



Employment of Persons with Criminal History

Purpose

The purpose of this policy is to establish background check practices as required and permitted by law and University of Texas System. Stephen F. Austin State University (SFASU) is committed to promoting a safe and secure environment to protect students, faculty, staff and property at the university. Background checks consist of criminal history, prior employment verification, educational verification, personal and professional references, and motor vehicle records.

Persons Affected

All individuals associated with or on the premises of SFASU, including without limitation employees, faculty, students, visitors, volunteers, contractors, persons of interest, unpaid interns or vendors.

Definitions

Applicant: an individual who applies for a position with SFASU whether the individual is an outside candidate or a current employee.

Appointment: Any position assigned at SFASU that does not necessarily require an employment application, such as a person of interest, volunteer, unpaid intern, contractor, or university affiliate.

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

Criminal History Record Information: 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 Section 411.082.

National Criminal History Record Check (NCHRC): a criminal history record check obtained from both the Texas Department of Public Safety and the Federal Bureau of Investigation based on fingerprint identification information, or a criminal record check obtained from a private vendor based on national criminal records.

Person of Interest (POI): any individual performing work for SFASU (either on or off SFASU property), including any individual granted access to SFASU technology resources. Individuals who are paid by SFASU payroll and who receive a W-2 are not considered POIs.

Position: both full-time and part-time positions, whether the position is filled or to be filled by a regular or a temporary worker or requires student status as a condition of holding the position, but not including a position filled by a temporary worker provided by a temporary employment agency; the employment agency is expected to conduct and will be responsible for conducting the criminal background check.



Policy

A criminal history check must be conducted on any individual who will perform work for SFASU. This includes prospective employees, current employees, unpaid interns, contractors, volunteers, and Persons of Interest (POI). An individual will satisfy the criminal history check requirement if completed within the past twelve (12) months with no break in service of more than six (6) months. The following authorized criminal history check sources may be used, as appropriate:

- a. The Texas Department of Public Safety Crime Records Service – Secure Site;
- b. A private vendor; and/or
- c. Other state, national, and international agencies.

The criminal background check must include a sex offender registration check.

Where state or federal law requires that a position be subject to a criminal history check using a specific source of criminal history check information and/or certain procedures, SFASU will comply with such laws.

Federal Agency Checks. SFASU may rely on a criminal history check conducted by a federal government agency to satisfy the requirements of this policy for an individual on assignment from a federal agency if SFASU receives documentation from that federal agency showing that the federal agency conducted a criminal history check with a sex offender registration check.

Other Checks. Additionally, SFASU will rely on information obtained from the U.S. government through the visa process or permanent, temporary residency and educational history for anyone who has lived outside the United States since the age of 17.

A criminal history check will include the following:

- a. County Criminal Records Search;
- b. Nationwide Criminal Record Search;
- c. Federal Criminal Record Search;
- d. Department of Justice Sex Offender Search;
- e. Social Security Trace; and
- f. Location Search.

Current Employees. A criminal history check must be conducted on:

- a. All current employees, contractors, volunteers, unpaid interns, and POIs if SFASU has not previously obtained a criminal history check; and
- b. A current employee when the president, or their designee, determines it is necessary to further the goals of SFASU.

Procedure

Upon review and approval of the hiring proposal or receipt of a completed background check consent form, HR will initiate the criminal history check.



- A. The selected individual will provide the required information, authorization, and consent to the criminal history search.
 - 1. An individual (including a current employee) who fails to provide authorization and consent and/or the required information will be removed from consideration for the position and/or subject to disciplinary action up to and including termination.
- B. Hiring managers/Departments will allow sufficient time for the completion of background checks before the selected individual begins performing work for SFASU.
 - 1. In an approved extenuating circumstances, an individual may begin performing work contingent upon the satisfactory completion of a criminal history check.
- C. Existing employees must notify Human Resources of criminal history changes.
- D. SFASU may conduct a public site search without an individual's knowledge or consent.

No Automatic Disqualification for Criminal Background

Criminal background information will be reviewed by the Director of Human Resources or their designees to determine whether there is a disqualifying offense under this section. Individuals with a criminal history will be evaluated on a case-by-case basis and the following factors will be considered:

- A. nature of the crime and its relationship to the position;
- B. number of offenses;
- C. time since the conviction;
- D. employment history; and
- E. efforts at rehabilitation.

SFASU will not hire, continue to employ, appoint or assign an individual if the 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 a 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 requirement such registration;
- C. unless the hiring/appointing official as appropriate articulates a compelling justification, the Director of Human Resources and president or designee 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 Director of Human Resources.

Falsification or Omission of Criminal History Information

Falsification in an application or omission of criminal history information required to be reported is grounds to reject an applicant or discipline, up to termination, for a current employee.

Notice Requirement



- A. If SFASU receives a report indicating that an individual has a criminal record, the individual will be notified, provided with a copy of the report, except as provided by law, policy or procedure, informed of the right to challenge the accuracy and completeness of the report with the agency that provided the report and informed that they have the opportunity to submit additional information relating to the criminal record and why it should not affect an employment decision.
- B. If SFASU has used 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). If such a report is relied on to deny employment, deny a promotion, reassign, or terminate an employee, the individual will be provided with a specific pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," a document prescribed by the Federal Trade Commission. The credit reporting agency that furnishes the individual's report is required to give SFASU the summary of consumer rights.

Opportunity to Respond

- A. Within five business days following the receipt of the report, the individual may submit additional information to the appropriate designated party relating to the criminal record and why it should not affect the appointment or employment decision.
- B. Before the hiring official makes a final appointment or employment decision, they will review all information provided to them with Human Resources and consult about whether to proceed with an offer or adverse employment action.
- C. If Human Resources recommendation does not align with the hiring official's decision to proceed with the appointment or employment decision due to the criminal history check, prior written approval from the applicable executive officer or their designee is required prior to extending an offer or continuing employment.
- D. If the results indicate the individual has an offense, the individual is not qualified for employment or appointment unless the conditions are met and the approvals are obtained.
- E. External Individuals: The final decision of SFASU may not be appealed.
- F. Current Employees: If the individual is a current employee subject to a criminal history check, standard employee grievance procedures are available to challenge the employment decision. If the criminal record leads to termination, the applicable employee discipline and discharge procedure will be used.
- G. Post-Decision Disclosure (when private vendor services used to conduct criminal background check): If a consumer report has been relied on to deny employment, deny a promotion, reassign, or terminate an employee, after the institution has taken an adverse action the individual must be notified that the action has been taken. It must include:
 - 1. The name, address, and phone number of the reporting agency that supplied the report;
 - 2. A statement that the reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
 - 3. A notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished and their right to an additional free consumer report from the agency upon request.



Self-Reporting

- A. Applicants for Employment: Applicants must report in writing any criminal complaint, indictment, no contest plea, guilty plea, deferred adjudication, or conviction (and whether registered as a sex offender or will be required to register as a sex offender), excluding traffic offenses punishable only by fine, occurring after the date of application within five business days.
- B. Current Employees: SFASU employees are required to report to their department head in writing, within five business days, any criminal complaint, indictment, no contest plea, guilty plea, deferred adjudication, or criminal conviction (and whether registered as a sex offender or will be required to register as a sex offender), excluding those for misdemeanor offenses punishable only by a fine. Failure to do so is a violation of policy and may lead to disciplinary action as appropriate.
- C. Department Head Obligation: The department head receiving a self-report as required under this section must provide that information to Human Resources and consult about the employee's suitability for the person.

Non-Discrimination

SFASU will not use any information obtained in the course of a criminal history check to discriminate on the basis of race, color, national origin, religion, sex, disability, age, sexual orientation, gender identity, and gender expression.

Falsification or Omission of Background Check Information

Subject to standard grievance and disciplinary procedures as applicable, falsification or omission of any portion of the background check or failure to report as required by this policy or law is a violation of this policy and may lead to disciplinary action up to and including termination or result in dismissal from the application process, as applicable.

Retention of Criminal History Check Records

- A. Confidential Records. Records obtained from a criminal background check database will be regarded as confidential as required by law and will not be made a part of the applicant's file or the employee's personnel file. The information will be kept in a separate secure file and will not be communicated to any unauthorized person.
- B. Criminal History Record Information. Under Texas Government Code Section 411.085, the unauthorized release of criminal history record information, information obtained from the TxDPS secure site consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, is a criminal offense and, consequently, SFASU officials in possession of such information shall seek legal advice concerning any requested release of such information.
- C. Destruction of Records Obtained from a Criminal Background Check Database. Records will be destroyed in a timely manner and in accordance with state and federal regulations.
- D. Self-Reports. Self-reports of charges or convictions, as required by this policy, will be maintained with the employee's personnel file in Human Resources in accordance with SFASU records retention schedule.



SFASU will ensure that all job advertisements and postings include a statement indicating the position is security sensitive and the employer is authorized to obtain a background check, including criminal history record information.

Related Statutes or Regulations, Rules, Policies, or Standards

UTS 124 Criminal Background Checks

SFA HOP 03-214 Security Sensitive Positions

SFA HOP 03-305 Employee Grievances

SFA HOP 03-304 Discipline and Discharge

Responsible Executive

Director of Human Resources

Revision History

September 1, 2023 (original)