

## **I. Overview**

In an effort to provide the safest possible environment for students, visitors, faculty, and staff, and in order to maintain its state license for research involving radioactive materials, SJSU shall, consistent with the requirements of the law and prudent practices, conduct fingerprinting criminal history record checks on current employees that have unescorted access to radioactive material in quantities of concern and any applicants or employees who apply for such positions in the future.

The campus recognizes that its need to investigate an employee's or prospective employee's criminal history and fingerprinting record must be balanced with the need to protect privacy. University policy and state and federal laws recognize the individual's right to privacy and prohibit campus employees and others from seeking, using, and disclosing personal information except within the scope of their assigned duties.

These guidelines do not apply to the screening of sworn and non-sworn employees of the University Police Department. Guidelines and standards for these individuals are contained in Government Code 1031 et. seq and enforced by the Commission on Peace Officer Standards and Training.

The term Fingerprinting and Criminal History Record Checks will be used through out this document. The definition of this term, as used in this Administrative Guideline, is: A process whereby SJSU obtains an individual's fingerprints on a standard Fingerprint card (Form FD-258) and submits the fingerprint card to the Nuclear Regulatory Commission's Division of Facilities and Security. NRC will submit the fingerprint card on behalf of SJSU to the Federal Bureau of Investigation (FBI) for identification and a criminal history records check. The FBI will return the results of its records check for each individual to SJSU.

## **II. Requirements**

- A. Effective with the implementation of this Policy, it will be the practice of SJSU, in conformity with the regulations of the U.S. Nuclear Regulatory Commission and the direction of the California Department of Health, to obtain fingerprinting and criminal history record check information on:
1. An applicant who is under consideration, following normal screening and selection processes, for a position that is designated for unescorted access to radioactive material in quantities of concern.
  2. Any current employee who has unescorted access to radioactive material in quantities of concern and has not had a prior fingerprinting and criminal history record check completed.

3. A current employee who is under consideration for a transfer, promotion or reclassification to a position for unescorted access to radioactive material in quantities of concern.
  4. The “Quantities of Concern” regarding the amount of radioactive material necessary for having a fingerprinting and criminal history record check completed are defined in Attachment A of this Administrative Guideline.
- B. For the purpose of managing business risks for unescorted access to radioactive material in quantities of concern, criminal record information will be obtained from the FBI under the guideline of this policy for the purpose of evaluating applicants/employees for employment and reclassification.
- C. This guideline does not automatically exclude from consideration for employment all individuals with convictions. SJSU shall in no way use this information to discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, pregnancy, age, disability or veteran’s status.

### **III. Procedure**

#### **A. Responsible Parties:**

##### **1. Hiring Department**

- Notifies SJSU Human Resources that a final candidate/employee has been selected for a security sensitive position.
- The cost of the fingerprinting and criminal history records check will be borne by the hiring department.

##### **2. University Police Department**

- Obtains fingerprints on the standard Fingerprint Card (FD—258, ORIMDNRCOOOZ) and forwards them to the Nuclear Regulatory Commission’s Division of Facilities and Security with payment for the fingerprint check.
- Receives results of the fingerprint check from the FBI.
- Reviews results and forwards, in a sealed confidential envelope, information on any convictions reported to Human Resources.
- Files all fingerprint check reports received from the FBI in a locked cabinet.
- Acts as member of the University Human Resource Committee (UHRC) to review information and make a determination of whether to grant unescorted access to radioactive materials in quantities of concern.
- Upon request provides the subjects of the fingerprinting and criminal history record checks with the forms needed to either request a summary of their record check results or challenge the accuracy of the results.

### **3. SJSU Human Resources**

- Includes in position announcements for staff and MPP positions a notice of fingerprinting and criminal history records screening when such screening is required.
- Assures that the candidates/employees for staff and MPP positions have been informed about the fingerprinting and criminal history records screening requirement and provides appropriate forms and a copy of the letter from the Department of Health to the finalist(s)/employee(s) who will undergo the fingerprinting and criminal history records check.
- Coordinate meetings of the UHRC to consider applicants for staff and MPP positions requiring unescorted access to radioactive materials in quantities of concern who have convictions reported.
- Maintains confidentiality of fingerprinting and criminal history record check results.
- The Associate Vice President of Human Resources serves as the Trustworthiness and Reliability Officer for staff and MPP positions requiring unescorted access to radioactive materials in quantities of concern who have convictions reported.
- Provides feedback to candidates/employees for staff positions whenever there is a finding and the University HR Review Committee may make a hiring/transfer decision based on those results.
- Provides the candidate/employee with any forms and information necessary if the candidate/employee seeks to challenge the accuracy or completeness of the results from the fingerprinting and criminal history record check.

### **4. SJSU Academic Affairs**

- Includes in position announcements for faculty positions a notice of fingerprinting and criminal history records screening when such screening is required.
- Assures that the candidates/employees for faculty positions have been informed about the fingerprinting and criminal history records screening requirement and provides appropriate forms and a copy of the letter from the Department of Health to the finalist(s)/employee(s) who will undergo the fingerprinting and criminal history records check.
- Maintains confidentiality of fingerprinting and criminal history record check results.
- The Associate Vice President of Faculty Affairs serves as the Trustworthiness and Reliability Officer for faculty requiring unescorted access to radioactive materials in quantities of concern who have convictions reported.
- Provides feedback to candidates/employees for faculty positions whenever there is a finding and the University HR Review Committee may make a hiring/transfer decision based on those results.
- Provides the candidate/employee with any forms and information necessary if the candidate/employee seeks to challenge the accuracy or completeness of the results from the fingerprinting and criminal history record check.

## 5. University HR Review Committee (UHRC)

- This committee consists of the Associate Vice President of Human Resources, Associate Vice President of Faculty Affairs and the University Police Chief.
- Reviews and updates the list of security sensitive positions for unescorted access to radioactive material in quantities of concern.
- Pursuant to Nuclear Regulatory Commission's Procedures for Processing Fingerprint Checks, the Committee considers the following four (4) elements:
  - a) Fingerprint and the Federal Bureau of Investigation (FBI) identification and criminal records check;
  - b) Verification of employment history;
  - c) Verification of education; and
  - d) Personal references.
- The UHRC will determine what information the University currently has and what information is needed. The UHRC will take appropriate action to access any additional information needed to make a final determination pursuant to NRC guidelines.
- When all relevant information is available, the UHRC will review the information from the fingerprinting and criminal history records check and verifies the trustworthiness and reliability information (employment history, education, personal reference) and makes a determination, in accordance with the NRC's Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Materials, of whether to grant unescorted access to radioactive materials in quantities of concern.

## IV. Procedures for Criminal Record Checks on Candidates/Employees

- A. Effective the date of the adoption of this policy as noted above, the University will conduct fingerprinting and criminal history record checks on all employees currently in positions that meet the criteria of Section II A above. In addition, a criminal record check will also be required of all successful candidates, internal and external, employees, including volunteers, for positions that are listed as being subject to a criminal record check under the criteria of Section II A.
- B. The positions that are outlined in **Attachment B** are subject to fingerprinting and criminal history record checks. These positions meet the criteria as outlined in Section II A of this document. This list is not exhaustive, and the University reserves the right to add or delete positions at anytime provided any additions are covered by the criteria in Section II A. The University will notify the affected bargaining units when adding or deleting a represented position.
- C. All advertisements, notices, and postings for positions listed in "**Attachment B**", as it is amended, as requiring a record check will state: "*Successful candidates/employees for this position will be offered the position contingent on a satisfactory fingerprinting and criminal history record check as required by the Nuclear Regulatory Commission and University Policy on FINGERPRINTING AND CRIMINAL HISTORY RECORD CHECK, For Unescorted Access to Radioactive Material in Quantities of Concern.*"

- D. Once the completed recruitment packet is returned to SJSU Human Resources or SJSU Academic Affairs, they will provide the finalist with the *Request For Information* form and (**Attachment C**) fingerprint card form and ensure the process is completed. Individuals refusing to sign the authorization are eliminated from further consideration.
- E. Some deviations to the procedure outlined in paragraph D, above, are expected when national searches are conducted. In such circumstances it may be more practical to have all finalist candidates, who are brought to campus, undergo the fingerprinting and criminal history record checks while here.
- F. If circumstances require that an offer or decision be made before the completion of the investigation, the offer must be in writing and state that the offer is contingent on the completion of a satisfactory fingerprinting and criminal history records investigation. The new hire may not start the position, or existing employee transfer, until the results of the screening are received and reviewed.

## V. If the Candidate's Screening Reveals Criminal Convictions

- A. The University HR Review Committee (UHRC) will be notified of all fingerprinting and criminal history record checks in which convictions or pending criminal arrests that are less than one-year old where there is no final disposition are found.
  - The Committee will review these reports and make final determinations regarding the suitability of individuals for specific positions. The Review Committee may recommend implementation of additional controls before a department can employ an individual with a felony conviction.
- B. Only criminal convictions or pending criminal arrests that are less than one-year old where there is no final disposition will be considered in determining an individual's suitability for employment. The UHRC may not base its final determination on an arrest more than one-year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.
- C. If an individual only has a record of misdemeanor convictions and no felony convictions, the UHRC should only consider those offenses if one or more of the convictions occurred within five years of the individual's application for employment. In addition, the UHRC must only consider misdemeanor offenses involving offenses that implicate the candidate's trustworthiness and reliability (e.g. theft, fraud, identity theft). UHRC should also ensure that it takes into account mitigating factors such as the individual's age at the time of the offense, evidence of rehabilitation, and any other factor included in NRC's Guidance for Evaluating Criminal History Record Checks.
- D. Prior to making any final adverse decision against the individual, the University will make available the contents of any criminal record obtained from the FBI for the purpose of assuring correct and complete information. Upon receipt of the contents of this criminal record, the individual must provide the University with written confirmation that he received the notice regarding his/her criminal records. If the individual believes that the information is incorrect or incomplete, the individual may challenge the accuracy or completeness of the information by challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of

Investigation Identification Division, Washington, D.C. 20537-9700 (as set forth in 28 CFR Part 16.30 through Part 16.34). The individual must initiate a written challenge and notice the University of this challenge within 10 days of receiving notice regarding his/her criminal record from the University. If the individual challenges the accuracy and completeness of the record, the University will not make a final decision regarding the individual until it has received the FBI's ultimate confirmation or correction of the individual's criminal record.

- E. If the results of the fingerprinting and criminal history record check preclude an individual from employment, transfer, reclassification, or reassignment of job duties on the campus, SJSU Human Resources will notify the candidate/employee.
- If the results of the fingerprinting and criminal history record check preclude a current employee from transfer, reclassification, or reassignment to a position for unescorted access to radioactive material in quantities of concern, the results of the fingerprinting and criminal history record check shall have no bearing on the individual's continued employment in the non-security sensitive position unless:
    - (i) The employee failed to admit to a felony conviction on his/her initial application for employment with the University; or
    - (ii) The felony conviction was of such a nature as to impact the safety or security of students, faculty, staff or University property.
  - If the University believes the results of the fingerprinting and criminal history record check impact the employee's ability to continue in his/her current position, the University will consider the individual's suitability for employment or change in job duties after considering the specific duties of the position, the number of offenses and circumstances of each, the period of time since the employee's last felony conviction, and whether the offenses were disclosed on the application. Any disciplinary action may only be administered in a manner consistent with the terms of the applicable collective bargaining agreement in accordance with the applicable provisions of the California Education Code.
- F. The University Police Department will serve as the Office of Record for fingerprint check results.
- Per NRC Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks, UPD shall retain the fingerprint and criminal history records from the FBI for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the three (3) year period, these documents shall be destroyed.