

**[CBC 2009 Proposal]**  
**Proposal for and Legislative History of---**  
**University Regulations on Criminal and Other Background Checks of**  
**Employees, Effective May 1, 2009.**

This documents the 'legislative history' of the following University Regulations, as adopted or revised, to take effect May 1, 2009.

University Policy 5-130 (new).

University Rule 5-130A (new)

University Rule 5-130B (new)

University Policy 6-301 (revision 8) (formerly PPM 8-4).

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6. Utah Code Utah Code Ann 53B-1-110, and Utah State Board of Regents Rule 847. [Pg 30] (State law which compelled the University to adopt the background check regulations).

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# 1. The approved final version of the revision of U-Policy 6-301.

*{ Background Checks. Proposed revision of existing U-Policy 6-301 (formerly PPM 8-4). draft 2009-2-04 }*

**Policy 6-301:** Appointments, Annuities, and Retirement (Revision. ~~7,~~ 8 revised ~~1999~~ 2009).

I. Purpose and Scope. [Reserved]

II. Definitions. [Reserved]

III. Policy: Appointments, Annuities, and Retirement.

## Section 1. Faculty

All appointments to the university faculty shall be made by the president, with the approval of the Board of Trustees, as hereinafter provided. Every appointment shall be made solely on the basis of the individual's merit in terms of the position concerned. The Immigration Reform and Control Act of 1986 makes it mandatory that each new hire in any employment category completes a Form I-9. This form must be completed within the first three working days after hire. All university employment is contingent upon completion of the Form I-9. ~~For Form I-9 information call Personnel Administration at extension 6787.~~ Information about the use of Form I-9 may be obtained from the Human Resources Department.

Section 2. Term of Appointments { \_\_\_\_\_ *Drafting note— No changes proposed to this part. Lengthy contents of existing Policy unrelated to criminal background check topics are not reproduced for this document. Full contents may be viewed at the University Regulations Library world-wide-web site. <http://www.regulations.utah.edu/academics/6-301.html> } }*

## Section 3. Required Disclosure of Criminal Records

~~No person shall be appointed to any position at the university who has been convicted of a crime, other than those traffic offenses which are not felonies or who, at the time of the appointment, is under indictment or charged with such a crime, unless the appointment is approved by the vice president to whom the employing department or college reports; provided, however, no person shall be appointed to a university position who, at the time of appointment, is charged with a felony. No appointment covered by this policy shall be effective until at least sixty days after a report of the circumstances involved in such employment has been made to the Board of Trustees by the vice president approving the appointment and the Board of Trustees has not taken action within that time to disapprove the appointment.~~

~~The report should set forth the nature of the crime committed or alleged to have been committed, the nature of the employment function to be performed by the individual concerned and an evaluation by the department seeking the appointment and the vice president concerned of the relationship of the crime committed or alleged to have been committed to the effective performance by the proposed appointee of the duties and role contemplated at the university.~~

Personnel applying for or holding University positions are subject to the provisions of University Policy 5-130 regarding criminal and other background checks.

Sections 4 through 8

{ \_\_\_Drafting note—No changes proposed to these parts. Lengthy contents of existing Policy unrelated to criminal background check topics are not reproduced for this document. Full contents may be viewed at the University Regulations Library world-wide-web site. <http://www.regulations.utah.edu/academics/6-301.html> }

IV. Rules, Procedures, Guidelines, Forms and other related resources. [reserved]

V. References: [reserved]

VI. Contacts: [reserved]

VII. History: [reserved]

## **2. The approved final version of new U-Policy 5-130.**

*{ Background Checks. New U-Policy 5-130 Draft 2009-4-10. }*

### **University Policy 5-130: Policy on Criminal and Other Background Checks Revision 0.**

#### I. Purpose and Scope

A. To provide for criminal and other background checks of certain prospective and existing University employees as required and permitted by Utah law and applicable policies of the Utah State Board of Regents and Utah System of Higher Education. This Policy takes effect as of May 1, 2009. The Policy is intended to be implemented through associated University Regulations, including a University Rule or Rules, which shall describe and govern specific aspects of the scope and manner of implementation. This Policy and associated regulations are to be implemented in conjunction with other regulations applicable for proceedings for disciplinary actions for existing employees, including those applicable for faculty, other academic personnel, or staff employees.

B. This Policy and associated regulations are to be interpreted to further core principles of the University as an academic institution and an equal opportunity employer, including principles of academic freedom and freedom of expression, non-discrimination and promotion of diversity, safety of persons and property, fair and equitable treatment of employees, students, and other members of the University community, and maintenance of a physical environment and intellectual climate conducive to successful performance of the university's threefold mission: instruction, research, and public service.

#### II. Definitions

A. Final 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.

B. Criminal 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, and the contents and methods of a Background Check may be further specified through an associated University Rule or other Regulation.

C. 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.

D. 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.

E. Faculty – for the limited purposes of this policy and any rule, guideline or procedure implementing this policy, faculty is defined to include regular and auxiliary faculty, and librarians, including the following academic personnel: the university president, vice presidents, deans, directors of libraries, professors (including distinguished presidential and university professors), associate professors, assistant professors, instructors, librarians, associate librarians, and assistant librarians.

F. Full-time - full-time positions are those that require a minimum of 0.75 FTE, 75% of full time effort. An individual who at any given time holds two or more part-time positions at the University which together result in at least 0.75 FTE employment is considered a fulltime employee for purposes of this policy.

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

H. Other Academic Personnel - for the limited purposes of this policy and any rule, guideline or procedure implementing this policy, this term is defined to include academic personnel (other than faculty as defined herein), including part-time teachers, post-doctoral fellows, visiting lecturers, graduate assistants, academic staff, and professional staff members of businesses, industries, and other agencies and organizations appointed by the University to serve in other part-time instructional, research or public service positions.

I. Reasonable Cause - where the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that the existing employee in his or her capacity as a University employee poses, or the applicant would pose, an unreasonable risk of significant physical, emotional, or financial harm to persons or property and/or the belief that a background search will reveal a history or report of a crime of a type that poses such an unreasonable risk of harm.

J. 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 members of the University community. In addition to University-wide designations of security sensitive positions, positions may be designated as security sensitive when individual departments are subject to further restrictions, requirements, laws or regulations. 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, University 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;
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 police, security, guard forces, or other significant health or safety issues.

K. 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.

### III. Policy

A. Required Background Checks for Applicants - A final applicant for any employee position at the University that involves significant contact with minors or is considered to be security sensitive by the University, must submit to a criminal background check as a condition of employment. The University may by Rule specify types of positions to which this requirement applies, or exempt applicants for certain academic positions, or for temporary or part time positions, from this requirement, so long as such exemptions are not inconsistent with Utah law and policies of the Utah State Board of Regents. The University may require such exempted applicants to self disclose any criminal background and to sign an agreement to conform to University regulations on sexual harassment and information, financial, health, and physical security, as may be specified by Rule.

B. Optional Background Checks for Applicants - The University may by Rule allow or require final applicants for positions other than those described in III.A above, including certain academic positions, 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 (or a final applicant for whom a background check would not otherwise be required) must submit to a criminal background check, when the University finds that reasonable cause exists. The University may by Rule establish procedures for determining that reasonable cause exists.

D. Written Release of Information and Self-Disclosure –

1. From applicants for employment, the University shall obtain a written and signed release of information for a background check.

2. From existing employees, when a background check is determined to be required based on reasonable cause, the University shall request a written and signed release of information for a background check. If the existing employee does not provide such release, a background check shall nevertheless be conducted and the employee shall receive written notice that the background check has been requested.

3. From an applicant or an existing employee who has been determined to be subject to a background check, the University may request that the applicant or employee complete a self-disclosure of criminal history and/or other background information. In such cases an individual's failure to complete such disclosure and/or the providing of materially false information as part of such disclosure, may be considered in making a risk assessment regarding that applicant or employee.

E. Fingerprint Background Check – As shall be further specified by Rule, the University may require each applicant or employee subject to a criminal background check under this policy to be fingerprinted and consent to a fingerprint background check by the Utah Bureau of Criminal Identification, the Federal Bureau of Investigation or another government or commercial entity.

F. Payment of Costs – As shall be further specified by Rule, the University may require an applicant to pay the costs of a criminal or other background check as a condition of employment.

G. Risk Assessment - Based on the information disclosed by the criminal or other background check, the University will assess the overall risk to persons and property. The University may by Rule designate an officer or establish a background review committee to participate in making such risk assessments and participate in other aspects of managing background checks and related decision-making.

H. 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 University may require an additional financial/credit check to be performed.

I. Degree Transcripts or License Documentation - If the position requires a degree or license, the University may obtain a copy of the applicant's or employee's degree transcripts or license documentation, or require similar documentation of educational or professional credentials, as may be specified by Rule.

J. Student Loan Status – As may be specified by Rule, if an applicant or employee has a student loan, the University may check on the loan status and the University may deny employment or take adverse employment action if the applicant or employee has a delinquent or defaulted student loan.

K. Opportunity to Respond - Before an applicant is denied employment or an existing employee is subjected to an adverse employment action based on information obtained in the criminal or other background report, the applicant or employee shall receive a copy of the report, written notice of the reasons for denial or the adverse action, a written description of his/her rights under the Fair Credit Reporting Act, and shall have an opportunity to respond to the reasons and any information received as a result of the background check. If an applicant disagrees with the accuracy of any information in the report and notifies the University's Human Resources Division 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. This process may be further specified by Rule.

L. Limitations on the Use of Information—Protection of Privacy and Confidentiality - The information contained in the criminal history or other background check will be available only to those persons involved in making employment, promotion or disciplinary decisions or performing the background investigation, and the information will be used only for the purpose of making an employment or promotion decision and shall be treated as confidential information.

M. Concurrent Enrollment Faculty – University employees, whether in faculty positions or in other academic positions, who are concurrent enrollment instructors, as defined in Regents' Rule 165-9, with unsupervised access to K-12 students shall complete a criminal background check consistent with Utah Code §53A-3-410. The University will determine the need for the criminal background check consistent with the law, shall satisfy this requirement, and shall maintain appropriate documentation.

#### IV. Rules, Procedures, Guidelines, Forms and other related resources.

##### A. Rules

Rule 5-130A and 5-130B *{insert links}*

##### B. Procedures

##### C. Guidelines

##### D. Forms



E. Other related resource materials.

V. References:

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. Utah State Board of Regents and Utah System of Higher Education Policy and Procedure R165, Concurrent Enrollment
- D. Utah State Board of Regents and Utah System of Higher Education Policy and Procedure R481, Academic Freedom, Professional Responsibility and Tenure
- E. Utah State Board of Regents and Utah System of Higher Education Policy and Procedure R847, Criminal Background Checks
- F. The Fair Credit Reporting Act (FRCA) 15 United States Code § 1681 et seq.

VI. Contacts:

[reserved]

VII. History:

[reserved]

### 3. The approved final version of new U-Rule 5-130A.

*{ Background Checks. New University Rule, for Faculty-Academic employees. Rule 5-130 A. Draft 2009-4-10. }*

**University Rule 5-130A:** Criminal and Other Background Checks for Faculty and Other Academic Personnel. Revision 0

#### I. Purpose and Scope

A. Purpose: To implement University Policy 5-130 (Policy on Criminal and Other Background Checks) for faculty and other academic personnel by describing the scope of personnel positions subject to background checks, the type of criminal and other background checks the University may use, and the related decision making processes.

B. This Rule applies to faculty and other academic positions as further described in Part III. Staff employee personnel positions are governed by separate rule.

C. This Rule takes effect May 1, 2009. This Rule (and any associated University Regulations) shall be reviewed two years from the date it takes effect. In addition, an interim report shall be made to the Senate in the Fall semester of 2009 regarding the implementation of this Rule and any associated regulations.

#### II. Definitions

A. Definitions of terms provided in University Policy 5-130 apply for purposes of this Rule.

#### III. Rule

A. Final Applicants (new employees).

1. Full-time positions. The University will conduct background checks as a condition of employment for final applicants for full-time faculty positions (including regular and auxiliary faculty) and final applicants for other full-time academic positions to the extent required by law and policy, which does not include post-doctoral fellow positions.

2. Part-time positions. The provisions of this Rule regarding final applicants do not apply to applicants for part-time faculty positions, or other part-time academic positions (including post-doctoral fellows, visiting lecturers, graduate assistants, academic staff, and professional staff members of businesses, industries, and other agencies and organizations appointed by the University to serve in other part-time instructional, research or public service positions), except as required by law. However, departments may request that background checks be conducted for some or all positions for part time faculty or other academic personnel with the approval of the Background Review Committee. Such departmental requests and BRC approvals shall be completed prior to the selection of a final applicant for such position, and shall be based on uniform application of criteria for positions with similar responsibilities.

3. Individuals who have previously been employed by the University and who then have no University affiliation for 400 consecutive days or more will for purposes of this Rule be treated as new employees subject to the background check requirements applicable to final applicants. Approved leaves of absence, part-time employment, and unpaid faculty appointments constitute a continued affiliation with the University.

4. Regular faculty members undergoing promotion in rank, and auxiliary faculty members being reappointed with or without promotion in rank shall not be considered final applicants-new employees for purposes of this Rule, and shall be subject to background check requirements only as provided in part III-B applicable for existing employees.

5. Individuals currently employed by the University and seeking a position in another department of the University which requires a background check for new employees with a broader scope than the check required for the employee's existing position shall be considered a final applicant for the new position, for purposes of this Rule.

**B. Existing Employees—Reasonable Cause.**

The University may conduct background checks for existing employees in faculty and other academic positions (including full- and part-time), or for final applicants for whom a background check would not otherwise be required, when the University finds that reasonable cause exists (as defined in Policy 5-130). The determination of the existence or lack of reasonable cause will be made by the Background Review Committee.

**C. Background Review Committee—establishment and composition.**

A Background Review Committee ("BRC") is hereby established for purposes of administering this Rule. It shall have continuing members, ad hoc members, and faculty representative members. Its continuing members and a chairperson shall be appointed by the President. The continuing members will consist of University personnel representing the Senior Vice Presidents for Academic Affairs and Health Sciences, the Associate Vice President for Diversity, Human Resources and General Counsel.

In each case considered by the BRC, the continuing members will invite one or more representatives of the applicant or employee's division or program (if applicable), department, and college to participate as ad hoc members of the BRC.

Faculty representative members of the BRC shall be elected by the Academic Senate Executive Committee upon the recommendation of the President of the Academic Senate. They shall be selected on the basis of qualifications consistent with those applicable for members of the Consolidated Hearing Committee (Policy 6-002-III-Section 10), and may be selected from the current or past roster of the CHC. They shall serve for terms determined by the Executive Committee, within the range of one to five years, staggered. At least

two and no more than three shall serve in any given period. The President of the Academic Senate or designee may substitute for any faculty representative absent for a particular BRC proceeding. No BRC proceeding involving investigation of an existing faculty employee shall be completed without the direct participation of at least one of the faculty representatives.

In addition, the department chairperson will have the option, following notice to the applicant or employee, to consult with the faculty of the department on any BRC matter regarding an existing faculty member or final applicant for a faculty position in that department. Background check information shall be divulged only to the extent necessary for purposes of such consultation, or as further agreed by the applicant or employee.

All members of the BRC and all other persons consulting or otherwise participating in BRC proceedings are governed by the provisions of Policy 5-130 regarding privacy, confidentiality, and limitations on the use of background check information.

#### D. Types of background checks.

1. For final applicants for all positions within the scope of this Rule, background checks shall include a criminal background check (as defined in Policy 5-130).

2. For final applicants for faculty positions the check will also include a verification of the highest degree awarded (doctoral degree or the latest master's degree awarded). Such a degree check may be included in a background check for other full-time academic positions.

3. Checks of other background information, such as financial/credit, student loan, motor vehicle, degree, or professional licensure information may be required for final applicants for a position or category of positions if a request to do so is approved by the Background Review Committee before a specific final applicant is identified. Checks of such other background information may be required, with reasonable cause, for existing academic employees at the request of the cognizant senior vice president, dean, department chair, division chief or program director with the concurrence of the Background Review Committee.

4. The University will not require or conduct fingerprint background checks, except as required by law.

5. In conducting background checks, the University will request from final applicants and existing employees (with reasonable cause) a written release of information, and may request completion of a self-disclosure form, in accord with Policy 5-130.

#### E. Costs.

The University will not require applicants or existing employees to pay the costs of a criminal or other background check as a condition of employment.

F. Results of background checks.

1. If a background check or self-disclosure reveals a criminal background, following the applicant or employee's opportunity to respond, consistent with University Policy 5-130, the University will assess the overall risk posed to persons and property by the background of the particular applicant or existing employee under all the circumstances. The individual's failure to complete a requested self-disclosure, or the providing of materially false information in such self-disclosure, may be considered in a risk assessment.

The risk assessment will be made by the Background Review Committee. For cases involving only minor motor vehicle-related violations, the BRC member representing the cognizant senior vice president may act on behalf of the BRC to determine that the individual shall be considered eligible for the position without further assessment. However, any determination that an individual is to be considered ineligible, or that an existing employee should be considered for other sanctions, must be made by the full BRC.

The BRC may determine that an individual with a criminal history should be considered eligible to obtain or retain the position, or considered ineligible, or that an existing employee should be considered for other sanctions, or that additional documentation should be required before making a determination of eligibility. If the BRC is divided, the University president or designee will make the final decision.

The risk assessment will include:

- a. the number of crimes committed;
- b. the severity of those crimes;
- c. the length of time since they were committed;
- d. the likelihood of recidivism;
- e. the security sensitivity of the position sought by the applicant or held by the existing employee;
- f. the extent of any failure to provide accurate information requested through self-disclosure; and
- g. other factors that may be relevant.

In cases involving an existing employee, if the risk assessment process leads to a determination that the employee should be considered ineligible to retain the position, or considered for other sanctions or other disciplinary action, then proceedings for any disciplinary actions shall be conducted in compliance with such other regulations of the University as are applicable based on the particular position held by the employee. For faculty, those include the Code of Faculty Rights and Responsibilities (Policy 6-316). For other academic personnel, they include the Policy on Academic Staff, Educational Trainees, Postdoctoral Fellows and Medical Housestaff (Policy 6-309).

2. If a degree check reveals a discrepancy between the educational credentials claimed by an individual and the information from the institution

purportedly awarding the degree, the individual will be given an opportunity to explain the discrepancy before any negative employment decision is made.

3. If a check of other background information reveals information which the University may consider a basis for a negative employment decision, the individual will be given an opportunity to explain that information.

G. Security sensitive position designations will be made as needed with approval of the Background Review Committee.

#### **4. The approved final version of new U-Rule 5-130B.**

*{University Rule 5-130 B. DRAFT 2009-3-12}*

#### **University Rule 5-130 B: Criminal Background Checks for Campus Staff. Revision 0.**

##### **I. Purpose and Scope**

A. Purpose: To implement University Policy 5-130 (Policy on Criminal and Other Background Checks) for campus staff by describing the scope of staff positions subject to background checks, the type of criminal and other background checks the University may use, and the related decision making processes.

B. This Rule applies to campus staff positions with a hire, rehire, or transfer date on or after May 1, 2009. This Rule does not apply for faculty and academic staff positions, which are regulated by separate rule (Rule 5-130A)

##### **II. Definitions**

A. Definitions of terms provided in University Policy 5-130 apply for purposes of this Rule.

B. The Human Resources Consultant referred to in this Rule is the Human Resources staff member or designee assigned by HR to the department to provide HR consulting services.

##### **III. Rule**

A. Staff positions requiring a Criminal Background Check (CBC):

1. Benefited Staff Positions (.50 FTE or greater, Regular).

2. Non-Benefited Staff Positions including Temporary and Part-Time positions (any FTE) that are classified as:

a. Security Sensitive as defined by Utah Board of Regents Rule R847-3, 3.9

b. Involving Significant Contact with minors under 21 as defined by Utah Board of Regents Rule R847-3, 3-10.

3. Division/Department Designation

a. A Division, Department or sub-unit, in consultation with the HR Consultant, may determine that ALL positions require a Criminal Background Check to meet State or Federal Regulations, the provisions of Regents Rule R847, departmental standards, or for other business related reasons. The Division/Department or subunit must uniformly apply all requirements for a CBC.

B. Staff employment actions which initiate a CBC:

1. New Hires

a. All new hires with a Hire Date of 5-1-09 or later are subject to a pre-employment CBC in accordance with the position requirements as outlined above.

2. Rehires

a. All rehires with a Rehire Date of 5-1-09 or later are subject to a pre-employment CBC in accordance with the position requirements as outlined above.

b. EXCEPTION: If a CBC was conducted by the University of Utah (for example, in connection with previous employment with University Hospital) within the preceding 12 months of the Rehire Date, the CBC requirement is waived.

3. Transfers (Promotion, Lateral, Demotion) including Campus to Campus, Hospital to Campus, and Campus to Hospital

a. Hiring departments are required to initiate a CBC on any employees transferring into positions designated as requiring a CBC, provided the University has not previously completed a CBC on the employee. The promotion, lateral transfer, or demotion to a position requiring a CBC is contingent on satisfactory completion of the CBC.

4. FTE Increases

a. An increase in an employee's FTE which results in a change from non-benefited to benefited status will require the department to initiate a CBC, provided the University has not previously completed a CBC on the employee. The FTE increase which necessitates a CBC is contingent on satisfactory completion of the CBC.

C . Reasonable Cause provision

1. The University may conduct background checks for existing staff employees if a determination is made that reasonable cause exists. The scope of this investigation will be determined by the grounds for the reasonable cause, and the nature of such an investigation will be the individual's continuing suitability for employment.

D. Criminal Background Check (CBC) packages

1. The University's standard Campus CBC package is a domestic United States search of Credit Bureau and other records to determine counties of residence for the previous seven years. Up to three aliases are checked,



and any felony and misdemeanor convictions are reported. The standard Campus CBC package also includes a check of the Sex Offender Registry.

2. As determined by the hiring department in consultation with Human Resources, more extensive CBC packages may be appropriate. Additional elements that may be included in a customized package include: employment, education, or professional license verification; Fraud and Abuse Control Information System (FACIS); Office of Inspector General (OIG) Medicare Fraud Exclusion List, Motor Vehicle Report, Credit Report and/or other elements.

#### E. Criminal Background Check (CBC) adjudication

1. If a background check reveals a criminal background, which may or may not have been disclosed by the applicant or employee, University Human Resources initiates a consultative process to evaluate and adjudicate the CBC, in accordance with University Policy 5-130 and the Fair Credit Reporting Act.

An initial review of CBC results is conducted by the Human Resources Consultant or designee to identify any felony or misdemeanor convictions. If the CBC results contain no convictions, with the exception of minor motor vehicle related violations, Human Resources will clear the individual for hire and notify the hiring manager.

In the event a CBC report includes felony or misdemeanor convictions which were not self disclosed by the individual, the individual will generally not be cleared for hire due to falsification. In the event there is a discrepancy between what the individual self disclosed and what was reported on the CBC, the Human Resources Consultant may confer with the individual and/or the hiring manager as appropriate before adjudicating the CBC.

In the event serious misdemeanor or felony conviction(s) are reported, and a consensus has not been reached in the initial conference with the hiring manager, the Human Resources Consultant may engage a representative of the Office of General Council and/or the department's Cognizant Vice-President or designee in the evaluation. In a consultative role, the Human Resources Consultant will facilitate an assessment of the overall risk posed to persons and property, and 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. The risk assessment will include:

- a. the number of crimes committed;
- b. the severity of those crimes;

- c. the length of time since they were committed;
- d. the likelihood of recidivism;
- e. the security sensitivity of the position sought by the applicant or held by the existing employee; and
- f. other factors that may be relevant.

F. Costs. The University will not require applicants or existing employees to pay the costs of a criminal or other background check as a condition of employment.

IV. References:

A. University Policy 5-130.

B. University Rule 5-130A (Faculty and Academic Staff)

V. Contacts:

For assistance with this Rule, contact Kristin Jensen, 581-2119 or Greg Hughes, 581-6033.

VI. History: [reserved]

## **5. Proposal background information---memoranda explaining the proposal.**

TO: Senior Vice Presidents David W. Pershing and A. Lorris Betz  
FROM: Associate Vice Presidents Susan M. Olson and Richard J. Sperry  
DATE: February 20, 2009  
SUBJECT: Proposed new criminal background check policy

As a result of action by the state legislature (Utah Code 53B-1-110) and the State Board of Regents (Rule 847), all institutions in the state system of higher education are required to implement procedures for conducting criminal background checks of new employees (and when individually warranted for “reasonable cause,” for existing employees). The checks are to be instituted for new employees hired after May 1, 2009. The proposal below to implement this requirement reflects careful balancing of the values of personal privacy, protection of persons and property at the university, and shared governance.

The attached proposal follows the new organization of University Regulations into Policies and Rules. Proposed Policy 5-130 closely tracks Regents Rule 847, which lays out parameters within which the state institutions must operate and with which the University of Utah will, of course, comply. Proposed Rule 5-130A describes the plans for implementing the Policy with respect to academic employees. A proposal for Rule 5-130B will come forth shortly, laying out the application of the Policy to staff employees.

The Regents’ policy, incorporated into UPol 5-130, leaves the following areas of discretion for the university to decide:

- Whether to screen for criminal histories via a Fingerprint Background Check or a Consumer-reporting Agency Criminal History Background Check. The University has already resolved this first issue by entering a contract with a commercial Consumer-reporting Agency called Accurate Background.
- Whether to exempt temporary and part-time positions and certain other academic employees, specifically “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 institutions on a part-time basis to carry out instructional, research or public service functions.” The latter group essentially describes many of our Adjunct faculty.
- Whether to charge prospective employees the cost of the checks
- Whether to also check for educational degrees, professional licenses, and student loan status
- What process to use within the institution to assess the risk to persons or property from hiring a prospective employee (i.e., a “final applicant”) with some criminal history discovered via the background check

Proposed Rule 5-130A would require criminal background checks of all newly-hired full-time faculty and academic staff, but not part-time faculty or academic staff, post-doctoral fellows, visiting lecturers, or graduate assistants. We recognize that full-time faculty and academic staff are no more likely than these to have criminal backgrounds, but the severe budgetary constraints at the moment suggest including only those mandated by the Regents at this time. This will also give us the opportunity to ensure that the processes for conducting the checks and for responding to information from the checks is working effectively before considering whether to include any new employees not initially covered.

Proposed Rule 5-130A would not require final applicants or existing employees to pay the costs of a background check. In Health Sciences the hiring units will pay the cost of the check. In Academic Affairs Senior Vice President Pershing will pay the cost of checks for full-time instructional employees for its first year and then assess that decision for subsequent years. Hiring units in Academic Affairs must pay the cost of checks for covered research and staff employees.

Proposed Rule 5-130A requires that the background check for new faculty members include a verification of the highest degree awarded (doctoral degree or the latest master's degree awarded). Such a degree check may be included in a background check for other full-time academic positions, but this is subject to further discussion with hiring units. We are not proposing to include professional licenses or student loan status in the check, though exceptions could be approved by the committee discussed in the next paragraph.

The process for risk assessment proposed by Rule 5-130A is the creation of a Background Review Committee (BRC) to be appointed by the President. This committee will consist of University personnel representing the Senior Vice Presidents for Academic Affairs and Health Sciences, Associate Vice President for Diversity, Human Resources, and General Counsel. In each case considered by the BRC, the continuing members will invite representatives of the final applicant or employee's division or program (if applicable), department, and college to participate as ad hoc members of the BRC. The department chair will have the option, following notice to the applicant or employee, to consult with the faculty of the department on any BRC matter regarding an existing faculty member or final applicant for a faculty position in that department. If the members of the BRC, including ad hoc members, are unable to agree on whether to hire or retain the individual, the president or president's designee shall make the decision.

We expect the number of individuals with any criminal history to be very few among full-time faculty and academic staff, as several years of experience with criminal background checks of School of Medicine faculty have already found. In the event of information requiring an assessment and decision, the BRC process would typically involve further conversation with the prospective faculty member. The risk assessment criteria established by the Regents and adopted by the Rule sensibly involve consideration of the number and severity of crimes and the length of time since they were

committed. We are committed to making employment decisions with due regard for the constitutional rights of free expression and association.

Along with proposing the adoption of Policy 5-130 and Rule 5-130A, we propose replacing current UPol 6-301 with a reference to the new policy and rule, as attached below. This existing policy has, however, provided the basis for beginning to provide notice to new faculty of the upcoming requirement. Because faculty members are typically hired several months ahead of the new fiscal and academic year, we have in February let departments know that they need to begin including notice language in their offer letters to new faculty. Job offers to covered faculty and academic staff will now need to be contingent on successful completion of the criminal background check and degree verification.

These proposals have emerged from a working group to plan the University's implementation of this new requirement as it applies to the hiring of faculty and other academic employees. Besides the two of us, the group includes Professor David Goldenberg (Chair, Academic Freedom and Faculty Rights Committee), Professor Octavio Villalpando (Associate. V.P. Diversity), and his Operations Manager Jennifer Bangerter, Professor Robert Flores (Special Assistant for Faculty Policy and former President of the Academic Senate), Phyllis Vetter (Associate General Counsel), Jennifer Allie (Director of Faculty Administration, School of Medicine), Greg Hughes and Kristin Jensen (Human Resources Coordinator and Manager), and Tami Garff (Academic Affairs Executive Assistant). The policy has been circulated to and discussed with the Senate Executive Committee, the Council of Academic Deans, and department chairs.

TO: Senior Vice Presidents David W. Pershing and A. Lorris Betz  
FROM: Associate Vice Presidents Susan M. Olson and Richard J. Sperry  
DATE: March 16, 2009  
SUBJECT: Revisions to proposed new criminal background check policy

Feedback at or since the March 2 Senate meeting, when the proposed criminal background check policy and academic rule were on the Intent calendar, has suggested a few revisions to the proposals. These will go to the March 23 Senate Executive Committee meeting and then, most likely, to the April 6 Senate meeting for debate. This memo summarizes these recent revisions. Please recall that the Policy applies to all employees and Rule A applies only to academic employees.

- Revisions to University Policy 5-130, I.A. draw attention to the corresponding rules so that future readers of the policy know they also need to consult the rules.
- Revisions to University Policy 5-130, I.B. articulate the values that guide the interpretation of this policy.
- Revisions to University Policy 5-130, II.B., III.A., III.B., III.C., III.E., III.G., III.H., III.I., and III.K. authorize further policy-making by rule. The changes from “President or his/her designee” to “University” ensure that normal policy-making or rule-making procedures will be followed in making changes to the policy and rules.
- Revisions to University Policy 5-130, II. I. elaborate the definition of “reasonable cause” to emphasize that a risk of significant harm must be present to conduct a background check on an existing employee.
- Revisions to University Policy 5-130, III. C. and to University Rule 5-130A, III.B. provide for a pre-employment background check on a final applicant for a position not otherwise covered, such as a part-time faculty position, if information arises that gives the University reasonable cause for such a check.
- Revisions to University Policy 5-130, III.D. and to University Rule 5-130A, III.D.5. and F.1. provide that false information given as part of a self-disclosure or refusal to provide such information may be considered in the risk assessment for hiring or retaining an employee. Requests for self-disclosure are a routine part of the staff job application form and are part of a step in the automated background check system for all individuals.
- Revisions to University Rule 5-130A, I.C. commit to a review of the rule and related regulations in the future, tentatively in two years.
- Revisions to University Rule 5-130A, III.A.2. prevent arbitrary requests to do background checks for positions not otherwise covered by the rule.
- Revisions to University Rule 5-130A, III. E. alternative version would allow departments to request permission to charge final applicants the cost of a background check.
- Revisions to University Rule 5-130A, III.F.1. authorize the office of the Senior Vice President to unilaterally approve the hiring of an employee whose background includes only a minor motor vehicle violation without convening other members of the proposed Background Review Committee.

Documents about the proposal for background checks included with this memo include:

- The original cover memo to the Senior Vice Presidents, dated February 20, 2009
- Proposed revision of existing University Policy 6-301
- Proposed University Policy 5-130, revised as of March 13, 2009
- Proposed University Rule 5-130A, revised as of March 13, 2009

Additional documents, relating to background checks for staff employees only, are being provided separately, and will include:

- Memos to the Executive Committee and to Interim Vice President for Human Resources Joan Gines concerning Proposed University Rule 5-130B, dated March 16, 2009
- Proposed University Rule 5-130B (Criminal Background Checks of Staff Employees), dated March 12, 2009

## Memorandum

To: Academic Senate

From: Susan Olson, for the CBC drafting group

Re: Proposed Policy and Rule on Criminal Background Checks-- changes in the proposal subsequent to the April 6, 2009 Senate meeting

Date: April 10, 2009

We have been advised by the Senate leadership of the wish to quickly complete the processing of Senate approval of the proposal for Policy and Rule on Criminal Background Checks. Based on the dialogue at or in conjunction with the April Senate meeting, we have incorporated several changes to the proposal that we think respond effectively to the various general and specific concerns held by Senate members and others who participated in the April meeting. Thank you to those who have helped in making the improvements.

All changes are marked in the Policy or Rule with the usual text markings. Below are highlights of those changes—with some explanation for each. Hopefully this will be helpful to you in making your voting decision.

**1. Probably the most important revision---- adding faculty representative members to the BRC.** In response to the request to add faculty representation on the Background Review Committee (which was treated as a ‘friendly amendment’ suggestion during the Senate meeting), the membership of the BRC has been expanded to include faculty---and the authority for selection of those faculty representatives is assigned to the Senate Executive Committee. The entirely new passage in the Rule is:

*“Faculty representative members of the BRC shall be elected by the Academic Senate Executive Committee upon the recommendation of the President of the Academic Senate. They shall be selected on the basis of qualifications consistent with those applicable for members of the Consolidated Hearing Committee (Policy 6-002-III-Section 10), and may be selected from the current or past roster of the CHC. They shall serve for terms determined by the Executive Committee, within the range of one to five years, staggered. At least two and no more than three shall serve in any given period. The President of the Academic Senate or designee may substitute for any faculty representative absent for a particular BRC proceeding. No BRC proceeding involving investigation of an existing faculty employee shall be completed without the direct participation of at least one of the faculty representatives.”*

As further explanation for some key features in this proposed system—it ensures that there will be representation from the faculty of the University with a high degree of independence from the central administration. The responsibilities of CHC members and these BRC faculty representatives are very similar in many important respects. By establishing qualifications modeled upon those applied for CHC members, the Rule



ensures that the representatives will be tenured (and thus able to exercise independent judgment free of pressure from administrators), and persons of sound judgment and able to fulfill the obligation to maintain confidentiality of sensitive information. There is a strong suggestion but not requirement that the representatives be selected from among the pool of current or past members of the CHC—which would ensure that those persons have in effect already been pre-screened for appropriate qualifications. As experience allows for further careful thinking about this—the Senate leadership may develop and pass along more guidance on how best to select these representatives.

Note that it should be obvious and not needing to be stated that an individual who participated in a case in the capacity of BRC member would not then be selected by the Senate office for serving on a CHC panel assigned to a later proceeding involving that same case.

The somewhat complicated description of the number of faculty representatives and the length of their terms is needed because of certain characteristics commonly found with the types of faculty who are likely to be selected for BRC service. Senior level faculty typically have many responsibilities, travel frequently for scholarly work, sometimes for very lengthy absences, and so any individual faculty representative may frequently be unavailable for a given BRC proceeding. That makes it useful to have multiple representatives so that the absence of one will not either prevent the BRC from proceeding or lead to loss of perceived legitimacy of its results because of the lack of faculty participation.

Decisions made by the BRC will best be made by members with some experience. There probably won't be a lot of 'action' for the BRC—assuming very few new hires of faculty & academic staff will have criminal background incidents needing to be weighed by the BRC---and what little action there is will typically happen in the spring semester high season of faculty hiring. So developing experience-based expertise will take at least one year—and then the faculty representatives will be more effective in their roles in the remaining years of their terms. So, it's useful to have multiple members serving multiple year terms, but have those terms staggered. That will ensure having at least one faculty representative with at least a year of experience, and the more-experienced member can help advise the newer members.

There is no explicit prohibition on serving successive terms, so the Executive Committee may decide to reappoint someone for another term, to take advantage of developed expertise (and also thereby minimize the number of people on campus who end up sharing in the highly confidential information inherent to BRC work).

## **2. Clarifying that existing faculty undergoing routine promotions are not to be treated as new hires and thereby automatically subjected to background checks.**

This closes a potential 'loophole.' A senator pointed out that the phrasing of the definition of the term "final applicant" in the Policy might have allowed for an interpretation treating ordinary promotions of faculty as being the equivalent of a new hire. That's clearly not desirable. All regular faculty and many auxiliary faculty do routinely go through promotions in rank---and for such routine career progression faculty who have been continuously employed should be treated as 'existing employees' for whom checks will be needed only when there is 'reasonable cause to suspect significant harm.' The solution is to add this new language to the Rule:

*“Regular faculty members undergoing promotion in rank, and auxiliary faculty members being reappointed with or without promotion in rank shall not be considered final applicants-new employees for purposes of this Rule, and shall be subject to background check requirements only as provided in part III-B applicable for existing employees.”*

**3. Privacy-confidentiality.** The Senate discussion made clear that there is great concern about protecting the privacy of persons undergoing background checks—except to the extent necessary to protect against harm to the institution/ persons or property. A general requirement of protecting privacy was already included in the Policy. This has been strengthened with additional language, in both the Policy and the Rule. The new language further emphasizes the important principle that information gathered through the background check procedures “shall be treated as confidential information.” This applies to all persons involved in any proceeding---including the newly added faculty representatives serving on the BRC, and any local-department faculty who are ‘consulted’ for a particular BRC case.

**4. Further narrowing of the definition of ‘reasonable cause.’** Reasonable cause serves as the basis for conducting a background check on existing employees. The definition of that concept plays a key role in drawing the appropriate balance of protecting employee privacy while allowing for adequate investigation of potential risks. New language is added to refine that definition in the Policy, to now refer to “*an unreasonable risk of significant physical, emotional, or financial harm to persons or property.*” That narrowing of the definition should eliminate grounds for frivolous interpretations of the concept of harm.

**5. Clarification that disciplinary actions against existing employees are governed by other existing regulations and the practices that have been developed over many years in implementing those existing regulations.**

The drafting group had been proceeding with the understanding that if a background check of an existing employee leads to the need to consider some sanction/ disciplinary action/ or other measures necessary to protect against harm to persons or property, then that would trigger activation of existing systems for disciplinary action. Most importantly for possible actions affecting existing faculty, that would lead to application of the system encompassed in the Code of Faculty Rights and Responsibilities.

Although this was the working assumption influencing earlier drafts, in an exchange in conjunction with the Senate meeting the suggestion was made that this assumption might not be understood by all--- and so ought not be left as merely implicit. It may have been that the lack of explicit mention of this important principle was contributing to the concerns some senators and guests had expressed about the possibilities of the new CBC regulations being overly susceptible to misuse for arbitrary, pernicious ‘witch-hunts.’ So the solution is to explicitly state this important principle. In particular it is now made explicit that proceedings involving existing faculty employees are to be governed by the Code of Faculty Rights and Responsibilities, with its extensive

and carefully developed protections of both regular and auxiliary faculty. This important point is made both in the Policy 5-130, and again in the Rule 5-130A.

The Policy has this new passage: *“This Policy and associated regulations are to be implemented in conjunction with other regulations applicable for proceedings for disciplinary actions for existing employees, including those applicable for faculty, other academic personnel, or staff employees.”*

The Rule has this new passage: *“In cases involving an existing employee, if the risk assessment process leads to a determination that the employee should be considered ineligible to retain the position, or considered for other sanctions or other disciplinary action, then proceedings for any disciplinary actions shall be conducted in compliance with such other regulations of the University as are applicable based on the particular position held by the employee. For faculty, those include the Code of Faculty Rights and Responsibilities (Policy 6-316). For other academic personnel, they include the Policy on Academic Staff, Educational Trainees, Postdoctoral Fellows and Medical Housestaff (Policy 6-309).”*

**6. Costs.** The Rule now no longer has the option for costs to be imposed on applicants. There seemed to be a strong view in the Senate meeting that such an alternative is not desirable, at least at this time. Those who might favor such an alternative can always raise this issue again any time during the mandated two-year study period.

**7. A fall semester 2009 mandated opportunity to assess the workings of the new background check system, and identify and respond to any needs for change.** The earlier draft of the Rule included a mandate for these regulations to be reexamined within two years. That remains. Newly added is another mandate that an *“interim report”* about implementation be made to the Senate in the fall of 2009. With these two requirements in place, it is assured that any as yet unforeseen difficulties in implementing this system will be brought to light after some experience has been gained, and that the Senate will have multiple opportunities to participate in making adjustments, including by amending the regulations if needed.

**8. A few other changes—too minor to call attention to** are marked in the ordinary manner of marking changes.

**9. Finally, these materials are rearranged slightly from the April 6 agenda.** Hopefully this will help you proceed quickly—focusing your attention on the important latest changes, but allowing for further reading of the older and by now familiar materials if helpful to you. The materials are (i) this explanation of recent changes, (ii) the proposed revision of existing Policy 6-301—with no recent changes, (iii) the latest drafts of proposed new Policy 5-130 and proposed new Rule 5-130A (with clear bold marking of the important recent changes), and (iv) the background information you have previously seen—with no new changes—which include the older cover memoranda and (for your information) the older materials regarding the Rule applicable for non-academic staff.

To: Academic Senate Office  
From: Human Resources—contact Greg Hughes / Kristin Jensen  
Date: March 16, 2009

Enclosed, please find the proposed new University Rule 5-130B regarding criminal background checks for staff employees. Please place this on the agenda for the next Senate Executive Committee meeting.

This new Rule will implement new Policy 5-130 as applicable to employees other than faculty and academic staff. Because this Rule has no application to academic personnel (for whom the criminal background check process will be governed by a separate rule), it is recommended that the Executive Committee classify this as an item for the information rather than the approval of the Senate.

This proposal has been approved by Joan Gines, acting Vice President for Human Resources.

For further information, please contact Greg Hughes at 581-6033, or Kristin Jensen at 581-2119.

Approved by: \_\_\_\_\_ date: \_\_\_\_\_

Memorandum

To: Acting Vice President for Human Resources-- Joan Gines  
From: Greg Hughes & Kristin Jensen  
Date: March 16, 2009  
RE: Proposed University Rule 5-130B (Criminal Background Checks of Staff Employees)

Attached for your consideration and approval is a proposal for a new University Rule 5-130B, to be associated with and implement University Policy 5-130.

The proposal, in an earlier version, has been reviewed with the University Institutional Policy Committee, and with the group led by Academic Affairs Associate V.P. Susan Olson responsible for developing the proposal for Policy 5-130 and the related Rule applicable for faculty and academic staff.

If you approve of this proposal, it will then be forwarded to the Academic Senate Executive Committee for its review. It will be recommended that the Executive Committee classify this as a Rule that does *not* “directly or significantly affect the University’s academic missions,” under U-Policy 1-001, and therefore may be implemented at any time after presentation to the Executive Committee. The proposed effective date for the new Rule is May 1, 2009, which is the same date new Policy 5-130 is proposed to take effect.

Executive Summary of the proposed new Rule:

The Utah Legislature and Utah State Board of Regents have adopted legislation and an administrative rule requiring the University and other higher education institutions to implement internal policies for conducting criminal background checks of some new employees and of existing employees when reasonable cause exists. Further information about that background is provided in the materials accompanying the proposal for new Policy 5-130.

In compliance with that Regents' rule, the University is now adopting new Policy 5-130, which will replace another long-standing policy (a section of Policy 6-301). To implement that new policy, two new Rules are also proposed for adoption. Rule 5-130A will serve to implement the policy for faculty and "academic staff" employees. Rule 5-130B, with your approval, will serve to implement the policy for all other staff employees.

Important provisions of this proposed Rule include the following:

- All benefited campus staff New Hires with a Hire Date of 5-1-09 or later will be subject to a pre-employment Criminal Background Check.
- Non-benefited campus staff New Hires that are hired into positions classified as Security Sensitive and/or involving Significant Contact with minors under 21 as defined by Utah Board of Regents Rule 847 will be subject to a pre-employment Criminal Background Check.
- Current campus staff members will be exempt from this requirement, and will not be subject to a Criminal Background Check.

**6. Utah Code Ann 53B-1-110, and Utah State Board of Regents Rule 847**  
(State law which compelled the University to implement background check regulations).

Utah Code Ann. **53B-1-110. Criminal background checks of prospective and existing employees of higher education institutions -- Board to adopt policy.**

(1) As used in this section:

- (a) "Institution" means an institution listed in Section 53B-1-102.
- (b) "Minor" means a person younger than 21 years of age.

(2) The board shall adopt a policy providing for criminal background checks of:

- (a) prospective employees of institutions; and
- (b) existing employees of institutions, where reasonable cause exists.

(3) (a) The policy shall require that:

- (i) an applicant for any position that involves significant contact with minors or any position considered to be security sensitive by the board or its designee shall submit to a criminal background check as a condition of employment; and
- (ii) an existing employee submit to a criminal background check, where reasonable cause exists.

(b) Subsection (3)(a)(i) does not apply to adjunct faculty positions.

(c) The policy may allow or require applicants for positions other than those described in Subsection (3)(a)(i) to submit to a criminal background check as a condition of employment.

(d) The policy may allow criminal background checks for new employees to be phased in over a two-year period.

(4) The applicant or employee shall receive written notice that the background check has been requested.

(5) Each applicant or employee subject to a criminal background check under this section shall, if required by the institution:

- (a) be fingerprinted; and
- (b) consent to a fingerprint background check by:
  - (i) the Utah Bureau of Criminal Identification; and
  - (ii) the Federal Bureau of Investigation.

(6) (a) Institutions may request the Utah Bureau of Criminal Identification to conduct criminal background checks of prospective employees and, where reasonable cause exists, existing employees pursuant to board policy.

(b) At the request of an institution, the Utah Bureau of Criminal Identification shall:

- (i) release the individual's full record of criminal convictions to the administrator requesting the information; and
- (ii) seek additional information from regional or national criminal data files in responding to inquiries under this section.

(c) Information received by the Utah Bureau of Criminal Identification from

entities other than agencies or political subdivisions of the state may not be released to a private entity unless the release is permissible under applicable laws or regulations of the entity providing the information.

(d) Except as provided in Subsection (7), the institution shall pay the cost of background checks conducted by the Utah Bureau of Criminal Identification, and the monies collected shall be credited to the Utah Bureau of Criminal Identification to offset its expenses.

(7) The board may by policy require an applicant to pay the costs of a criminal background check as a condition of employment.

(8) The applicant or employee shall have an opportunity to respond to any information received as a result of the criminal background check.

(9) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons under procedures established by the board in policy.

Enacted by Chapter 248, 2007 General Session

## **Utah State Board of Regents Rule**

### **R847, Criminal Background Checks**

#### **R847-1. Purpose**

To provide for criminal background checks of certain prospective and existing employees of System institutions.

#### **R847-2. References**

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

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

**2.3.** Policy and Procedure R165, Concurrent Enrollment

**2.4.** Policy and Procedure R481, Academic Freedom, Professional Responsibility and Tenure

#### **R847-3. Definitions**

**3.1. 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 institutions on a part-time basis to carry out instructional, research or public service functions.

**3.2. 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 institution such as financial/credit checks, degree transcripts or license documentation, or student loan status.

**3.3. 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. An institution 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.

**3.4. 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.

**3.5. Employee** - a faculty member, classified or professional employee of a Utah System of Higher Education institution who receives compensation for work or services from funds controlled by the institution, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked.

**3.6. Institution** - an institution listed in Section 53B-1-102.

**3.7. Minor** - a person younger than 21 years of age.

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

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

**3.9.1.** access to children, including child care in a child care center, or to diminished capacity adults;

**3.9.2.** relationships with students where exceptional trust and responsibility are involved, such as counselors, health care providers, coaches, and residence hall personnel;

**3.9.3.** responsibility for providing direct medical care, treatment, or counseling and/or access to pharmaceuticals, toxins, hazardous or controlled substances;

**3.9.4.** 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;

**3.9.5.** decision making authority for committing institutional 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;

**3.9.6.** access to building and residence hall master control and key systems;

**3.9.7.** access to confidential information or sensitive personal information such as employment, health, donor, financial and other records, including data that could facilitate identity theft;

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

**3.9.9.** responsibility for police, security, guard forces, or other significant health or safety issues.

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

**3.10. 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.

#### **R847-4. Policy**

**4.1. Required Background Checks for Applicants** - An applicant for any employee position at an institution that involves significant contact with minors or is considered to be security sensitive by the institution'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 institutional rules on sexual harassment and information, financial, health, and physical security.

**4.2. Optional Background Checks for Applicants** - The president or his/her designee may allow or require applicants for positions other than those described in 4.1, including adjunct faculty, temporary or part time positions, to submit to a criminal background check as a condition of employment.

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

**4.4. Written Release of Information** - For applicants for employment, the institution shall obtain a written and signed release of information for a criminal history background check. For existing employees, the institution shall request a written and signed release of information for a criminal history background check.

**4.5. Notice a Background Check has been Requested** - If the existing employee does not provide a written and signed release as requested pursuant to 4.4, the employee shall receive written notice that the background check has been requested.

**4.6. Fingerprint Background Check** - The institution may require each applicant or employee subject to a criminal background check under this section to be fingerprinted and consent to a fingerprint background check by the Utah Bureau of Criminal Identification, the Federal Bureau of Investigation or another government or commercial entity.

**4.6.1.** Institutions may request the Utah Bureau of Criminal Identification to conduct criminal background checks of prospective employees and, where reasonable cause exists, existing employees pursuant to board policy.

**4.6.2.** At the request of an institution, the Utah Bureau of Criminal Identification is directed by 53B-1-110 to release the individual's full record of criminal convictions to the authorized institutional administrator requesting the information and is also directed to seek additional information from regional or national criminal data files in responding to inquiries under 53B-1-110.

**4.6.3.** 53B-1-110 provides that information received by the Utah Bureau of Criminal Identification from entities other than agencies or political subdivisions of the state may not be released to a private entity unless the release is permissible under applicable laws or regulations of the entity providing the information.

**4.6.4.** Except as provided in 4.8, the institution shall pay the actual cost of fingerprint background checks incurred by the Utah Bureau of Criminal Identification, and the moneys collected shall be credited to the Utah Bureau of Criminal Identification to offset its expenses in conducting the checks.

**4.7. Consumer-reporting Agency Criminal History Background Check** - The president or his/her designee may determine to use a consumer-reporting agency to conduct a criminal history background check instead of the fingerprint background check process provided in 4.6.

**4.7.1.** 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.

**4.8. 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.

**4.9. Risk Assessment** - Based on the convictions disclosed by the criminal background check, the institution 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 institution 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.

**4.10. 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 applicant or employee shall receive a copy of the report, written notice of the reasons for denial or the adverse action, a written description of his/her rights under the Fair Credit Reporting Act, and 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 institution within three (3) business days of his/her receipt of the report, the institution shall provide a reasonable opportunity to address the information contained in the report.

**4.11. 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 institution or others, the president or his/her designee may require an additional financial/credit check to be performed.

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

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

**4.14. 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.

**4.15. Background Checks Phased In** - Criminal background checks for new employees may be phased in over a two year period ending May 1, 2009.

**4.16. 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 institution employing a concurrent 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.) This requirement is not subject to the phase in provisions of 4.15.

(Adopted July 20, 2007.)