



**Institutional Handbook of Operating Procedures**  
**Policy 03.02.06**

Section: Human Resources Policies	Responsible Vice President: Vice President and Chief Human Resources Officer
Subject: Employees	Responsible Entity: Human Resources

**I. Title**  
*Criminal History Background Checks for Employment*

**II. Policy**  
The University of Texas Medical Branch (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 applicants for positions in correctional facilities. Clearance for employees working in the correctional facilities is the responsibility of the Texas Department of Criminal Justice (TDCJ) 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.

UTMB, in compliance with applicable federal laws and regulations, strives to maintain an environment free from discrimination against individuals on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, gender identity or expression, genetic information, or veteran status.

**III. 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 external applicant 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, State and Federal OIG sanctions checks, GSA System for Award Management (SAM), and the Food and Drug Administration (FDA).

For student applicants to a position requiring student status, UTMB may rely on a criminal history background check conducted at UTMB within the past sixty (60) months as long as the student has maintained continuous enrollment during the long semesters; the student is employed in the same job or one with the same criminal background check requirements; and the student is required to report any charges or convictions (including current or upcoming registry as a sex offender), excluding misdemeanor offenses punishable only by fine.

**Without Salary Appointments (WOS) and Volunteers:** 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), and non-teaching appointees must also have criminal history background checks prior to their appointments. This background check must include the sex offender registry, terrorist watchlists and State and Federal OIG sanctions checks, US General Services Administration (GSA) System for Award Management (SAM), and the Food and Drug Administration.

**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 criminal history background check will be conducted on:

- a. A current employee who is under consideration for a management position or a position which carries responsibility for payroll, purchasing, billing and collections, audit, financial reporting, and other related fiduciary functions;
- b. A current employee if UTMB has not previously obtained a criminal history background check on the employee; and
- c. 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, US General Services Administration (GSA) System for Award Management (SAM), and the Food and Drug Administration.

**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.

### **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 and Chief Human Resources Officer and the Chief of University Police will make the final decision about whether an applicant for a position poses a security risk.

Decisions will be made 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 and Chief Human Resources Officer 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.

Criminal history background information is reviewed by both the Vice President and Chief Human Resources Officer and the Chief of University Police to determine whether there is a disqualifying offense under this section.

### **Notice Requirement**

When UTMB receives a report indicating that an applicant or a current employee has a criminal record, Human Resources 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 UTMB 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 dismissal procedures will be used.

### **Disclosure When Private Vendor Services Used To Conduct Criminal History Background Check**

UTMB uses a third-party vendor credit reporting agency to conduct criminal record checks, and the resulting report is considered a “consumer report” under the Fair Credit Reporting Act (FCRA). UTMB complies 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 punishable only by fine. Correctional Managed Care employees must report such incidents within 48 hours to their supervisor and the appropriate TDCJ official.

The Department Head receiving a self-report as required under this section must provide the information to the Vice President and Chief Human Resources Officer 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 individuals for employment and shall not be used to discriminate on the basis of race, color, national origin, religion, sex (including pregnancy), disability, age, sexual orientation, gender identity and expression, genetic information, or veteran status. 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 (8:00 am – 5:00 pm) 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.

**IV. 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.

**V. Relevant Federal and State Statutes**

- [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 § 411.0845](#) et seq. – Criminal History Clearinghouse
- [Texas Government Code § 411.085](#) Unauthorized Obtaining, Use, or Disclosure of Criminal History Record Information
- [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

**VI. Relevant System Policies and Procedures**

[University of Texas System Policy UTS 124](#)

**VII. Related UTMB Policies and Procedures**

[IHOP - 03.02.10 - Use of Consumer Reports for Employees, Students and Contractors](#)

**VIII. Dates Approved or Amended**

<i>Originated: 02/19/2004</i>	
<i>Reviewed with Changes</i>	<i>Reviewed without Changes</i>
06/06/2019	05/02/2017
06/13/2019	10/25/2021

**IX. Contact Information**

Human Resources, Employee Relations  
(409) 772-8696