



SUBJECT: CRIMINAL BACKGROUND CHECKS (Effective July 1, 2008)

- I. **PURPOSE:** To provide for criminal background checks of certain prospective and existing employees of Southern Utah University.

- II. **REFERENCES:**
 - A. Utah Code 53A-3-410 (Criminal background checks on school personnel -- Notice -- Payment of cost -- Request for review)

 - B. Utah Code 53B-1-110 (Higher Education Criminal Background Checks)

 - C. Policy and Procedure R847, Criminal Background Checks

 - D. Policy and Procedure R165, Concurrent Enrollment

 - E. Policy and Procedure R481, Academic Freedom, Professional Responsibility and Tenure

- III. **DEFINITIONS**
 - A. **Adjunct Faculty** - part-time teachers, post-doctoral fellows, visiting lecturers, graduate assistants and other professional staff members of businesses, industries, and other agencies and organizations who are appointed by the University on a part-time basis to carry out instructional, research or public service functions.

 - B. **Applicant** - the final applicant offered employment, transfer or promotion, contingent on acceptable results of a criminal background check and other reviews required for the position by the University such as financial/credit checks, degree transcripts or license documentation, or student loan status.

 - C. **Background Check** - a commercial or governmental process of searching public records to determine no less than whether an individual has been convicted of criminal conduct anywhere in the United States of America within no less than the last seven years. The University may choose to specify a longer time period, search in one or more foreign countries, or seek additional information such as arrests or other evidence of character issues as part of a Background Check.

 - D. **Diminished Capacity Adult** - a person who lacks decision making capacity which requires, to greater or lesser degree: (1) possession of a set of values and goals; (2) the ability to communicate and to understand information; and (3) the ability to reason and to deliberate about one's choices.



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E. Employee - a faculty member, classified or professional employee of the University who receives compensation for work or services from funds controlled by the University, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked.

F. Minor - a person younger than 21 years of age.

G. Reasonable Cause - where the known facts and circumstances are sufficient to warrant a person of reasonable prudence to believe that the employee poses an unreasonable risk to persons or property and/or a history or report of a crime will be found.

H. Security Sensitive Positions - positions designated by the University as security sensitive whose duties require, provide for, or encompass the potential to incur human, financial or property loss or other harm to the University and its constituents. A security sensitive position should include at least one of the following elements:

1. access to children, including child care in a child care center, or to diminished capacity adults;
2. relationships with students where exceptional trust and responsibility are involved, such as counselors, health care providers, coaches, and residence hall personnel;
3. responsibility for providing direct medical care, treatment, or counseling and/or access to pharmaceuticals, toxins, hazardous or controlled substances;
4. direct access to laboratory materials and other property that have the potential of being diverted from their proper use either for financial gain or for harmful, dangerous or illegal purposes;
5. decision making authority for committing University funds or financial resources through contracts and commitments and/or direct access to or responsibility for handling cash, checks, credit/debit cards or cash equivalents, institutional property, disbursements or receipts;
6. access to building and residence hall master control and key systems;
7. access to confidential information or sensitive personal information such as employment, health, donor, financial and other records, including data that could facilitate identity theft;



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8. access to and responsibility for the maintenance, upgrading, and repair of the University's computer networks and/or information technology systems; and

9. responsibility for public safety, or other significant health or safety issues.

I. Besides University wide designations of security sensitive positions, individual departments may be subject to additional restrictions, requirements, laws or regulations.

J. Significant Contact - an employee position involves significant contact with minor persons if there is a reasonable expectation that in the course of the normal, routine responsibilities of the position, the employee and a minor would interact on a one-on-one basis. For example, teachers with office hour consultations, mentors, counselors, test center employees, coaches, and advisors could all reasonably expect to interact one-on-one with students as a normal, routine part of their work and hence would have "significant contact" with one or more minor persons during the course of their employment.

IV. POLICY

A. Required Background Checks for Applicants - An applicant for any employee position at Southern Utah University that involves significant contact with minors or is considered to be security sensitive by the University's president or his/her designee, must submit to a criminal background check as a condition of employment. The president or his/her designee may exempt applicants for adjunct faculty, temporary, or part-time positions, from this requirement. The president or his/her designee may require such exempted employees to self-disclose any criminal background and to sign an agreement to conform to University rules on sexual harassment and information, financial, health, and physical security.

B. Optional Background Checks for Applicants - The president or his/her designee may allow or require applicants for positions other than those described in IV. A. including adjunct faculty, temporary or part time positions, to submit to a criminal background check as a condition of employment.

C. Background Checks for Existing Employees - An existing employee must submit to a criminal background check, where the University's president or his/her designee finds that reasonable cause exists.

D. Written Release of Information - For applicants for employment, the University shall obtain a written and signed release of information for a criminal history



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background check. For existing employees, the University shall request a written and signed release of information for a criminal history background check.

E. Notice a Background Check has been Requested - If the existing employee does not provide a written and signed release as requested pursuant to IV, D, the employee shall receive written notice from the Human Resources Office that the background check has been requested.

F. Consumer-reporting Agency Criminal History Background Check - The president or his/her designee may use a consumer-reporting agency to conduct a criminal history background check.

At a minimum, the consumer-reporting agency must conduct an investigation to verify the applicant or employee's social security number, obtain information regarding past employment, and search the individual's criminal background nationwide in the individual's counties of residence for the last seven years.

G. Payment of Costs - The president or his/her designee may require an applicant to pay the costs of a criminal background check as a condition of employment.

H. Risk Assessment - Based on the convictions disclosed by the criminal background check, the University will assess the overall risk to persons and property. That risk assessment will include: (1) the number of crimes committed, (2) the severity of those crimes, (3) the length of time since they were committed, (4) the likelihood of recidivism, (5) the security sensitivity of the position sought by the applicant or held by the existing employee, and (6) other factors that may be relevant. The University may determine that an individual with a criminal history should be considered eligible to obtain or retain the position, or that additional documentation should be required.

I. Opportunity to Respond - Before an applicant is denied employment or an employee is subjected to an adverse employment action based on information obtained in the criminal background report, the University Human Resources Office will send the applicant or employee a copy of the report, written notice of the reasons for denial or the adverse action, and a written description of his/her rights under the Fair Credit Reporting Act. The applicant or employee shall have an opportunity to respond to the reasons and any information received as a result of the criminal background check. If an applicant disagrees with the accuracy of any information in the report and notifies the Human Resources Office of the University within three (3) business days of his/her receipt of the report, the University shall provide a reasonable opportunity to address the information contained in the report.



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J. Record Keeping - Documentation associated with criminal background checks will be kept secure and protected in the Human Resources office. The information contained in the criminal history background check will be available only to those persons involved in making employment decisions or performing the background investigation, and the information will be used only for the purpose of making an employment decision.

K. Financial/Credit Check - If an applicant is applying for, or an employee holds, a security sensitive position with access to sensitive personal information or financial responsibilities over the funds of the University or others, the president or his/her designee may require an additional financial/credit check to be performed.

L. Degree Transcripts or License Documentation - If the position requires a degree or license, the University may obtain a copy of the applicant's degree transcripts or license documentation.

M. Student Loan Status - If an applicant or employee has a student loan, the University may check on the loan status. The University may deny employment or take adverse employment action if the applicant or employee has a delinquent or defaulted student loan.

N. Limitations on the Use of Information - The information contained in the criminal history background check will be available only to those persons involved in making employment decisions or performing the background investigation, and the information will be used only for the purpose of making an employment or promotion decision.

O. Concurrent Enrollment Faculty - Higher education employees, whether full-time or adjunct faculty, who are concurrent enrollment instructors with unsupervised access to K-12 students shall complete a criminal background check consistent with §53A-3-410. The University employing a concurrent enrollment instructor who is also a higher education employee shall have responsibility to determine the need for the criminal background check consistent with the law, shall satisfy this requirement, and shall maintain appropriate documentation. (See Policy and Procedures R165, Concurrent Enrollment, paragraph 9.2.)