

## CRIMINAL HISTORY

### I. Procedure

#### A. Criminal Background Checks:

1. Any offer of employment is contingent upon the satisfactory outcome of a criminal background check. Western Dakota Technical College (WDTC) has the sole discretion to determine whether the outcome of a criminal background check is satisfactory. In making a determination, WDTC:
  - a. Shall adhere to all applicable federal and state laws that disqualify an individual from employment by the college.
  - b. May consider the conviction of any crime of moral turpitude.
  - c. May consider any criminal conviction, including convictions not disclosed by the applicant.
2. WDTC shall partner with local agencies to submit Live SCAN fingerprints to the Division of Criminal Investigation (DCI). Under extenuating circumstances, at WDTC's discretion, WDTC shall provide fingerprint cards for manual submission to the DCI.
3. Records are reviewed at the state level and then forwarded by the DCI to the Federal Bureau of Investigation (FBI) for a national criminal history record check.
4. WDTC shall pay any fees charged for the cost of fingerprinting and/or the criminal background investigation for any person who is offered employment contingent of a criminal background check.
5. Any person whose employment is subject to the requirements of this section may enter service on a temporary basis pending receipt of results of the criminal background investigation under the following circumstances:
  - a. The prospective new employee has submitted new completed fingerprints to the DCI; and
  - b. The Human Resources office has completed a South Dakota Sex Offender registry check and has cleared the prospective new employee.
6. WDTC may, without liability, withdraw its offer of employment or terminate the temporary employment without notice if the report reveals a disqualifying record.
  - a. If the applicant believes the criminal background result is incorrect or incomplete in any respect and the applicant wishes changes, corrections, or updating of the alleged deficiency, the applicant should directly contact the agency which contributed the questioned information or to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306.

7. Should an applicant be disqualified from employment due to the results of a criminal background check, WDTC shall inform the individual that the criminal background report reveals a conviction which prohibits WDTC from employing the person and inform the person of his or her rights to appeal the accuracy or completeness of the criminal history record information (CHRI). WDTC will not delay the employment hiring decision solely because the applicant seeks to correct his or her CHRI.
8. Any organization that contracts with WDTC for service shall be required to certify to WDTC, in writing, that individuals employed by the service provider have been subjected to a criminal background check. At the discretion of the president or designee, this requirement may be waived if individuals employed by the service provider do not have contact with students.

#### B. Change in Criminal History

1. To assure the protection of persons served, if a current employee is arrested for or charged with a crime, including felonies and gross misdemeanors, or if a supervisor/manager receives credible information regarding possible criminal acts, and the crime or possible crime is related to the employee's position, the employee will be suspended until final disposition of the charges. If final disposition of the charges does not occur within 60 days from the date of the arrest or charge, WDTC will conduct an investigation of the circumstances, which may lead to termination of employment.
2. The employee will notify WDTC in writing of a conviction for a violation of a criminal felony and/or gross misdemeanor drug charge no later than five calendar days after such conviction.
3. The procedure to determine the employee's eligibility for employment will be the same as the procedure established for the criminal background check.
4. An employee who fails to notify his/her supervisor of a change in criminal history during employment may be terminated.
5. An employee returning to a position requiring a background check, following an absence of 12 consecutive months of not working, regardless of reason of the absence, will be required to have a new criminal background check completed.

#### C. Confidentiality

1. Information received as the result of this procedure shall remain confidential and shall not be released to any other individual or entity pursuant with the regulations set forth in the South Dakota Criminal Division of Criminal Investigation Guide for Noncriminal Justice Agency.

#### D. Storage and Access

1. WDTC shall retain CHRI on all persons subject to the criminal background investigation processes described in this policy for three (3) years following the hiring decision. Should the result of the criminal background investigation reveal a disqualifying record, such result shall be kept by WDTC for seven (7) years. WDTC reserves the right to retain any received result indefinitely.
2. CHRI results are kept separate from employee personnel records in locked storage containers within a controlled area that is free from public or unauthorized access.
3. WDTC will not routinely maintain electronic copies of CHRI; however, if electronic copies are necessary, WDTC will restrict access to authorized persons only. CHRI will not be stored on a server that is unprotected or accessible by an unauthorized entity.

#### E. Destruction

1. WDTC will dispose of records securely as outlined in the South Dakota Division of Criminal Investigation Guide for Noncriminal Justice Agency
  - a. Hard copies of CHRI will be shredded in-house using a cross-shredding technique.
  - b. Electronic records will be deleted or overwritten as required by the South Dakota Division of Criminal Investigation (SDDCI) or FBI.

#### F. Security Incident Response Plan

1. WDTC employees will immediately report to the LASO information security incidents such as the theft or loss of physical records, or the hacking or failure of electronic systems, or suspicions that an incident has or will take place.
2. The LASO will document receipt of all reports, investigate incidents, and report incidents to SDDCI.
3. LASO documentation will include:
  - a. Date of security incident
  - b. Location of security incident
  - c. Systems affected
  - d. Method of detection
  - e. Nature of security incident
  - f. Description of security incident
  - g. Actions taken/resolution
  - h. Current date
  - i. Contact information for LASO

## **II. Definitions**

- A. Criminal Conviction means a verdict that results when a court of law finds a defendant guilty of a crime.
- B. Crime of Moral Turpitude means a conduct that is considered contrary to community standards of justice, honesty, or good morals.
- C. Final Disposition of Charges means how a case was finally resolved. This could be through a jury verdict, a dismissal or conviction through a guilty or no contest plea.
- D. Felony means a crime, typically one involving violence, regarded as more serious than a misdemeanor, and usually punishable by imprisonment for more than one year.
- E. Gross Misdemeanor means a crime which is more serious than a regular misdemeanor, but is still classified as a minor crime, as opposed to serious crimes. Such crimes may include petty theft, simple assault or driving under the influence of alcohol and/or other drugs. Typically, the maximum sentence is one year in county jail and/or \$5,000 in fines.
- F. Sole discretion means the legal ability to hold the deciding power over a given situation.

### **Legal References:**

SDCL 3-10-12 – Criminal background investigation – Prospective employees, technical college instructors, and student teachers – Temporary employment pending results.

SDCL 13-10-13 – Criminal conviction as a factor in hiring decision.

SDCL 13-10-16 – Conviction defined

U.S.C., Title 5, Section 552a – Records maintained on individuals.

South Dakota Criminal Division of Criminal Investigation – Guide for Noncriminal Justice Agency

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