



## **HRM 60.122: CRIMINAL BACKGROUND CHECKS**

### **PURPOSE**

This policy establishes the criteria and procedures whereby Mississippi State University will perform criminal background checks. Criminal background checks will help to increase safety, manage risk, meet mandated regulatory compliance, and contribute to informed and safe hiring decisions.

### **POLICY**

The Department of Human Resources Management (“HRM”) is solely authorized to conduct and oversee the criminal background check process. Completion of criminal background checks will be coordinated by the appropriate staff from HRM through an approved third-party vendor who is qualified to perform such work. The Chief Human Resources Officer, in collaboration with the Office of General Counsel as appropriate, is responsible for confirming decisions regarding interpreting criminal background check records and information, determining eligibility for employment, and making employment recommendations to the hiring department. The University Compliance Officer or designee is responsible for providing additional recommendation and interpretation for compliance under the Minor Protection Policy ([OP 01.29](#)). All employees are responsible for ensuring the integrity and confidentiality of the criminal background check process.

### **Post Offer Employment Background Checks**

All individuals selected for new hire in regular full-time, regular part-time, time-limited, temporary, intermittent, post-doctoral, and graduate teaching positions will be required to have a background check. University employees who are moving to a new position within the University and reclassifications will not receive a background check unless they have not had one and will become subject to one under the Minor Protection Policy. Former employees, including rehired retirees, with a six-month break in service or after any break in service if the former employee has never had a criminal background check, are subject to a criminal background check. A criminal background check is only required for student worker positions, including graduate research and service assistant positions, as follows:

- Positions handling cash and checks on a regular basis
- Positions having contact with minors
- Positions with access to residence hall rooms
- Positions having access to systems containing sensitive information
- (Refer to [OP 01.26](#))
- Positions having patient contact or access to prescription medications

An offer of employment may be extended to an individual prior to the completion of the background check. While every effort will be made to complete the background check process prior to the first day of work, individuals will be allowed to start work with continued employment contingent upon successful completion of the criminal background check. Letters of offer must include this contingency. Under certain circumstances, depending on the gravity of the information received in the criminal background report and the risk to the University, employment may be suspended or delayed until the criminal background check process is completed.

Individuals with a criminal history will not be automatically disqualified from employment. Multiple factors will be taken into consideration. Any individual who refuses to consent to the criminal background check, refuses to provide information necessary to conduct the background check or to complete the background screen process, or provides false or misleading information will not be considered for the position for which she/he applied and/or was offered. Any individual who has already been hired and is subsequently found to have provided false or misleading information related to the criminal background check is in violation of University policy and may be subject to disciplinary action, up to and including termination from employment.

While there may be certain exceptions, the University will normally be responsible for the costs associated with conducting criminal background checks.

### **Other Background Checks**

Section 25-1-113, Mississippi Code of 1972, as amended, prohibits the hiring for public employment of individuals who have been convicted of or plead guilty to the unlawful taking or misappropriation of public funds. Effective July 1, 2014, the State cannot continue to employ a person who has been convicted or pled guilty to the unlawful misappropriation of public funds.

To ensure compliance with this state law, each employee, regardless of employee class, is required to complete an attestation form annually affirming that he/she has never been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained, or misappropriated by the abuse of or misuse of any office or employment or money coming into his/her hands by virtue of his/her office or employment. An employee that declines to complete the attestation form may be subject to a criminal background check. No background check will be requested or conducted by HRM without authorization by the employee. If an employee declines to authorize the background check, employment may be terminated. Should the criminal background check occur and it establishes that the employee has been convicted or pled guilty to misuse of public funds in violation of Section 25-1-113, employment will terminate and the employee will have no recourse against the Board of Trustees of State Institutions of Higher Learning.

Criminal background checks may be required due to other criteria. Examples include, but are not limited to, grant submissions/awards, volunteer programs, work involving contact with minors, credentialing and licensing requirements, or compliance with federal and/or state laws.

## **PROCEDURE**

All individuals subject to a criminal background check are required to complete and submit to HRM a Disclosure and Authorization to Obtain Information form (<http://www.hrm.msstate.edu/forms/>) prior to initiation of the background screen process. Once the authorization form is received in HRM, the request is submitted to the vendor. When the investigation is complete, the vendor will return the information to HRM. In the event a criminal conviction record is discovered, a report is provided to HRM by the vendor for further review. Incidents, other than unrelated misdemeanors, found through the background screen process will be reviewed by the Chief Human Resources Officer in collaboration with the Office of General Counsel and the University Compliance Officer, as appropriate.

The Fair Credit Reporting Reform Act (FCRA) mandates types of records that cannot be used to automatically deny employment, such as arrests, expunged or sealed records.

Individuals with a criminal history will not be automatically disqualified from employment. Multiple factors will be taken into consideration, such as the nature and gravity of the offense(s), the nature of the position sought or held, the accuracy of disclosure on the employment application, etc.

Copies of the Disclosure and Authorization to Obtain Information forms are required to be maintained under lock and key or in a secure electronic format in HRM for a period of three (3) years. Copies of criminal background screen reports are maintained in the vendor system and will only be distributed to the Office of General Counsel, the Compliance Officer in relation to the Minor Protection Policy, and the employee, as appropriate.

### **Pre-Adverse Action Notice**

HRM will notify individuals in writing that negative information has been revealed during the background check process which may impact the employment decision and will provide a copy of the supporting report to the employee along with a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.” The individual will be provided no less than five days to challenge the information provided in the report and take steps to correct inaccuracies or provide explanation.

A final employment decision shall not be made until the individual’s new information has been considered or at such time the individual fails to respond as required.

### **Adverse Action Notice**

After consideration of any individual's response and prior to making an adverse employment decision, a second written notification will be sent by HRM to the individual. This notice shall contain the following:

- The name, address, and phone number of the vendor Consumer Report Agency (CRA) that supplied the report
- A statement that the vendor supplying the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
- A notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days and to dispute with the CRA, the accuracy or completeness of any information in a consumer report furnished by the agency.

## **REGULATORY**

The Consumer Credit Reporting Reform Act of 1996  
Section 601 - §1681b. - Permissible Purposes of Reports

Miss. Code Ann. §43-20-8 and §25-1-113

EEOC Enforcement Guidelines Consideration of Arrest and Conviction Records in  
Employment Decisions under Title VII of the Civil Rights Act of 1964

## **REVIEW**

The Chief Human Resources Officer is responsible for review of this policy as needed, but no less frequently than 4 years.

**REVIEWED BY:**

/s/ Judy Spencer  
Chief Human Resources Officer

02/29/2016  
Date

/s/ Julia Hodges  
Interim Provost and Executive Vice President

03/02/2016  
Date

/s/ Timothy N. Chamblee  
Assistant Vice President and Director  
Institutional Research and Effectiveness

03/04/2016  
Date

/s/ Joan Lucas  
General Counsel

03/10/2016  
Date

**APPROVED:**

/s/ Mark Keenum  
President

03/18/2016  
Date