



GEORGIA DEPARTMENT OF HUMAN SERVICES Human Resources Policy #504

CRIMINAL HISTORY RECORD CHECKS

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References: Criminal Code of Georgia (O.C.G.A. Title 16)
28 C.F.R. §§ 50.12(b), 20.33, and 16.34
IRS Publication 1075 (Rev. 11-2016)
Rules of the Georgia Crime Information Center
DHS Human Resources Policy #1301 — Drug-Free Workplace

The Department of Human Services (DHS) is concerned about the health and safety of all individuals and the safeguarding of state property. It is the policy of DHS that all reasonable efforts will be made to provide a safe and secure environment for clients, customers, staff and any other work-related contacts. Based on this objective, a criminal history record check will be completed on the final selectee being considered for employment in any job with DHS.

SECTION A: GENERAL PROVISIONS

1. All applicants who are selected for employment to any position with DHS are required to undergo a criminal history record check, which includes fingerprinting.
2. All applicants/employees are required to disclose all convictions and/or pending charges on the State Security Questionnaire/ Loyalty Oath forms.
 - a. Falsification, omission, or misrepresentation of information, material (having direct impact or influence on hiring decision) or otherwise, including criminal history, is prohibited and may result in an applicant not being employed or separation of an employee.
 - b. Individuals who are not employed or employees who are separated due to falsification, omission, or misrepresentation of information are not eligible for consideration for re-employment.
3. Employees are required to notify their supervisor and Human Resources representative of any arrests and/or convictions within five (5) calendar days of the date of the arrest or conviction. A determination of appropriate action will be made on a case-by-case basis.

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SECTION B: CRIMES THAT RESTRICT EMPLOYMENT

1. Individuals who have been convicted of a crime listed in this section, or any other offense committed outside the state of Georgia that would be considered one of the enumerated crimes if committed in Georgia, are ineligible for employment as indicated below.
2. There is a permanent disqualification from employment in positions subject to criminal history record checks for a conviction, plea of nolo contendere, or release from incarceration or completion of probation for the following crimes.
 - a. Murder, Felony Murder (O.C.G.A. § 16-5-1)
 - b. Attempted Murder (O.C.G.A. § 16-4-1)
 - c. Voluntary Manslaughter (O.C.G.A. § 16-5-2)
 - d. Kidnapping (O.C.G.A. § 16-5-40)
 - e. Robbery (Armed or Unarmed) (O.C.G.A. §§ 16-8-40 and 16-8-41)
 - f. Cruelty to Children (1st or 2nd Degree) (O.C.G.A. § 16-5-70)
 - g. Sexual Offenses (O.C.G.A. Title 16, Chapter 6)
 - h. Human Trafficking for Labor or Sex (O.C.G.A. § 16-5-46)
 - i. Aggravated Assault (O.C.G.A. § 16-5-21)
 - j. Aggravated Battery (O.C.G.A. § 16-5-24)
 - k. Theft by Taking, Deception, or Conversion (O.C.G.A. §§ 16-8-2, 16-8-3, and 16-8-4)
 - l. Forgery (1st or 2nd Degree) (O.C.G.A. § 16-9-1)
 - m. Identity Theft or Fraud (O.C.G.A. Title 16 Chapter 9 Article 8 and Article 4)
 - n. Stalking or Aggravated Stalking (O.C.G.A. §§ 16-5-90 and 16-5-91)
 - o. Financial Transaction Card Fraud (O.C.G.A. § 16-9-33)
 - p. Fraud in Obtaining Public Assistance, Food Stamps or Medicaid (O.C.G.A. § 49-4-15)

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q. Terroristic Threat (O.C.G.A. § 16-11-37)

3. In addition to the crimes listed above, any applicant/employee who has been/is convicted of a crime related to child, elder, disabled, client, resident, or patient abuse, neglect, exploitation, or maltreatment, shall not be eligible for employment regardless of the date of conviction. Current DHS employees who obtain such a conviction may be separated from employment upon review of the circumstances of the conviction. and a determination by the Division Director and OHR.

Note: For the purposes of ineligibility (except for those offenses that are a violation of Article 8 of Chapter 5 of Title 16 or Chapter 6 of Title 16) crimes that have been disposed under the Georgia First Offender Act will not make the applicant/employee ineligible. This includes crimes that are being treated as “First Offender Under Sentence” meaning the applicant/employee is working to fulfill their sentence requirements to mask the record for employment purposes as there is no conviction for the prescribed offense. (O.C.G.A. §§ 42-8-63 and 42-8-63.1).

4. Applicants/Employees will be ineligible for employment/promotion if the applicant's criminal history indicates any of the following:
 - a. Recent arrest for a disqualifying offense; arrest within the previous eighteen (18) months when the case has not been adjudicated. The disqualification shall be in place until such time the case is adjudicated, and a complete evaluation of the criminal record can be made.
 - b. A pattern of arrests; a pattern shall be determined as three (3) or more arrests within the eighteen (18) months prior to the date of criminal record review.
5. The following minimum sanctions are to be imposed on applicants who have been convicted of a drug offense:
 - a. Disqualification from employment in any position for a period of two (2) years from the date of conviction or completion of probation for the first offense.
 - b. Disqualification from employment in any position for a period of five (5) years from the date of conviction or completion of probation for the second or subsequent offense.
6. Applicants/Employees with any Felony conviction(s), regardless of time frame, will be ineligible for employment if their position requires access to criminal record information. This provision is in accordance with the Criminal Justice Information Services (CJIS) Security Policy and Rules of the Georgia Crime Information Center.

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SECTION C: ACCESS AND USE OF CRIMINAL HISTORY RECORD INFORMATION

1. DHS Employees who access, process, receive or review criminal history record information is required to successfully complete the GCIC Security Awareness Training in compliance with the CJIS Security Policy and Rules of the Georgia Crime Information Center.
2. DHS Employees who have not completed and passed the GCIC Security Awareness Training will be denied access to CJIS data; until he/she completes the required training.
3. DHS will use an applicant/employee's criminal history record information for the sole purpose requested. A new record will be requested for any subsequent purpose or use.
4. Subsequent Criminal History Record Check Reviews for Current Employees. The purpose of any subsequent review of a current DHS employee's criminal history record is to confirm that the employee has no additional arrests or convictions that would make them ineligible for continued employment with DHS. If an employee has been deemed eligible for employment with DHS following a criminal history review conducted by DHS and no other disqualifying arrests or convictions have been found in a subsequent criminal history review. Then, OHR will be notified that the employee continues to be eligible for employment. If a subsequent criminal history review shows disqualifying arrests or convictions occurring after the most recent date, DHS will determine that the employee is eligible for employment. DHS will notify OHR of such for the purpose of making a determination regarding continued employment.

SECTION D: NOTICE TO DHS APPLICANTS/EMPLOYEES

1. Notice that a state and federal criminal history record check will be conducted on all persons selected for employment/promotion with DHS shall be placed on all job announcements.
2. During the interview process, applicants/employees are to be advised of the required criminal history record check and the effect that the contents of such record may have on the employment decision.

SECTION E: FINGERPRINTING

1. Final Selectees for employment/promotion must be fingerprinted and determined eligible prior to employment/promotion.

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SECTION F: REVIEW OF CRIMINAL RECORD AND NOTICES BY THE OFFICE OF INSPECTOR GENERAL (OIG)

1. OIG will review applicant/employee criminal history record data and determine eligibility based on the requirements prescribed in this policy.
2. Offenses not prescribed in this policy and non-convictions will not be considered as part of the eligibility determination.
3. Upon initial review, OIG will provide OHR with a letter of Eligibility or a letter stating that more time is needed to make a final determination. The time frame for a final determination will be a maximum of fifteen (15) business days.
4. If OIG must obtain additional documentation from an applicant/employee (e.g., dispositions) to make a final determination, the applicant will be sent a letter detailing the information needed. The applicant/employee will be given fifteen (15) business days from the date of the letter to submit the requested information. If the applicant does not provide the requested information, the applicant's file will be closed, and an "Ineligible for Employment" letter will be sent to OHR. (See 28 C.F.R. § 50.12(b)).
5. If an applicant is determined to be ineligible for employment/promotion based on this policy, the applicant will be provided a letter detailing the conviction(s) or other policy requirements that caused the adverse determination. The applicant will be given fifteen (15) business days to challenge the contents of the record. However, an applicant cannot challenge a determination based on the provisions of this policy. If the applicant does not respond within the allotted time frame, the file will be closed, and an "Ineligible for Employment" letter will be sent to OHR. (See 28 C.F.R. § 50.12(b)).

SECTION G: MAINTENANCE OF CRIMINAL HISTORY RECORDS

1. OIG will be the central repository for all employee criminal history record information.
2. OHR may maintain the determination letter as part of the employee's personnel file.
3. OIG will maintain employee criminal history records in accordance with the State Retention Schedule.
4. DHS will not use Criminal Justice Information (CJI) data for commercial purposes.

SECTION H: INTERNAL REVENUE SERVICE BACKGROUND SCREENING REQUIREMENTS

1. Employees and Contractors whose positions require access to Federal Tax

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Information (FTI) as defined in Internal Revenue Service (IRS) Pub 1075 Section 1.4.1 shall be subject to additional background screening for suitability as required in IRS Pub 1075 Section 2.C.3.

2. IRS Pub 1075 Section 1.4.1 defines FTI as:
 - a. FTI includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Compromise available for public inspection; court records, etc.) is not protected Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement.
 - b. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.
3. IRS Pub 1075 Section 1.4.4 defines what is not FTI as it relates to this policy as:
 - a. Copies of tax returns or return information provided to the agency directly by the taxpayer or his/her representative (e.g., W-2's, Form 1040, etc.) or obtained from public information files (e.g., federal tax lien on file with the county clerk, Offers in Compromise available for public inspection; court records, etc.) is not protected. FTI that is subject to the safeguarding requirements of IRC 6103(p)(4).
4. The IRS background requirements include:
 - a. For positions that meet IRS Pub 1075 Section 1.4.1 criteria, this policy's disqualifying offenses shall be applied for their initial background review. As with any DHS employee or contractor, the individual will be required to submit fingerprints for comparison with Georgia and federal criminal record databases. to check for the existence of any criminal history that would need to be evaluated for suitability under this policy for employment with DHS or to provide services, this also shall apply to those whose positions require access to FTI.
 - b. In addition to fingerprint screening, under this section of the policy, the employee will be required to complete a consent for background document where the employee or contractor will need to list all their residences, employers, and schools for the five (5) years prior to applying for employment or to contract with the department. As with the fingerprint review, the criteria for this policy will be used to determine eligibility for access to FTI as an employee or contractor. The findings will be recorded, and an eligible or ineligible status will be sent to human resources or other designee as part of the final determining factor for employment or to contract with the department.

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- c. A reinvestigation will be completed every five (5) years as required in IRS Pub 1075 Section 2.C.3 for those employees or contractors whose positions require access to FTI. This recheck will be started within 45 business days of the anniversary date of the employee or contractor.

For additional information or assistance, please contact your local Human Resources Representative.