obtain criminal history record information from a third-party vendor.

4. FALSIFICATION OR FAILURE TO DISCLOSE CRIMINAL HISTORY

- 4.1 Candidate for Employment. If it is determined prior to employment that a candidate has falsified or failed to disclose the individual's criminal history under Section 2.4, the candidate may be rejected.
- 4.2 Employee. If it is determined at any time after employment that an employee falsified or failed to disclose the individual's criminal history in accordance with this regulation, the employee may be subject to disciplinary action, including dismissal.
- 4.3 A decision to reject a candidate for employment or discipline/dismiss an employee for falsification or failure to disclose criminal history in accordance with this regulation need not take into account the factors set forth in Section 6.

5. CRIMINAL HISTORY BACKGROUND CHECKS OF EMPLOYEES

5.1 Employees are Subject to Periodic Checks

Each system employee's criminal history record information is subject to review at any time as permitted by law. Periodic criminal history information record checks may be conducted at the discretion of a member.

5.2 Employee Reporting of Arrests, Charges or Convictions

- 5.2.1 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 constitutes grounds for disciplinary action, including dismissal.
- 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 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 member human resources department and/or investigation by the appropriate law enforcement agency. The employee must cooperate fully during the review process.
- 5.2.4 The member human resources department (or provost or designee for faculty employees) conducts the analysis outlined in Section 6 and assists the employee's department/unit in determining appropriate disciplinary action in such cases, including dismissal, 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 a candidate for employment (Section 2) or an employee (Section 5), the following analysis must be conducted to determine whether a candidate is eligible for potential or continued employment or whether to discipline or dismiss an employee.

6.1 Conviction Records

- 6.1.1 The member human resources department (or provost or designee for faculty applicants or employees) that proposes to reject a candidate for employment or discipline or dismiss an employee based on criminal history record information consisting of conviction records must justify the action as job-related and consistent with business necessity. In making its decision, the 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; and
 - (d) 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 member for the citizens of Texas.
- 6.1.2 A conviction on an individual's criminal history record constitutes reliable evidence that the individual 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 an individual's conviction records, the member human resources department (or provost or designee) need not evaluate whether the candidate for employment 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 member human resources department (or provost or designee)

reasonably concludes the candidate for employment's or employee's criminal conduct evidences the individual is unsuitable for the position in question, the member human resources department (or provost or designee) may recommend that the department/unit reject the candidate or dismiss the employee. If the department/unit disagrees with the conclusion of the 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 Records of a Criminal Charge or Arrest

6.2.1 The member human resources department (or provost or designee for faculty candidates for employment or employees) that proposes to reject a candidate or discipline or dismiss an employee based on criminal history record information consisting of a criminal charge or arrest must justify the action as job-related and consistent with business necessity and must evaluate whether the candidate or employee actually engaged in the misconduct. In making its decision, the 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 charged or arrested;
- (b) The time that has passed since the charge or arrest and/or disposition of the offense;
- (c) The nature of the job sought or held;
- (d) 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 member for the citizens of Texas;
- (e) The candidate's or employee's explanation of the charge or arrest coupled with follow-up inquiries necessary to evaluate the individual's credibility; and
- (f) Whether the reason for the charge or arrest violated a system policy or regulation, or member rule or procedure.

6.2.2 A criminal charge or an arrest without a conviction does not establish that the individual actually engaged in the alleged activity. Therefore, when considering records of an individual's criminal charge or arrest, the member human resources department (or provost or designee) must evaluate whether the candidate for employment or employee actually engaged in the misconduct. **NOTE: If the human resources department (or provost or designee) is unable to determine that the candidate or employee actually engaged in the misconduct, any rejection of the candidate or discipline or dismissal of the employee cannot be based on the criminal charge or arrest.**

6.2.3 If, after considering all the circumstances and the factors listed in Subsections 6.2.1 and 6.2.2, the member human resources department (or provost or designee) reasonably concludes that the candidate for employment's or employee's misconduct evidences the individual is unsuitable for the position in question or should be disciplined, the member human resources department (or provost or

designee) may recommend that the department/unit reject the candidate or discipline or dismiss the employee. If the department/unit disagrees with the conclusion of the member human resources department (or provost or designee) and wishes to employ, continue the employment of or not discipline the individual, the department/unit must receive approval from the CEO or designee.

7. APPEALS

- 7.1 A candidate for employment rejected under this regulation has no appeal unless the individual alleges discrimination. Such appeals must be filed in accordance with System Regulation *08.01.01, Civil Rights Compliance*.
- 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, Complaint and Appeal Process for Faculty Members*, or System Regulation *08.01.01*, and related member rules or procedures.
- 7.3 Non-faculty employees can appeal action taken under this regulation by following the applicable provisions of System Regulation *32.01.02, Complaint and Appeal Process for Nonfaculty Employees*, or System Regulation *08.01.01*, and related member rules or procedures.

Related Statutes, Policies, or Requirements

[Tex. Educ. Code § 51.215](#)

[Tex. Gov't Code Ch. 411, Subchapter F](#)

[Tex. Gov't Code Ch. 559](#)

Fair Chance Act (codified at [10 U.S.C. § 4657](#), [41 U.S.C. § 4714](#)).

[Fair Credit Reporting Act, as amended, 15 U.S.C. §§ 1681 – 1681u](#)

[Federal Trade Commission informational document about the Fair Credit Reporting Act – Using Consumer Reports: What Employers Need to Know](#)

[System Policy 08.01, Civil Rights Protections and Compliance](#)

[System Regulation 08.01.01, Civil Rights Compliance](#)

[System Policy 12.01, Academic Freedom, Responsibility and Tenure](#)

[System Regulation 32.01.01, Complaint and Appeal Process for Faculty Members](#)

[System Regulation 32.01.02, Complaint and Appeal Process for Nonfaculty Employees](#)

[System Policy 32.02, Discipline and Dismissal of Employees](#)

Member Rule Requirements

A rule is required to supplement this regulation. See Section 1.4.

Contact Office

General Counsel
(979) 458-6120