

Chapter: Conditions of Employment	Effective Date: 7/22/19
Title: Criminal History: Standards, Background Checks, and Self-Reporting Requirements	Page: 1 of 8
Statutes: Human Resources Code §242.010	Replaces: PRS.02.08, 7/1/17

(a) **Policy.**

- (1) TJJJ ensures that employees, volunteers, and contractors meet appropriate criminal history standards.
- (2) To ensure that criminal history standards are met, TJJJ:
 - (A) conducts fingerprinting and criminal history background checks before:
 - (i) hiring an applicant;
 - (ii) enrolling a volunteer; and
 - (iii) granting a contractor access to TJJJ youth or to youth records.
 - (B) conducts annual criminal history background checks for current employees, volunteers, and certain contractors;
 - (C) may conduct additional checks on a random basis or when required by the executive director; and
 - (D) requires each employee and volunteer to notify TJJJ if he/she is arrested, is notified of criminal charges, or learns of a change in the status of a previously reported criminal charge.
- (3) TJJJ management takes appropriate action in accordance with the provisions of this policy in response to criminal charges against employees, volunteers, or certain contractors.

(b) **Applicability.**

- (1) The criminal history standards and background check process in this policy apply to:
 - (A) applicants for TJJJ employment and current TJJJ employees;
 - (B) applicants for the volunteer program and current volunteers; and
 - (C) TJJJ contractors (including their employees, volunteers, contractors, and subcontractors) who:
 - (i) have direct access to youth in TJJJ-operated facilities; or
 - (ii) have access to records of TJJJ youth.
- (2) TJJJ contractors (including their employees, volunteers, contractors, and subcontractors) who have direct access to TJJJ youth who are not in TJJJ-operated facilities are subject to the criminal history standards and background check process as outlined in the contract with TJJJ. The contract terms must adhere to the criminal history standards for contract facilities specified in [\(e\)\(3\)](#) below.
- (3) The self-reporting requirements in this policy apply to current TJJJ employees and volunteers.
- (4) For current employees, this policy is to be applied to conduct occurring on or after the effective date.

(c) **Definitions.**

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

(d) **General Provisions.**

- (1) A [conviction](#) or [deferred adjudication](#) is considered to have occurred on the date of disposition for the conviction or deferred adjudication.
- (2) References in this policy to specific criminal offenses or offense levels are to be understood as including equivalent offenses under the Uniform Code of Military Justice.
- (3) Arrests that have been expunged and juvenile records that have been sealed may not be considered for purposes of this policy.

(e) **Criminal History Standards.**

(1) **Automatic Disqualifiers.**

The criminal history below disqualifies a person from being employed by TJJJ, working with TJJJ youth, or having access to youth records.

- (A) Ever convicted or received deferred adjudication for any felony.
- (B) Ever convicted or received deferred adjudication for domestic violence involving a family member or non-spouse partner.
- (C) Ever convicted or received deferred adjudication for official oppression.
- (D) Current requirement to register as a sex offender.
- (E) Arrest for a disqualifying offense. An arrest that has been expunged is not considered an arrest and may not be used.
- (F) Outstanding warrant — see [\(f\)\(2\)](#) below.

(2) **Automatic Reviews.**

The criminal history below requires a case-by-case review before a person may be (or may continue to be) employed by TJJJ or approved for a position that involves working with TJJJ youth or having access to youth records.

- (A) Ever convicted or received deferred adjudication for a Class A or B misdemeanor involving violence against a person, other than one that is an automatic disqualifier.
- (B) Ever convicted or received deferred adjudication for a Class A or B misdemeanor in which a child under age 17 is a victim or is directly endangered.
- (C) Convicted or received deferred adjudication for a Class A or B misdemeanor drug offense in the last 10 years.
- (D) Convicted or received deferred adjudication for any Class A or B misdemeanor in the last five years.
- (E) Subject of a currently active protective order.
- (F) Currently serving a term of probation for a criminal offense that is not an automatic disqualifier.
- (G) Arrest for an offense under (e)(2)(A) or (B). An arrest that has been expunged is not considered an arrest and may not be used.

(3) **Standards for Contract Facilities.**

- (A) Employees, contractors, or volunteers who provide services in a facility that contracts to accept TJJD youth and that is licensed by the Department of Family and Protective Services (DFPS) must, in order to work with TJJD youth:
- (i) obtain clearance under DFPS background check rules; and
 - (ii) meet all TJJD criminal history standards.
- (B) Employees, contractors, or volunteers who provide services in a facility that contracts to accept TJJD youth and that is regulated by TJJD as a juvenile justice facility must, in order to work with TJJD youth:
- (i) meet the criminal history standards in [37 TAC §344.400](#); and
 - (ii) meet all TJJD criminal history standards.

(4) **Review of Criminal History.**

- (A) Regardless of the standards requiring disqualification or automatic review for certain offenses, TJJD may determine it is in the agency's best interests to disqualify an applicant or to terminate an employee or volunteer for any pending criminal charge, conviction, deferred adjudication, or other pattern of conduct that indicates risk, which may include juvenile adjudications.
- (B) Any review of criminal history, including a review not specifically required by this policy, is conducted by the director of human resources and the general counsel or their designees and any other appropriate, authorized staff. Factors considered during the review may include:
- (i) age at the time of the offense;
 - (ii) time elapsed since the offense;
 - (iii) how the offense relates to the position applied for;
 - (iv) nature and seriousness of the offense;
 - (v) number and pattern of offenses;
 - (vi) other patterns of conduct that indicate risk, including juvenile adjudications;
 - (vii) whether the offense was committed under duress;
 - (viii) evidence of rehabilitation and/or recovery;
 - (ix) whether the applicant holds a license from another state agency; and
 - (x) any other relevant, job-related factors.
- (C) A [hiring authority](#) must obtain approval from the [chief local administrator](#) if the hiring authority decides not to select an applicant based on:
- (i) any criminal history, if that history was reviewed as described in (e)(4)(B) above and the applicant was cleared for hire; or
 - (ii) any other documented behavior obtained through the background check process described in [PRS.05.13](#) (e.g., internal reference checks, information from previous employers).

(f) **Criminal History Background Checks.**

(1) **Background Check Process.**

Background investigation specialists in the Human Resources Department obtain criminal history information through the following processes.

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

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

- (i) Initial checks are conducted on:
 - (I) [external applicants](#) being seriously considered for hire;
 - (II) [internal applicants](#) being seriously considered for another position through the competitive selection process;
 - (III) applicants for the volunteer program; and
 - (IV) contractors (including their employees, volunteers, contractors, and subcontractors).
- (ii) An annual check is conducted during the person's birth month.
- (iii) A check conducted through TCIC/NCIC identifies the following:
 - (I) prior convictions and arrests;
 - (II) public sex offender registration information; and
 - (III) outstanding warrants.

(B) **FACT Clearinghouse.**

TJJD receives notifications of new arrests through the Fingerprint-based Applicant Clearinghouse of Texas (FACT Clearinghouse). TJJD receives these notifications for employees, contractors, and volunteers.

Note: These notifications are made possible because the individual's fingerprints previously submitted to the Department of Public Safety (DPS) allow DPS to create an ongoing criminal history search for the individual.

(2) **Outstanding Warrants.**

(A) **External Applicants.**

(i) **Outstanding Traffic Warrant.**

If an external applicant has an outstanding warrant for a traffic violation, the background investigation specialist calls the telephone number provided on the application in an attempt to contact or leave a message for the applicant. The applicant is disqualified from employment or volunteer service 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 TJJD, 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.**

If an external applicant has an outstanding warrant for a non-traffic violation, the applicant is disqualified from employment or volunteer service.

(B) **Current Employees and Volunteers.**

The background investigation specialist notifies the director of human resources or designee if a check reveals that a current employee or volunteer has an outstanding warrant.

(i) **Misdemeanor Offense (Including Traffic Violations).**

For misdemeanor warrants, the person is notified of the outstanding warrant. An employee is placed on administrative suspension without pay until the end of three business days after notification or until the warrant is executed, withdrawn, or otherwise resolved, whichever occurs first. A volunteer is notified that he/she is not eligible to participate in the volunteer program until the warrant has been withdrawn or otherwise resolved.

(I) If an employee is an internal applicant, the employee will no longer be considered for the position unless he/she provides, by the end of the third business day, appropriate documentation verifying that:

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

(-b-) all charges have been dismissed or 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 documentation verifying that the warrant has been withdrawn, he/she is administratively separated under [PRS.11.21](#) due to ineligibility for continued employment.

(ii) **Felony Offense.**

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

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

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

(II) If a volunteer is arrested or charged with a criminal offense, the volunteer is suspended from the volunteer program pending the outcome of the case.

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

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

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

(ii) information obtained from a criminal record check is kept confidential and may be disclosed only to the following individuals:

(I) executive director;

(II) general counsel or designee;

(III) chief local administrator;

(IV) manager over volunteer services; and

(V) others who have a need to know (e.g., a hearing officer or a grievant whose criminal record is at issue in a grievance).

(B) A staff member may access criminal history information or receive such information about another person only if he/she has been authorized through the state-approved process for accessing federal criminal history information.

(C) All documents containing criminal record history information are destroyed after the information is used for the intended purpose.

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

(1) **Responsibilities of Employee or Volunteer.**

- (A) Employees and volunteers must report the following to TJJJ 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, deferred adjudication, or the initiation or termination of proceedings to revoke probation).
- (B) To report these events to TJJJ, an employee must:
- (i) provide a completed [Self-Report of Criminal Charges, 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 the employee to provide a completed HR-038 to the local Human Resources office within the required time frame.
- (C) To report these events to TJJJ, a volunteer must ensure the community resource coordinator is notified by telephone, text, or email.

(2) **Responsibilities of Supervisor or Community Resource Coordinator.**

- (A) The supervisor must complete the HR-038 when the employee is unable to do so and provide the form to the local Human Resources office on the same workday he/she received notice of the incident.
- (B) The community resource coordinator must complete the HR-038 form upon being notified by the volunteer and provide the form to the manager over volunteer services on the same workday he/she received notice of the incident.

(3) **Responsibilities of Local HRA or Manager over Volunteer Services.**

Upon receipt of a completed HR-038, the local human resources administrator, the manager over volunteer services, or a designee:

- (A) immediately emails a scanned copy to a background investigation specialist;
- (B) provides a copy to the chief local administrator; and
- (C) files the original in the employee's or volunteer's confidential personnel file.

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

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

- (A) conducts a criminal history background check; and
- (B) notifies the director of human resources, manager over volunteer services, or an authorized designee of the results.

(h) Management Actions for Current Employees and Volunteers.**(1) Failure to Self-Report.**

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

- (A) disqualified from consideration if he/she is an internal applicant for a position, regardless of the nature of the offense;
- (B) subject to disciplinary action under [PRS.35.01](#) for failing to report the event or subject to termination as a volunteer; and
- (C) subject to the actions in [\(h\)\(2\)](#) and [\(3\)](#) below if the employee is not terminated for failure to report the event.

(2) Pending Criminal Charges.

- (A) If TJJJ learns that an employee has a pending criminal charge and the employee is not terminated from employment based on the conduct that resulted in the pending charge:
 - (i) the employee must be administratively separated from employment under [PRS.11.19](#) if a conviction or deferred adjudication on the charge, or if the charge itself, would result in automatic disqualification based on the standards in [\(e\)\(1\)](#) above;
 - (ii) the employee must be reviewed by the general counsel and director of human resources (or their designees), along with the employee's chief local administrator, for possible separation from employment under PRS.11.19 if a conviction or deferred adjudication on the charge, or if the charge itself, would require an automatic review under [\(e\)\(2\)](#) above. The review may consider factors listed in [\(e\)\(4\)\(B\)](#) above; or
 - (iii) the employee may be allowed to continue employment if the offense charged is not listed in [\(e\)\(1\)](#) or [\(e\)\(2\)](#) above.
- (B) If an employee is not terminated from employment based on the pending charge or the conduct that resulted in the charge, the employee may be subject to other disciplinary action for the conduct that resulted in the charge.

(3) Convictions.

- (A) If TJJJ learns that an employee has been convicted or has received deferred adjudication for a criminal offense, the employee is subject to disciplinary action under PRS.35.01.
- (B) If the employee is not terminated from employment and the conviction or deferred adjudication is under a criminal drug- or alcohol-related statute, the director of human resources 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 provided by the EAP or a court-approved provider; and

Note: The EAP and/or the court-approved provider provides TJJJ a report indicating whether the employee satisfactorily completed the program.
 - (ii) provide proof of completion to the local HRA.

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

This section applies only to employees who are paid from funds received through a federal grant or contract. If TJJJ receives notice that such an employee has been convicted under a criminal drug statute for an offense that occurred on TJJJ premises, the director of human resources or designee must:

- (A) notify the granting agency of the conviction, the employee's title, and the grant/contract ID number within 10 days after receiving notice of the conviction; and
- (B) ensure that appropriate management actions are taken within 30 days after receiving notice of the conviction.

(5) **Executive Director Override.**

- (A) The executive director may override any decision made by TJJJ staff based on the criminal history of an applicant, employee, volunteer, or contractor, including criminal history that would otherwise automatically disqualify the individual.
 - (B) If a decision is made to terminate or disqualify an individual from employment, volunteer service, or working with TJJJ youth in a contract facility, any TJJJ employee may request a review by the executive director if the employee believes:
 - (i) the experience of the disqualifying offense improves the individual's qualifications for the job (e.g., an alcohol or drug abuse counselor); or
 - (ii) other factors in [\(e\)\(4\)\(B\)](#) above should be considered.
 - (C) All requests are first reviewed by the general counsel and the director of human resources (or their designees) who will make a recommendation to the executive director.
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