

## Criminal Background Checks

### Policy Number: 160

**Subject:** Criminal Background Checks  
**Scope:** External and internal applicants for security sensitive positions, current employees, student applicants who have been given a conditional offer of admission, current students, and certain visitors to the University. Medical residents and clinical fellows should refer to [The University of Texas Health Science Center at Houston Graduate Medical Education Resident Handbook](#) for additional information.  
**Date Reviewed:** July 2019

**Responsible Office:** Human Resources; Applicable Student Affairs and Faculty Affairs Offices  
**Responsible Executive:** Vice President and Chief Human Resources Officer; Assistant/Associate Deans for Student Affairs; Executive Vice President & Chief Academic Officer

## I. POLICY AND GENERAL STATEMENT

The University of Texas Health Science Center at Houston ("University") conducts criminal background checks in the following instances:

- On internal and external applicants who are finalists for employment. The University may rely on a background check conducted at the University within the past twelve months if there has not been a break in service of more than six months, and the criminal background check is appropriate for the position sought.
- On all current employees who have not previously had a background check and current employees when the president or designee determines that such a check is necessary to further the goals of the institution.
- On current employees who are under consideration for promotion. A promotion for a classified or management administrative and professional ("A&P") employee is defined as occurring when an employee moves to a position that has a greater salary range than the position the employee currently holds, when an employee moves from a non-benefits eligible status to a benefits eligible status, and/or when an employee moves to a position of greater responsibility and scope, regardless of salary, as determined by a job classification review through Human Resources ("HR"). A promotion occurs for faculty when faculty move from non-tenure track to tenure track, when faculty rank is increased (whether tenure track or non-tenure track), when an award of tenure is recommended by the University Appointment, Promotion and Tenure Committee and before endorsement by the President, when faculty move from a non-benefits eligible status to a benefits eligible status, when faculty are appointed to an academic A&P position, or when a postdoctoral research fellow or other classified or A&P employee moves to a faculty (tenure track or non-tenure track) position.
- On all student applicants following an offer of admission or acceptance into a program and prior to matriculation or enrollment in any program of study. Admission or acceptance is expressly contingent upon satisfactory completion of a criminal background

check. Enrolled students may be required to provide additional criminal background checks for clinical placement, program requirements, or other purposes at the discretion of each school's Dean or designee.

- On all postdoctoral research fellows.
- On all faculty who hold a without salary appointment.
- On all employees in child-care centers and youth camps operated by, on the property of, or in the facilities of the University in accordance with UTS 124.
- On all volunteers in health care facilities, child care facilities and youth camps in accordance with UTS 124.
- On all observers, professional trainees, visiting scientists and visiting students who are approved for research and/or educational collaboration, observation or study.

For the purposes of this policy, the University has determined that all positions within the University (whether employee or student or without salary appointments) are security sensitive.

All background checks conducted by the University must include a sex offender registration check.

The University may rely on a criminal background check conducted by an agency of the federal government for an individual on assignment from an agency of the federal government, if the University receives documentation from that federal agency showing that a background check, including a criminal background check with a sex offender registry check, has been conducted by the federal agency.

Information obtained as a result of a criminal background check will be used only for the purposes of employment, promotion, admission, and current enrollment or participation, and will not be used to discriminate based upon race, color, national origin, sex, sexual orientation, disability, veteran status, religion or age. An individual with a criminal record will not automatically be disqualified from employment or promotion. In the event the investigation reveals criminal record information, the information will be used on a case-by-case basis to determine whether the individual is qualified based on factors such as specific duties of the position; number of offenses; nature of offense; length of time intervening between the offense and the employment decision; employment history; efforts at rehabilitation; and accuracy of the information that the individual provided on the employment application. As noted in Section II.A.1.b below, additional requirements apply to individuals convicted or placed on deferred adjudication for offenses requiring registration as a sex offender.

Criminal background information will be regarded as confidential, as required by state and federal law, and will not be released or disclosed to any unauthorized person. If the University elects to use a third-party vendor credit reporting agency to conduct criminal background checks, the resulting report is considered a "consumer report" under the Fair Credit Reporting Act (FCRA), and the University must comply with all applicable FCRA disclosure and notice requirements.

## II. PROCEDURE

### A. External Applicants

For classified and management A&P positions, HR will provide a written confirmation of the extended job offer advising the candidate that the offer is expressly contingent upon the satisfactory completion of a criminal background check. Authorization for the criminal background check is required.

For faculty, fellows, and academic A&P positions, the Dean or designee will extend a written job offer advising the candidate that the offer is expressly contingent upon the satisfactory completion of a criminal background check. Authorization for the criminal background check is required.

All candidates (including classified, management A&P, faculty, fellows and academic A&P) identified for hire must be successfully cleared prior to the start of employment. All postdoctoral research fellows and faculty who hold a without salary appointment must be successfully cleared prior to the start of their appointment. Failure to authorize a criminal background check is grounds for non-hire of an individual identified for hire.

#### 1. Applicant/Appointee with Criminal Background

##### a. General Provisions

In the event an applicant/appointee selected for hire/appointment is discovered to have a criminal background, except as outlined in Section II.A.1.b below, The University of Texas Police - Houston ("UTP-H") will determine on a case-by-case basis whether the individual appears to pose a risk to the University. UTP-H will consult HR to assess the job duties of a position to determine if the reported criminal background is germane to the essential functions of the position or other duties that may be assigned and will conduct the case-by-case analysis of whether the individual is qualified for the position.

#### **b. Sex Offenders**

Additional requirements apply if an individual has been convicted of or placed on deferred adjudication for (a) an offense that would require the individual to register as a sex offender under the Texas Code of Criminal Procedure, which includes, but is not limited to, such offenses as Continuous Sexual Abuse of a Young Child; Sexual Assault; and Aggravated Sexual Assault; or (b) an offense under the laws of another state or federal law that is equivalent to an offense requiring such registration.

In such cases, the University will not hire, continue to employ, appoint or assign that individual unless:

- the hiring/appointing official articulates a compelling justification;
- the Vice President and Chief Human Resources Officer and the UTP-H Chief of Police concur;
- the President of the University concurs; and
- the individual has no higher than a level one (low) risk as determined by the risk assessment screening tool under the Texas Code of Criminal Procedure or, if no such level is assigned, a low risk as determined by the UTP-H Chief of Police.

#### **c. Notification of Applicant**

An applicant/appointee considered not eligible for employment in the desired position as a result of the criminal background check process will be so advised by HR. A copy of the report will be provided, except as provided by law, DPS policy or University procedure. HR will inform the applicant/appointee that he/she may challenge the results of the criminal background check by doing so with the agency that provided the report and that he/she has the opportunity to submit additional information relating to the criminal record and why it should not affect the employment decision to UTP-H.

### **2. Falsification of Application Materials/Failure to Disclose Criminal Convictions**

Falsifying application materials, including failure to disclose criminal convictions, deferrals of adjudication, sex offender registration, community supervision or other pre-trial diversion or disposition, is grounds for non-hire/appointment of an individual identified for hire/appointment. Further, applicants/candidates must report in writing any criminal charges or convictions (including whether he or she is registered or will be required to register as a sex offender) occurring in the interim period between application and appointment. Any University official receiving a self-report must provide the information to HR and UTP-H and must consult HR and UTP-H about the individual's suitability for the position.

If it is subsequently discovered that a current employee/appointee falsified information on employment application materials or failed to disclose accurate information regarding conviction(s), deferred adjudication(s), sex offender registration, community supervision and/or other pre-trial diversion or disposition, that employee/appointee will be subject to appropriate disciplinary action, up to and including termination. In the case of an individual who holds an appointment with the University, that appointment may be ended.

### **3. Challenging Results of Criminal Background Check/Opportunity to Respond**

If the applicant/appointee desires to challenge the results of the criminal background check, it is the responsibility of the applicant/appointee to resolve the discrepancy and to provide evidence of the resolution of the discrepancy to UTP-H. Within three calendar days following receipt of the notice of a finding of a criminal background, the individual may submit additional information to UTP-H relating to the criminal records and why they should not affect the employment decision. Before UTP-H makes a final employment recommendation, they will review all information with HR and consult about whether to proceed with an offer or adverse employment action. If either UTP-H or HR 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 an offer may not be extended or employment continued without the prior written approval of the applicable executive officer or his or her designee.

The decision of the institution is final and may not be appealed.

If a consumer report has been relied on to deny employment after the institution has taken an adverse action, the individual must be given notice that the action has been taken. It must include the name, address, and phone number of the credit reporting agency that supplied the report; 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 a notice of the individual's right to dispute the accuracy or completeness of any information that agency furnished; and his or her right to an additional free consumer report from the agency upon request within 60 days.

### **4. Maintaining Criminal Background Information**

Records obtained from a criminal background check database will not be made a part of the applicant's/appointee's file or the employee's personnel file, but will be maintained in a separate secure file and will be retained only for such time as needed for the application process. The unauthorized release of records 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. Officials in possession of such information shall seek legal advice with respect to any requested release of such information.

## **5. Job Descriptions and Advertisements**

All job descriptions and advertisements for security sensitive positions will be identified as such in accordance with Texas Education Code §51.215 and Texas Government Code §411.094: "This position is a security-sensitive position pursuant to Texas Education Code §51.215 and Texas Government Code §411.094."

## **6. Contract Workers (From Temporary Employment Agencies)**

For those positions filled by a contract worker provided by a temporary employment agency, the employment agency is responsible for conducting the appropriate criminal background check and for providing that information to the University and/or the appropriate University designated agent as required by the University.

## **B. Employees**

Employees are required to disclose in writing to Human Resources - Employee Relations any arrests for and/or criminal charges of all misdemeanor or felony offenses (other than minor traffic violations), any misdemeanor or felony convictions and/or deferrals of adjudication, community supervision and/or other pre-trial diversion or disposition (other than minor traffic violations) and whether they are registered or will be required to register as a sex offender, within five days of occurrence. Nondisclosure or falsification of this information will be grounds for disciplinary action, up to and including termination. HR will coordinate with UTP-H, the Office of Legal Affairs, and other appropriate offices to evaluate the information and determine the appropriate action.

Employees must disclose drug-related arrests and/or convictions in accordance with [HOOP Policy 173 Substance Abuse](#).

In the event an employee is discovered to have any misdemeanor or felony arrests and/or convictions and/or deferrals of adjudication, sex offender registration, community supervision and/or other pre-trial diversion or disposition (other than minor traffic violations), whether through self-disclosure, a background check occurring pursuant to this policy, or through any other reporting mechanism, UTP-H will determine on a case-by-case basis whether the individual appears to pose a risk to the University. UTP-H will consult HR to assess the job duties of the employee's position to determine if the reported criminal background is germane to the essential functions of the position or other duties that may be assigned and will conduct the referenced case-by-case analysis.

Additional requirements apply to individuals who have been convicted or placed on deferred adjudication for an offense that would require registration as a sex offender, as outlined in Section II.A.1.b.

An employee considered a risk to the University as a result of any misdemeanor or felony arrest and/or conviction and/or deferral of adjudication, sex offender registration, community supervision and/or other pre-trial diversion or disposition (other than minor traffic violations), whether through self-disclosure, a background check occurring pursuant to this policy, or through any other reporting mechanism, will be so advised by HR and will be placed on administrative leave with pay. A copy of the report, if applicable, will be provided, except as provided by law or DPS policy or procedure. HR will inform the employee that if the employee wishes to challenge the results of the criminal background check he/she may do so with the agency that provided the report. HR will also inform the employee that he/she has the opportunity to submit additional information relating to the criminal record and why it should not affect the employment decision to UTP-H.

The employee may challenge the results of UTP-H's risk assessment by notifying UTP-H in writing within three calendar days of being notified and may submit additional information to UTP-H relating to the criminal records and why they should not affect the employment decision. UTP-H will notify HR of the results of the challenge. Before UTP-H makes a final employment recommendation, all information provided will be reviewed with HR. If either UTP-H or HR 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 an offer may not be extended or employment continued without the prior written approval of the applicable executive officer or designee. Employees who are unsuccessful in the challenge to UTP-H or who fail to challenge the risk assessment within three calendar days will be subject to termination of employment. Standard employee grievance procedures or termination procedures, as applicable, are available to challenge the decision to terminate.

If a consumer report has been relied on to deny or terminate employment, the individual must be given notice that the action has been taken. It must include the name, address, and phone number of the consumer reporting agency that supplied the report; a statement that the consumer reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and a notice of the individual's right to dispute the accuracy or completeness of any information that the reporting agency furnished and to obtain additional free report from the agency upon request within 60 days.

A contractual agreement, grant or external agency (e.g., school district, hospital, clinic site) may require annual criminal background checks on current employees. In those instances where an employee is identified as ineligible to remain in his/her position because of contractual, grant or external agency requirements, disciplinary action, if appropriate, may be taken by the employee's current department in consultation with an Employee Relations Advisor in HR.

## **C. Student Applicants and Enrolled Students**

Each individual seeking admission to an academic unit or program shall disclose on any required application all pending criminal charges, all misdemeanor or felony convictions and any deferrals of adjudication (other than for minor traffic violations) whether or not placed on probation, community supervision, or other pre-trial diversion or disposition or other supervised release. The applicant must also disclose whether he or she is registered or will be required to register as a sex offender. An applicant offered admission is required to provide written consent for a criminal background check, the results of which must be released to the appropriate Dean or designee of an academic unit or program. The criminal background check will be conducted by an agency designated by each school. Results from any agency or company other than the designated contracted agency will not be accepted. The cost of the criminal background check shall be borne by the applicant. Admission to a school or program is expressly contingent upon successful completion of a criminal background check. Failure to consent to a criminal background check is grounds for withdrawal of an offer of admission or for exclusion or dismissal from a program. The relevancy of any pending charge(s), conviction(s), and/or deferral(s) of adjudication to the academic and technical requirements of the applicable program may be considered as part of the admissions process.

In reviewing the background check reports and any information submitted, the unit or program may consider the following factors in making its determinations: the nature and seriousness of the offense or event, the circumstances surrounding the offense or event, the relationship between the requirements of the educational program and the offense committed, the age of the person when the offense or event occurred, whether the offense or event was an isolated or repeated incident, the length of time that has passed since the offense or event, history of academic or disciplinary misconduct, evidence of successful rehabilitation, and the accuracy of the information provided by the applicant or student in the application materials, disclosure forms or other materials.

The applicant or student will be informed that the vendor conducting the criminal background check is not involved in any decisions or determinations by the school or program regarding withdrawal of an offer of admission or exclusion or dismissal from a program.

### **1. Falsification of Application Materials**

Falsifying application materials in any way, including failure to fully disclose criminal charges, criminal convictions and/or deferral(s) of adjudication, sex offender registration, community supervision or any other pre-trial diversion or disposition may be grounds for withdrawal of an offer of admission, exclusion or dismissal from a program or academic unit.

### **2. Challenging Results**

An individual offered conditional admission or an enrolled student will have access to or receive a copy of the criminal background check from his or her academic unit's selected vendor. Prior to making a final determination that will adversely affect the applicant or student, the program or academic unit will provide the applicant or student a copy of, or access to, the background check report issued by the designated company, and will inform him/her how to contact the designated company to challenge the accuracy of the report and that the designated company was not involved in any decisions made. If the individual desires to challenge the results of the criminal background check, it is the responsibility of the individual to resolve the discrepancy with the vendor and to provide evidence of the resolution of the discrepancy to the appropriate Dean or designee.

### **3. Validity of Criminal Background Check**

The completed criminal background check will be valid for the duration of a student's enrollment in a program unless the individual has had a break in enrollment or the Dean or designee has determined that an additional criminal background check is required for clinical placement or other purposes. A break in enrollment is defined as withdrawal from and readmission to a program, suspension for any length of time from a program for disciplinary purposes, and, at the discretion of the appropriate Dean or designee, after a leave of absence of any length for medical or other reasons.

### **4. Confidentiality and Recordkeeping**

Background check reports and other submitted information are confidential and may only be reviewed by University officials and affiliated clinical facilities in accordance with state and federal law. Background check reports and other submitted information on students will be maintained in each school's respective Office of Student Affairs. Background check reports and other submitted information on applicants denied admission into a program will be maintained in accordance with the University's record retention policy.

### **5. Disclosure of Arrest/Criminal Charges**

Enrolled students are required to disclose within five days of occurrence to their respective Dean or designee any arrests for and/or criminal charges of all misdemeanor or felony offenses (other than minor traffic violations), any misdemeanor or felony convictions and/or deferrals of adjudication, community supervision and/or other pre-trial diversion or disposition (other than minor traffic violations) and whether they are registered or will be required to register as a sex offender. Nondisclosure or falsification of this information will be grounds for disciplinary action, up to and including dismissal from a program.

### III. CONTACTS

#### **Human Resources (questions regarding this policy as it relates to employment)**

713-500-3130

<http://www.uth.edu/hr/contact.htm>

#### **Applicable Office of Student Affairs (questions regarding this policy as it relates to students)**

SBMI: <https://sbmi.uth.edu/prospective-students/admission-process.htm> SOD: <https://dentistry.uth.edu/students/> GSBS: <https://gsbs.uth.edu/current-students/student-life/>

MS: <https://med.uth.edu/admissions/> SON: <https://nursing.uth.edu/acaddept/studentaffairs/default.htm> SPH: <https://sph.uth.edu/about/directory>

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