Criminal Background Checks for Employment

Definitions

Security sensitive areas are physical locations at the University of Texas Medical Branch (UTMB) designated by the President or his designee. 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 n campus, security sensitive areas have been divided into three security levels and all employees working in these areas are required to have the level of criminal background check designated for the area in which they work. These levels are as follows:

Level I - Criminal conviction record on applicants who are under final consideration, following normal screening and selection processes, for a position that do not have social security numbers or U.S. addresses. However, access to keys and certain buildings is limited with a Level I security check.

Level II - Criminal history record information on applicants who are under final consideration, following normal screening and selection processes.

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.

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 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 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 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. This also includes without salary (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 background check on their employees.

> **Authorization Required:** A signed written authorization form must be obtained from the applicant prior to proceeding with the criminal 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.

Procedures, continued

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 background check services.
c) Other state, national, and international sites.

Current Employees: a current employee who is under consideration for a promotion that requires a criminal background check based on UTMB policy; current employee if the institution has not previously obtained a criminal 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.

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 background check services.
c) Other state, national, and international sites.

Statutorily Required Criminal Background Check.

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 and/or certain procedures, UTMB will comply with such laws. To the extent such laws impose criminal background checks that are more extensive or substantially similar, UTMB may rely on compliance with the statute to satisfy the requirements of this policy.

No Automatic Disqualification for Criminal Background.

UTMB does not automatically disqualify all applicants from employment with conviction records. The Associate Vice President of Human Resources Operations or designee will make the final decision about whether an applicant for a classified position poses a security risk. Should there be a concern regarding a faculty or A&P position, the decision will be made by the area leader (President, Executive Vice President and Provost, Dean of Medicine, Executive Vice President and CEO Health System, Executive Vice President and

Procedures, continued

Chief Business Officer, Deans, Vice Presidents) of the area where the appointment is to be made. Decisions will be based on a case-by-case basis based on factors such as:

a. The nature and gravity of the offense or offenses;
b. The time that has passed since the conviction and/or completion of the sentence; and
c. The nature of the job held or sought.

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 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 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.

Procedures, continued

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

External Applicants for Employment. Applicants must report in writing any charges or convictions, 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 charges, or criminal convictions, excluding misdemeanor offenses punishable only by fine. Human Resources will review the charges on a case-by-case basis and a determination will be made. Subject to standard grievance and disciplinary procedures as applicable, failure to do so is a violation of policy and may lead to disciplinary action as appropriate. These charges will be reviewed and a determination will be made by Human Resources.

Criminal Background Check Records.

Criminal 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 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 though 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

Procedures, continued

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 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 background check has been performed. A contracting agency that needs additional information about this process should contact Human Resources.

Retention

After the expiration of the probationary term of the individual's employment, all criminal conviction record information obtained from Level 1 security checks shall be destroyed. If no probationary period is involved, the information shall be destroyed 180 days after it was obtained. 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 § 411.135 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
Texas Education Code § 51.215 – Access to Police Records of
Texas Government Code § 411.081 et seq. – Criminal History Clearinghouse
Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
University of Texas System Policy UTS 124