



## BACKGROUND INVESTIGATION POLICY

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### Purpose

It shall be a condition of employment with any institution of the University System of Georgia to submit to a background investigation.

### Policy

Offers of employment shall be conditional pending the result of the background investigation, which shall include, at a minimum, the following:

- A state and federal criminal history check covering a minimum of seven (7) years; **Felony convictions will be considered without time limits, misdemeanors will be considered for seven (7) years.**
- A state and federal criminal history check covering a minimum of seven (7) years;
- A nationwide sex offender search;
- A social security number check; and
- For all professional, faculty and academic positions, an academic credentials check.

Offers of employment for positions of trust may be conditional pending the result of a state and federal criminal history check covering more than the minimum of seven (7) years. Positions of trust are those that involve interaction with children, after-hours access to facilities, access to financial resources or that have been otherwise identified by the hiring official to require a more extensive background investigation.

A background investigation shall also be performed on any existing employee being transferred, reassigned, reclassified or promoted to a position of trust unless a background investigation conforming to this procedure has been performed on such employee on or after September 01, 2007.

An institution of the University System of Georgia may elect to perform reference checks and/or background investigations on part-time, student or temporary employees. ***Georgia Southern University will require a BI for all temporary hires and for students identified in sensitive positions. Temporary employees, who have not had a previous BI, returning to work after an absence of one year, will have to undergo a BI.***

## Procedure

### 1.0 Definitions

**Background Investigation** – An investigation comprised of a criminal background check (including social security number check and, for positions with access to or responsibility for money, a credit check.), confirmation of credentials and confirmation of employment history.

**Background Investigation Committee (BIC)** – The administrative committee charged with determining questions of suitability of hire. Each institution of the University System of Georgia shall form such a committee. It is suggested that such committee have a minimum of three members and not more than five members and include a representative from the institution's Hiring Office, the applicable Hiring Department, the institution's legal advisor (if on campus) and public safety department.

***The BIC will consist of a representative from Human Resources, Public Safety Department, Office of Legal Affairs, and a representative appointed from the VP Division for which the search is being considered. The Associate VP for Legal Affairs will chair the BIC.***

**Consent Form** – A form authorizing the institution to conduct a criminal background check. All employment finalists and promotion candidates at the institution are required to sign a Consent Form to be considered for employment with the University.

**Hiring Department** – The department hiring a new employee (whether internally or externally), or promoting an existing employee.

**Hiring Office**– The institution's employment office that handles all new hires at the institution.

### 2.0 Determining Employment Eligibility for Applicants with Criminal History

Only criminal convictions may be considered when determining a candidate's eligibility for a specific position or employment as a whole. Detention and/or arrest without conviction do not constitute valid grounds for adverse employment decisions and do not play a part in the decision-making process. However, if an individual has a criminal case pending, his or her suitability for continued employment will be reviewed upon disposition of the case.

1. Felony convictions involving crimes of moral turpitude disqualify an individual for employment with the university system of Georgia in a position of trust. *Felony*

*convictions for any crime disqualify an individual for employment at Georgia Southern in any position.*

2. Failing to disclose a criminal conviction history where required in employment application materials will disqualify a candidate for employment with an institution of the University System of Georgia. ***This criminal conviction history includes all felony convictions, without a time limitation, and misdemeanor convictions within the last seven years.***
3. When determining whether a candidate with disclosed misdemeanor convictions is eligible for employment or promotion, the Background Investigation Committee will consider the specific responsibilities of the position for which the candidate is being considered, the nature, number and gravity of crimes for which the candidate was convicted and the amount of time that has passed since the conviction. A determination of ineligibility for a specific position as the result of a misdemeanor criminal background does not necessarily mean that an individual is ineligible for all employment with the institution and each such determination will be made on a case by case basis.

### **3.0 Process for Conducting Background Investigation**

Notice should be included in all job postings that finalists will be required to submit to a background investigation. The institution shall set guidelines for assigning the cost of performing a background investigation. ***In recruitment searches that involve the appointment of faculty, Human Resources will coordinate BI activities with a representative of the Provost Office.***

The Hiring Department is responsible for confirming the employment history and credentials of an applicant before having the Hiring Office initiate the Background Investigation and before extending an offer of employment. The Hiring Office shall give the Hiring Department all required employment paperwork, including the Consent Forms, to be given to the final candidate. With respect to the promotion of existing employees, the institution shall implement a procedure for obtaining the Consent Form from the employee prior to initiating the Background Investigation. ***Background Investigations will not be done for faculty promotions from one faculty rank to another faculty rank. The University reserves the right to conduct a Background Investigation at any time on an employee should the need evolve relative to an internal investigation or other related matter.***

A conditional offer of employment/promotion may be made at this time. **Important: All offers of employment must be made in writing and must include the following statement:** “This offer of employment is contingent upon completion of a background investigation including a criminal background check demonstrating your eligibility for employment with [the institution], as determined by [the institution] in its sole discretion, confirmation of the credentials and employment history reflected in your application materials and, if applicable, a satisfactory credit check.”

Upon receipt of a signed Consent Form of the Hiring Department's selected candidate, the Hiring Office will initiate the Background Investigation. If the top candidate is not hired for the involved position (e.g. criminal conviction precludes hiring, other criminal convictions render applicant ineligible for the specific position, candidate does not accept the job offer, etc.), the Hiring Department may select another candidate for the position. If the candidate next selected for the position has already signed the Consent Form, then the Hiring Office will immediately initiate the investigation process. If the next applicant identified as the Hiring Department's top candidate has not signed a Consent Form, then the Hiring Office will initiate the Background Investigation as soon as the Hiring Department submits a signed Consent Form. ***Human Resources working with the Hiring Authority may acquire consent forms on all candidates selected for final interviews.***

#### 4.0 How Criminal Background Check Information is Processed:

Background Investigation reports are submitted directly to the Hiring Office by the entity performing the investigation. The Board of Regents has entered into an agreement with ChoicePoint WorkPlace Solutions, Inc. ("ChoicePoint") to provide background investigation. Each institution may elect to utilize ChoicePoint pursuant to this agreement or utilize another vendor selected by the institution. ***(The Department of Human Resources has selected HireRight to complete the Background Investigation reports).*** The BIC is responsible for determining the eligibility of the selected candidate for employment with the institution. Concluding, ***the background investigation discloses misdemeanor convictions.*** The Hiring Office should notify the Hiring Department of this determination. The BIC makes its decision about the selected candidate's eligibility as follows:

1. **The Background Investigation report shows no convictions:** the selected candidate is eligible for employment.
2. **The Background Investigation report shows a conviction** of one or more crimes of moral turpitude the selected candidate is ineligible for employment with the institution in a position of trust.
  - a. Prior to making this final determination, the Hiring Office must give a pre-adverse action disclosure to the candidate. This pre-adverse action disclosure must include a copy of the candidate's Background Investigation report, together with the name, address and telephone number of the company that conducted the Background Investigation, and information on how to dispute information in the report. A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" must also be provided to the candidate. This summary will be typically provided by the company performing the Background Investigation.
  - b. The candidate must be given an opportunity (a minimum of three days) to provide an explanation in writing of the circumstances surrounding the results of the Background Investigation, including any mitigating factors, and have this explanation considered prior to the finalization of the hiring decision.

- c. If the candidate successfully shows that she/he has no felony convictions, then the candidate shall be eligible for employment. The Hiring Office will notify the Hiring Department of this determination. *If the candidate, has a misdemeanor then the BIC will determine their eligibility for employment.*
  - d. If the candidate is unsuccessful in showing no felony convictions, then the candidate is ineligible for employment. If the candidate is unsuccessful in showing no convictions of crimes of moral turpitude then the candidate is ineligible for employment in positions of trust. An adverse action notice must then be sent to the candidate. This notice must include:
    - i. The name, address and telephone number of the company that supplied the Background Investigation report;
    - ii. A statement that the company that supplied the Background Investigation report did not make the decision to take the adverse action and cannot give specific reasons for it; and
    - iii. A notice of the individual's right to dispute the accuracy and completeness of any information the company furnished in the Background Investigation report and the right of the individual to obtain an additional free report from the company upon request within sixty days.
3. **The Background Investigation report shows one or more misdemeanor criminal convictions and the applicant is not applying for a position of trust:**
- a. The criminal convictions were all disclosed by the selected candidate in the application materials. The BIC will determine whether the candidate is eligible for the involved position based on the job description and the nature of the crimes for which the candidate was convicted.
    - i. If the BIC determines the candidate is eligible, then the Hiring Office will so notify the Hiring Department.
    - ii. If the BIC determines the candidate is not eligible, then prior to making this final determination, the Hiring Office must give a pre-adverse action disclosure to the candidate.
      - 1. This pre-adverse action disclosure must include a copy of the candidate's Background Investigation report, together with the name, address and telephone number of the company that conducted the Background Investigation, and information on how to dispute information in the report. A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" must also be provided to the candidate. **This summary will be typically provided by the company performing the Background Investigation.**
      - 2. The candidate must be given an opportunity (a minimum of three days) to provide an explanation in writing of the circumstances surrounding the results of the Background Investigation, including any mitigating factors, and have this explanation considered prior to the finalization of the hiring decision.

3. If the candidate successfully shows that she/he does not have the criminal convictions that led the BIC to determine that the candidate was ineligible for employment, then the candidate shall be eligible for employment. The Hiring Office will notify the Hiring Department of this determination.
  4. If the candidate is unsuccessful in showing that she/he does not have the criminal convictions that led the BIC to determine that the candidate was ineligible for employment, therefore the candidate is ineligible for employment. An adverse action notice must then be sent to the candidate. This notice must include:
    - a. The name, address and telephone number of the company that supplied the Background Investigation report;
    - b. A statement that the company that supplied the Background Investigation report did not make the decision to take the adverse action and cannot give specific reasons for it; and
    - c. A notice of the individual's right to dispute the accuracy and completeness of any information the company furnished in the Background Investigation report and the right of the individual to obtain an additional free report from the company upon request within sixty days.
- b. The criminal convictions were not disclosed by the selected candidate in the application materials. The Hiring Office will notify the candidate in writing that the Background Investigation revealed misdemeanor convictions not disclosed in his/her application materials and that s/he will be removed from consideration for the involved position due to misrepresentation and falsifying application materials unless s/he contacts the Hiring Office and corrects any inaccuracies contained in the report within a minimum of three (3) days. This notification will be accompanied by a pre-adverse action disclosure
- i. The pre-adverse disclosure must include a copy of the candidate's Background Investigation report, together with the name, address and telephone number of the company that conducted the Background Investigation, and information on how to dispute the information in the report. A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" must also be provided to the candidate. This summary will be typically provided by the company performing the Background Investigation.
  - ii. The candidate must be given an opportunity (a minimum of three days) to provide an explanation in writing of the circumstances surrounding the results of the Background Investigation, including any mitigating factors, and have this explanation considered prior to the finalization of the hiring decision.
  - iii. If the candidate successfully shows that s/he has no criminal conviction, then the candidate shall be eligible for employment. The Hiring Office will notify the Hiring Department of this determination.
  - iv. If the candidate is unsuccessful in showing no criminal convictions, then the candidate is ineligible for employment due to misrepresentation and falsifying

application materials. An adverse action notice must then be sent to the candidate. This notice must include:

1. The name, address and telephone number of the company that supplied the Background Investigation report;
2. A statement that the company that supplied the Background Investigation report did not make the decision to take the adverse action and cannot give specific reasons for it; and
3. A notice of the individual's right to dispute the accuracy and completeness of any information the company furnished in the Background Investigation report and the right of the individual to obtain an additional free report from the company upon request within sixty days.

#### **4.0 Maintenance of Background Investigation Reports**

Background Investigation reports should be delivered directly to the Hiring Office by the entity performing the investigation. The report will remain with the Hiring Office until the determination on employment eligibility has been made. The Hiring Office shall place a certification in the employee's personnel file stating the date the report was obtained, the name of the person reviewing the report and a statement that the report showed that the employee was or was not eligible for employment with the institution. The report shall then be stored segregated from the employee's personnel file. The report itself is not provided to nor maintained by the Hiring Department.

Background Investigation reports obtained on existing employees should be delivered to the Hiring Office by the entity performing the investigation. The report will remain with the Hiring Office until a determination on continued employment eligibility has been made. The Hiring Office shall place a certification in the employee's personnel file stating the date the report was obtained, the name of the person reviewing the report and a statement that the report showed that the employee was or was not eligible for employment with the institution. The report shall then be stored segregated from the employee's personnel file. The report itself is not provided to the employee's department.

Consent forms for Background Investigations shall be placed in the personnel file of the employee and maintained in accordance with USG Record Retention Guidelines.

For all non-successful applicants and current employees, consent forms for Background Investigations, a copy of the pre-adverse action disclosure, a copy of the adverse action notice, the statement of the person reviewing the Background Investigation report to determine if the subject of the report was or was not eligible for employment and the Background Investigation report must be retained in accordance with USG Record Retention Guidelines.

A copy of his or her report shall be given to each applicant and/or employee as applicable.

## 5.0 **Moral Turpitude**

Courts in Georgia have found that moral turpitude “includes everything contrary to justice, honesty, modesty or good morals.” In determining whether a crime is one that involves moral turpitude, the courts have applied the following test: does the crime, disregarding its punishment, meet the test as being contrary to justice, honesty, modesty, good morals or man’s duty to man?

The following are some crimes involving moral turpitude:

- Fraud or false pretenses in obtaining something of value
- Larceny or a misdemeanor theft by taking
- Larceny after trust
- Murder
- Soliciting for prostitutes
- Voluntary manslaughter
- Sale of narcotics or other illegal drugs
- Pattern of failure to file federal tax returns in years in which taxes are due
- Criminal issuance of a bad check
- Making a false report of a crime

The following have been held to be not crimes involving moral turpitude:

- Public drunkenness
- Driving under the influence
- Carrying a concealed weapon
- Unlawful sale of liquor
- Fighting
- Simple Battery
- Simple Assault
- Misdemeanor criminal trespass
- Child abandonment
- Misdemeanor offense of escape
- Misdemeanor offense of obstructing a law enforcement officer
- Possession of less than one ounce of marijuana

The Office of Legal Affairs is prepared to assist you with any questions in this matter.

## 6.0 **Arrests and Convictions**

Any current employee who is charged with a crime (other than a minor traffic offense) shall report being charged with such crime to the Hiring Office. The employee should report the crime to the Department of Human Resources and/or the Provost’s Office within 72 hours of the employee becoming aware of such charge. Failure to report being charged with such a crime may result in appropriate disciplinary action, including termination of employment.

The Hiring Office (*The Department of Human Resources in concert with the Office of Legal Affairs and representatives of the Provost Office, if applicable*) shall review the nature of the crime and make a determination on what, if any, action should be taken regarding the employee's employment status until resolution of the charge.

Any current employee who is convicted of a crime (other than a minor traffic offense) shall report such conviction to the Hiring Office within 24 hours of the conviction. Failure to report such conviction may result in appropriate disciplinary action, including termination of employment. The BIC shall review the nature of the crime and make a determination on what, if any, action should be taken regarding the employee's employment status. The BIC shall review the crime utilizing the same standards as it applies in reviewing crimes committed by a candidate for employment but may consider other factors, including the length of employment of the employee and performance reviews.

### **Questions**

The Legal Affairs Department is prepared to assist you with any questions on this procedure.