

Chapter: Conditions of Employment	<b>Effective Date: 2/15/14</b>
<b>Title: Criminal History: Standards, Background Checks, and Self-Reporting Requirements</b>	Page: 1 of 6
ACA: N/A	Replaces: PRS.02.08, 9/15/13,
Statute(s): <a href="#">Human Resources Code §242.010</a>	

(a) **Policy.**

- (1) Applicants for employment with the Texas Juvenile Justice Department (TJJD) must meet the criminal history standards in this policy to be eligible for hire.
- (2) Current TJJD employees must maintain the criminal history standards in this policy to remain eligible for continued employment.
- (3) To ensure that criminal history standards are met, TJJD:
  - conducts pre-employment fingerprinting and criminal history background checks;
  - conducts criminal history background checks throughout an employee's employment; and
  - requires each employee to notify TJJD if he/she:
    - is arrested;
    - is notified of criminal charges through an indictment or other official notification; or
    - learns of a change in the status of a previously reported criminal charge.
- (4) TJJD management takes appropriate action in response to a report of an employee's pending criminal charge or conviction in accordance with the provisions of this policy.

(b) **Applicability.**

- (1) The criminal history standards and background check processes apply to:
  - (A) applicants for TJJD employment and current TJJD employees; and
  - (B) employees of a TJJD contractor or subcontractor who have direct access to [youth](#) in TJJD-operated or TJJD-contracted facilities. (Note: Such employees are subject to the standards for correctional series positions.)
- (2) The criminal history background check processes apply to volunteers.
- (3) The self-reporting requirements apply to current TJJD employees.

(c) **Resources.**

- (1) [PRS.05.14](#), Texas/National Crime Information Center (TCIC/NCIC) System - This policy describes how TJJD obtains criminal history information through the TCIC/NCIC system.
- (2) [Volunteer Services Operations Manual](#) - This manual establishes the criminal history standards for TJJD volunteers who are not TJJD employees.

(d) **Definitions.**

For definitions of certain terms used in this policy, see the [PRS glossary](#).

(e) **Criminal History Standards.**

(1) **Determining When a Conviction Occurred.**

When determining if enough time has passed after a conviction to qualify for employment, a conviction is considered to have occurred on the date of disposition for the conviction.

**(2) Minimum Standards.****(A) Minimum Standards for All Applicants and Employees.**

Regardless of the nature of the position, applicants for employment and current employees must not:

- (i) ever have been convicted of a felony or Class A or B misdemeanor in which a child under the age of 17 is a victim or is directly endangered;
- (ii) ever have been convicted of an offense requiring the applicant to register as a sex offender under [Chapter 62, Code of Criminal Procedure](#);
- (iii) ever have been convicted of an offense described in [Article 42.12, Section 3g, Code of Criminal Procedure](#);
- (iv) have any pending criminal charge for which a conviction would result in disqualification from employment; or
- (v) have an outstanding warrant. See section [\(f\)\(2\)](#) regarding outstanding warrants.

**(B) Additional Minimum Standards for Non-Correctional Series Positions.**

In addition to the requirements in [\(A\)](#) above, current employees in non-correctional series positions and applicants for these positions must not have been convicted of a felony (or an equivalent offense under the Uniform Code of Military Justice) in the last 15 years.

**(C) Additional Minimum Standards for Correctional Series Positions.****(i) External Applicants.**

In addition to the requirements in [\(A\)](#) above, external applicants for correctional series positions must not:

- (I) ever have been convicted of a felony;
- (II) ever have been convicted of a Class A or B misdemeanor, or the equivalent, within the last five years; or
- (III) be on probation for any criminal offense.

**(ii) Internal Applicants and Current Employees.**

In addition to the requirements in [\(A\)](#) above, current employees in correctional series positions and internal applicants for these positions must not ever have been convicted of a felony.

**(3) Other Criminal Charges or Convictions.**

- (A) Based on the nature of a pending criminal charge or a conviction or the relationship of the offense to the employee's duties, the human resources director and general counsel, or a designee from each office, may determine it is in the agency's best interest to disqualify an applicant or terminate an employee for a pending criminal charge or a conviction that is not an automatic disqualifier for employment.
- (B) Records of arrests or other criminal charges that are no longer pending and did not result in a conviction are not used to disqualify an individual from employment or assignment to a correctional series position.

**(f) Criminal History Background Checks.****(1) Background Check Process.**

Human Resources background investigation specialists obtain criminal history information through the following processes.

**(A) Texas/National Crime Information Center.**

Criminal history background checks are conducted through the Texas/National Crime Information Center (TCIC/NCIC) in accordance with [PRS.05.14](#).

- (i) Pre-employment criminal history background checks are conducted on:
  - (I) external applicants being seriously considered for hire; and
  - (II) internal applicants being seriously considered for another position through the competitive selection process.
- (ii) An annual criminal history background check is conducted during each employee's birth month.
- (iii) A criminal history background check conducted through TCIC/NCIC identifies the following:
  - (I) prior convictions and arrests;
  - (II) public sex offender registration information; and
  - (III) outstanding warrants.

**(B) Flash Notifications.**

On each workday, a background investigations specialist reviews a file provided by the Texas Department of Public Safety (DPS) through the DPS server. If a TJJJ employee has been arrested, the file contains a flash notification of the arrest.

Note: These flash notifications are made possible because the employee's fingerprints previously submitted to the DPS allow the DPS to create an ongoing criminal history search for the employee.

**(2) Outstanding Warrants.****(A) External Applicants.****(i) Outstanding Traffic Warrant.**

If a criminal history background check reveals that an external applicant has an outstanding warrant for a traffic violation, the background investigation specialist calls the telephone number provided on the application for employment in an attempt to contact or leave a message for the applicant. The applicant is disqualified from employment if:

- (I) the attempt to contact the applicant fails (e.g., incorrect phone number provided or no available method to leave a message); or
- (II) within three business days after being contacted by TJJJ, the applicant fails to provide appropriate documentation verifying that the warrant has been withdrawn without arrest or the filing of criminal charges.

(ii) **All Other Outstanding Warrants.**

External applicants are not provided the opportunity to resolve an outstanding warrant for any other violation.

(B) **Current Employees.**

The background investigations specialist notifies the human resources director or designee if a criminal history background check reveals that a current employee has an outstanding warrant.

(i) **Traffic Violation or Other Misdemeanor Offense.**

The employee is notified of the outstanding warrant and placed on administrative suspension without pay until the end of three business days after notification or until the warrant is no longer outstanding, whichever occurs first.

(I) To continue being considered for a position for which the employee is an internal applicant, he/she must provide the agency by the end of the three business days appropriate documentation verifying that:

(-a-) the warrant has been withdrawn; and

(-b-) the nature of any criminal charges resulting from the warrant would not disqualify the employee from employment in the position upon conviction.

(II) If at the end of the third business day the employee has not provided the agency with documentation supporting that the warrant has been withdrawn, he/she is administratively separated per [PRS.11.21](#) due to ineligibility for continued employment.

(ii) **Felony Offense.**

In addition to the steps above for a misdemeanor warrant, the human resources director or designee notifies the Office of Inspector General (OIG) of the outstanding felony warrant. The OIG executes or coordinates the execution of the warrant for arrest with the issuing law enforcement agency.

(iii) **Warrants that Result in Arrest or Criminal Charge.**

If the employee is arrested or charged with a criminal offense, the procedures in Sections [\(g\)](#) and [\(h\)\(2\)](#) apply.

(3) **Confidentiality and Disclosure of Information.**

(A) Except as otherwise required or allowed by law:

(i) access to criminal record reports are restricted to authorized Human Resources personnel; and

(ii) information obtained from a criminal record check is kept confidential and disclosed to the local human resources administrator (HRA), hiring authority, [chief local administrator \(CLA\)](#), or others (e.g., a hearing officer, or a grievant whose criminal record is at issue in a grievance), as applicable, on a need-to-know basis only.

(B) All documents containing criminal record history information are destroyed after the information is used for the purpose for which it was intended.

(g) **Employee Self-Reporting Process.**

(1) **Employee's Responsibilities.**

(A) Employees must report the following to TJJD within two workdays after the event:

- (i) an arrest;
- (ii) notification of criminal charges through an indictment or other official notification; and
- (iii) a change in the status of a previously reported criminal charge (e.g., dismissal, conviction, the initiation or termination of proceedings to revoke probation).

(B) To report these events to TJJD, the employee must:

- (i) provide a completed Employee's Report of Criminal Charges form,  [HR-038](#), to the local Human Resources office; or
- (ii) ensure his/her supervisor is contacted by telephone, text, or email when the circumstances do not allow him/her to provide a completed HR-038 form to the local Human Resources office within the required time frame.

(2) **Supervisor's Responsibilities.**

The supervisor must:

- (A) complete the HR-038 form when the employee is unable to do so; and
- (B) provide the completed form to the local Human Resources office on the same workday the supervisor received notice of the incident.

(3) **Local Human Resources Administrator's Responsibilities.**

Upon receipt of a completed HR-038 form, the local human resources administrator (HRA) or designee must:

- (A) immediately email a scanned copy of the form to a Human Resources background investigation specialist;
- (B) provide a copy to the CLA; and
- (C) file the original form in the employee's confidential personnel file.

(4) **Background Investigation Specialist's Responsibilities.**

Upon receipt of the HR-038 form, the authorized background investigation specialist:

- (A) conducts a criminal history background check; and
- (B) provides guidance to the local HRA and CLA regarding the appropriate management action based on the criminal history standards established by this policy.

(h) **Management Actions for Current Employees.**

(1) **Employee's Failure to Self-Report.**

If a criminal history background check reveals that a TJJD employee failed to report an arrest, indictment, criminal charge, or conviction as required by this policy, the employee is:

- (A) disqualified from being selected for a position for which the employee is an internal applicant regardless of the nature of the offense;
- (B) subject to disciplinary action in accordance with [PRS.35.01](#) for failing to report the event; and
- (C) subject to the actions in [\(2\)](#) and [\(3\)](#) below if he/she is not terminated for failure to report the event.

(2) **Pending Criminal Charges.**

If TJJD learns that an employee has a pending criminal charge:

- (A) the employee must be administratively separated from employment per [PRS.11.19](#) if a conviction would violate the criminal history standards and the employee is not terminated from employment based on the conduct that resulted in the pending criminal charge; or
- (B) the employee may be allowed to continue employment if a conviction would not violate the criminal history standards. However, the employee may be subject to disciplinary action for the conduct upon which the charge is based.

(3) **Convictions.**

- (A) If TJJD learns that an employee has been convicted of a criminal offense, the employee is subject to disciplinary action in accordance with PRS.35.01.
- (B) If the employee is not terminated from employment and the conviction is under a criminal drug- or alcohol-related statute, the human resources director or designee refers the employee to a substance abuse professional through the agency's Employee Assistance Program (EAP). As a condition of continued employment, the employee must:
  - (i) satisfactorily participate in and complete a substance abuse rehabilitation program approved by the EAP; and
  - (ii) provide proof of completion to the local HRA.

(4) **Employees Paid from Federal Grants or Contracts.**

If the Human Resources Department receives notice that an employee who is paid from funds received from a federal grant or contract has been convicted under a criminal drug statute for an offense which occurred on TJJD premises, the director of human resources or his/her designee must:

- (A) notify the granting agency of the conviction within 10 days after receiving notice of the conviction; and
  - (B) ensure that appropriate management actions are taken within 30 days after receiving such notice.
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