Criminal History Background Checks for Employment and Promotion

Definitions

Security sensitive areas are all of the physical locations at the utmbHealth (UTMB) designated by the President or his designee. Also included are any UTMB controlled facilities throughout the State of Texas. These locations include, but are not limited to, areas providing direct patient care, laboratories, child care, pharmacy services and offices of senior level administrative positions. Due to the high-risk nature of some work on campus, security sensitive areas have been divided into two security levels and all employees working in these areas are required to have the level of criminal history background check designated for the area in which they work. These levels are as follows:

> **Level II -** Criminal history record information on applicants who are under final consideration, following normal screening and selection processes. This criminal history includes, but is not limited to, sex offender registry, terrorist watchlists and State and Federal Office of Inspector General (OIG) sanctions checks.
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> **Level III** – Department of Justice (DOJ) background check on applicants who are under final consideration, following normal screening and selection processes, for a position that will have access to select agents or unescorted access to certain radioactive material. This criminal history includes, but is not limited to, sex offender registry, terrorist watchlists and State and Federal OIG) sanctions checks.

Applicant is an individual who applies for a position within UTMB whether the individual is an internal or external candidate. This also includes without salary (WOS) positions and volunteers.

Criminal Conviction Record Information refers to the public information maintained by the Department of Public Safety, as provided in Texas Government Code §411.135.

Criminal History Record Information is the 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.

Definitions, continued

Select Agents has the meaning assigned in 42 C.F.R. § 73 ad 7 C.F.R. § 331, or as amended.

Controlled Substance has the meaning assigned in Texas Health and Safety Code § 481.002, as that section may be amended from time to time.

Policy

UTMB is committed to promoting a safe and secure environment. This policy applies to all UTMB faculty, staff, contract employees and volunteers with the exception of those who work in correctional facilities. Clearance for employees working in the correctional facilities is the responsibility of the Texas Department of Criminal Justice and other appropriate correctional agencies.

UTMB will not employ individuals if it is determined that the individual poses a security risk. Unescorted access will not be granted to Level II or Level III areas until criminal history background checks have been satisfactorily completed.

Procedures

In accordance with Section 51.215 of the Texas Education Code and Sections 411.094 and 411.135 of the Texas Government code, UTMB must obtain criminal history background checks, at a minimum, on:

Applicants for Employment: any applicant, internal or external, who is under final consideration, following normal screening and selection processes, for a regular full-time or part-time position of employment. UTMB may rely on a criminal history background check conducted at UTMB within the past twelve (12) months if there is not a break in service of more than six (6) months and the criminal history background check relied on is appropriate for the position sought. This criminal history must include the sex offender registry, terrorist watchlists and State and Federal OIG sanctions checks.

Without Salary Appointments (WOS):
This also includes applicants for WOS positions and volunteers, but does not include a position filled by a temporary worker provided by a temporary employment agency or contractor. The employment agency or contractor is responsible for conducting the appropriate level of criminal history background check on their employees. WOS faculty appointees must have a criminal history background check prior to their receiving a WOS appointment to a position with a faculty academic title authorized under Regents' Rules and Regulations, Rule 31001. WOS classified, Administrative and Professional (A&P), Faculty, and non-teaching appointees must also have criminal history background

Procedures, continued

checks prior to their appointments. This background check must include the sex offender registry, terrorist watchlists and State and Federal OIG sanctions checks.

Authorization Required: A signed written authorization form must be obtained from the applicant prior to proceeding with the criminal history background check. Refusal by the applicant to sign this form will constitute withdrawal from consideration for the security sensitive position. This authorization form must include the notice required by Texas Government Code §559.003, as it may be amended from time to time.

Sources for applicants: Any or all of the following background check sources may be used, as appropriate:

a. The TX DPS Crime Records Service – Secure Site.
b. A private vendor that offers national criminal history background check services.
c. Other state, national, and international sites.

Current Employees: a current employee who is under consideration for a transfer, promotion/demotion, reclass or additional appointment that requires a criminal history background check based on UTMB policy; current employee if the institution has not previously obtained a criminal history background check on the employee; and a current employee when the President, or his/her designee, determines it is necessary to further the goals of the institution. This criminal history background check must include sex offender registry, terrorist watchlists and State and Federal OIG sanctions checks.

Youth Camps: In addition to fully complying with all state and federal laws relating to criminal history background checks, the following provisions apply to youth camps operated by, on the property of, or in the facilities of UTMB. Youth camps shall ensure that for all employees and final applicants who will work at the camp, and all volunteers and student observers who will regularly or frequently be at the camp, are subject to criminal history background checks each year.

Sources for current employees: Any or all of the following background check sources may be used, as appropriate:

a. The TX DPS Crime Records Service – Secure Site.
b. A private vendor that offers national criminal history background check services.
c. Other state, national, and international sites.

Procedures, continued

Statutorily Required Criminal History Background Check.

Where state or federal law requires that a position be subject to a criminal history background check using a specific source of criminal history background check information and/or certain procedures, UTMB will comply with such laws. To the extent such laws impose criminal history background checks that are more extensive or substantially similar, UTMB may rely on compliance with the statute to satisfy the requirements of this policy. UTMB may also rely on the criminal history background check conducted by an agency of the federal government if the criminal history background check also includes the sex offender registry.

No Automatic Disqualification for Criminal History Background.

UTMB does not automatically disqualify all applicants from employment with conviction records. The Vice President of Human Resources Operations and the Chief of University Police will make the final decision about whether an applicant for a classified position poses a security risk.

Decisions will be based on a case-by-case basis.

UTMB will 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 that would require:

(a) the individual to register as a sex offender under Chapter 62, Code of Criminal Procedure, which includes, but is not limited to, such offenses as Continuous Sexual Abuse of Young Child; Sexual Assault; 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, unless the hiring/appointing official, as appropriate, articulates a compelling justification, the Vice President of Human Resources and the Chief of University Police concur, the President concurs, 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, Code of Criminal Procedure. If no such risk level is assigned, then the risk level cannot exceed a low risk as determined by the UTMB's Chief of University Police.

Institutional criminal history background check procedures must include a review of the criminal history background information by both the Director of Human Resources and the Chief of University Police to

Procedures, continued

determine whether there is a disqualifying offense under this section.
Notice Requirement.

An institution receiving a report indicating that an applicant or a current employee has a criminal record will notify the individual that such a report has been received, provide the individual with a copy of the report, and notify the individual of the right to challenge the accuracy and completeness of the report and to submit additional information relating to the criminal record and why it should not affect an employment decision.

Opportunity to Respond to Adverse Action.

External Applicants for Employment. The decision of the institution is final and may not be appealed.

Current Employees. If the individual is a current employee subject to a criminal history background check, standard employee grievance procedures are available to challenge the decision. If the criminal record leads to termination, the applicable employee discipline and discharge procedures will be used.

Disclosure When Private Vendor Services Used To Conduct Criminal History Background Check.
If an institution elects to use a third-party vendor credit reporting agency to conduct criminal record checks, the resulting report is considered a "consumer report" under the Fair Credit Reporting Act (FCRA) and the institution must comply with all FCRA disclosure and notice requirements.

Post Application/Employment: Self-Report of Charges or Convictions Required.

External Applicants for Employment. Applicants must report in writing any charges or convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding misdemeanor offenses punishable only by fine, occurring after the date of application.

Current Employees: UTMB employees must report to their supervisor in writing, within five business days, any criminal complaint, information, indictment, no contest plea, guilty plea or criminal charges, convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding misdemeanor offenses

Procedures, continued

punishable only by fine.

The Department Head receiving a self-report as required under this section must provide the information to the Vice President of Human Resources and the Chief of University Police and consult about the individual's suitability for the position. Falsification or omission of records or failure to report as required by this policy or law will result in disciplinary action. Such discipline is subject to standard grievance and disciplinary procedures.

Criminal History Background Check Records.
Criminal history background check information obtained by UTMB may be used only for the purpose of evaluating applicants for employment and shall not be used to discriminate on the basis of race, color, national origin, religion, sex, handicap, or age. Criminal history background check records shall be handled and retained in accordance with applicable state and federal laws.

Criminal history record information, including conviction information contained therein, will be regarded as confidential as required by law and will not be made part of the applicant's file or the employee's personnel file or communicated to any unauthorized person. Under Texas Government Code 411.085, the unauthorized release of criminal history record information is a criminal offense. Consequently, the Department of Legal Affairs must be consulted with respect to any requested release of this information.

Building Access:
Access to security sensitive areas during normal business hours (8-5) may be obtained through the Key Control Officer (KCO) for the department. Twenty-four hour access may only be obtained through the Trusted Requestor for the department and must be based on legitimate business need for after-hours access. No employee will be granted unescorted access to areas requiring Level II or Level III clearance until the Criminal History Record Information and or DOJ clearance has been obtained and the employee has received a satisfactory security clearance as defined in the above process.

Contractors:
Criminal history background checks must be completed on all contract employees performing work in security-sensitive areas before access will be given to the area. The contract agency is responsible for ensuring that the appropriate level criminal history background check has been performed. A contracting agency that needs additional information about this process should contact Human Resources.

Retention

Reports received from the third-party vendor on the Level II security checks must be kept for five years in compliance with the Fair Credit Reporting Act of 2003.

References

Texas Education Code § 51.215. Access to Police Records of Employment Applicants
Texas Government Code § 411.094 Access to Criminal History Record Information: Institution of Higher Education
Texas Government Code § 411.081 et seq. – Criminal History Clearinghouse
Texas Government Code § 411.135 Access to Certain Information by Public
Nuclear Regulatory Commission, Order EA-07-305, Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material
Texas Administrative Code §, Title 25 289.252 (ii) Requirements for Increased Control
Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
University of Texas System Policy UTS 124
IHOP 3.2.10 Use of Consumer Reports for Employees, Students and Contractors