



Criminal Background Checks – Procedure

4.6.1

Part 1. Definitions

Conviction of crime or crimes: Any of the following accepted and recorded by the court: A plea of guilty or a verdict of guilty by a jury or a finding of guilty by the court. This definition shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Documentary evidence of rehabilitation: Copy of local, state or federal release orders and evidence showing at least one year has elapsed since release from any local state or federal correctional institution without subsequent conviction of a crime and evidence showing compliance with all terms and conditions of probation or parole or copy of relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

Felony: A crime for which a sentence of imprisonment for more than one year may be imposed.

Gross Misdemeanor: Any crime which is not a felony or misdemeanor for which a jail sentence from between 90 days to one year may be imposed or for which the maximum fine is \$3,000. (Lake Superior College will only consider gross misdemeanors for which a jail sentence may be imposed. Gross misdemeanors for which only a fine may be imposed shall not be considered.)

Misdemeanor: A crime for which a sentence of not more than 90 days or a fine of not more than \$700 or both may be imposed. (Lake Superior College will only consider misdemeanors for which a jail sentence may be imposed. Misdemeanors for which only a fine may be imposed shall not be considered.)

New job applicant: Any person applying for a position of employment with Lake Superior College including any current employee of another state agency or any former state employee. Lake Superior College reserves the right to perform a criminal background check on someone currently employed within Lake Superior College who is being appointed to a new position and current health faculty who need hospital clearance.

Records that shall not be used: 1) Records of arrest not followed by a valid conviction; 2) Convictions that have been, pursuant to law, annulled or expunged; 3) Misdemeanor convictions for which no jail sentence can be imposed; 4) convictions where more than 15 years has passed since the discharge of the sentence.

Part 2. Criteria for Conducting Criminal Background Checks

A criminal background check will be conducted on the successful job applicant, and, in certain cases, student worker applicant, prior to making a firm offer of employment or approving a volunteer appointment.

Subpart A. Applicants with no criminal conviction

Applicants with no criminal conviction will automatically pass the criminal background check.

Subpart B. Applicants with a criminal conviction

Applicants with a criminal conviction are not automatically disqualified from employment.

Consideration must first be given to the following:

1. Whether or not the criminal conviction *directly relates* to the position sought.
2. If there *is not* a direct relationship between the criminal conviction and the position sought, the agency shall not disqualify the applicant solely or in part because of a prior criminal conviction.
3. If the Human Resources Office determines that the criminal conviction is directly related to the position sought, the applicant will be required to present competent evidence of sufficient rehabilitation and fitness to perform the duties of the position sought.

Part 3. Responsibilities

Subpart A. Administrators' and supervisors' responsibilities:

Administrators and supervisors shall be familiar with Lake Superior College's policy on Criminal Background Checks and Minnesota Statutes Chapter 364 Criminal Offenders, Rehabilitation. A violation of the rights established in Minnesota Statutes Chapter 364 constitutes a violation of a person's civil rights. Therefore, to limit personal and departmental liability, administrators and supervisors must be in compliance with this policy and the law in all respects.

Subpart B. Applicant responsibilities:

The applicant shall provide the college authorization to complete a criminal background check by reading and signing the "Informed Consent Criminal Background Check" form. This form asks for the applicant's name, any previous names, birth date, social security number and signature.

Subpart C. Human Resource Designee responsibilities:

The Human Resources Designee shall:

1. Obtain "Informed Consent for Criminal Background Check" form from the applicant.
2. Retain applicant's "Informed Consent for Criminal Background Check" form in applicant's personnel file.
3. Conduct criminal background check.
4. Maintain record of all criminal background checks completed.

5. If no criminal conviction, notify supervisor that the applicant has passed the criminal background check and s/he may hire the applicant.
6. If the applicant has a criminal conviction, determine whether criminal conviction *directly relates* to the position sought by using the following criteria:
 - a. Nature and seriousness of the crime or crimes for which the individual was convicted.
 - b. Relationship of the crime or crimes to the purposes of regulating the position of public employment sought.
 - c. Relationship of the crime to the ability, capacity, and fitness required to perform duties and discharge the responsibilities of the position of employment.
7. If it is determined the position sought *does not directly relate* to the criminal conviction, inform the supervisor so that s/he may hire the applicant. Human Resources shall not disqualify applicant solely or in part based on criminal conviction.
8. If it is determined that the position sought does directly relate to the criminal conviction, evaluate evidence of rehabilitation and fitness to perform duties of position by contacting the applicant and requesting s/he provide:
 - a. A copy of the local, state, or federal release order; **and**
 - b. Evidence showing at least one year has elapsed since release from any local, state or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; **or**
 - c. A copy of relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

Human Resources shall consider the above information plus additional relevant information, including documentation presented by the applicant regarding:

- a. The nature and seriousness of the crime or crimes for which convicted.
 - b. All circumstances relative to the crime or crimes including mitigating circumstances or social conditions surrounding commission of crime or crimes;
 - c. The person's age at the time the crime or crimes was committed;
 - d. The length of time elapsed since the crime or crimes were committed;
 - e. All other competent evidence of rehabilitation and present fitness including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from local state or federal correctional institution.
9. If Human Resources determines the applicant should be denied employment solely or in part due to on the individual's prior criminal conviction, Human Resources and the supervisor shall meet to discuss the recommendation.
 10. If complex issues arise, Human Resources will consult with the MnSCU Office of the Chancellor.
 11. If a decision is reached to deny employment solely or in part due to the individual's prior criminal conviction, Human Resources shall notify the individual in writing of the following:
 - a. The grounds and reasons for the denial or disqualification.

- b. The applicable complaint and grievance procedure as set forth in Minnesota Statute Chapter 14, the Administrative Procedures Act.
- c. The earliest date the person may reapply for a position.
- d. That all competent evidence of rehabilitation presented will be considered upon reapplication.

12. Human Resources shall maintain a record of any applicant denied employment because of his/her criminal convictions.

Date Proposed: April 2008

Date Implementation: July 2008

Signature of College President

Date