

## 33.99.14 Criminal History Record Information – Employees and Applicants

Approved March 11, 2008

Revised February 27, 2012

Next Scheduled Review: ~~March 11, 2010~~February 27, 2014



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### Regulation Statement

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

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### Reason for Regulation

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This regulation provides minimum procedures to be used by ~~A&M-S~~system mMembers in performing criminal background checks of current employees and applicants for employment.

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### Procedures and Responsibilities

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#### 1. GENERAL

- 1.1 The ~~Texas A&M University-S~~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 ~~A&M-System-system~~ for the citizens of Texas. To achieve these goals, mMembers of the ~~A&M-S~~system may obtain, at any time, criminal history record information on any applicant for employment or any existing-current employee. Criminal history record information may be used to make employment decisions affecting the applicant or employee as provided by this regulation.
- 1.2 This regulation applies to all applicants for employment positions and all employees of the ~~A&M-S~~system, 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 ~~A&M-S~~system mMember campus police departments obtaining criminal history record information for a criminal justice purpose under Chapter 411, Subchapter F, Texas Government Code.
- 1.3 Each ~~A&M-S~~system Mmember will determine what employment positions for that Mmember contain job duties that require the position to be designated “security sensitive.” This determination will result 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 person, having access to the financial information of the employer or another person, having 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 shall be identified as such in the job description and any advertisement for the position.

- 1.4 Each ~~A&M S~~system ~~M~~member shall have a rule addressing ~~any operational requirements for the implementation of performing criminal history background checks within the parameters 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 a person who is not entitled to the information; ~~provide a person with a copy of his or her criminal history record information obtained from the Texas Department of Public Safety (DPS) Crime Records Service Secure Site;~~ or violate DPS rules published in accordance with Chapter 411, Subchapter F, of the Government Code. *See* Tex. Gov’t Code § 411.085.
- 1.6 To ensure compliance with EEOC standards and policy guidance, applicantsIndividuals with a criminal history will not be automatically disqualified ~~from~~for system employment, and a system employee’s criminal history will not result in automatic disciplinary action or dismissal with the A&M System except as provided by this regulation. The analysis found in It is the practice of the A&M System not to employ or to continue the employment of individuals who may be deemed unsuited for service by reason of certain convictions, or conduct leading to arrest or conviction. While an arrest or conviction of a crime, in and of itself, may not be an automatic bar to employment, if conduct leading to arrest or conviction relates to suitability of the individual to perform duties in a particular position, such person may be denied employment.Section 6 of this regulation shall 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 shall not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, ~~or~~ age, genetic information or veteran status.
- 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 ~~A&M S~~system non-faculty employees, as defined in System Policy 32.02, Discipline and Dismissal of Employees. Failure by the ~~A&M S~~system to follow the steps outlined in this regulation or an associated ~~A&M S~~system ~~m~~Member rule or procedure shall not form the basis of an applicant’s appeal of his or her 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 ~~A&M System Member~~ rules or procedures.

1.9 Every applicant for system employment and current employee will have, as permitted by law, the opportunity to request, receive, review and correct information about that applicant or employee collected by or on behalf of the member.

## 2. PRE-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

2.1 Every offer of ~~A&M System~~ employment shall be conditioned on receipt of an acceptable criminal history record information check. Every finalist for system employment will be required to complete and sign a background check authorization/consent form. An applicant's failure of an applicant to consent to a criminal background check is grounds for the rejection of the applicant.

~~2.2 Applicants shall be ineligible for A&M System employment if the applicant has criminal history indicating a conviction for:~~

~~— a) any second degree, first degree, or capital felony as defined by state law or equivalent offenses under the law of another jurisdiction; or~~

~~— b) any offense requiring registration as a sex offender.~~

2.2 Any system member finding criminal history record information for an applicant indicating a conviction, criminal charge or an arrest shall conduct the analysis found in Section 6 of this regulation to determine whether the information will affect the individual's eligibility for potential or continued employment.

2.3 Any applicant 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 system 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. (other than those listed in Section 2.2 of this regulation) may be hired only after a recommendation by the A&M System Member's department/unit head and approval by the Chief Executive Officer (CEO) or designee. An A&M System Member finding criminal history record information for an applicant indicating a conviction (other than those listed in Section 2.2 of this regulation) or an arrest shall conduct the analysis found in Section 6 of this regulation.~~

2.4 An applicants for system employment isare required to promptly report any arrest, criminal charge or conviction occurring after his or her application is submitted. This reporting obligation for applicants exists until s-made between the application for employment and individual: (a) receives notice that he or she will not be hired; or (b) is

~~hired and first reports to work—the A&M System Member’s decision to hire the applicant for employment.~~

### 3. SOURCES OF CRIMINAL HISTORY RECORD INFORMATION

~~A&M System~~ Members can access, as permitted by law, the following sources to obtain criminal history record information:

- (a) ~~the Texas Department of Public Safety’s~~ DPS Crime Records Service ~~\_Public Site~~ or any other publicly available local, state, ~~or~~ federal or international source;
- (b) ~~the Texas Department of Public Safety’s~~ DPS Crime Records Service ~~\_Secure Site;~~ and/or
- (c) a third-party vendor (in accordance with the federal Fair Credit Reporting Act).

~~Members of the A&M System may also utilize the services of a third party vendor(s) to obtain criminal history record information.~~ A system member that obtains criminal history record information ~~obtained~~ about an individual shall ~~be destroyed~~ all such information within its control as soon as practicable: for applicants, after the position has been filled and the individual or the successful candidate reports to his or her first day of work; for employees, after the criminal history record information has been analyzed and any resulting action taken under this regulation. Note, however, that system members shall 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 a person for any criminal offense, including arrest information that relates to the conviction or grant of deferred adjudication. ~~—The A&M System~~ Members are permitted to use this information for any purpose and release the information to any ~~other~~ person. *See* Tex. Gov’t Code § 411.135.

#### 3.2 ~~DPS Crime Records Service~~ \_Secure Site

~~The A&M System~~ Members are entitled to obtain from the DPS secure site criminal history record information maintained by DPS that relates to a person who is an applicant for 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 shall not be accessed to obtain criminal history record information for any other applicants or existing current employees unless permitted by state law. The information obtained from the secure site may ~~only~~ only be used only for the purpose of evaluating applicants for employment in security-sensitive positions. NOTE: the information obtained from the secure site ; it may not be released or disclosed to any person except on court order OR with the consent of the person who is the subject of the criminal history records information. *See* Tex. Gov’t Code § 411.094~~(e)~~.

#### 4. FALSIFICATION OR FAILURE TO DISCLOSE CRIMINAL HISTORY

- 4.1 Applicant. If it is determined prior to employment that an applicant has falsified ~~or failed to disclose his or her~~ the individual's criminal history in his or her employment application ~~for employment~~, the applicant ~~will may not be rejected~~ eligible for system employment ~~with the A&M System~~. ~~If it is determined prior to employment that an applicant has failed to disclose his or her criminal history in his or her application for employment, the applicant may not be eligible for employment with the A&M System.~~
- 4.2 Employee. If it is determined at any time after employment that an employee falsified or failed to disclose ~~his or her~~ the individual's criminal history on his or her employment application ~~for employment~~, the employee may be subject to disciplinary action, including dismissal.
- 4.3 A decision to reject an applicant or discipline/~~terminate~~ dismiss an employee for falsification or failure to disclose criminal history need not take into account the factors set forth in Section 6 of this regulation.

#### 5. POST-EMPLOYMENT CRIMINAL HISTORY BACKGROUND CHECKS

##### 5.1 Employees are Subject to Periodic Checks

~~5.1.1~~ Each ~~A&M~~ System employee's criminal history record information is subject to review at any time as permitted by law. Periodic criminal history information record checks ~~shall~~ may be conducted at the discretion of a ~~A&M System m~~ Member.

##### 5.2 Employee Reporting of Arrests, Charges, or Convictions

5.2.1 ~~A&M~~ System employees must report to their supervisor, within twenty-four (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 shall constitute grounds for disciplinary action, ~~up to and including~~ dismissal ~~termination~~.

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 ~~A&M System~~ 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 ~~A&M System M~~ member human resources department and/or investigation by the appropriate law enforcement agency. The employee shall cooperate fully during the review process.

5.2.4 The ~~A&M System M~~ member human resources department (or ~~p~~ Provost or designee for faculty employees) will conduct the analysis outlined in Section 6 of this regulation and will assist the employee's department ~~or~~ unit in

determining appropriate disciplinary action in such cases, ~~up to and including termination of employment 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 an applicant ~~for employment~~ (Section 2.3) or an employee (Section 5), the following analysis ~~shall~~ be ~~initiated prior~~ ~~conducted to determine whether to finding~~ an applicant ~~is ineligible for potential or continued~~ employment or ~~prior whether~~ to disciplin~~ing~~ or ~~terminating dismiss~~ an employee. ~~This analysis is not required in situations where criminal history record information is found under Section 2.2 of this regulation.~~

### 6.1 Conviction Records

6.1.1 The ~~A&M System M~~member human resources department (or ~~p~~Provost or designee for faculty applicants or employees) that proposes to reject an applicant or discipline or ~~terminate 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. ~~To support~~ ~~In making~~ its decision, the ~~A&M System M~~member human resources department (or ~~p~~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 number of offenses committed by the individual.~~
- ~~(de)~~ 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 ~~A&M System M~~member for the citizens of Texas.

6.1.2 A conviction on a person's criminal history record constitutes reliable evidence that the person 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 a person's conviction records, the ~~A&M System M~~member human resources department (or ~~p~~Provost or designee) need not evaluate whether the applicant 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 ~~A&M System M~~member human resources department (or ~~p~~Provost or designee) reasonably concludes the applicant's or employee's criminal conduct evidences he or she is unsuitable for the position in question, the ~~A&M System~~

~~M~~member human resources department (or ~~p~~Provost or ~~d~~esignee) may recommend that the department/unit reject the applicant or ~~terminate~~ ~~dismiss~~ the employee. If the department/unit disagrees with the conclusion of the ~~A&M System M~~member human resources department (or ~~p~~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 ~~Arrest~~ Records of a Criminal Charge or Arrest

6.2.1 The ~~A&M System M~~member human resources department (or ~~Provost~~ provost or designee for faculty applicants or employees) that proposes to reject an applicant or discipline or ~~terminate~~ ~~dismiss~~ an employee based on criminal history record information consisting of a criminal charge or arrest ~~records~~ must justify the action as job-related and consistent with business necessity and must evaluate whether the applicant or employee actually engaged in the misconduct. ~~To support~~ In making its decision, the ~~A&M System M~~member human resources department (or ~~p~~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 number of times the individual has been arrested.~~
- ~~(de)~~ (e) 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 ~~A&M System M~~member for the citizens of Texas;
- ~~(f)~~ (e) The applicant's or employee's explanation of his or her charge or arrest record coupled with follow-up inquiries necessary to evaluate his or her credibility; and
- ~~(gf)~~ (f) Whether the reason for the charge or arrest violated an ~~A&M s~~System policy or regulation, or ~~A&M System M~~member rule or procedure; ~~regardless of whether the arrest resulted in a conviction.~~

6.2.2 A criminal charge or an ~~n~~ arrest without a conviction does not establish that the person actually engaged in the alleged activity. Therefore, when considering records of a person's criminal charge or arrest ~~records~~, the ~~A&M System M~~member human resources department (or ~~p~~Provost or designee) must evaluate whether the applicant or employee actually engaged in the misconduct. ~~When analyzing arrest records, the A&M System Member human resources department (or Provost or designee) must consider two additional elements,~~

~~items (f) and (g), before deciding whether an applicant or employee is suitable for the position in question. **NOTE: If the human resources department (or provost or designee) is unable to determine that the applicant or employee actually engaged in the misconduct, any rejection of the applicant 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 ~~A&M System M~~member human resources department (or ~~p~~Provost or designee) reasonably concludes ~~that~~ the applicant's or employee's ~~criminal activity~~~~misconduct~~ evidences ~~he or she~~~~the person~~ is unsuitable for the position in question ~~or should be disciplined~~, the ~~A&M System M~~member human resources department (or ~~p~~Provost or designee) may recommend that the department/unit reject the applicant or ~~discipline or terminate~~~~dismiss~~ the employee. If the department/unit disagrees with the conclusion of the ~~A&M System M~~member human resources department (or ~~p~~Provost or designee) and wishes to employ, ~~or~~ continue the employment of ~~or not discipline~~ the individual, the department/unit must receive approval from the CEO or designee.

~~6.2.4 In the event an employee is unable to report to work as a result of an arrest, the employee may be subject to discharge for absenteeism under System Regulation 32.02.02, or other applicable A&M System regulations or A&M System Member rules and procedures.~~

## 7. APPEALS

7.1 ~~An external a~~Applicants ~~rejected for system employment under this regulation have~~ no appeal ~~available to them unless the individual y alleges unlawful they have been discrimination, sexual harassment and/or retaliated against for an unlawful reason (race, color, national origin, religion, sex, disability, or age.)~~ ~~Such appeals must be filed in accordance with System Regulation 08.01.01, Civil Rights Compliance~~Applicants ~~alleging unlawful discrimination must present written data or documentation of the specific actions or basis of the allegation to the A&M System Member equal employment opportunity officer within 10 business days from the date of rejection of their application. Upon receipt of this documentation, the A&M System Member equal employment opportunity officer or designee, will investigate the complaint and issue a written report of findings to the CEO or designee for approval. The rejected applicant and department/unit head will receive a copy of the approved report within 14 business days of CEO or designee approval. Section 7.2 or 7.3 of this regulation, as applicable, addresses an internal applicant's appeal.~~

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 Procedures for Faculty Members*, or System Regulation 08.01.01, and ~~any~~ related ~~A&M System M~~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 A&M System Member rules or procedures.

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## **Related Statutes, Policies, or Requirements**

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Tex. Gov't Code Chapter 411, Subchapter F  
<http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>

Tex. Educ. Code § 51.215  
<http://tlo2.tlc.state.tx.us/statutes/docs/ED/content/htm/ed.003.00.000051.00.htm>

Tex. Gov't Code Chapter 559

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 12.01, Academic Freedom, Responsibility and Tenure  
<http://www.tamus.edu/offices/policy/policies/pdf/12-01.pdf>

System Policy 32.02, Discipline and Dismissal of Employees  
<http://www.tamus.edu/offices/policy/policies/pdf/32-02.pdf>

System Regulation 08.01.01, Civil Rights Compliance

System Regulation 32.01.01, Complaint and Appeal Procedures for Faculty Members  
<http://www.tamus.edu/offices/policy/policies/pdf/32-01-01.pdf>

System Regulation 32.01.02, Complaint and Appeal Process for Nonfaculty Employees  
<http://www.tamus.edu/offices/policy/policies/pdf/32-01-02.pdf>

System Regulation 32.02.02, Discipline and Dismissal of Nonfaculty Employees  
<http://www.tamus.edu/offices/policy/policies/pdf/32-02-02.pdf>

System Regulation 33.99.01, Employment Practices  
<http://www.tamus.edu/offices/policy/policies/pdf/33-99-01.pdf>

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## **Definitions**

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“Applicant” – ~~a~~ means an individual applying for a position with ~~the s~~The Texas A&M University System, whether an external candidate or current employee.

“Arrest” – ~~to~~ means detain in legal custody.

~~“Conviction” – as used in this regulation means a~~ finding of guilt after a trial, a plea of guilty, or a plea of nolo contendere (or no contest), or placement on deferred adjudication or some other type of pretrial diversion, for offenses other than misdemeanor traffic offenses punishable only by fine.

~~“Conviction record” means –~~ criminal history data reported by criminal justice agencies and includes arrests, prosecutions and dispositions of cases for persons arrested for a Class B misdemeanor or greater violation as defined by state law or equivalent offenses under the law of another jurisdiction.

~~Criminal charge – a formal written instrument such as an indictment or information accusing an individual of a criminal offense.~~

~~“Arrest record” means arrest history data generated as a result of detention in legal custody.~~

~~“Criminal history record information” – means~~ information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. It does not include driving record information maintained by DPS under Chapter 521 of the Texas Transportation Code. *See* Tex. Gov’t Code § 411.082.

~~“Job-related” means an activity resulting in arrest or conviction where a relationship exists between the activity resulting in the arrest or conviction and the employee’s work performance, or if such activity may adversely affect the mission of The Texas A&M University System.~~

~~“Security-sensitive position – ” means a~~any position in which an employee handles currency, has access to a computer terminal, has access to the personal information or identifying information of another person, has access to the financial information of the employer or another person, has access to a master key, or works in an area designated as a security-sensitive area. *See* Tex. Gov’t Code § 411.094(a)(2); *See* Tex. Educ. Code § 51.215(c).

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## Contact Office

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~~The System~~ Office of General Counsel  
(979) 458-6120