**Staff Background Checks UPPS No. 04.04.17**

**Issue No. 7**

**Effective Date: 05/02/2022**

**Next Review Date: 06/01/2025 (E3Y)**

**Sr. Reviewer: Associate Vice President for Human Resources**

**POLICY STATEMENT**

*Texas State University is committed to providing a safe and secure environment for students, employees, and visitors, as well as safeguarding the assets and resources of the university.*

**01. BACKGROUND INFORMATION**

01.01 This university policy and procedure statement establishes Texas State University’s procedures for conducting and obtaining staff criminal history, driving history, and other background checks for security-sensitive positions.

01.02 Any employment relationship between the university and an individual is contingent upon the individual satisfying all required background check reviews.

01.03 The university will use information obtained in background checks only for evaluating:

a. individuals seeking university employment; and

b. current employees under certain employment circumstances.

01.04 The university will conduct background checks or will use a third party approved by the president. The university or its third-party agent will conduct all checks in accordance with law and this policy. The department requesting a check for regular staff will pay its cost.

01.05 The university will not automatically disqualify an individual with a criminal history from employment or employment actions. If an applicant or current employee self-identifies a criminal history, or a criminal history background investigation reveals a criminal history, an individualized assessment will be conducted to determine the appropriateness of any employment or employment actions.

01.06 The university considers all information obtained through background checks privileged, confidential, and restricted to authorized persons and lawful use only.

01.07 The university will conduct criminal history background checks for:

a. applicants selected to fill positions;

b. current employees selected for transfer or promotion;

c. current employees in positions that are reclassified if a background check was not completed within the past 90 days; and

d. current employees deemed appropriate by president or by divisional vice presidents.

01.08 The director of Facilities Management will conduct driving history checks on behalf of the university on persons whose duties may require that they operate a university vehicle, as provided in [UPPS No. 05.05.02](https://policies.txstate.edu/university-policies/05-05-02.html), Driver Selection.

01.09 Other background checks, such as credit, credential, education, employer reference, workers’ compensation, motor vehicle, and global watch list checks, may be conducted and obtained if deemed appropriate and approved by the division vice president, or designee.

01.10 Talent Acquisition, unless otherwise assigned by the president, will conduct or secure through the [Texas Department of Public Safety (DPS)](https://www.dps.texas.gov/), or a third-party agent approved by the president, all background checks for the university except for those positions that require a driver’s license as a condition of employment (see Section 01.08).

01.11 Postings for staff employment will include a notification of the background check requirement per the authority granted in the [Texas Education Code, Section 51.215](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.51.htm#51.215), and [Texas Government Code, Section 411.1405](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.411.htm#411.1405).

01.12 This policy does not apply to faculty or contractors.

**02. DEFINITIONS**

02.01 Appropriate Concurrence Official – the vice president, or designee, for the division.

02.02 Criminal History – any criminal charges filed against the applicant or employee excluding misdemeanor offenses punishable only by fine.

02.03 Individualized Assessment – a process applied by using the [Checklist and Concurrence Official Certification for Conducting an Individualized Assessment](http://gato-docs.its.txstate.edu/jcr%3Ab201ac7b-2889-41e0-9bf8-5fb5c66ea2d1/CHECKLIST%20and%20CONCURRENCE%20OFFICIAL%20CERTIFICATION%20FOR%20CONDUCTING%20AN%20INDIVIDUALIZED%20ASSESSMENT%208-26-2013.docx) form to determine if an individual’s criminal history justifies the exclusion of that individual from initial or continued employment based on the job-relatedness and consistency with the university’s shared values.

02.04 Security-Sensitive Positions – For the purposes of this policy, all staff and certain student worker positions are considered security-sensitive.

**03. PROCEDURES FOR INDIVIDUALIZED ASSESSMENT**

03.01 An individual’s criminal history can be discovered through the university’s pre-employment, transfer, self-reporting, or president and vice president request process. The individualized assessment is based on considerations for:

a. nature and gravity of each offense;

b. number of offenses;

c. age at the time of conviction or release from prison;

d. length of time that has passed since the offense, conduct, or completion of sentence; and

e. employment history to include:

1) evidence that the individual performed the same type of work post-conviction with the same or a different employer with no known incidents of criminal conduct;

2) length and consistency of employment history before and after the offense or conduct;

3) rehabilitation efforts such as education or training;

4) employment or character references; and

5) any other information regarding fitness for the position.

**04. PROCEDURES FOR CRIMINAL HISTORY BACKGROUND CHECKS**

04.01 Pre-Employment

a. The hiring official will request a criminal history background check and provide to Talent Acquisition, a [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf) signed by the applicant on whom the background check is being conducted. Talent Acquisition must receive the signed [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf). Failure to sign the authorization form renders the individual ineligible for hire.

b. Talent Acquisition will conduct a criminal history background check after receiving the [Pre-Employment Inquiry Release](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf) form. Talent Acquisition will notify and provide a copy of the background check results to the hiring official. The hiring official must then determine action on a case-by-case basis after conducting an individualized assessment for the individual using the [Checklist and Concurrence Official Certification for Conducting an Individualized Assessment](http://gato-docs.its.txstate.edu/jcr%3Ab201ac7b-2889-41e0-9bf8-5fb5c66ea2d1/CHECKLIST%20and%20CONCURRENCE%20OFFICIAL%20CERTIFICATION%20FOR%20CONDUCTING%20AN%20INDIVIDUALIZED%20ASSESSMENT%208-26-2013.docx).

c. If the hiring official determines that the criminal history of the individual is not a relevant reason to deny employment, the hiring official must secure concurrence from the appropriate concurrence official, as noted in Section 02.03. Conversely, if the hiring official determines that the criminal history of the individual would justify not hiring the individual, concurrence must also be secured from the appropriate concurrence official. Non-concurrence from the appropriate concurrence official negates the recommended decision of the hiring official.

d. A hiring official may allow an individual with a criminal history record a minimum of seven working days to dispute the background check findings through the approved third-party vendor or Texas DPS, as appropriate. If the hiring official chooses this option, the hiring official will notify Talent Acquisition of this decision. Talent Acquisition will send a letter to the individual. The letter will explain the dispute process and instruct the individual to contact the third-party vendor or Texas DPS for further information regarding the background check’s findings in accordance with the [Fair Credit Reporting Act](https://www.govinfo.gov/content/pkg/CFR-2011-title16-vol1/pdf/CFR-2011-title16-vol1-chapI-subchapF.pdf). The seven-working-day period begins on the date Talent Acquisition mails the letter. The position for which the individual was applying will remain unfilled until this option is concluded.

e. If the individual does not respond to the university’s attempt to gather additional information about the background information of the selected applicant, the university may make its employment decision without the additional information.

f. Talent Acquisition will not disclose the information obtained through a background check to the subject of the background check. Inquiries to Talent Acquisition from the individual will be referred to the hiring official and the approved third-party vendor without discussion.

g. Non-student non-regular (NSNR) employees must undergo a criminal history background check. Additionally, student workers and volunteers must also undergo a criminal history background check when requested by the department head.

Talent Acquisition will run the background check through the Texas DPS. As a state agency, a release form for the individual is not required for the Texas DPS background check. The background checks and individualized assessment processes for NSNR and student worker employees will be the same as provided in Sections 04.01 a. and 04.01 b.

04.02 Current employees selected for transfer or promotion to a position in another division:

a. Except as provided in this subsection, the requirements in Section 03.01 apply.

b. If the background check for an individual selected for promotion or transfer to another division reveals a criminal history, Talent Acquisition will notify and provide a copy of the background check results to both the gaining and losing divisional vice presidents, or designees. The gaining vice president, or designee, will conduct an individualized assessment to determine if the proposed promotion or transfer may proceed. If the employee fails the individualized assessment, the vice president, or designee, will notify the individual and Talent Acquisition and may move to fill the position vacancy in accordance with normal university employment policy. Talent Acquisition will then notify the employee’s current vice president, or designee, who will conduct an individualized assessment for the individual to determine the appropriate employment action for the individual. The employment actions are retention in the employee’s current position, termination of the employee’s employment, or transfer to another position in the division.

The individualized assessments by the divisional vice presidents, or designees, should be completed within 10 calendar days.

04.03 Current employees selected for promotion, reclassification, transfer, or to fill a position within their current division and a criminal history check was not completed within the past 90 days:

a. Except as this subsection provides, the requirements of Section 03.01 apply.

If the background check for an individual selected for promotion, transfer, or reclassification within the same division reveals a criminal history, Talent Acquisition will notify and provide a copy of the background check results to the employee’s current division vice president. The vice president will conduct an individualized assessment to determine if the recommended or any other employment action regarding the employee’s employment status should be taken. Employment actions for an employee are to approve the recommended action, disapprove the recommended action with the employee remaining in their current position, terminate the employee from employment, or transfer the employee to another position in the division.

The individualized assessment by the divisional vice president should be completed within 10 calendar days.

04.04 Employee Self-Reporting (see Section 06.)

a. The supervisor will request a criminal history background check and provide to Talent Acquisition, a [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf) signed by the employee on whom the check is being conducted. Talent Acquisition must receive the signed [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf). Failure to sign the authorization form may lead to disciplinary actions, up to and including termination of employment.

b. Talent Acquisition will conduct a criminal history background check after receiving the [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf). If the background check indicates a criminal history, Talent Acquisition will notify and provide a copy of the background check results to the supervisor. The supervisor must then determine action on a case-by-case basis after conducting an individualized assessment for the individual using the [Checklist and Concurrence Official Certification for Conducting an Individualized Assessment](http://gato-docs.its.txstate.edu/jcr%3Ab201ac7b-2889-41e0-9bf8-5fb5c66ea2d1/CHECKLIST%20and%20CONCURRENCE%20OFFICIAL%20CERTIFICATION%20FOR%20CONDUCTING%20AN%20INDIVIDUALIZED%20ASSESSMENT%208-26-2013.docx).

The divisional vice president will conduct a final review of the individualized assessment and will determine the employment action. Employment actions for an employee are to approve the continued employment or terminate the employee from employment.

04.05 At the request of the president, vice president, or designee

a. The president, vice president, or designee, will request a criminal history background check and provide to the assistant vice president for Talent Acquisition, or designee, a [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf) signed by the employee on whom the check is being conducted. Talent Acquisition must receive the signed [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf). Failure to sign the authorization form may lead to disciplinary actions, up to and including termination of employment.

b. Talent Acquisition will conduct a criminal history background check after receiving the [Pre-Employment Inquiry Release form](https://gato-docs.its.txstate.edu/jcr%3A9270ac64-e7fb-4c71-beea-1cbe395c4e95/Salaried%20Staff%20Pre-Employemnt%20Inquiry%20Release%20Fillable%20Form%20%28002%29.pdf). If the check indicates a criminal history, Talent Acquisition will notify and provide a copy of the background check results to the president, vice president, or designee. The official must then determine action on a case-by-case basis after conducting an individualized assessment for the individual using the [Checklist and Concurrence Official Certification for Conducting an Individualized Assessment](http://gato-docs.its.txstate.edu/jcr%3Ab201ac7b-2889-41e0-9bf8-5fb5c66ea2d1/CHECKLIST%20and%20CONCURRENCE%20OFFICIAL%20CERTIFICATION%20FOR%20CONDUCTING%20AN%20INDIVIDUALIZED%20ASSESSMENT%208-26-2013.docx).

The president, vice president, or designee, will determine employment action. Employment actions for an employee are to approve the employee’s continued employment or terminate the employee.

**05. PROCEDURE FOR BACKGROUND CHECKS OTHER THAN CRIMINAL HISTORY AND DRIVING HISTORY**

05.01 The appropriate divisional vice president may authorize other background checks such as employment and education verification, credit history, personal identification, and license and certification verification.

Talent Acquisition will conduct the background checks authorized in this subsection in the same manner as provided in Section 03.

The employee’s divisional vice president, with input from the department head with the open position, will determine how to use the background check results.

**06. PROCEDURES FOR EMPLOYEE SELF-REPORTING REQUIREMENT**

06.01 All employees must report to their supervisor in writing, within five business days, any criminal charges filed against them excluding misdemeanor offenses punishable only by fine. Additionally, employees must report to their supervisor in writing any conviction or other final disposition of a criminal charge filed against them. A criminal conviction or other final disposition for misdemeanor offenses punishable only by fine similarly does not need to be reported.

06.02 A self-report under this section will require an individualized assessment per Sections 03. and 04.

06.03 Failure to report under this section is a violation of this policy and may lead to disciplinary action, up to and including termination of employment.

**07. REVIEWERS OF THIS UPPS**

07.01 Reviewers of this UPPS include the following:

Position Date

Associate Vice President for June 1 E3Y

Human Resources

Chair, Staff Council June 1 E3Y

**08. CERTIFICATION STATEMENT**

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Associate Vice President for Human Resources; senior reviewer of the UPPS

 President