

# **POLICY AND PROCEDURES RELATING TO CRIMINAL BACKGROUND CHECKS FOR EMPLOYEES**

## **I. Overview and Purpose**

On May 15, 2008, The Kansas Board of Regents (Board) adopted a policy amendment requiring criminal background checks be conducted on all employees prior to the employee beginning work for any state educational institution governed or coordinated by the Kansas Board of Regents, subject to limited exceptions. The amendment further requires that each university develop a plan for implementing the policy and that the plan be submitted to the Board for approval.

Therefore, in order to comply with the Board's policy amendment, and to attempt to insure that Fort Hays State University is a safe and secure environment for all students, employees, and visitors, the University adopts the following policy and procedures which shall constitute the implementation plan required by the Board's policy amendment.

## **II. Policy**

### **A. Applicability of Policy**

It is the policy of Fort Hays State University that a criminal background check be performed on each person hired for a position of employment at FHSU, other than employees whose term of employment is limited to six months or less, and hourly student employees. Nothing herein shall be construed as amending, superseding or supplanting Kansas law mandating background checks be conducted on certain persons such as employees of the University Police Department or students enrolled in certain programs which are designed to lead to licensure of the student.

FHSU reserves the right to conduct criminal background checks on candidates for positions for which a criminal background check is optional under the Board's policy amendment, and any such criminal background checks, if required, will be specified by FHSU in the position announcement, and will be subject to the terms of this policy.

### **B. Scope of Criminal Background Check**

A criminal background check under this policy shall include criminal history record searches for felony and misdemeanor convictions or pending charges at the county and federal levels in every jurisdiction where the candidate currently resides or has resided for seven years preceding the candidate's application for employment. In addition, the criminal background check shall consist of sex offender registry searches at the county and federal levels in every jurisdiction where the candidate currently resides or has resided. FHSU may in its discretion order additional checks or verifications beyond the above-referenced. For purposes of this policy, "conviction" shall include pleas of guilty and *nolo contendere*.

## **III. Procedures for Implementation**

### **A. Timing of the Criminal Background Check**

All criminal background checks conducted pursuant to this policy shall be initiated no later than simultaneously with the [extension of an offer of employment](#). All such offers shall be made contingent upon the successful completion of a criminal background check. No candidate shall

begin working for FHSU until a successful background check has been completed. There may be circumstances in which criminal background checks will be conducted on all finalists for the position and not just the candidate who is actually offered the position. Such circumstances will be decided by FHSU on a case-by-case basis, and may include but are not limited to searches for positions of President, Vice President and Dean.

Any job announcement which is advertised in any medium concerning the position must contain the following statement: "Successful candidate will have consented to and successfully completed a criminal background check."

## B. Steps for Initiating the Criminal Background Check

For unclassified positions with academic rank, the responsibility for initiating the criminal background check shall be with the dean of the respective college. For unclassified positions without academic rank, the division Vice President shall initiate the background check. For classified positions, the primary responsibility for initiating the background check will be with the Director of Personnel Services.

## C. Authorization to Conduct Criminal Background Checks

Either before or at the time that the offer of employment is extended, an [authorization form](#) will be provided to the candidate that must be completed and signed if the candidate will continue to be considered for the position. This document will notify the candidate of his or her [rights under the Fair Credit Reporting Act \(FCRA\)](#).

## D. Criteria for Evaluation

When the results of the background check are received from the vendor, the dean, Vice President for unclassified non-faculty positions or the Director of Personnel Services for classified positions will evaluate the candidate's fitness for employment in light of the results of the criminal background check to determine whether the results reasonably bear on the candidate's trustworthiness, or the safety or well-being of FHSU's students, employees, and other University community members. The reviewer may discuss the results of the check with his/her immediate supervisor or the supervisor of the position at issue, as well as FHSU General Counsel. In reviewing the results, the following factors will be considered:

### 1. The Offense<sup>1</sup>

- The nature and severity of the offense along with whether or not it was conducted intentionally, willfully or maliciously (depending upon the statutory elements of the charge and not upon either the candidate's or any law enforcement agencies' account of the offense).
- The candidate's age at the time of the offense.
- The number and type of offenses discovered by the criminal background check.
- The time elapsed since the last offense.
- Whether the individual is currently subject to any punishment for the offense (community service; work release; etc.) or is undergoing any type of probationary or post-release supervision.

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<sup>1</sup> "Offense" herein shall include convictions and pending charges.

- Whether the circumstances of the offense arose out of an employment situation and whether the information obtained from the criminal background check demonstrates a pattern of criminality.
- Other circumstances concerning the offense which would lead a disinterested observer to reasonably conclude that the candidate is not trustworthy, or cannot perform the functions of the position in a manner safe to the university, its employees, students and visitors.

## 2. The Position

- The duties and responsibilities of the position applied for, including, but not limited to, the nature and scope of the position and whether it entails or requires access to: Residential facilities; facilities other than the candidate's primary workplace; money and other university property; or vulnerable populations, including minor children.
- The nature and scope of the position's autonomy and discretionary authority.
- The nature and scope of supervision that the candidate will receive in the position.
- The nature and scope of supervision the candidate will provide to support staff and/or students.
- The sensitive nature of data, information, or records for which the candidate will have responsibility or access to in the position.
- Any other unique circumstances for which the fitness of the candidate for the position may be reasonably questioned in light of the results of the background check. The employee's history of performance and behavior in previous jobs and statements of references.

## 3. Information not to be Considered

No employment decisions will be made upon the consideration of any information obtained from the criminal background check relating to the finances of the candidate, personal and family matters unrelated to felony or misdemeanor offenses, or civil lawsuits filed by or against the candidate, unless the civil case arises out of or is substantially related to a felony or misdemeanor offense.

## E. Notification of Results

If a decision is made to hire the candidate following the criminal background check, the reviewing party will so notify the candidate and existing University procedures for processing the newly hired employee will be followed. If the decision is initially made **not to hire the candidate on the basis of the results** of the criminal background check, the reviewing party will notify the candidate and provide notice of the candidate's right to appeal the decision.

The candidate may appeal the decision to the reviewing party. Such appeal shall be instituted within three business days of receipt of notice of the initial decision, and may entail an explanation of information obtained in the criminal background check or dispute of the accuracy of the criminal background check results. If within seven working days from receipt of the appeal the decision is not overturned, the **candidate will no longer be considered for the position** and the candidate will be notified of such by the reviewing party.

## F. Record Keeping

All records generated or received on each candidate relating to the criminal background check shall be kept in individual files and stored in the Office of General Counsel or other suitable location designated by the General Counsel for a period of seven years after the position has been filled.

Unless required by law, no documents related to criminal background checks will be released outside of the University and none of the information contained in such documents may be shared other than with persons with the need to know such information.

## G. Vendor and Costs

The vendor that will be used to perform the criminal background checks will normally be the vendor having an existing contract with the State of Kansas to provide such service. As of the effective date of this policy, such vendor is Validity Screening Solutions.

Any cost associated with obtaining the criminal background check shall be borne by the college or administrative unit where the position is located unless otherwise specified by the President of the University.

## H. Compliance with the Fair Credit Reporting Act

All candidates will [sign an authorization](#) compliant with the Fair Credit Reporting Act (FCRA) prior to the initiation of the criminal background check. Such document will notify the candidate that a criminal background check will be used to determine the candidate's fitness for employment with FHSU, and will also contain a [summary of the candidate's rights](#) under the FCRA.

Should the results of the criminal background check cause FHSU to [initially decide not to hire the candidate](#), the candidate will receive a copy of the background check report and a [summary of the candidate's rights](#) under the FCRA. The candidate will also be advised of his or her right to contest the decision with the reviewing party. Should such [appeal not result in the decision of the reviewing party being overturned](#), the candidate will be notified of the final decision.

Along with notice of the decision, the candidate will be provided with the name, address, and telephone number of Validity Screening Solutions (or other consumer reporting agency conducting the criminal background check on FHSU's behalf); a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer specific reasons why the adverse action was taken; and notification of the candidate's rights to obtain a free copy of the consumer report within 60 days and to dispute with the reporting agency the accuracy or completeness of any information in the report.

At no time will any information from the criminal background check be used in violation of any federal or state equal employment opportunity law or regulation.

## I. Effective Date

This policy shall be effective September 1, 2008.