

## **Criminal History Review and Determination of Relevance to Job Requirements**

Once a final candidate(s) under consideration for hire into a position has been identified, have the applicant sign and return the [Notification and Authorization to Obtain Information form](#) and the [Department of Public Safety Computerized Criminal History \(CCH\) Verification form](#) and contact the appropriate university representatives to request a background check.

The Department of Public Safety Computerized Criminal History form is used for in-state applicants and the Notification and Authorization to Obtain Information form is required for out-of-state applicants.

The Office of Human Resources performs the criminal history background check for staff, faculty, adjuncts and graduate assistants. Career Services performs the criminal history background check for student employees other than graduate assistants.

Upon receipt of these signed forms, the designated university representative will enter the request and the authorization into the background check system and obtain a copy of the candidate's official criminal history. They will then review the information for convictions that are relevant to the duties of the position.

Based on current EEOC regulations, no applicant can be excluded from hiring simply because he or she has a criminal history. It is important to consider criminal history on a case by case basis, taking into account the following:

- Is the conviction relevant to the position?
- How recent is the conviction?
- What is the type and severity of each offense?
- Does the number of offenses represent a pattern of behavior?
- How much time has passed since the offense?
- Are there other extenuating circumstances?

The sections below explain how TWU will review criminal history and determine relevance. It is important to be familiar with these basic procedures, because the position for which an individual is being hired may have additional types of conviction categories that are relevant. Please refer to the section, Additional Offenses That May Be Relevant, below for more examples. The hiring department should notify OHR by email, if there are additional offense categories for OHR to verify and review.

An applicant can be disqualified from further consideration if they have falsified the application by indicating they have no convictions, and the criminal history indicates that they do have convictions.

## **Disclosure during the Interview Process**

In addition, the hiring department should review any criminal history information that the applicant has disclosed during the interview process; and share it with OHR or Career Services so that information may be considered. Remember that a candidate cannot be disqualified simply for having a conviction: the offenses must be relevant to the position in question. Hiring managers are encouraged to consult with the Office of Human Resources before excluding an applicant due to criminal history information that was disclosed in the interview process.

For more information on considering conviction information, see the EEOC publication [Guidance on Consideration of Arrest and Conviction Records in Employment Decisions](#). The EEOC has determined that improper use of conviction information in hiring decisions can violate Title VII's disparate treatment\* and disparate impact\*\* theories. It is critical for hiring departments to consider conviction information in a fair and consistent manner.

## **Is the Conviction Relevant to the Position?**

The following types of convictions are generally considered relevant to any position at the university:

- Theft
- Injury to person(s)
- Weapons
- Threats
- Injury to property
- Sexual Misconduct
- Murder

Although a conviction in one of these categories is generally relevant, a conviction of this type may not automatically exclude the applicant from consideration. Other factors, as listed above, must be considered, particularly the severity of the offense and the length of time since the conviction.

Conversely, a conviction that is not within one of the seven categories above could be relevant for a particular job. For example, a drug or alcohol related conviction is more likely to be relevant if the job requires driving or contact with minors. See the chart [Additional Offenses That May Be Relevant](#) for more examples.

## **How Recent Is the Conviction?**

In general, TWU considers convictions and deferred adjudications that fall within this timeframe:

- Felony – 10 years
- Misdemeanor – 5 years.

Again, it is important to remember that these are general guidelines. The timeframe and types of convictions that are considered relevant should be determined by the nature of the position for which the individual is applying.

The chart below notes the severity of offenses and how long after conviction they are generally considered relevant. Offenses are generally relevant if the offense occurred within the time period indicated.

## Type of Offense and Recommended Action

Offense	Time	Recommended Action
<b>Felony</b>	Within 10 years	<p style="text-align: center;"><b>Do not hire</b></p> <p>If the felony is relevant to position for which an applicant is being considered. Categories that are relevant to most positions include:</p> <ul style="list-style-type: none"> <li>• Theft related</li> <li>• Injury to person(s)</li> <li>• Weapons</li> <li>• Threats</li> <li>• Injury to property</li> <li>• Sexual Misconduct</li> <li>• Murder</li> </ul>
<b>Misdemeanor</b>	Within 5 years	<p style="text-align: center;"><b>Do not hire</b></p> <p>If the misdemeanor is relevant to position for which applicant is being considered. Categories that are relevant to most positions include:</p> <ul style="list-style-type: none"> <li>• Theft related</li> <li>• Injury to person(s)</li> <li>• Weapons</li> <li>• Threats</li> <li>• Injury to property</li> <li>• Sexual Misconduct</li> <li>• Murder</li> </ul>
<b>Deferred Adjudications</b> (i.e., the final disposition is still pending or the original charge has not been dismissed)		<p style="text-align: center;"><b>Eligible for hire</b></p> <p>The hiring department should monitor. If applicant does not comply with the adjudication, it could become a relevant conviction.</p>

## Additional Offenses That May Be Relevant

<b>General Job Requirements (not inclusive)</b>	<b>Relevant Offense</b>
<b>Equipment Operation</b> (i.e., driving, operation of heavy equipment)	<ul style="list-style-type: none"> <li>• Drug Related</li> <li>• Alcohol Related</li> <li>• Criminal Traffic Offenses (DWI, DUI)</li> </ul>
<b>Handling Chemicals/Pathogens/Controlled Substances</b>	<ul style="list-style-type: none"> <li>• Crimes against the Government</li> <li>• Environment related</li> <li>• Drug Related</li> </ul>
<b>Transportation/Shipping</b>	<ul style="list-style-type: none"> <li>• Smuggling</li> <li>• Crimes against the Government</li> </ul>
<b>Financial (i.e., Cash, Purchasing, Grants, Contracts, Storeroom, or Accounting)</b>	<ul style="list-style-type: none"> <li>• Smuggling</li> <li>• Gambling</li> <li>• Fraud</li> <li>• Theft</li> </ul>
<b>Contact with Minors (i.e., Child Care Workers, Camp Counselors, Residential Housing, Athletics)</b>	<ul style="list-style-type: none"> <li>• Drug Related</li> <li>• Alcohol Related</li> <li>• Criminal Traffic Offenses (DWI, DUI)</li> </ul>
<b>Security Clearance</b>	<ul style="list-style-type: none"> <li>• Smuggling</li> <li>• Crimes Against the Government</li> <li>• Gambling</li> <li>• Obstructing Justice</li> </ul>

The Office of Human Resources or Career Services will obtain an official report of the person’s criminal history and determine whether there are convictions which would normally exclude the person from being hired into the position. If they are not relevant, a notification is sent by email that the individual is clear to hire.

If there is any question concerning the job relatedness of a conviction, OHR will discuss with the hiring department because they have a fuller understanding of the job duties of the position and may provide more information to determine the relevance of certain conviction.

If the hiring department has questions or wishes to discuss any decision to not hire, please contact OHR immediately. Likewise contact OHR immediately if you receive notice that the

applicant is clear for hire, but it is believed that the convictions that were disclosed should be considered relevant.

## **Before Taking an Adverse Action**

Once it has been determined that the applicant has convictions which are relevant to the position, the Office of Human Resources or Career Services notifies the applicant in writing. A Non-Hire Notice to Applicants giving a copy of the report relied on to make the decision along with a copy of a [Summary of Your Rights Under the Fair Credit Reporting Act](#) is sent to the individual.

The notice, required by law, gives the applicant an opportunity to correct errors in the criminal history record or provide additional information. The applicant has up to five (5) business days from the date of the letter to provide additional information.

The hiring department may not offer the position to another finalist until the five day period has expired. Notification will be sent immediately when the applicant indicates they will request a review. The hiring process may be able to proceed sooner than five days, if a review decision has been made or if the applicant indicates that there is no reason for review.

While this may be an inconvenience to the hiring department, the applicant must be given an opportunity to provide correction or additional information and be given further consideration for the position if the conviction information was incorrect or not relevant.

## **After Taking an Adverse Action**

If an adverse action based on information in a consumer report is taken the applicant must be notified of this fact – orally, in writing, or electronically.

An adverse action notice tells people about their rights to see information being reported about them and to correct inaccurate information. The notice must include:

- the name, address, and phone number of the consumer reporting company that supplied the report;
- a statement that the company that supplied the report did not make the decision to take the unfavorable action and can't give specific reasons for it; and
- a notice of the person's right to dispute the accuracy or completeness of any information the consumer reporting company furnished, and to get an additional free report from the company if the person asks for it within 60 days.

## **Rescinding an Offer of Employment**

A new hire cannot begin work before the background check results are received. Waiting for the results of all required background check(s) before making an offer of employment will avoid the necessity of rescinding an offer of employment. If a job offer is made, and approved by OHR, it is important to be clear, in writing, that the offer is contingent upon the results of the background

check. If the person begins work before the background check results are received, and a non-hire recommendation is received from OHR, please contact the Director of Professional Services immediately.

## **Security Sensitive Positions**

All faculty, administrative and staff positions, including temporary positions, GA/GTA and student positions at Texas Woman's University are classified as security sensitive positions and will be required to have criminal history background checks performed as provided in TEX Education CODE Section 51.215: ACCESS TO POLICE RECORDS OF EMPLOYMENT APPLICANTS.

Criminal background records and applicant background verifications are confidential. Such records will be plainly marked "CONFIDENTIAL" and will only be disclosed to those who have a need to know. The unauthorized disclosure of background information will be considered a breach of confidentiality, and the individual or individuals involved will be subject to disciplinary action up to and including employment dismissal.

In an effort to protect the privacy of consumer information and reduce the risk of fraud and identity theft, a new federal rule requires businesses to take appropriate measures to dispose of sensitive information derived from consumer reports. All information received by OHR or Career Services is subject to being destroyed at the completion of the review process.

\*Disparate Treatment: A violation of Title VII law when an individual of a protected group is shown to have been singled out and treated less favorably than others similarly situated on the basis of an impermissible criterion under Title VII.

\*\*Disparate Impact: employment practices may be considered discriminatory and illegal if they have a disproportionate "**adverse impact**" on members of a minority group.