COUNTY OF DURHAM
Administrative Procedure

SUBJECT: Conducting Criminal Background Investigations in the Recruitment and Selection Process	
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1.0 PURPOSE OF THE PROCEDURE:

To establish a uniform policy for conducting criminal background investigations for County positions.

2.0 POLICY STATEMENT:

It is the policy of Durham County to conduct criminal background investigations by checking various sources of information to verify eligibility for County employment of prospective employees, volunteers, interns and temporary personnel. The County will conduct criminal background investigations for current County staff who are finalist for promotional, and /or lateral movement within the County, as well as demotions.

Consistent with this policy, a criminal history will not automatically disqualify an applicant from employment, unless explicitly mandated by law.

The County will not inquire into an applicant's criminal history on an initial employment application form, unless explicitly mandated by law.

The County will not conduct a criminal background check or make an inquiry into an applicant's possible criminal history until after an applicant's credentials have been reviewed, it has been determined that the applicant is otherwise qualified for a position, and the applicant has been recommended for hire by the department where the vacancy exists.

In no case may records of criminal arrests, dismissals, or convictions which have been expunged be used, by the County or any of its agencies, in connection with employment, except as dictated by law. The Human Resources Department shall maintain records of all such requests and inquiries related to them and present to the County Manager as requested.

3.0 APPLICABILITY:

This procedure shall apply to all Departments covered by the Personnel Ordinance or Memorandum of Understanding for all prospective employees recommended for appointment to a County position. Additionally, this procedure applies to those applicants and staff within the County Manager's office, County Attorney, Clerk to the Board, and the Tax Administrator.

ISSUING DEPARTMENT: Human Resources	EFFECTIVE DATE: October 1, 2012
AUTHORIZED BY :	REVISION DATE:

4.0 LEGAL REFERENCES:

The Personnel Ordinance, The Fair Credit Reporting Act (as amended December 18, 2010), and Title VII of the Civil Rights Act of 1964.

5.0 DEFINITIONS

5.1 Applicant – Any current or prospective employee, volunteer or intern.

5.2 Adverse Action – Denial of employment to an applicant based on criminal history.

5.3 Criminal Background Investigation – A check of various information sources that verifies the eligibility of a prospective employee to provide County services. The type of information that can be reviewed includes, but is not limited to, a criminal history record report including driving record, and sex offender registry.

5.4 Conditional Offer – An offer of employment contingent upon certain conditions being satisfactorily met.

5.5 Criminal Background Check – A search of criminal conviction history.

5.6 Criminal History Record Information (CHRI) – Information about the history of an individual's contact with law enforcement agencies.

5.7 Consumer Report – Any written communication with information used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a prospective applicant's eligibility for employment.

5.8 Conviction – Any sentence arising from a plea or verdict of guilty, including a sentence of incarceration, a suspended sentence, or a probation sentence.

5.9 Intern – A student currently enrolled in a college or university program, who completes internship hours under a mutually approved agreement between the County and the academic institution.

5.10 Otherwise Qualified – Any applicant that meets all other criteria for consideration for a position.

5.11 Individualized Assessment – Determines the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform one or more of the duties or responsibilities related to the employment sought.

5.12 Volunteer – Anyone providing services for the County without receiving or expecting payment.

5.13 Aggrieved Applicant – Anyone who has applied for a position with the County and has been notified in writing that they were rejected due to negative information contained in a CHRI report.

6.0 EXCEPTIONS TO THE POLICY

The following departments will conduct background investigations within the department and before submitting a selection to Human Resources.

- Sheriff's Department
- Criminal Resources Justice Center (CJRC)
- Youth Home
- Filling of any position where the employee will be assigned duties at the County judicial building or in the jail.

Seasonal/Relief positions at the Board of Elections are exempt from criminal background screening.

7.0 BACKGROUND INVESTIGATION AND IMPLEMENTATION PROCEDURE

Human Resources will implement this procedure by:

a. Ensuring that hiring supervisors and applicants are aware that a background investigation will be completed.
b. Ensuring that applicants, volunteers, interns and temporary personnel, complete the appropriate Authorization and Consent for Release of Personal Information form before a report is procured.
c. Performing a criminal background check on all applicants, volunteers, interns and temporary personnel before a conditional offer of employment has been made pursuant to this administrative procedure.
d. Performing a background investigation in compliance with the Fair Credit Reporting Act (FCRA) and in accordance with the County's Recruitment and Selection Administrative Procedure.

e. Ensuring that an-adverse action letter is sent to the prospective employee, volunteer, intern or temporary personnel, when applicable, with a deadline by which that person can submit proof that the report is erroneous, or evidence of their rehabilitation or other pertinent information as desired to the Human Resources Department.
f. Ensuring that no applicant, volunteer, intern or temporary personnel begins work in a position without an executed and approved background investigation in addition to all other pre-employment requirements.
g. Ensuring that background investigation information is confidentially handled and maintained within HR.

8.0 FINDINGS IN CRIMINAL BACKGROUND CHECKS

8.1 When making employment decisions based on criminal history, the County will consider the following factors to determine if such decision is job related and consistent with business necessity:

a. The nature or gravity of the offense or conduct;
b. The time elapsed since the offense, conviction and/or completion of the sentence, and
c. The nature of the job sought or held.

Such consideration will involve completing an individualized assessment and will take into account the following:

a. The facts or circumstances surrounding the offense or conduct;
b. The number of offenses for which the individual was convicted;
c. Evidence that the individual performed the same type of work post conviction without incidence of criminal conduct;
d. The length and consistency of employment history before or after the offense or conduct;
e. Rehabilitation efforts, e.g., education/training;
f. Employment or character references and any other information regarding fitness for the particular position; and
g. Whether individual is bonded under a federal, state or local program.

8.2 If there are findings because of a criminal background check that could potentially lead to an adverse action, the Human Resources Department, County Attorney and County Manager's Offices must be consulted. If a decision is made to authorize a change in the job offer status, the applicant will be notified in accordance with this administrative procedure. If the applicant submits a request for reconsideration, a copy of the candidate letter, the (CRHI) report, evidence of rehabilitation, or proof of error in the report, will be submitted to the Human Resources Department for review.

Any applicant aggrieved by a potential adverse action may file a request for reconsideration due to an allegation that the record in question is incorrect or inappropriately attributed to them or that the criminal record correctly attributed to them should not be a bar to employment, with the Human Resources Department, which shall consider the request and take appropriate action. The aggrieved applicant must file the request in accordance with this section.

8.3 The County will follow the practices set forth below when it is inclined to deny an application a position because of their conviction history:

a. Ensure that due diligence is exercised to confirm that the record received pertains to the individual for whom a request was made by comparing the applicant's identifying information, such as that on a driver's license or government issued identification, Authorization and Consent for Release of Personal Information or CRHI request form, to the information on the CRHI report.
b. Notify the applicant and provide him or her with a copy of the CRHI report that appears to make him or her ineligible for employment prior to making any adverse determination or taking any adverse action.
c. Afford the applicant an opportunity to contest the accuracy and/or explain the relevance of any conviction(s) or explain how a decision to bar them from employment is not job related and consistent with business necessity, or to submit any evidence of rehabilitation, before a final decision is made about the applicant's suitability for the position sought. The applicant shall have seven (7) calendar days from the mailing date of notice from the County to respond to the County regarding the CRHI report. **The applicant's rebuttal must be in writing.**

8.4 Nothing in this administrative procedure obligates the County to suspend recruitment efforts indefinitely, or prevents the County from filling the position for which an affected applicant has applied.

8.5 In no instance, will implementation of this policy conflict with applicable federal or state statutes and regulations.