

**Date:** March 16, 2012**Code:** HR 2012-04**Reference:** HR 2008-25**To:** CSU Presidents**From:** Gail E. Brooks *Gail Brooks*
Vice Chancellor
Human Resources**Subject:** Background Checks Update: Criminal Records Checks for CSU Bargaining Unit Employees Working at Camps and Clinics in which Minor Children Participate

Overview

Audience: CSU Presidents, Vice Presidents, HR Officers, AVPs/Deans of Faculty Affairs and campus designees responsible for administering employment programs.

Action Item: Conduct background checks for applicants/employees as required by this policy

Affected Employee All
Group(s)/Unit(s):

Summary

This supplement provides for mandatory background checks for certain represented individuals who work with minor children who attend Camps and/or Clinics operated on a CSU campus.

I. Overview

In an effort to provide the safest possible environment for minor children attending Camps and/or Clinics operated on a CSU campus, the University shall, consistent with the requirements of the law and prudent practices, conduct criminal records checks on individuals as defined above. Bargaining unit employees who have worked in the past or who are currently working with Camps and/or Clinics on the campus are subject to this Policy unless they have been subject to a criminal records check or update of a criminal records check within the past year on the same campus.

For the purpose of this Policy, a criminal records check shall consist of, at a minimum, a check of State and Federal criminal history databases with the use of LiveScan or other similar means. The criminal records check of any employee or volunteer who will supervise or discipline minor children at a camp operated by the University must consist of the submission of fingerprints to the Department of Justice. For the purposes of consistency and uniformity of policy, all employees and volunteers subject to this Policy should submit fingerprints as directed by the campus. This is usually accomplished via LiveScan. Campuses may also check sex offender websites.

The University recognizes that its need to investigate an employee's or prospective employee's criminal record must be balanced with the need to protect privacy. University policy and state and federal laws recognize the individual's right to privacy and prohibit campus employees and others from seeking, using, and disclosing personal information except within the scope of their assigned duties. Criminal offender record information obtained by the University should only be used for official business purposes, such as evaluating applicants for employment, and transfer, except as provided in Section V.

Distribution:

CSU Chancellor
All Campus Vice Presidents
Associate Vice Presidents/Deans of Faculty

Human Resource Officers
General Counsel
Athletic Directors

These guidelines do not automatically exclude from consideration for employment all individuals with convictions. CSU shall in no way use this information to discriminate on the basis of race, religion, ancestry, color, sex, sexual orientation, gender identity, age, physical disability, mental disability, veteran status, marital status, pregnancy, medical condition and/or national origin.

Campus Policies/Procedures that fall within the requirements of this Program and include or can be modified to include University employees who are subject to a criminal records check as defined above may continue to be followed.

II. Definitions

- A. Bargaining Unit Employees Who Work or Will Work with Camps and/or Clinics in which Minor Children Participate
 - 1) Candidates – A bargaining unit employee who is under final consideration, following a normal screening and selection process, for a bargaining unit position that will work with children in Camps and/or Clinics run by the University.
 - 2) Current employees – Individuals currently employed by the University in bargaining unit positions who are:
 - a. under consideration for a transfer or promotion to a position working full or part-time in a Camp and/or Clinic in which minor children participate that is run by the University or who are already working in such a position; or
 - b. who are to be required or assigned to work at a Camp and/or Clinic in which minor children participate that is held on CSU property; or
 - c. who apply for additional employment for positions at Camps and/or Clinics run by the University.
 - 3) Volunteers (Under these guidelines) – Individuals currently employed by the University in bargaining unit positions who volunteer to work at Camps and/or Clinics run by the University.
- B. Camp and/or Clinic –Camp and/or Clinic refers to any Camp and/or Clinic in which minor children participate and which is run by the University. Also included are camps and/or clinics in which minor children participate that are not run by the University but the campus either conducts the criminal records check of its employees or is informed of the results of the criminal records check of the University's employees.
- C. Criminal Records Check –The Education Code requires the submission of fingerprints to the Department of Justice for any employee or volunteer who will supervise and/or discipline minor children at a camp operated by the University. For other employees/volunteers working with summer camps/clinics attended by minor children, criminal record checks are usually accomplished by a process that captures and compares the fingerprints to the criminal history data of the California Department of Justice and the National Crime Information Center (NCIC), also known as LiveScan. Campuses that do not have LiveScan may choose to use a private contractor to obtain criminal records, provided state and federal criminal records are searched. In addition, campuses may also access records from the Megan's Law website.
 - 1) These criminal records checks are not exclusive of those additional processes or checks required for other employee groups under law or in accordance with State or CSU guidelines, such as checking motor vehicle driving records of those employees who drive on state business, those employed by childcare facilities, and more extensive criminal records checks required of peace officers and dispatchers who have access to criminal history and DMV information.

- D. Criminal Records Check Agency – The agency used to conduct the criminal records check.
- E. Minors – Anyone under the age of 18 at the start of the Camp/Clinic.

III. Procedures for Criminal Records Checks

- A. All advertisements, notices, and postings for positions that will work with Camps and/or Clinics will state: “*A criminal records check must be completed satisfactorily before any candidate can be offered a position with the University in a Camp and/or Clinic.*” Job descriptions should reference the criminal records check requirements in the qualifications.
All advertisements, notices, and postings for positions will also state: “Failure to satisfactorily complete the criminal records check may affect continued employment of current CSU employee who apply for the position.”
- B. If the campus uses LiveScan, the Fair Credit Reporting Act (FCRA) is not applicable and, therefore, the campus does not need to comply with FCRA.

If the campus does not use LiveScan, but uses an agency or company to conduct the criminal records check, the campus procedure will include FCRA requirements listed below. FCRA applies when an “outside screening company” is used for the purposes of “hiring, promotion, retention or reassignment,” as delineated in HR-2005-10.

- C. Human Resources and/or Academic Affairs personnel will develop procedures to ensure that the finalist receives the appropriate forms to participate in the criminal records check, and ensures the process is completed.
 - 1) Confidentiality - Confidentiality of criminal record check results will be maintained.
 - a. The hiring department and the current department of the employee will not be notified of the specific results of the criminal records check.
 - 2) Cost - The cost of the LiveScan or equivalent will be borne by the campus or the organization running the Camp and/or Clinic, not the current employee. However, if a bargaining unit employee volunteers to work at the Camp/Clinic on his/her own time or voluntarily applies for a position as extra work for extra pay, the bargaining unit employee shall be charged in the same manner as any outside volunteer or applicant to work at the Camp/Clinic. (If the Camp and/or Clinic require applicants and volunteers to pay the cost for the criminal records check, it may also charge Volunteers under this Policy.)
 - 3) Timing – In most cases the Criminal Records Check will be initiated after a final decision is made but prior to making an offer of employment.
 - a. The criminal records check is to be completed before offering the employee the position
 - b. If circumstances require that an offer or decision be made before the completion of the investigation, the offer must be in writing and state that the offer is contingent on the completion of a satisfactory criminal records investigation. The applicant, including an applicant who is a current employee, may not start the position until the results of the screening are received and reviewed.
 - 4) Custodian of Records - The campus will identify who will be the Custodian of Records, authorized to conduct the criminal records check using LiveScan or equivalent. The Custodian of Records:
 - a. Will be authorized by the Department of Justice;
 - b. Will sign a confidentiality agreement with the Department of Justice;
 - c. Will notify Staff Human Resources or Academic Affairs or other department authorized to receive the results of the criminal records check results;

- d. Will keep the criminal check results (CORI) secure (locked in a file cabinet) and separate from personnel files; and
 - e. Will maintain the Criminal Offender Record Information (CORI). The information is to be destroyed no later than the termination of the employee's employment or seven (7) years from rejection due to the CORI.
 - f. The campus may elect to only notify the assigned person if the results reveal a conviction.
- 5) Decision Makers - The campus will identify who will be responsible for reviewing results when an individual has a felony or misdemeanor conviction on the criminal records check results that may disqualify a bargaining unit employee. It is recommended that the campus have a committee of 2 – 3 MPPs to make sure objective, non-discriminatory decisions are made. Decision makers will:
- a. Sign a confidentiality agreement;
 - b. Identify who is to be notified if the check reveals an active warrant where the immediate arrest of the individual is necessary;
 - c. Develop procedures to notify hiring departments that clearances have been received and the bargaining unit employee can begin working;
 - d. Provide feedback to bargaining unit employees whenever there is a finding that results in the bargaining unit employee not being placed in the position for which considered; and
 - e. Notify the hiring department that the bargaining unit employee is no longer a candidate for the position or is not be placed in the position if the results disqualify a bargaining unit employee from being hired.
- 6) Communication with Bargaining Unit Employees – Bargaining Unit Employees:
- a. Must be given notice pursuant to the California Information Practices Act. Anyone who refuses to sign the authorization to conduct the criminal records check are eliminated from further consideration. (Attachment A is a sample authorization form)
 - b. Upon request may be given a copy of the Criminal Offender Record Information (CORI), but must be told it cannot be submitted to another agency; it is only for the employee's own record.
 - c. Are to be provided with information about the criminal records check procedure and who to contact if there is a dispute about the results.
- V. If the Bargaining Unit Employee's Screening Reveals a Conviction**
- A. The person or persons responsible for reviewing criminal records check results will be notified of all criminal record checks in which convictions are found.
- 1) This Decision Maker(s) will review these reports and make final determinations regarding the suitability of bargaining unit employees for the Camp/Clinic position. The Decision Maker(s) may recommend implementation of additional controls before a department can employ a bargaining unit employee with a conviction.
- B. Only felony convictions and misdemeanor convictions may preclude employment. Disqualification decisions will be based on job-related/legitimate business reasons. Detention and /or arrest without conviction do not constitute valid grounds for employment decisions and cannot play a part in the decision-making process. The CSU will consider appropriate action if the check reveals an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.
- C. If a background check reveals an active arrest warrant in the criminal report, the reviewing office will notify the campus police for verification and follow up action, if deemed necessary.“

- D. If the results of the criminal record check preclude a bargaining unit employee from employment, transfer, reclassification, or reassignment with the Camp or Clinic on the campus:
 - 1) Staff Human Resources or Academic Personnel will notify the candidate.
- E. The criminal records check may affect the individual's continued employment under the following circumstances:
 - 1) The employee failed to admit to a felony conviction on his/her initial application for employment with the University; or
 - 2) The conviction was of such a nature as to impact the safety or security of students, faculty, staff or University property.
- F. If the University believes the result of the criminal records check impacts the bargaining unit employee's ability to continue in his/her current position, the University will consider the individual's suitability for employment or change in job duties after considering:
 - 1) the nature of the crime;
 - 2) the job for which being considered;
 - 3) the number of offenses and circumstances of each;
 - 4) when the crime and conviction occurred and the period of time since the last conviction;
 - 5) whether the offenses were disclosed on the application; and
 - 6) the bargaining unit employee's conduct, performance and /or rehabilitation efforts since.
- G. Any disciplinary action, up to and including discharge, may only be administered in a manner consistent with the terms of the applicable collective bargaining agreement in accordance with the applicable provisions of the California Education Code.

If you have questions regarding this policy, please contact systemwide Human Resources at (562) 951-4411 or your campus counsel. This document is available on the Human Resources Management Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

GB/bc