


Approved by: Butch Eley, Commissioner	Policy Number: 40
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**DEPARTMENT OF FINANCE AND ADMINISTRATION
Criminal Background Check Policy
For the Office of Inspector General**

SECTION I. STATEMENT OF PURPOSE

1. The Office of Inspector General (OIG) was created by Title 71 Chapter 5 of Tennessee Code Annotated to investigate and prosecute TennCare fraud and abuse. OIG is located in the Department of Finance and Administration (Department) and reports to the Commissioner of Finance and Administration. (Tennessee Code Annotated Section 71-5-2502).
2. Unless otherwise specified herein, the Department Human Resources Office (HRO) Director or designee shall conduct criminal background checks on all candidates for employment with OIG, employees transferred into positions with OIG which require a new or different background check, and certain contractors of OIG as provided herein.
3. The purpose of this Policy is to define the types of employment related criminal background checks administered to OIG employees and candidates; identify by function which candidates, employees, and contractors are subject to the background checks defined in this policy; and describe the procedures for performing background checks.
4. This policy will be effective upon the final date of signature by all required officials.
5. All persons who receive background checks pursuant to this policy shall have an absolute responsibility to report any subsequent misdemeanor or felony conviction to HRO and to the Inspector General. HRO and Inspector General shall consider the nature of the conviction in light of this policy to evaluate its impact upon continuation of employment. Failure to report a criminal conviction within 10 days may result in disciplinary action up to and including termination.

SECTION II. DEFINITIONS.

1. **Background Check Documentation** includes all notification and consent documents signed by the candidate, as well as the background check result sheet(s), registry results, and any statement of rights provided to the candidate.
2. **Federal Fingerprint Background Check** is a check of federal and state criminal records maintained in the FBI Criminal Justice Information System database, and conducted by the Tennessee Bureau of Investigation (TBI) through an agreement with the Federal Bureau of Investigation (FBI), when authorized by federal or state law.

3. **Transfer** means any change of duties into a position requiring a background check, whether that occurs by promotion, demotion, reclassification of job position, or otherwise, whether the change is from another State department or within Finance and Administration, and whether such transfer is voluntary or involuntary.

4. **OIG Special Agent** is an employee of the OIG who is a duly authorized law enforcement officer specifically designated by the Inspector General to have weapons and enforcement authority pursuant to Tenn. Code Ann. § 71-5-2507.

5. **OIG Certified Terminal Operator** is an employee of the OIG who is authorized to access the FBI/TBI Criminal Justice Information database for criminal justice purposes pursuant to an agreement with TBI.

SECTION III. POLICY.

1. As prohibited by Tenn. Code Ann. §8-50-112, and the Americans with Disabilities Act Amendments Act (ADAAA), OIG shall not include any language about background checks or physical or mental health histories on the job postings or announcements and shall not inquire about an applicant's criminal history on the initial application form. Inquiries into criminal history and physical requirements of the position may be made only after the initial screening of applications. Background checks and physical and mental examinations where applicable may be administered only after an employment offer has been extended.

2. No background check will be conducted unless the candidate has been provided prior notice of the background check and signed and returned a Department of Finance and Administration Criminal History Check Consent Form which is attached as **Exhibit A**.

3. After receipt of the background check results, the HRO will coordinate appropriate next steps in accordance with the procedures established in Section IV below.

4. No credit check will be conducted, and no portion of the background check will be conducted by a third-party vendor.

5. HRO shall preserve all background check documentation for five (5) years after the records were generated or after a personnel action was taken in reliance upon the results, whichever is later. All fingerprint background check results from the CJIS database shall be maintained in a secure location consistent with the requirements of the FBI CJIS Security Policy. This retention requirement applies regardless of whether the applicant was hired by the Department or the contractor was placed into the Department. Additionally, if an applicant, contractor, or employee files an employment related claim or charge against the Department, the documentation must be maintained until the case is concluded or five (5) years, whichever is longer.

6. Background check result documentation shall not be maintained as part of an employee's personnel file but in a confidential separate "background check file" maintained by HRO in accordance with established Department retention procedures and the FBI CJIS Security Policy if applicable.

7. Except as otherwise required or expressly permitted by state or federal law, a criminal history obtained by the Department shall be confidential and shall not be disclosed. Any unauthorized disclosure (Intentional or unintentional) shall be reported to the HRO immediately. Persons who release or use this information without proper authorization may be subject to disciplinary action up to and including termination. Disclosures that violate criminal laws or the CJIS Security Policy rules may also be referred to prosecuting authorities including the TBI.

8. After all record-retention requirements are satisfied, the Department must dispose of all background check records in a secure manner which meets industry standards for the destruction of confidential and/or sensitive information. This may include shredding, burning, or pulverizing, or permanently destroying electronic records, which are all considered reasonable measures of disposal.

SECTION IV. PROCEDURES.

1. **Background Checks Authorized by 28 C.F.R. § 20.3(g)(2) and §20.33(a)(1) (Federal Fingerprint Background Checks)**. After making offer of employment but before first day of employment, the Department shall conduct a Federal Fingerprint Background Check in accordance with federal and state law when filling all positions within OIG including appointments, rehires, and transfers. The HRO shall provide prior notice and statement of rights to all candidates prior to the fingerprint background check and shall obtain signed consent forms.

2. The TBI will provide HRO with a copy of the Federal Fingerprint Background Check report. HRO will determine whether the employee is eligible for a position with OIG based upon the applicable standards stated below.

3. If the TBI report reveals a conviction which appears to prevent a candidate from employment, HRO shall generate a letter advising the candidate that he/she is not eligible for employment with OIG, including a statement of the basis of the determination. Within five working days the candidate must respond and (1) verify that the information is correct; (2) dispute the information and provide documentation to support the dispute; (3) provide documentation to more fully explain the conviction; or (4) withdraw from consideration for the position.

4. Upon receipt of the employee's response or the employee's failure to respond, HRO shall recommend a course of action to the OIG and the Appointing Authority.

5. If the TBI report reveals that a contractor has been convicted of a crime preventing employment with OIG, HRO shall notify the contractor's employer in writing that the contractor is not eligible for placement at OIG.

6. Internal OIG transfers do not require a new Federal Fingerprint Background Check provided the HRO is in possession of all documentation of a prior Federal Fingerprint Background Check and provided that the new position does not have additional background check requirements based upon the standards stated below.

7. All applicants for OIG Commissioned Positions must also satisfy all requirements of Tenn. Code Ann. § 38-8-106 as a condition of employment. All investigations in connection with these requirements shall take place after a conditional offer of employment has been extended and shall be conducted

pursuant to OIG Policy No. 20-102. All documents produced in connection with these results shall be maintained and destroyed in the manner provided in Section III of this policy.

8. All post-hiring employee screening requirements required in order to maintain terminal or other access to the CJIS system shall be conducted separate and apart from hiring background checks and in accordance with OIG Policy No. 20-109 and TBI mandates. If the post-hiring screenings reveal adverse findings, the OIG will report those to HRO and work with HRO to address the situation.

SECTION V. HIRING STANDARDS BY POSITION

1. OIG Special Agents. No person shall be eligible for a position as an OIG Special Agent if the required background checks reveals a conviction for, guilty plea or a plea of nolo contendere to any felony charge or to any violation of federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substance analogues.

2. OIG Certified CJIS Terminal Operator. No person shall be eligible for a position as an OIG Certified CJIS Terminal Operator if the required background check reveals a conviction for, guilty plea or a plea of nolo contendere to any charge which is deemed impermissible by the TBI's requirements for CJIS Terminal Operators. The TBI will make all decisions regarding CJIS terminal operator background check qualifications and will communicate that to HRO and OIG.

3. Employees within OIG who are placed with or perform functions of the Office of Cooperative Disability Investigation created by Tenn. Code Ann § 4-61-101 must comply with all criminal background check and screening requirements stated in the Memorandum of Understanding (MOU) between the Department of Finance and Administration, the United States Social Security Administration, and Tennessee Disability Determination Services. All employment decisions from these background checks /screenings, and all document retention requirements for these background checks/ screenings are set out in the MOU and are not subject to this policy.

4. All Other OIG Positions. If the background check reveals criminal history involving convictions of felonies, misdemeanors involving dishonesty or violence, or persistent substance abuse or other matters which would negatively impact an individual's ability to perform the position in a capable and trustworthy manner, the HRO and OIG will consider all relevant information, including any explanation provided by the candidate pursuant to Section IV (3) above, in light of the following considerations before making an employment decision, as required by Tenn. Code Ann. § 8-50-112(c):

- The specific duties and responsibilities of the position;
- The bearing, if any, that a candidate's criminal history may have on the candidate's fitness or ability to perform the duties required by the position;
- The amount of time that has elapsed since the candidate's conviction or release;
- The age of the candidate at the time of the commission of each offense;
- The frequency and seriousness of each offense;
- The potential for harm to the Department and its customers if the same offense(s) were to recur;
- Any information produced by the candidate regarding his or her rehabilitation and good conduct since the occurrence of an offense;
- Any public policy considerations with respect to the benefits of employment for Candidates with criminal histories; and
- Any other factors determined to be relevant by the Department.