



MIDWESTERN STATE UNIVERSITY

Operating Policies & Procedures Manual

University Operating Policy/Procedure (OP)

OP 52.25: Criminal Background Checks – Employees and Volunteers

Approval Authority: President
Policy Type: University Operating Policy and Procedure
Policy Owner: Vice President for Administration and Finance
Responsible Office: Human Resources
Next Scheduled Review: 05/01/2022

I. Policy Statement

Midwestern State University (“MSU” or “University”) is committed to providing the safest possible environment for students, employees and visitors and to safeguard sensitive data, personal information, and personal and public property. To that end, a criminal background check shall be conducted on each applicant, employee, and volunteer hired to fill a position at MSU.

II. Reason for Policy

The purpose of this policy is to promote MSU’s commitment to a safe and secure environment by conducting criminal background checks in compliance with federal and state laws.

III. Application of Policy

This policy applies to all University employees, students, and designated individuals.

IV. Definitions

Applicant – Means an individual who applies for an open position at MSU. Within the scope of this policy, the term applies to all external and internal applicants who are finalists for positions. Additionally, for the purpose of this policy, the term applicant applies to current MSU employees who transfer to, or are promoted to another position. The term applicant applies to candidates for both benefits-eligible and non-benefits eligible positions, including student employment and unpaid volunteer positions, but does not apply to persons hired through temporary employment agencies who are not considered to be employees of the University.

Security Sensitive Position – All employment and unpaid volunteer positions have been designated security sensitive by the President in consultation with the Director of Human Resources as authorized by Texas Government Codes 411.094 and Texas Education Code 51.215.

Criminal Background Check – Consists of criminal history information collected directly by the University through the appropriate law enforcement agencies or indirectly through private vendors that offer national criminal background check services.

Criminal History Information - Is a record of information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges and their dispositions. Texas Government Code 411.082.

Camp, Program, or Event for Youth: Employees and Volunteers – Any employee, University affiliate, volunteer, or student observer who will be present at a camp or other event or facility hosting or involving minor children must submit to a criminal background check each year. The check shall be conducted prior to permitting an individual to work, volunteer, or be present with unsupervised access to minors.

V. Procedures and Responsibilities

A. Employment Procedures

1. Finalists selected for interview in a position will be investigated prior to the issuance of a written offer, notice of employment, or contract.
2. Background checks for current employees who are promoted, transferred, or reclassified will be requested by the authorized personnel within the Human Resources Department upon notification of the proposed change in employment status unless the employee has successfully completed a criminal background check by the university within the most recent twelve month period.
3. Background checks for employees working with minors will be requested by the Human Resources Department upon notification of this security sensitive position within a camp, program, or event for youth.
4. A criminal background check will not be required of a current faculty member upon promotion into another faculty rank or consideration for faculty tenure.
5. The designation as a security sensitive position shall be included in the position's job description, announcements, and advertisements.
6. Prior to conducting the criminal background check, the Human Resources Department will obtain a signed, written consent and release form from the applicant.

7. The criminal background check will be requested upon receipt of the signed consent form and the results will be reported to the Human Resources Department.
8. The hiring supervisor in consultation with the Director of Human Resources shall be responsible for making a decision to hire, promote, transfer, reclassify, or retain the applicant based in part upon an evaluation of the contents of the criminal history report.
9. The subject of the background check has the right to challenge the accuracy and completeness of the report and to submit additional information relating to the criminal record.

B. Volunteer Procedures

1. All designated volunteers working with minors must complete a background check.
2. Prior to conducting the criminal background check, the Youth Protection Program Coordinator will obtain a signed, written consent and release form from the volunteer.
3. The Camp Director in coordination with the Youth Protection Program Coordinator shall be responsible for making a decision to allow this individual to volunteer.
4. The subject of the background check has the right to challenge the accuracy and completeness of the report and to submit additional information relating to the criminal record.
5. Departments coordinating the event will be responsible for the cost of the background check for volunteers.

C. Confidentiality

Criminal history information is privileged and confidential. It may not be released or otherwise disclosed without a legitimate need to know during the hiring process, except on court order. Criminal history information is relevant only for evaluation in the hiring/employment/volunteer decision; it is not placed in the applicant or personnel file; and if printed or stored electronically, it is destroyed by the Director of Human Resources provided in Texas Government Code 411.094.

D. Penalties for Misuse

Only employees who have signed the DPS Authorized User Acknowledgement and obtained a personal password will be permitted to retrieve criminal history records from the Department of Public Safety databases or private vendor databases.

Any unauthorized access, retrieval, or misuse of confidential information obtained through the ~~DPS~~ databases may lead to criminal charges and termination of employment.

E. Use of Private Vendors

When the University elects to use a third-party vendor credit reporting agency to conduct criminal history checks, the resulting report is considered a “consumer report” under the Fair Credit Reporting Act (FCRA) and the institution shall comply with all applicable FCRA disclosure and notification requirements.

F. Employee Disclosure

Current employees must report information to their supervisor within three (3) business days of any criminal arrests, criminal charges, or criminal convictions, excluding misdemeanor traffic offenses punishable only by fine. Failure to report shall constitute grounds for disciplinary action, up to and including termination. The employee’s supervisor must report the arrest(s), criminal charge(s), or conviction(s) to the head of the employing department and to the Director of Human Resources.

G. Nondiscrimination

Criminal history information shall not be used to discriminate on the basis of race, color, national origin, religion, sex (gender), disability, age, sexual orientation, or genetic information. Disclosure of a criminal offense will not automatically exclude or disqualify an applicant from consideration for employment. The relevance of the applicant’s criminal history to the employment decision will be determined on a case-by-case basis in consideration of the following factors:

1. the length of time since an offense;
2. the number of offenses;
3. the nature of the offense;
4. the applicant’s subsequent employment history;
5. the applicant’s efforts at rehabilitation;
6. the specific duties of the position to be filled, and
7. the accuracy of criminal history information disclosed by the applicant.

VI. Related Statutes, Rules, Policies, Forms, and Websites

Related Statutes/Rules:

- Texas Education Code, Sec. 51.215 (Access to Police records of Employment Applicants).
- Texas Education Code, Title 2, Subtitle D, Chapter 22.0831 (National Criminal History Record Information Review of Certified Educators).
- Texas Government Code, Sec. 411.082 (Definitions).
- Texas Government Code, Sec. 411.094 (Access to Criminal History Information: Higher Education Entities; Security Sensitive Position).

Related Policies:

[OP 62.04: Protection of Minor Children on Campus](#)

Related Forms:

VII. Responsible Office(s)

Human Resources Department

Phone: (940) 397-4221

Email: human.resources@msutexas.edu

VIII. History

- 16 Feb. 2001: Adopted and Approved by MSU Board of Regents.
- 11 May 2007: Revised by adding definitions, procedures, and statements regarding confidentiality and nondiscrimination.
- 2 Nov. 2007: Revised by clarifying offer of employment.
- 15 Feb. 2008: Revised by defining criminal history information, adding a timeframe for past background checks, and further defined nondiscrimination.
- 8 Aug. 2008: Revised by clarifying completion time for current faculty members.
- 13 May 2011: Revised by adding penalties for misuse of confidential information.
- 9 Aug. 2013: Revised by updating title, added requirement of youth camp employees and volunteers submitting to criminal background checks, included private vendors and employee disclosure requirement.