Minnesota Department of Corrections

Policy:	**103.014**
Title:	**Background Checks for Applicants and Current Employees**
Effective Date:	**1/12/22**

PURPOSE: To define processes for screening finalists for employment on their criminal history; associations with incarcerated persons, persons on probation or parole, and formerly incarcerated persons; employment history, including incidents of sexual harassment; and other background information. To define processes for screening department employees, all of whom may have contact with incarcerated persons or releasees, on their criminal history a minimum of once every five years.

APPLICABILITY: Minnesota Department of Corrections (DOC); finalists for employment with the DOC, including department employees; and department employees who may have contact with incarcerated persons or releasees.

DEFINITIONS:

Appointing authority – a designated person empowered to make decisions regarding the employment of persons in DOC positions.

Appointing authority review panel – a designated group of DOC appointing authorities who review the following for finalists for initial appointment or rehire to trainee-corrections officer positions: 1) criminal history and 2) associations with criminal justice involved persons.

Associations with criminal justice involved person – interactions with a currently or formerly incarcerated person or other person who is or was incarcerated or on supervised release, parole, or probation under the jurisdiction of the DOC or any other federal, state, or local law enforcement jurisdiction in the United States, or interaction with the family of a current or former criminal justice involved person, regardless of whether the association existed before, during, or after the current or former criminal justice involved person's incarceration or release under any federal, state, or local law enforcement jurisdiction in the past ten years. (See Policy 103.223, "Personal Associations Between Staff and Offenders.")

Background check forms – may include the Minnesota Department of Corrections Consent form: Criminal History/Release of Predatory Offender Registration/Sexual Abuse Record (attached), Intent-Consent to Conduct Employee Criminal History Check (attached), Employment Reference form (attached), Criminal Justice Involved Persons Association Disclosure form (attached), Release of Information (attached), Firearms Screening Questionnaire (attached), and the Forms Packet for Positions Involving Provision of Psychotherapy (attached).

Criminal convictions – includes felonies, gross misdemeanors and misdemeanors for which probation or a workhouse, jail, restitution, or incarceration sentence or a stay of imposition or execution may be imposed. For purposes of this policy, a criminal conviction includes juvenile adjudication for which registration is required.

Department of Human Services (DHS) background check – background check run on the finalist for a position that requires direct contact with juveniles or youth.

Documentary evidence – includes such examples as a copy of local, state, or federal release orders and a copy of an order of discharge from probation, parole, or other field supervision.

Finalist – applicant for initial appointment, promotion, or rehire with the DOC who is considered a top applicant for a position.

Fingerprint card – duplicate of an individual's fingerprints, either using ink and paper or electronic scanning equipment.

Fingerprint criminal records – records from the Minnesota Bureau of Criminal Apprehension (BCA) that provide all available information on an individual related to criminal activity.

Incarceration – housing in any local/county jail, or state/federal correctional facility.

Initial appointment – employment transactions processed by human resources (HR) for each new employee. For purposes of this policy, employment transactions are also processed for persons who have previously been employed by the DOC who are rehired (from outside the state or another state agency) or have transferred from another state agency to the DOC.

Minnesota Predatory Offender Registry – database of persons who have committed predatory offenses that is maintained by the BCA.

Promotion – an employment transaction of an employee to an unlimited, classified position in a higher job classification, which is assigned to a salary range which is two or more steps higher than the maximum of the current job classification or requires an increase of two or more steps to pay the employee at the minimum of the new range. For purposes of this policy, promotion does not include junior/senior plan movements (e.g. corrections officer (CO) 1 to CO2) or reallocation promotions.

PROCEDURES:

A. The department screens finalists for employment on their criminal history, associations with criminal justice involved persons or currently/formerly incarcerated persons, employment history, including incidents of sexual harassment, and other background information, if applicable, when they are being considered for initial appointment or rehire with the DOC. The department also conducts criminal history and employment history checks, including checking for incidents of sexual harassment, on a finalist for promotion with the DOC.

   1. The DOC does not confirm a finalist's contingent job offer or promote anyone who:
      a) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or any other public or private institution responsible for the care and custody of people;
      b) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
      c) Has been civilly or administratively adjudicated to have engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or any other public or private institution responsible for the care and custody of people.

   2. For positions that may require the use or possession of a firearm, the department only confirms a finalist's contingent job offer for individuals who are legally eligible to use or possess a firearm. For positions that provide psychotherapy, the department conducts an employment history check from the last five years to determine if the finalist has a history of sexual contact with clients.

3. At least once every five years, a criminal history check is conducted on all employees. Qualified staff evaluate the findings and provide the appointing authority with any pertinent information to consider.

4. Offers of employment and promotion are contingent on the results of the applicable background checks, the post-hire fingerprint check, and other applicable background checks (such as the psychotherapy background check) if required. If applicable, offers of employment including promotion are also made contingent on the results of the pre-placement physical exam, in accordance with Policy 103.016, "Pre Placement Medical Exam and Evaluation," Policy 105.180 "Tuberculosis Control for Applicants, Employees, Contractors, Volunteers and Students," and Policy 103.041, "Commercial Driver's License."

B. Criminal history and predatory offender background checks for finalists

1. Finalists for initial appointment, rehire, and promotion must complete the background checks forms provided by the human resources (HR) staffing representative or hiring supervisor. If the position requires the use or possession of a firearm, the finalist must be provided with the Firearms Screening Questionnaire (attached) and be screened to determine whether or not the finalist is permitted to use a firearm, in accordance with Policy 103.130, "Firearms and Chemical Irritants Eligibility." If the finalist has a history of criminal conviction, including sexual abuse, the finalist must provide all the following, if applicable and requested:
   a) A copy of the local, state or federal release order demonstrating one year has elapsed since incarceration.
   b) A copy of the relevant discharge order or other documents from the respective law enforcement jurisdiction or court of record showing completion of probation, parole, or other field supervision.
   c) Any other competent evidence of rehabilitation and present fitness. This may include letters of reference by persons who have been in contact with the finalist since the finalist's release from incarceration.
   d) For positions that require the use or possession of a firearm, finalists with a domestic assault conviction, a domestic assault arrest with a lesser conviction, and/or a misdemeanor or higher assault conviction must provide documentation regarding their eligibility to possess a firearm.

2. The HR staffing representative must review the background check form(s) for completeness and signature and provide the form(s) to the HR transactions aide to conduct the initial criminal history check.

3. The HR transactions aide must provide the Criminal History/Release of Predatory Offender Registration/Sexual Abuse Record Form (attached) to the office of special investigations (OSI) to perform the predatory offender registry check on finalists for initial appointment and rehire.

4. The HR transactions aides must maintain the necessary certification(s) to conduct the following checks for criminal convictions:
   a) Review of the appropriate consent form to ensure the form is complete.
   b) Criminal justice information system (CJIS) criminal history query, including wants and warrants (for initial appointments, rehires, and promotions).
   c) Odyssey system query (for initial appointments, rehires, and promotions).

d) Current driver's license status check (all listed states, for initial appointments and rehires).

5. Criminal history results
   a) For reviews/checks that identify no criminal history, the HR transactions aide must return the finalist's background check form(s) to the HR staffing representative.
   b) For reviews/checks that identify a criminal history on finalists for initial appointment and rehire, the HR staffing designee must provide all the documentary evidence to the OSI director/designee. The OSI director/designee must maintain the necessary certification(s) to conduct checks for criminal convictions; review the findings; and determine whether or not the finalist is eligible for employment in accordance with this policy. If more documentation is needed from the finalist to make a determination, the OSI director/designee must ask the HR staffing designee to request more information from the finalist. For positions that require the use or possession of a firearm, this may include requesting the finalist to provide an approved request to purchase or carry a firearm.
   c) For reviews/checks that identify a criminal history on department employees who are finalists for promotion, the HR staffing designee must provide all the documentary evidence to the OSI director/designee if assistance is needed to complete the review/check. The OSI director/designee must maintain the necessary certification(s) to conduct checks for criminal convictions.

6. Once the OSI director/designee has determined the finalist's authorization for initial appointment or rehire, or has completed the criminal history check on department employees who are finalists for promotion, the OSI director/designee must sign the Pre-Employment Background Checklist and return the criminal history packet to HR staffing.

7. Unless DOC senior management has authorized an exception, the HR staffing manager/designee must contact the appointing authority to review the criminal conviction history of a finalist for initial appointment or rehire to a position other than trainee-corrections officer and contact the appointing authority review panel for a trainee-corrections officer position. The HR staffing manager/designee must contact the regional HR director regarding the post-hire criminal history of a department employee who is a finalist for promotion to determine whether the employee reported the conviction(s) per Policy 103.0141, "Employees Who Are the Subject of Criminal Investigation(s), Arrest(s) and/or Conviction(s)." The regional HR director must review with the appointing authority the post-hire criminal history of a department employee who is a finalist for promotion.

8. The appointing authority/review panel must examine a finalist's criminal conviction history and any documentary evidence, if provided or requested, in order to determine if the finalist will be offered a contingent offer for a position. The appointing authority/review panel must consider the following:
   a) The relationship of the crime(s) to the position being sought;
   b) The nature and seriousness of the crime(s) for which convicted;
   c) All circumstances relative to the crime(s), including mitigating circumstances or special conditions surrounding the commission of the crime(s);
   d) The age of the person at the time the crime(s) were committed;
   e) The length of time elapsed since the crime(s) were committed;

f) All other competent evidence of rehabilitation and present fitness presented, including such examples as employment history, completed education/training, and letters of reference by persons who have been in contact with the finalist since the expiration of the finalist's sentence; and

g) For a department employee who is a finalist for promotion, all of the above and also whether the employee reported the conviction(s) per Policy 103.0141, "Employees Who Are the Subject of Criminal Investigation(s), Arrest(s) and/or Conviction(s)."

9. For initial appointment and rehires, the HR staffing manager/designee must document the appointing authority/review panel decision on the Pre-Employment Background Checklist (attached) and relay the decision to the HR staffing representative. For promotion of department employees, the HR staffing manager/designee must document the appointing authority's promotional decision, if required, on the Intent-Consent to Conduct Employee Criminal History Check Form (attached).

10. The background check form(s) of the finalist/employee are retained in the employee's private/confidential file.

C. Association with criminal justice involved persons

1. Finalists for initial appointment or rehire must be asked to complete a Criminal Justice Involved Persons Association Disclosure form (attached) and provide information regarding their personal association(s) with current or former criminal justice involved persons and/or their families.

2. The HR staffing designee must review the Criminal Justice Involved Persons Association Disclosure form to identify if the finalist self-disclosed an association.

3. The HR staffing designee must enter the following information in the iShare criminal justice involved persons associations list for OSI to review:
   a) Finalist's name and previous names held;
   b) Position for which the finalist is being considered;
   c) All known phone numbers of the finalist;
   d) All known home and work addresses of the finalist;
   e) Criminal justice involved person's name, relationship to the finalist, location of the person, type of contact with the person as disclosed by the finalist, along with any comments provided by the finalist;

4. The OSI designee must complete the following searches for associations:
   a) Conduct a search in the correctional operations management system (COMS) to determine if the finalist is/has been listed as a visitor for any offender under the DOC's jurisdiction.
   b) Conduct a search in COMS to determine if the finalist was previously under the DOC's jurisdiction.

5. The OSI designee must enter the following information in the iShare criminal justice involved persons associations list for OSI to review:
   a) All relationships identified that were not disclosed by the finalist;
   b) Whether the finalist was previously under DOC jurisdiction;
   c) Whether the criminal justice involved person is listed in COMS; and

d) Whether the finalist is listed as a visitor in COMS, date of last visit, and restrictions.

6. OSI must complete a check of all incarcerated persons' phone records and financial transactions along with any other pertinent information.

7. The HR staffing designee must provide information from the finalist, COMS, and OSI to the appointing authority review panel to determine whether the personal association would be a detriment to security or to the safety of employees. If determined to be a detriment to security or safety, the finalist's contingent job offer must not be confirmed for initial appointment or rehire. If approval by the appointing authority/review panel includes conditions related to the association(s) with criminal justice involved persons, the HR staffing designee must communicate the conditions to the finalist prior to the initial appointment or rehire date.

8. A finalist who fails to report a personal association with a criminal justice involved person and is subsequently appointed may be discharged upon discovery of the association.

D. Employment history check

1. Finalists for employment must be asked to complete the Employment Reference Form (attached) and the Release of Information (attached).

2. The HR staffing representative must review the information on the Employment Reference Form for completeness, follow-up with the finalist on any incomplete information, and note any area(s) of concern.

3. The HR staffing representative/designee reviews the employment record of a current or former state employee finalist in the state employee management system (SEMA4). If a finalist has been discharged from state employment or otherwise disciplined, the HR staffing representative/designee must provide a summary of the SEMA4 findings to the HR staffing manager/designee who analyzes the facts and determines if additional information will be requested from the regional HR office or other state agency HR office.

4. The HR staffing manager/designee analyzes and reviews the facts pertaining to the discharge/discipline with the hiring supervisor and/or appointing authority to determine if there is a job-related basis to remove the applicant from consideration for the vacancy.

5. For finalists for trainee-corrections officer positions, the HR staffing representative/designee must contact each current or previous employer from at least the last five years. For finalists for positions other than trainee-corrections officer positions, the hiring supervisor must contact each current or previous employer from at least the last five years. The Employment Reference Form, Release of Information Form, and Employment Background Information Request must be used for this purpose. For department employees who are finalists for promotion, HR must verify if the employee has been the respondent in a substantiated violation of Policy 103.300, "Sexual Harassment Prohibited."

6. For finalists for trainee-corrections officer positions, the HR staffing designee must review negative results from the employment history check, including any substantiated complaints by a former or current employer of sexual harassment, with the staffing

manager/designee and deputy commissioner-facility safety and security, if deemed necessary, to determine if there is a job-related basis to remove the applicant from consideration for the vacancy.

7. For finalists for positions other than trainee-corrections officer, the hiring supervisor must review negative results from the employment history check with the hiring supervisor's manager, the HR staffing representative, and the appointing authority if deemed necessary, to determine if there is a job-related basis to remove the applicant from consideration for the vacancy.

8. When a finalist's employment history includes a substantiated complaint (by a former or current employer) of sexual harassment, the assistant commissioner – facility safety and security or appointing authority must consider the time since the incident(s) occurred, the severity of the incident(s), and any repeated behavior/performance issues in making an employment decision.

E. Department of Human Services (DHS) background check

If the finalist's work includes providing direct contact services to juveniles under the jurisdiction of a DOC licensed facility, the regional HR staff must follow the facility's protocol to ensure a DHS background check is completed prior to confirming a finalist's conditional job offer.

F. Psychotherapy background check

Finalists for positions that perform psychotherapy must undergo a background check, per Minn. Stat. §604.20. This includes positions in the following job classifications: clinical program therapist, psychologist, psychological services director, psychologist supervisor, and residential program services manager senior and corrections supervisor, corrections program director, and state program administrator manager/senior in behavioral health services.

1. Finalists for initial appointment or rehire to a position in one of the job classifications listed must complete the Forms Packet for Positions Involving Provision of Psychotherapy provided by HR staffing or the hiring supervisor. Current DOC employee finalists are required to complete the Forms Packet for Positions Involving Provision of Psychotherapy (attached) if the DOC employee finalist has previous experience (within the last five years) with another employer performing psychotherapy, and the psychotherapy background check was not previously completed on the DOC employee finalist.

2. HR staff must review the psychotherapy forms packet for completeness and signature and send the packet to the finalist's current and/or previous employers within the last five years. HR staff must re-send the form for completion to employers who do not respond within five working days.

3. HR staff must review employer responses and contact the appointing authority with any concerns to determine if there is a job-related basis to remove the applicant from consideration for the vacancy.

4. The background check forms of the finalist/employee are retained in the employee's private/confidential file.

G. Commercial driver's license background check

Finalists for positions that require a commercial driver's license must undergo a driver's license background check and drug and alcohol testing in accordance with Policy 103.041, "Commercial Driver's License."

H. Medical examination(s) and evaluation(s) are required for certain positions in accordance with Policy 103.016, "Pre-Placement Medical Exam and Evaluation" and Policy 105.180, "Tuberculosis Control for Applicants, Employees, Contractors, Volunteers and Students."

I. Fingerprinting procedure

1. Hiring supervisors
   a) The hiring supervisor at a Minnesota correctional facility must follow the facility's protocol for taking fingerprints and sending them to the BCA within the new employee's first 30 days of employment.
   b) Hiring supervisors at central office must coordinate with central office regional HR staff to have the new employee fingerprinted and the fingerprints sent to the BCA within the first 30 days of employment.
   c) Hiring supervisors in field services district offices must coordinate with the BCA, nearest county office or Minnesota correctional facility to have the new employee fingerprinted and the fingerprints sent to the BCA within the first 30 days of employment. The supervisor must give the employee the handling and routing instructions for the Federal Bureau of Investigation (FBI) fingerprint applicant card and fingerprint background check results to give to the BCA, county office, or correctional facility taking the fingerprints.

2. Regional HR staff must verify that all initial appointments to the DOC have fingerprints sent to the BCA within the new employee's first 30 days of employment.

3. Regional HR staff must verify that current DOC employees who transfer from another DOC location and who were hired by the DOC on or after March 12, 2003, have been fingerprinted. If fingerprints are needed from the transferring DOC employee, regional HR staff must work with the hiring supervisor to fingerprint the transferring DOC employee within 30 days of transfer.

4. When the fingerprint criminal record is received, the regional HR staff must review it.
   a) If there are no convictions on the fingerprint criminal record, no communication with the hiring supervisor or appointing authority is necessary.
   b) If there are convictions on the fingerprint criminal record, the regional HR staff must compare the fingerprint criminal record with the conviction information documented in the employee's private/confidential file within five days of receipt of the record. The regional HR staff must confirm:
      (1) All convictions were documented when the employee was approved for hire.
      (2) Any new conviction was previously disclosed by the employee and reviewed by the regional HR director and OSI director/designee if deemed necessary.

5. If any conviction on the fingerprint criminal record has not been reviewed and approved, the regional HR director must consult with the appointing authority to determine the appropriate employment action, including whether to initiate an investigation.

6. The regional HR staff must ensure the fingerprint criminal record is scanned into the employee's private/confidential file.

7. Upon completion of all decisions and actions related to the fingerprint criminal record, the regional HR staff must destroy the fingerprint card (not the record).

J. At least every five years, the DOC conducts a criminal history check on all employees.

1. The HR staffing designee contacts DOC employees to complete and submit the DOC Intent-Consent to Conduct Employee Criminal History Check form if the employee has not yet submitted the form, and ensures the form is complete.

2. The HR staffing designee conducts a criminal history query, including wants and warrant, in the criminal justice information system (CJIS), and sends the criminal history check to the OSI director/designee to complete and/or review if necessary.

3. If findings from the criminal history check show a post-hire conviction, the HR staffing manager/designee compares the findings with information in the employee's private/confidential file and reviews the results with the regional HR director/designee, if necessary, to determine if the employee reported the conviction(s) per policy 103.0141, "Employees Who Are the Subject of Criminal Investigation(s), Arrest(s), and/or Conviction(s)."

4. If applicable, the regional HR director/designee consults with the appointing authority to determine the appropriate employment action, including whether to initiate an investigation.

5. The DOC Intent-Consent to Conduct Employee Criminal History Check form is retained in the employee's private/confidential file.

INTERNAL CONTROLS:

A. Background check forms and fingerprint criminal records are retained in the employee's private/confidential file in accordance with the HR records retention schedule.

B. HR and OSI staff maintain the necessary certification(s) to conduct criminal history and predatory offender background checks.

C. HR and OSI staff conduct separate, independent criminal history checks, which are reviewed, and discussed if necessary, by the OSI director/designee and the HR staffing manager/designee.

ACA STANDARDS: 4-4055, 4-4061; 3-JTS-1C-15; 2-CO-1C-10; 2-CO-1C-18; 3-3054; 3-3058; 2-7035; 2-7036

REFERENCES: Collective bargaining agreements.
Minn. Stat. §§ 14.03, 243.166, "Registration of Predatory Offenders;" 364.021; 604.20; 245C.02, subd. 11, 364.03; and Chapter 43A, "State Employment"
Policy 103.041, "Commercial Driver's License"
Policy 103.016, "Pre Placement Medical Exam and Evaluation"
Policy 103.130, "Firearms and Chemical Irritants Eligibility"
Policy 103.220, "Personal Code of Conduct of Employees."
Policy 103.223, "Personal Associations Between Staff and Offenders"

Policy 107.009, “Office of Special Investigations – Code of Conduct and Ethics.”
Policy 103.0141, "Employees Who Are the Subject of Criminal Investigation(s), Arrest(s) and/or Conviction(s)."
Policy 105.180, “Tuberculosis Control for Applicants, Employees, Contractors, Volunteers and Students”
Policy 103.300, “Sexual Harassment Prohibited”
Minn. Rule 2960, subp.7
MMB HR/LR Procedure #1421P, Employment Reference and Records Checks for Current and Former State Employees
Prison Rape Elimination Act (PREA), 28 C.F.R. § 115 (2012)

REPLACES: Policy 103.014, “Background Checks for Applicants and Current Employees,” 2/6/2018.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS:
Pre-Employment Background Checklist (103.014C)
Employment Reference Form (103.014E)
Minnesota Department of Corrections Consent Form: Criminal History/Release of Predatory Offender Registration/Sexual Abuse Record (103.014F)
Release of Information (103.014G)
Employment Background Information Request (103.014H)
Firearms Screening Questionnaire (103.014I)
Intent-Consent to Conduct Criminal History Check (103.014J)
Pre-Employment Association with Criminal Justice Involved Persons Disclosure Form (103.014K)
Forms Packet for Positions Involving Provision of Psychotherapy (103.070B)
Psychotherapy Background Information Release (103.070A)

APPROVED BY:
Deputy Commissioner, Reintegration and Restorative Services
Deputy Commissioner, Facility Safety and Security
Assistant Commissioner, Organizational and Regulatory Services
Assistant Commissioner, Chief of Staff
Assistant Commissioner, Health, Recovery, and Programming