

Administrative Procedure Chapter ~~2, Administration~~~~9, Personnel~~
Administrative Procedure AP 2.202, Background Check Process for University

Community Members and Non-UH Volunteers

Effective Date: January 2023

Prior Dates Amended: None

Responsible Office: Office of Vice President for Academic Strategy and Office of Vice President for Administration

Governing Board and/or Executive Policy: RP 5.212 – Early Admission Policies, RP 10.206 – Child Care Programs, RP 11.205 – Public Health, Safety and Security, EP 2.202 – Safety and Protection of Minors

Review Date: January 2025

I. Purpose

The purpose of this Administrative Procedure is to provide the process for background checks for individuals associated with the University of Hawai'i who interact with minors in a University of Hawai'i program. This Administrative Procedure is a companion process to Executive Policy 2.202, Safety and Protection of Minors (the "Policy" or the "Safety and Protection of Minors Policy") and should be read with that Policy.

II. Definitions

The definitions of the following terms have the meanings assigned to such terms in the EP 2.202 Safety and Protection of Minors Policy:

Background Check Coordinator
Covered Person
Covered Program
Covered Program Minor
Responsible Campus Official
Covered Program Administrator
Mandated Reporter
University Community Member
University-affiliated Organizations
Non-UH Volunteer

III. Administrative Procedure

A. Persons Required to Undergo Background Checks. A federal and State criminal background check shall be required of each of the following persons:

1. Applicants for employment or appointment or volunteer position with a Covered Program. All applicants applying for an employment, academic appointment (paid or unpaid) or volunteer position with the University for a Covered Program will be required to undergo a federal and State criminal background check after a conditional offer of employment, appointment or a volunteer position is made to the applicant.
2. University Community Members who work with Covered Program Minors. Existing University Community Members who work in or with Covered Programs involving Covered Program Minors (each, a “UH Covered Person”) will be required to successfully complete federal and State criminal background checks.
3. Contractors or other individuals employed or otherwise affiliated with non-University organizations which take part in Covered Programs. Contractors or other individuals employed or otherwise affiliated with non-University organizations which take part in Covered Programs are required to successfully complete federal and State background checks. The non-University organization shall handle the background check for each such contractor and individual and shall certify to the University in writing (a) the nature and extent of the background check that was conducted, and (b) that nothing in the background of the contractor or individual bears adversely upon his or her ability to provide for the safety and well-being of Covered Program Minors.
4. Volunteer positions that do not require a background check.
 - a. In situations where a Non-UH Volunteer was successfully background checked by the University within the past twelve (12 months) of the date of the activity. However, the Non-UH Volunteer must disclose any convictions that occurred during any break in service and complete background check screening prior to commencement of participation in activities and programs with Covered Program Minors.
 - b. One-time Non-UH Volunteers who will be participating in a single event or activity that lasts no longer than eight (8) hours.
 - c. Non-UH Volunteers participating in on-or-off campus events where chaperones are provided.

B. Background Check Process for University Community Members. The following background check process shall apply to University Community Members who work with Covered Program Minors. These individuals subject to a background check are referred herein as “Candidates.”

1. Candidate completes the “Application and Notification of Conditional Participation in a Covered Program” form. All Candidates will be required to complete the form which will include the following information:
 - a. The Candidate’s current legal name, previous names for the last ten (10) years, social security number, date of birth, current address, and previous addresses for the last ten (10) years.
 - b. The Candidate’s (i) previous criminal convictions, giving the candidate the opportunity to self-report prior criminal convictions, (ii) mental or emotional conditions which may affect the candidate’s ability to responsibly manage, supervise, control and interact with children, and (iii) detailed explanations of any information provided under the foregoing subsections (i) and (ii).¹
 - c. Up to three (3) references, as specifically required by the Covered Program Administrator. When appropriate, former employers and/or other background references should be contacted to clarify or secure additional screening information.
 - d. Disclosures, acknowledgments, and consent. The Notification of Conditional Hiring form will provide the Candidate with disclosures, acknowledgments, and consent information including the Candidate’s rights under Hawai’i Revised Statutes Chapter 378 and under the Fair Credit Reporting Act (FCRA). Execution of the authorization and consent by the Candidate will grant the University and its designees authorization to check the Candidate’s criminal history.
 - i. Cooperation Required. All Candidates shall cooperate fully and make every reasonable effort to comply with the background check requirements when so notified by the Covered Program Administrator or their designee and/or the Responsible Campus Official.
 - ii. Failure to provide authorization and consent. Failure to provide authorization and consent to a background check will preclude a Candidate from consideration for a position within a Covered

¹ Like criminal convictions, this can only be asked after the conditional offer.

Program and/or may result in termination of UH Covered Person from a position within a Covered Program.

2. Candidate acknowledges Executive Policy EP 2.202, Safety and Protection of Minors. The Covered Program Administrator or their designee will provide all prospective employees with the Minors Policy and secure their acknowledgement of the receipt of the policy.
3. Background Check Coordinator (“BCC”) reviews the “Application and Notification of Conditional Participation in a Covered Program” form and issues a determination on the prospective suitability of the applicant in a program with minors. The background checks for University Community Members will consist of the following:
 - a. Fingerprint Requirement. Candidates shall complete the Federal Bureau of Investigation (“FBI”) Fingerprint Identification Form and schedule an appointment for fingerprinting. The Covered Program Administrator shall notify Candidates that their fingerprints will be retained by the Hawai‘i Criminal Justice Data Center (“HCJDC”) and the FBI.
 - b. Hawai‘i Criminal Justice Data Center (“HCJDC”) statewide criminal history record information system (“CJIS-Hawaii”) website: <http://ag.hawaii.gov/hcjdc/>
 - c. Hawai‘i Sex Offender Registry and National Sex Offender Public Registry
 - d. If the individual will be driving Covered Program Minors, then a motor vehicle driving record search is required

C. Background Check Process for Non-UH Volunteers.

The following background check process shall apply to all Non-UH Volunteers or applicants for Non-UH Volunteer positions. Individuals subject to a background check are referred herein as “Candidates”.

1. Candidate completes the “Application and Notification of Conditional Participation in a Covered Program” form. All Candidates must complete this form which will include the following information:
 - a. The Candidate’s current legal name, previous names for the last ten (10) years, social security number, date of birth, current address,

previous addresses for the last ten (10) years, and other personally identifiable information.

- b. The Candidate's (i) previous criminal convictions, giving the candidate the opportunity to self-report prior criminal convictions, (ii) mental or emotional conditions which may affect the candidate's ability to responsibly manage, supervise, control and interact with children, and (iii) detailed explanations of any information provided under the foregoing subsections (i) and (ii). See footnotes 3 and 4.
 - c. Up to three (3) references, as specifically required by the Covered Program Administrator. When appropriate, former employees and/or other background references should be contacted to clarify or secure additional screening information.
 - d. Disclosures, acknowledgments, and consent. The "Application and Notification of Conditional Participation in a Covered Program" form will provide the Candidate with disclosures, acknowledgments, and consent information including the Candidate's rights under Hawai'i Revised Statutes Chapter 378 and under the Fair Credit Reporting Act (FCRA). Execution of the authorization and consent by the Candidate will grant the University and its designees authorization to check the Candidate's criminal history.
 - i. Cooperation required. All Candidates shall cooperate fully and make every reasonable effort to comply with the background check requirements when notified by the Covered Program Administrator or their designee and/or the Responsible Campus Official.
 - ii. Failure to provide authorization and consent. Failure to provide authorization and consent to a background check will preclude a Candidate from consideration for a position within a Covered Program.
2. Candidate acknowledges Executive Policy EP 2.202, Safety and Protection of Minors. The Covered Program Administrator or their designee will provide all prospective Non-UH Volunteers with the Policy and secure their acknowledgement of the receipt of the policy.
 3. BCC reviews the "Application and Notification of Conditional Participation in a Covered Program" form and issues a determination on the prospective of the applicant in a program with minors. For Non-UH Volunteer positions, the following review is the minimum required.

However, a program may choose to enhance the background check process based upon their unique programmatic needs and protocols. The background checks for Non-UH Volunteers will consist of the following:

- a. Hawai'i Criminal Justice Data Center ("HCJDC") statewide criminal history record information system ("CJIS-Hawaii") website: <http://ag.hawaii.gov/hcjdc/>
- b. Hawai'i Sex Offender Registry and National Sex Offender Public Registry
- c. If the individual will be driving Covered Program Minors, then a motor vehicle driving record search is required

D. Background Check Process for Contractors and Other Non-University Organizations.

1. Background checks for contractors or other individuals employed or otherwise affiliated with non-University organizations who have contact with Covered Program Minors shall be conducted by such non-University organizations.
2. The non-University organizations should be required to certify to the University in writing what background checks were completed and that nothing in the background of each of the Covered Programs bear adversely upon his or her ability to provide for the safety and well-being of Covered Program Minors.

E. Background Check Results

1. Compliance with Applicable Law. The timing, process, and use of criminal history information is subject to significant legal compliance, obligations; and thus all background checks will be conducted, and all information and results will be used, only in accordance with applicable law.
2. Confidentiality of Background Check Results
 - a. Confidential File. The background check report is maintained in a confidential file separate from a Candidate's application file or a UH Covered Person's personnel file. Notwithstanding the foregoing, criminal convictions are considered public records and may be disclosed to the public.

- b. No Criminal Record. If the background check does not reveal any prior criminal record for a Candidate, the BCC shall input the results into a secured repository. The BCC will then notify the appropriate Covered Program Administrator or their designee of the background check clearance for such Candidate.
- c. Prior Criminal Record. If the background check reveals a prior criminal record for a Candidate, the Background Check Coordinator, in consultation with the Director of the System Office of Human Resources, will evaluate the Candidate's suitability for the Covered Program.
 - i. Factors to Consider. The BCC will consider the relevance of the Candidate's criminal history in relation to the Candidate's prospective role in the Covered Program, including a case-by-case assessment of various factors including but not limited to the nature and circumstances surrounding the offense, the conviction's temporal proximity, any recidivism, and any relationship between the conduct that resulted in the conviction and the Candidate's prospective role in the Covered Program. The Background Check Coordinator should review the Candidate's background for any indications of: violence, alcohol or drug abuse, sex offense, offense involving children, or any other circumstance which indicates that the Candidate may pose a risk to the health, safety, or well-being of children.²
 - ii. When appropriate, any of the following may be consulted: (1) panel of faculty experts; (2) Office of Academic Affairs (or equivalent) for the campus; (3) Human Resources; and/or (4) the University's employee and labor relations consultant.
3. Negative Background Checks for University Community Members. If the Background Check Coordinator's evaluation of a Candidate's background check results in the recommendation for adverse action against the Candidate, the Background Check Coordinator will communicate the outcome of the background check results to the Campus Program Administrator. By formal notice in writing and within five (5) business days, the Candidate may request the following actions:
 - a. Provide Candidate with a copy of background check results. The Background Check Coordinator shall provide the Candidate with a copy of the background check results (if requested) and a copy of the

² Following Hawaii Administrative Rules Section 8-7-2

Summary of Your Rights in accordance with the Fair Credit Reporting Act (FCRA).

- b. Opportunity to respond/dispute background check results and/or recommended action. The Background Check Coordinator shall allow the Candidate five (5) business days to respond in writing to the information revealed in the background check and/or the BCC's recommended adverse action.
- c. Appeals procedure. In the case of an adverse action that may mean a Candidate does not meet the criteria to work with minors, there is an opportunity to appeal the decision. Candidates must respond and/or dispute such information and/or recommended adverse action within the applicable time frames and process set forth by the University in Administrative Procedure AP 9.110, with the proviso that subparagraph 6.c does not apply since the Background Check Coordinator acts as the Chancellor's Designee in this matter.
- d. No Response. If the Candidate does not respond or responds and the University upholds its decision, the Background Check Coordinator must provide the Candidate a letter detailing the final adverse decision.
- e. Existing Employees with Negative Result. If a Candidate who has been employed by the University and working with minors prior to implementation of this policy receives a negative background check that precludes the Candidate from participating in a program with minors, the employee will not be approved for a program with minors.

If the negative background check indicates a criminal history that may render the employee unsuitable for continued employment at the University, the criminal violation will be analyzed within the nexus of the employee's duties and responsibilities. If proven that such a nexus exists, the employee will be separated from University service.

If a Candidate who has been employed by the University and working as a part of their faculty or staff position with minors prior to implementation of this policy receives a negative background check that precludes the Candidate from fulfilling his or her job (but does not render the employee unsuitable for continued employment at the University), the University will make a reasonable effort to find alternative employment.

For faculty, their duties may be reorganized so that they are no longer interacting with minors. If it is not possible to reorganize faculty duties

to avoid contact with minors within the home department, then a faculty member who is tenured or tenure-track may seek to transfer to another department, subject to the receiving department's and Dean's approval. The faculty member's position and funding for the position may follow them to the receiving department, if they are transferred. If a transfer is not possible, the tenured or tenure-track faculty member will be terminated after four (4) months. For those tenured faculty whose primary responsibilities related to working with minors evolved over time from the original intention of their faculty position, suitability for continued University employment will be analyzed on a case-by-case basis.

For other University employees, they may be transferred to an alternative position that does not involve working with minors. If no such position is available at the same level, a lower level position will be identified for which the employee will be qualified. If a transfer to a different position is not possible, the employee will be terminated after three (3) months.

4. Negative background check for Non-UH Volunteers will follow the same process as for employees.

F. Obligation to Disclose and Re-Check of Covered Persons.

1. ~~Background checks are valid for the period of the Covered Person's appointment in the program three (3) years if no break in service. After the initial background check, the Covered Program Administrator shall ensure that Covered Persons undergo background checks every three (3) years to remain eligible to participate in a University Covered Program.~~
 - a. No Break in service. Once a Candidate has successfully cleared the background check process and has been accepted as a Covered Person, he/she will not need to be background checked ~~for another three (3) years from the date of the prior background check,~~ as long as no break in service occurs or he/she is not dismissed as a Covered Person.
 - b. Break in service. Covered Persons who previously cleared a background check, who previously participated in a Covered Program, and who have a break in service must disclose any convictions that occurred during the break prior to their participation in activities and programs with Covered Program Minors. ~~These individuals will be subject to new background screening, but will not be subject to additional fingerprinting. Covered Persons will need to be rescreened~~

~~three (3) years from the date of the prior background check, as long as no break in service occurs or he/she is not dismissed as a Covered Person.~~

- c. Break in service greater than twelve (12) months. Covered Persons will be re-screened, including fingerprinting, if there is a break in service for twelve (12) months or more or if new information arises regarding their background.
2. Subsequent events. All Covered Persons shall notify the BCC of any subsequent events that might alter the background check.

IV. Delegation of Authority

The authority to oversee the Covered Programs' compliance with the requirements and responsibilities set forth in this policy is delegated to the Provost/Chancellors of UH four-year campuses and the Vice President for Community Colleges who will appoint an executive University employee as the Responsible Campus Official for each respective campus.

V. Contact Information

Office of the Vice President for Academic Strategy and Office of the Vice President for Administration

VI. References

- Executive Policy EP 2.202 Safety and Protection of Minors
- Administrative Procedure AP 9.110, Employment-Related Grievance Procedure for Persons (Including Applicants for Positions) Not Covered by Collective Bargaining Agreement Grievance Procedures or Other Applicable Procedures
- Executive Policy EP 2.214, Institutional Data Classification Categories and Information Security Guidelines
- Executive Policy EP 2.215, Institutional Data Governance
- Hawai'i Revised Statutes §§ 78-2.7, 378-2.5(d), 846-2.7; Hawai'i Administrative Rules Section 8-7-2

VII. Website

<https://www.hawaii.edu/minors-on-campus>

Approved:

David Lassner
President

Date