

# Procedure: 4.1.9p. (III.W.1)

## Background Investigations

**Revised:** January 1, 2020, November 15, 2016, April 23, 2015, July 17, 2013, September 27, 2012, March 1, 2012

**Last Reviewed:** October 28, 2019

**Adopted:** April 3, 2008



### I. PURPOSE:

- A. It is the policy of the Technical College System of Georgia (TCSG) that all reasonable measures will be taken to provide a safe and secure environment for employees, students, visitors, contractors, and other individuals working in, attending, and/or visiting any TCSG System Office work unit or technical college. Based on this objective and as provided in the parameters of this procedure, a thorough background investigation shall be conducted in conjunction with a recommended candidate's initial employment with the TCSG System Office or any associated technical college in a full- or part-time position. The investigation shall include a post-offer criminal history records check and, as applicable, a post-offer: credit history records check, a fingerprint records check, and a motor vehicle records check. These activities must be successfully completed before a hiring decision is finalized.
- B. The recommended candidate for a full-time P.O.S.T. certified law enforcement position shall also be required to successfully complete a post-offer FBI fingerprint-based criminal history check, a State of Georgia mandated medical examination, and a psychological screening, if the latter activity is included in a technical college's written selection process for these positions.
- C. The background check for the recommended candidate for a full- or part-time salaried or hourly paid position serving in a technical college's child care learning center shall also include a post-offer FBI fingerprint-based criminal history record check, a check of the Georgia Child Abuse Registry, the National Sex Offender Registry, a check of the Georgia Sex Offender Registry, and, if the individual has lived in a state other than Georgia and/or a U.S. Territory and/or tribal land within the five (5) year period prior to his/her application for employment, a check of the criminal registry (fingerprint or name based), a child abuse registry check, and a sex offender registry check for each of these states, territories or tribal lands. These checks shall be undertaken by the Georgia Department of Early Care and Learning (DECAL).
- D. All required background checks must be successfully completed before a hiring decision is finalized.
- E. The successful completion of a criminal history records check will also be required of any contractor/employee of a contractor who works in a full-time or regular, part-time

capacity at any technical college, and whose work assignment(s) include direct contact with students and staff.

- F. Similarly, the Commissioner or technical college president may require volunteers to undergo a criminal history records check as a condition of service in this capacity. Any determination should be based on the nature of an individual's assignments within the System Office or technical college to include access to confidential information.
  
- G. As provided in this procedure and absent a hiring decision made in response to an individualized assessment, an applicant subject to a post-offer criminal history records check and, as applicable, a fingerprint records check shall be ineligible for employment if he/she possesses a record of criminal conviction(s) for certain identified offenses or is on probation or parole for these same offenses or, if his/her criminal history reflects one or more pending (non-adjudicated) criminal charge(s) or one or more active arrest warrant(s).

## II. RELATED AUTHORITY:

Governor Deal's February 23, 2015 Executive Order (Criminal History Checks)

Child Care and Development Block Grant of 2014

O.C.G.A. Title 16, Chapter 6

O.C.G.A. § 16-11-5

O.C.G.A. § 16-12.1.1

O.C.G.A. Title 17, Criminal Procedures

O.C.G.A. § 17-10-6.1 (Serious Violent Felonies)

O.C.G.A. § 20-1A-30, et seq.

O.C.G.A. § 35-3-30 et seq.

O.C.G.A. § 42-8-60 et seq.

O.C.G.A. § 45-3-11

O.C.G.A. § 45-23-1 et seq. Drug-free Workplace Act of 1990

O.C.G.A. § 50-5-83

Rules of the Georgia Crime Information Center Council 15 U.S.C. § 1681

State Personnel Board Medical and Physical Examination Program

Rules of the Department of Early Care and Learning

## III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia.

## IV. DEFINITIONS:

- A. **Applicant:** An individual seeking employment with any System Office work unit or technical college associated with the Technical College System of Georgia. This term also includes employees of other state agencies or any college/university affiliated with the University System of Georgia, as well as current or former employees of the Technical College System of Georgia or any technical college.
- B. **Arrest:** The taking of an individual into custody by law enforcement personnel for the purpose of charging them with a crime/illegal act.
- C. **Background Investigation:** may include a criminal history records (name) check, motor vehicle/driver's history investigation, military service investigation, employment history investigation, credit history investigation, and/or the review, verification, and/or the

investigation of information provided on an applicant's resume, or employment application.

- D. **Business Day:** Weekdays that administrative offices are open.
- E. **Comprehensive Background Check:** as mandated by federal law, the Rules of the Georgia Department of Early Care and Learning require that any individual whose job duties include having personal contact with a child in a licensed child care learning program must satisfactorily complete all of the following before such service can begin: an FBI fingerprint-based criminal history record check; a check of the National Sex Offender Registry, a check of the Georgia Child Abuse Registry, a check of the Georgia Sex Offender Registry, and a check of the criminal registry (fingerprint or name based), sex offender registry, and the child abuse registry for every U.S. Territory, tribal land or state (other than Georgia) in which he/she has lived during the past five (5) years
- F. **Consumer Report:** any communication of information by a consumer reporting agency regarding a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living when such information is used for employment or other purposes. When used in conjunction with a consumer report, the term "employment purposes" is defined as a report used for the purpose of evaluating a consumer for initial employment, promotion, reassignment, or retention.
- G. **Consumer Reporting Agency:** The person (entity) who regularly assembles or evaluates consumer information and furnishes consumer reports to third parties for a fee or on a cooperative basis.
- H. **Conviction:** The formal decision of a judge or jury that determines that an individual has committed the crime(s) for which he/she has been accused whether or not an appeal has been sought.
- I. **Crime:** An act or omission that is prohibited by criminal law and punishable usually by fine or imprisonment.
- J. **Criminal Record (DECAL):** Encompasses the following information:
- Conviction of a Crime;
  - Arrest, charge and sentencing for a crime where:
    - A plea of nolo contendere was entered to a charge;
    - First Offender Treatment without adjudication of guilt pursuant to the charge was granted;
    - Adjudication or sentence was otherwise withheld or not entered on the charge;
  - Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such a crime has expired pursuant to the provisions of O.C.G.A. Title 17, Chapter 3.
- K. **Criminal History Records Check/Investigation:** Information accessed from a computerized database at the state or federal level (GCIC and/or NCIC) to determine whether an individual has a criminal record.
- L. **Criminal History Record Information:** Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, to include any disposition arising there from including acquittal, sentencing, correctional supervision, and release.
- M. **Disposition:** The final outcome of a criminal charge.
- N. **Employment History Investigation:** An oral or written verification of an individual's previous employment as referenced on his/her resume or employment application to include reason(s) for leaving former employer(s).
- O. **Fair Credit Reporting Act (FRCA):** Federal law regulating the collection, dissemination, and use of consumer information, including consumer credit information. Consumer reporting agencies (CRAs) must to adopt procedures that promote confidentiality, accuracy, relevancy, and proper use of consumer information. Employers (in almost all

- circumstances) are required to follow certain steps, including obtaining an individual's written consent before pursuing a consumer report from a consumer reporting agency.
- P. **Felony:** The most serious of criminal offenses that generally carries a minimum sentence/term of one (1) year or more in a correctional facility.
  - Q. **Fingerprint:** For purposes of this procedure, an electronic image of a person's fingerprint.
  - R. **First Offender Act (Probation of First Offenders):** As provided in O.C.G.A. § 42-8-60, a discharge without court adjudication of guilt except for registration requirements under the state Sex Offender Registry and as otherwise provided in O.C.G.A. § 42-8-63.1. The defendant shall be discharged without court adjudication of guilt upon fulfillment of the terms of probation, upon release by the court prior to the termination of the sentence (e.g., probation) or, upon release from confinement. The discharge completely exonerates the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties. Additionally, upon discharge, the defendant shall not be considered to have a criminal conviction.
  - S. **Georgia Crime Information Center (GCIC):** A Division of the Georgia Bureau of Investigation that provides the intrastate communication of vital information relating to crimes, criminals, and criminal activity.
  - T. **Material Falsification:** refers to an applicant's submission of false or misleading information that directly influences and/or influences a hiring decision.
  - U. **Misdemeanor:** A crime, less serious than a felony, which is punishable by fine or no more than one (1) year in a correctional facility.
  - V. **Name Check:** A criminal record investigation using an individual's name and social security number as a basis for identification.
  - W. **National Crime Information Center (NCIC):** A federal criminal history record information database maintained by the Federal Bureau of Investigation (FBI).
  - X. **Nolo Contendere:** a plea entered by a defendant (as an alternative to a pleading of guilty or not guilty) in response to being charged with a crime in which he/she neither admits to nor disputes the charge(s). A court will treat any such plea as an admission (of guilt) and proceed to find the defendant guilty as charged.
  - Y. **Satisfactory Determination:** a written declaration by the Georgia Department of Early Care and Learning that the individual for whom a comprehensive background records check was performed, was found to have no criminal record and whose name did not appear on a registry which would preclude employment in a TCSG child care learning center.
  - Z. **Sensitive Governmental Positions:** In accordance with the Governor's Executive Order implementing "Ban the Box" hiring policies (02.23.15.03), a position for which a criminal history would be an immediate disqualification. For TCSG and its affiliated technical colleges, these positions are limited to those that require P.O.S.T certification.
  - AA. **Unsatisfactory Determination:** a written declaration by the Georgia Department of Early Care and Learning that the individual for whom a comprehensive background records check was performed was found to have a criminal record and/or whose name did appear on a registry that would preclude employment in a TCSG childcare learning center.

## V. ATTACHMENTS:

- 4.7.2p.a5. Driver's History Consent Form
- 4.1.9p.a1. Criminal History Information Release Form (Technical College)
- 4.1.9p.a2. GCIC Awareness Statement
- 4.1.9p.a3. Pre-Employment Questionnaire – P.O.S.T. Certified Law Enforcement Positions

- 4.1.9p.a4. Cogent Systems/Georgia Applicant Processing Systems Acknowledgement Form
- 4.1.9p.a5. Summary of Rights under the Fair Credit Reporting Act

## **VI. PROCEDURE:**

### **A. General Provisions:**

1. All applicants are subject to a thorough background investigation as a part of the selection process to include the investigation, review, and/or verification of information provided on an employment application (e.g., an applicant's employment history, education history, and, military service history). Additionally, every recommended candidate must successfully complete a post-offer criminal history records check as a condition of initial employment with the TCSG System Office or any associated technical college in any full- or part-time position.  
NOTE: Written statements made by an applicant on a System Office/technical college employment application and the State of Georgia Security Questionnaire/Loyalty Oath will be deemed to have been made under oath as provided in state law. A material falsification or misrepresentation of information on these documents or any other hiring document may result in the withdrawal of an employment offer or, if already employed, dismissal. Current employees pursuing advancement opportunities or other position(s) who falsify employment related documents/forms shall also be subject to disciplinary action up to and including dismissal from employment.
2. Background investigations may only be conducted on individuals that have been selected for hire.
3. The System Office and technical colleges will use the State of Georgia's contracted consumer reporting agency for all positions, with the exception of positions that require P.O.S.T. certification. P.O.S.T. certified law enforcement positions may process the criminal history check through a Georgia Crime Information Center terminal, if available, and in accordance with applicable laws and regulations governing criminal history records.
4. An employing System Office work unit or technical college shall provide a recommended candidate with a written, conditional offer of employment which communicates that the offer is contingent upon the candidate successfully completing the referenced criminal history records check and, dependent upon the position sought, one or more of the following: a credit history records check; a motor vehicle records check; a fingerprint records check; a psychological screening; and, a medical examination. NOTE: additional screening requirements governing a prospective employee of a technical college's childcare learning center are outlined below.
5. The correspondence/memorandum must advise the applicant or current employee that he/she may be determined to be ineligible for employment or, as applicable, separated from employment on the basis of information received on the criminal history records check or, as applicable, a fingerprint records check. Similarly, the conditional offer of employment may be withdrawn and/or a current employee made subject to disciplinary action based on the results of other required check(s)/screening(s).
6. The selection process is not complete and no candidate may be formally hired and begin work until all such check(s)/screening(s) have been completed and the candidate has successfully met all established hiring standards.
7. All current System Office or technical college employees are subject to a criminal history records check prior to any promotion, change in employment status from part-time to full-time, movement/lateral transfer to a position deemed sensitive given the nature and

scope of the individual's newly assigned duties, or for any other legitimate business reason as determined by the Commissioner or technical college president. If implemented, this provision shall be consistently applied within the System Office and each technical college.

8. A recommended candidate's criminal history records check shall be considered valid for a period of sixty (60) calendar days from the date of the final report. If the individual is not hired within the sixty (60) calendar day period, these activities must be repeated if the individual later becomes the recommended candidate for the same or a different position.
9. As described in this procedure, a recommended candidate who has been convicted of certain misdemeanor or felony offenses is subject to being disqualified from employment for a period of five (5) years. The five (5) year period begins on the date of the most recent conviction, plea of nolo contendere, or release from incarceration, probation, or parole, whichever is later.  
NOTE: For a serious violent felony of an egregious nature, the period of disqualification may be extended beyond five (5) years.
10. With the exception of individuals employed at a child enrichment center, a formal discharge under the provisions of The First Offender Act is not a conviction of a crime under Georgia Law and may not generally be used to disqualify a person in any application for employment or subsequent appointment in the public or private sector.
11. Any current employee who is found to have falsified or misrepresented information on employment-related forms or documents is subject to disciplinary action up to and including dismissal from employment.
12. Contractors and/or employees of a contractor who work in a full-time or part-time capacity in a technical college setting and whose work assignments include direct contact with students and staff (e.g., bookstore operations, custodial operations, food service operations) must meet the same criminal history standards as an applicant or any employee subject to the provisions of this policy.
13. Contractors and/or employees of a contractor whose work assignments in a technical college setting are temporary/time-limited and/or seasonal/sporadic in nature (e.g., grounds maintenance, construction projects, maintenance, installation, repair or service-related duties/tasks, etc.) are not subject to the provisions of this policy.
14. Pursuant to Governor Deal's February 23, 2015 Executive Order no employment application utilized by the System Office or a technical college may require an applicant to disclose past conviction(s) for criminal or traffic offenses, with the exception of applications for positions that have been identified as sensitive government positions.
15. If an applicant provided a conditional offer of employment is initially determined to be ineligible for employment (i.e., a targeted exclusion) based on his/her documented criminal history, the System Office or technical college human resources director must complete an individualized assessment before finalizing the decision. In response to this decision, the applicant must be provided with a pre-adverse action notice pursuant to the Fair Credit Reporting Act or, as applicable, the Rules of the Georgia Crime Information Center (GCIC) to include a copy of his/her consumer report or, as applicable, the GCIC criminal history information which led to the decision.
16. As provided in this procedure, an individual who would otherwise be disqualified from employment based on his/her criminal history may, nonetheless, be recommended for appointment following completion of an individualized assessment. Any such recommendation must be submitted, in writing, to the Commissioner by the technical college president or, as applicable, a System Office hiring official. No hiring decision can be finalized until the Commissioner and/or his/her designee has reviewed the submitted information and, if appropriate, authorized the appointment in writing.

## **B. Child Care Learning Center Positions:**

1. The Rules of the Georgia Department of Early Care and Learning (DECAL) stipulate that before a new employee can be present at a childcare learning center while children are present for care, he/she must have first received a satisfactory comprehensive background check determination from DECAL. Included among the positions subject to this screening are those who care for, supervise, or have unsupervised access to children as well as those that perform duties for the center that involve personal contact with children.
2. For purposes of this procedure, an applicant provided a conditional offer of employment for a full- or part-time position in a technical college childcare learning center must first successfully complete the TCSG-mandated criminal history records check. Provided the results are satisfactory, the individual must then undergo DECAL's comprehensive background check.
3. Before employment can commence, a prospective employee and the director of the college's childcare learning center must be in receipt of a satisfactory comprehensive background check determination letter from DECAL.
4. Pursuant to DECAL Rules, all childcare learning center employees referenced above must undergo a comprehensive background record check and receive a satisfactory determination from DECAL every five (5) years thereafter.
5. Any applicant provided a conditional offer of employment who refuses to complete a Cogent Systems/Georgia Applicant Processing Services Acknowledgement Form (Attachment 4.1.9p.a5.) and other Cogent registration requirements and/or who refuses to undergo the activities required for a Comprehensive Background Check shall have his/her conditional offer of employment withdrawn.
6. Any current employee who refuses to undergo a comprehensive background check as outlined in this procedure, or who possesses a criminal record or placement on a referenced registry that would otherwise disqualify him/her from working in a TCSG childcare learning center will be released from employment pursuant to applicable State Board Policies and TCSG Procedures.
7. The employing technical college is responsible for all costs associated with the required comprehensive background checks for both prospective and current employees.

## **C. P.O.S.T. Certified Law Enforcement Positions:**

1. Applicants to be interviewed for a full- or part-time P.O.S.T. certified law enforcement position serving in a technical college's campus police department shall complete a TCSG Pre-Employment Questionnaire (Attachment:4.1.9p.a6.) in conjunction with the interview portion of the selection process. The Questionnaire is considered a pre-offer activity.
2. Following the delivery of a written conditional offer of employment, the selected candidate for a full- or part-time law enforcement position must participate in/successfully complete certain post-offer screening activities which may be in addition to or which may compliment a technical college's written selection process.
3. The recommended candidate for a full- or part-time law enforcement position must successfully complete a criminal history records check, to include an FBI fingerprint-based check. The candidate must also undergo a medical examination (in accordance with the State of Georgia Medical and Physical Examination Program) and a pre-employment drug screening. As provided in a technical college's written selection

process, the candidate may also be required to undergo/successfully complete, a motor vehicle records check and a psychological screening.

4. The recommended candidate for a full-time P.O.S.T. certified law enforcement position must complete a physical examination in accordance with Procedure 4.6.1p., Medical and Physical Examination Program. The examination is considered a post-offer activity and no applicant may commence employment unless he/she undergoes a medical examination and is determined by a medical practitioner to have met established State of Georgia medical standards for service in this capacity.
5. With the exception noted in Paragraph VI.A.4.f., the selected candidate may, at his/her expense, utilize a licensed medical practitioner of his/her own choosing to perform the required examination. Alternatively, a technical college may contract with a licensed medical practitioner to either perform the medical examination or review the results of a medical examination performed by another licensed medical practitioner to validate that the candidate meets all established medical standards for service as a P.O.S.T. certified law enforcement officer. In either instance, cost for the examination or the review of a completed examination shall be the responsibility of the prospective employee unless the technical college agrees to assume these costs. If a college agrees to assume these costs for all prospective employees in law enforcement positions, the college may stipulate that the prospective employee be examined by a designated provider.

#### **D. Employment Restrictions:**

1. Absent a hiring decision made in response to an individualized assessment as provided in this procedure, there is a mandatory disqualification period from employment for a period of five (5) years from the date of the most recent conviction, plea of *nolo contendere*, or release from incarceration, probation, or parole, whichever is later, for any of the following crimes/categories of crimes:
  - a. Offenses designated as a serious violent felony in O.C.G.A. § 17-10-6.1, e.g., murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, as well as other felony offenses involving violent behavior, such as arson, aggravated battery, kidnapping, reckless conduct causing bodily harm, robbery, voluntary manslaughter, involuntary manslaughter, cruelty to children in the second or third degree;
  - b. Other sexual offenses referenced in O.C.G.A. Title 16, Chapter 6 including incest, statutory rape, child molestation, enticing a child for indecent purposes, and sexual exploitation of children;
  - c. When the applicant is applying to work in the child enrichment center, certain misdemeanor offenses when the victim is a minor including, simple battery, simple assault, or family violence battery; cruelty to children; criminal attempt (when the victim is a minor); and, contributing to the delinquency, unruliness or deprivation of a minor.
  - d. Any other felony or misdemeanor conviction directly related to the area of assignment (e.g., theft by taking, theft by deception, theft by shoplifting, etc.), when the position sought involves access to financial resources including, but not limited to cash and Purchasing Cards;
  - e. Criminal attempt when the crime attempted is any of the crimes referenced in the above subparagraphs.
  - f. Any offense committed in another jurisdiction that, if committed in Georgia, would be one of the enumerated criminal offenses referenced in these subparagraphs.

NOTE: In circumstances pertaining to a conviction for a violent felony offense that is so egregious given the nature of the crime, the period of disqualification may be extended



beyond the five (5) year period. Any such extension may only be considered after completion of an individualized assessment as outlined in this procedure. Before a decision to extend the disqualification period is finalized, a technical college president or the System Office deputy commissioner, or an assistant commissioner should consult with the Executive Director of the Office of Legal Services.

2. Drug-Related Convictions:
  - a. Any person who has been convicted for the first time under the laws of Georgia, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug is ineligible for any public employment for a period of three (3) months from the date of conviction; and,
  - b. Any person who has been convicted two (2) or more times under the laws of Georgia, the United States, or any other state of any criminal offense involving the manufacture, distribution, sale or possession of a controlled substance, marijuana, or a dangerous drug is ineligible for any public employment for a period of five (5) years from the most recent date of conviction.
3. Active Arrest Warrants or Pending Criminal Charges:
  - a. An applicant cannot commence employment if he/she has an active arrest warrant or a pending, non-adjudicated charge for any felony or misdemeanor offense or a drug-related offense referenced above.
  - b. The disqualification will apply until the applicant has successfully cleared an outstanding arrest warrant or a pending, non-adjudicated charge referenced above by providing a copy of the disposition or documentation that the arrest warrant has been cleared.

### **C. Motor Vehicle Records (MVR) Checks:**

1. As provided in the TCSG procedure governing Driver Qualifications, an applicant provided a conditional offer of employment for any full- or part-time position that would require the incumbent to drive a state, rental, or personal vehicle on State of Georgia business must, as a condition of employment: possess a valid driver's license, consent to a Motor Vehicle Records (MVR) Search/Check to ensure that his/her driving history records are consistent with established driving standards; and, complete the accompanying Driver's History Consent Form (Attachment:4.7.2p.a5.).  
NOTE: if the applicant refuses to sign the Driver's History Consent Form his/her conditional offer of employment will be withdrawn.
2. An applicant shall not be considered for a position meeting the above referenced driving requirements if he/she possesses a suspended or revoked Driver's License.
3. An applicant whose driving history reflects two (2) "at fault" motor vehicle accidents in the three (3) year period immediately preceding his/her application for employment; who possesses eight (8) or nine (9) violation points on his/her driving record; or, who has been convicted of Driving Under the Influence (DUI) or Driving while Intoxicated (DWI) within six (6) months of his/her application for employment must, as a condition of employment:
  - a. complete a driver safety video offered by or through the Georgia Department of Administrative Services (DOAS) or a similar organization; and,
  - b. successfully complete a defensive driving course offered through a Defensive Driving School certified by the Georgia Department of Driver's Services (or comparable course in his/her state of residence) within sixty (60) days of his/her date of employment. The cost of the Defensive Driving Course will be responsibility of the applicant/employee; or,

- c. in response to a DUI or DWI conviction or plea of nolo contendere, successfully complete a DUI Alcohol or Drug Use Risk Reduction Course through a provider certified by the Georgia Department of Driver's Services (or comparable course in his/her state of residence) within sixty (60) days of his/her date of employment unless completion of the course was previously mandated by the court of jurisdiction as a part of sentencing. The cost of the course will be the responsibility of the applicant/employee. NOTE: any newly hired employee who fails to meet these conditions within the established time period shall be dismissed from employment.
4. An applicant whose driving history reflects three (3) or more "at fault" motor vehicle accidents in the three (3) year period immediately preceding his/her application for employment, or ten (10) or more current violation points may not be employed in any position for which driving on a frequent or infrequent basis is a condition of employment.
5. Any current employee in a position not subject to the requirements of the Driver Qualification Procedure who subsequently receives a conditional offer of employment for a position subject to the provisions of this procedure must have his/her driving history records reviewed. Any employee who refuses to sign the accompanying Driver's History Consent Form will not be considered further for the position and may be subject to disciplinary action.

#### **D. Credit History Records Checks:**

1. Pursuant to applicable state law, an applicant provided a conditional offer of employment for a position requiring an incumbent to use a Purchasing Card (i.e., P-Card) must, as a condition of employment, undergo both a criminal history records check and a credit history records check.
2. The credit history of a recommended candidate may also be investigated when the duties of the identified position include responsibility for handling money, managing financial transactions or related duties or, when appropriate for those positions charged with overseeing these activities. Care must be taken to ensure that the investigation and any subsequent employment-related decision are made consistent with applicable provisions of the Fair Credit Reporting Act (FCRA).
4. In conjunction with these requirements, the applicant shall complete a Credit Information Release/Fair Credit Reporting Act Disclosure Form (Attachment: 4.1.9p.a4.) and be provided a copy of Attachment: 4.1.9p.a11. (Summary of Rights Under the Fair Credit Reporting Act).
5. If the applicant refuses to sign the Credit Information Release/Fair Credit Report Act Disclosure Form, his/her conditional offer of employment will be withdrawn.

#### **E. Notification and Authorization Requirements:**

1. All vacancy announcements/notices shall incorporate a statement advising potential applicants of the background investigation requirements for the designated position.
2. During the selection process, each applicant to be interviewed for a given position shall be notified of the specific background investigation requirements for the position sought and that successful completion of each screening activity is considered a condition of employment.
3. An applicant provided a conditional offer of employment must provide written authorization to permit the System Office or the employing technical college to conduct a criminal history records check (attachment: 4.1.9p.a1.) and, as applicable, a motor vehicle records check,(attachment 4.7.2p.a5.) a credit history records check (attachment: 4.1.9p.a2.), a fingerprint records check, or a medical examination.

4. Any applicant who refuses to provide the required written authorization(s) or who refuses to undergo one or more of the required screening activities will have his/her conditional offer of employment withdrawn.
5. Any current employee who fails to comply with the requirement of this paragraph will have his/her conditional offer of employment withdrawn and may be subject to disciplinary action.

**F. Background Checks Required by a Clinical/Internship/Externship Site or Agency:**

1. Employees in certain positions, such as health sciences faculty who supervise students in a clinical/internship/externship site or agency may be required (as a condition of employment) to undergo additional background screening(s) (e.g., a criminal history records check) as dictated by a public or private clinical/internship/externship site or agency (e.g., a hospital, medical center, laboratory, etc.). These may include an inquiry with the HHS Office of the Inspector General, Exclusion Program, Inquiry with the General Services Administration Excluded Parties List System (EPLS).
2. An employee who is denied entry to a clinical/internship/externship site or agency on the basis of the results of these additional screening requirement(s) and cannot perform the essential functions of his/her job, may be subject to disciplinary action up to and including dismissal from employment as provided in the State Board policy governing Positive Discipline or, as applicable, the TCSG procedure governing Adverse Employment Actions.

**G. Individualized Assessment:**

1. In response to preliminary decision to exclude an applicant from employment on the basis of his/her documented criminal history (i.e., a targeted exclusion based on the hiring parameters in this procedure), the System Office or technical college human resources director/coordinator must complete a three-step individualized assessment to include:
  - a. Formal written notice provided to the applicant indicating that he/she may be excluded from employment because of past criminal conduct. This pre-adverse action notice shall be initiated pursuant to Fair Credit Reporting Act (FCRA) guidelines, or, as applicable, the Rules of the Georgia Crime Information Center (only for law enforcement candidates processed through a GCIC terminal). NOTE: FCRA guidelines require that a copy of the consumer report obtained from the State of Georgia's contract consumer reporting agency and a summary of the consumer's rights under the FCRA (Attachment: 4.1.9p.a11.) be attached to the pre-adverse action notice.
  - b. The applicant must be provided an opportunity to demonstrate that the decision/exclusion does not properly apply to him/her, e.g., that he/she was not properly identified in the conviction record or that the conviction records are otherwise inaccurate. NOTE: the applicant should be provided a reasonable amount of time (e.g., 5 business days) to identify any inconsistencies or inaccuracies in the report and begin the process to correct his/her record; and,
  - c. The applicant must be provided an opportunity to submit additional information that reflects that the parameters of the procedure and his/her exclusion is not job-related and consistent with business necessity. The supporting information may include:
    - i. the specific circumstances surrounding the offense/conduct;
    - ii. the number of offenses for which the applicant was convicted;

- iii. the applicant's age at the time of the conviction or, as applicable, at his/her release from incarceration;
  - iv. any evidence that the applicant has held similar employment since the conviction/incarceration without engaging in further criminal conduct;
  - v. the length and consistency of the applicant's employment history before and after the criminal offense;
  - vi. the success of rehabilitation efforts to include education and training;
  - vii. employment or character references provided by the applicant or other information regarding his/her fitness for the position; and, as applicable,
  - viii. whether the individual is bonded under a federal, state, or local bonding program.
2. If an applicant fails to provide additional information in response to the pre-adverse action notice, the System Office or technical college may proceed to finalize the employment decision without such information and disqualify the applicant from employment consistent with the provisions of this procedure.
  3. If an applicant does respond to the pre-adverse action notice and provide information for consideration, all submitted information should be considered before a final eligibility determination is made. The analysis should also include a further review of such factors as the nature and gravity of the offense or conduct, the passage of time since the offense/conduct and/or the completion of the sentence; and the nature of the job sought (e.g., the nature of the assigned job duties, the identification of the job's essential functions; and, the circumstances under which the job is performed to include the level of supervision, oversight, contact with others, and the workplace environment). The human resources director/coordinator may elect to meet with the applicant/employee to discuss these matters.

#### **H. Authorization to Employ an Applicant with a Disqualifying Criminal History:**

1. If, after completion of the individualized assessment, it is determined that an exception to the hiring prohibitions outlined in this procedure should be pursued, any such recommendation must be submitted, in writing, to the Commissioner by the technical college president or, as applicable, a System Office hiring official. The request should include a synopsis of the applicant's past criminal history and the accompanying rationale,
2. No hiring decision can be finalized until the Commissioner and/or his/her designee makes a determination and, if approved, authorizes the appointment in writing.
3. A request for a hiring exception shall not be approved if such a decision would conflict with an existing statutory hiring exclusion.

#### **I. Notification of Adverse Hiring Decision**

1. If an applicant is subsequently denied employment due to his/her criminal history/conduct, he/she must be notified of this decision in writing.
2. In instances in which an adverse action notice is based on a consumer report generated by the State of Georgia's contract consumer reporting agency, the notice must include a description of the action taken; the name, address and toll-free telephone number of the consumer reporting agency providing the report; a statement that the consumer reporting agency did not make the decision to take the adverse employment action and is unable to provide the applicant the specific reasons why the action was taken; notice of the applicant's right to obtain a free copy of the report from the consumer reporting agency within sixty (60) days of the notice; and, notice of the applicant's right to dispute

the accuracy and/or completeness of any information contained in the report with the consumer reporting agency.

3. In instances in which an adverse action notice is based on criminal history information obtained directly from the Georgia Crime Information Center, the applicant must be informed of all information pertinent to the decision to include the contents of the record and the effect the record had on the decision. Additionally, the applicant should be provided with a copy of the criminal history record used in making the determination. NOTE: if, after reviewing the information, an applicant believes that his/her record is incorrect or incomplete in any respect and desires that changes, corrections or updating of the alleged deficiency be made, she/she should make application directly to the agency which contributed the questioned information.
4. Any disciplinary action imposed on a current employee on the basis of an arrest and/or one or more subsequent convictions(s), pleas(s) of nolo contendere, etc. for one or more criminal offense(s) must follow applicable provisions of the State Board policy governing Positive Discipline and/or, as applicable, the TCSG procedure governing Adverse Employment Actions.

#### **J. Maintenance of Criminal History Records**

1. All records pertaining to a candidate's or an employee's criminal history must be maintained separately and stored in a locked cabinet.
2. Areas in which the information is processed and handled must be out of public view and restricted to authorized personnel in the performance of their official duties.

#### **K. Access to Criminal History Information**

1. Criminal history records and other related information will only be accessible to authorized System Office/technical college staff.
2. Any employee who has access to or reviews or processes a request for GCIC criminal history records/investigation reports must sign a GCIC Awareness Statement (Attachment: 4.1.9p.a11.) and complete any associated training. The Rules of the GCIC require signed Awareness Statements to be placed in each employee's official personnel file.
3. Criminal history records will not be released or otherwise disseminated or disclosed to unauthorized individuals or employees.
4. An employee's unauthorized access to and/or release of an applicant's or other staff member's criminal history information to unauthorized individuals may subject the employee to disciplinary action up to and including dismissal from employment.
5. The Georgia Crime Information Act (O.C.G.A. 35-3-38) establishes specific criminal penalties for the unlawful access of the criminal justice system or dissemination of criminal history information.

#### **VII. RECORD RETENTION:**

Criminal history records must be retained for seven (7) years.

*NOTE: Pursuant to statute and the accompanying Rules of the Georgia Department of Early Care and Learning (DECAL), documentation that reflects that a satisfactory fingerprint records check determination was received before a prospective child enrichment center/group day-care home employee begins working with children must be maintained on-site by the center/group day care home director in a separate file. The documentation is available for inspection by a DECAL representative, upon request. Similar information must be maintained on all current employees of a center/group day-care home.*