

Texas A&M University-San Antonio

33.99.14.01 Criminal History Record Information-Employees and Applicants

Approved: July 07, 2010

Revised: November, 2013

Revised: November, 2015

Revised: February 22, 2019

Next Scheduled Review: February 22, 2024

Rule Statement

In accordance with Texas A&M University System (System) Regulation [33.99.14, *Criminal History Record Information-Employees and Applicants*](#) and as part of the university's commitment to attain a safe working environment for students, employees and visitors, Texas A&M University-San Antonio (A&M-San Antonio) shall perform criminal background checks on employees and finalists for employment as described in this rule.

Reason for Rule

This rule is required by System Regulation [33.99.14, *Criminal History Record Information-Employees and Applicants*](#). This rule does not apply to the A&M-San Antonio Police Department obtaining criminal history record information for a criminal justice purpose under Chapter 411, Subchapter F, Texas Government Code.

Official Rule

1. GENERAL

- 1.1 All A&M-San Antonio employment positions, including but not limited to staff, faculty, and positions that require student status are designated as security-sensitive.

2. COLLECTION OF CRIMINAL HISTORY RECORD INFORMATION

- 2.1 Human Resources shall enable the collection of criminal background information by appropriate vendors as necessary. The vendor will analyze all relevant background information relative to the position requirements. See Section 3 for actions if there is a finding of criminal history record information. Any decision not to hire a finalist or consider an applicant must comply with System Regulation [33.99.14, *Criminal History Record Information-Employees and Applicants*](#).
- 2.2 An offer to a candidate for a position is pending until the completion of the criminal background check and thus no person can be placed in a position, until the background check is completed, reviewed, and determined to be acceptable in accordance with this rule.

- 2.3 Any offers that may occur prior to the completion of the criminal history background check shall be conditional and contingent on an acceptable criminal background check.
- 2.4 Existing employees may have criminal history record information gathered only after the Office of Human Resources has approved the collection of this information and when the employee:
 - 2.4.1 holds a position for which the specific duties of the position require it; or
 - 2.4.2 allegedly violates a rule or procedure at Texas A&M University-San Antonio, or a policy or regulation of The Texas A&M University System, and the criminal history information is, in good faith, believed necessary to shed light about the substance of the allegation. Background character information may not be sought under this provision.
- 2.5 The Office of Human Resources will maintain background reports for the retention period outlined in the Systems Records Retention Schedule Records Series Item No. 3.1.026 (Criminal History Checks).

3. ACTIONS IN THE CASE OF A FINDING OF CRIMINAL HISTORY RECORD INFORMATION

- 3.1 The Office of Human Resources will analyze the relevant criminal background history information relative to the position requirements. In these reviews, the Office of Human Resources must assure that the applicant or employee is notified of the finding prior to any discussion of the finding with the current or prospective unit of employment. The applicant or employee must be given an opportunity to provide correct information if he or she can substantiate that the history check is in error, or he or she may provide contextual information as he or she deems relevant. If criminal history record information remains, the Office of Human Resources will discuss the findings of the criminal history check and the information gathered from the applicant or employee with:
 - 3.1.1 the designated contact in the Office of the Dean, Associate Vice President, Dean of Students, or Vice President in requesting department,
 - 3.1.2 Chief of Staff, Chief of Police or President, or
 - 3.1.3 The current hiring supervisor or designated Security Contact Person for all other employees or applicants.
- 3.2 In accordance with Texas A&M System Regulation, *33.99.14* (particularly section 6) the Office of Human Resources will render a decision concerning either approval to hire for applicants, or the initiation of the process to sanction, up to and including separation from the University, for existing employees. Rules for appeals by hiring units, not applicants, are presented in section 8 of this rule. Existing employees may appeal a decision or sanction in accordance with University Rule, *12.01.99.01* or *12.99.99.01.01* (if an existing faculty member) or SAP 32.02.02.00.01 (if an existing non-faculty employee). If an applicant has a conviction for any of the offenses listed in 2.3 of System Regulation

33.99.14 and the department/unit still wishes to hire the applicant, approval to do so must be given by (a) the Chief Human Resources Officer in consultation with the Vice President of the relevant Department, or (b) the President.

4. APPLICANT AND EXISTING EMPLOYEE RESPONSIBILITIES TO INFORM SUPERVISORS OF ARRESTS

4.1 The university is strongly committed to the principle that an individual is innocent unless proven guilty. All applicants and existing employees must inform either the Chief Human Resources Officer or their supervisor within 24 hours of any criminal arrests, criminal charges, or criminal convictions, excluding misdemeanor traffic offenses punishable only by fine that occur after the approval of this rule. If circumstances prevent this, as soon as the situation allows notification the applicant or employee must provide both explanation for the delay as well as notification of the criminal arrest or charge or criminal conviction to either the Chief Human Resources Officer or the employee's supervisor.

4.2 If an A&M -San Antonio investigation is warranted based on a possible violation of Texas A&M System policies or regulations and the factors presented in section 6.2.1 of System Regulation 33.99.14, or university rules or procedures, the investigation will be conducted in accordance with existing rules for investigations of such violation. For applicants who are not existing employees, a determination will be made by the Chief Human Resources Officer (or Provost or designee for faculty positions) as to whether conviction for such an arrest would make the applicant unsuitable for the position, and only if this would be the case, whether a delay in the hiring process is warranted pending final resolution by the judicial system. At no time will guilt be inferred or assumed solely as a result of the arrest.

4.3 If the Chief Human Resources Officer (or Provost or designee as appropriate) 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.

5. FALSIFICATION OR FAILURE TO DISCLOSE CRIMINAL HISTORY

5.1 Human Resources shall consult with the System Office of General Counsel before determining appropriate actions based on the applicant's falsification or failure to disclose his or her criminal history on the individual's application for A&M-San Antonio employment.

6. POST-EMPLOYMENT CRIMINAL BACKGROUND CHECKS

6.1 Criminal history background checks on current A&M-San Antonio employees shall be run in accordance with System Regulation, 33.99.14.

6.2 Reporting of arrests, charges, or convictions shall be in accordance with System Regulation, 33.99.14.

7. PROCESS FOR OBTAINING AND EVALUATING CRIMINAL HISTORY RECORDS

- 7.1 Human Resources is responsible for obtaining criminal history records. These records will be analyzed by a human resources representative and, when necessary, the department head in accordance with System Regulation, *33.99.14*.
- 7.2 The record analysis will follow the guidelines as outlined by Section 6 of System Regulation, *33.99.14* and a final disposition of the analysis will be documented and retained in Human Resources. The criminal history record information will be destroyed in accordance with the A&M-San Antonio Procedure *61.99.01.00.01, Records Management*.
- 7.3 If the criminal history check produces criminal history record information, Human Resources may reference System Regulation, *33.99.14, Chief of Police* and/or the System Office of General Counsel before determining appropriate action.
- 7.4 Every applicant and employee will have, as permitted by law, the opportunity to request, receive, review, and correct information about that individual collected by, or on behalf of A&M-San Antonio using authorization given as part of the employment application.

8. APPEALS

- 8.1 Any appeal of an action taken under this Rule must follow the provisions of Section 7 of System Regulation, *33.99.14*.

9. CONFIDENTIALITY

The Office of Human Resources is authorized to gather information on criminal history records and to share this information with appropriate university offices as described in this Rule. However, A&M -San Antonio respects the privacy of its employees and applicants and strictly prohibits the disclosure of any information obtained by any individual under this rule to persons other than those authorized by the rule itself. 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 related DPS rules.

Related Statutes, Policies, or Requirements

[Tex. Gov't Code Chapter 411, Subchapter F](#)

[Tex. Educ. Code § 51.215](#)

[System Policy 12.01, Academic Freedom, Responsibility and Tenure](#)

[System Policy 32.02, Discipline and Dismissal of Employees](#)

[System Regulation 32.01.01, Complaint and Appeal Procedures for Faculty Members](#)

[System Regulation 32.01.02, Complaint and Appeal Process for Nonfaculty Employees](#)

[System Regulation 32.02.02, Discipline and Dismissal of Nonfaculty Employees](#)

[System Regulation 33.99.01, Employment Practices](#)

[System Regulation 33.99.14, Criminal History Record Information-Employees and Applicants](#)

[University Rule 12.01.99.01 University Statement on Academic Freedom, Responsibility and Tenure](#)

[University SAP 12.01.99.01.01 Academic Freedom, Responsibility and Tenure](#)

[University SAP 32.02.02.O0.01 Discipline and Dismissal Procedures for Nonfaculty Employees](#)

[A&M-San Antonio Procedure 61.99.01.O0.01 Records Management](#)

Contact Office

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