

**SUBJECT: DESIGNATION OF SENSITIVE POSITIONS AND REQUIREMENTS FOR CRIMINAL HISTORY INFORMATION**

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**POLICY No.:** 723

**EFFECTIVE DATE:** 09/30/09

**REVISED DATE:** 01/30/11

**APPROVED BY:**

*Jonathan E. Feldman*

**SUPERSEDES:** DHS Policy No. 703.1

**PURPOSE:** To provide guidelines to implement the Board of Supervisors adopted Resolution regarding access of criminal history information in connection with employment in sensitive positions.

To ensure that any person hired, promoted, or transferred to another position obtains work clearance through a LiveScan fingerprint process and criminal records background check to assure that any criminal record or criminal conviction does not conflict with duties to be performed or does not pose a potential threat to the Department of Public Health (DPH) or the public served in performance of duties.

**POLICY:** Every position within DPH is judged to be a sensitive position, and therefore, covered by this policy and guidelines.

All newly hired employees, reinstatements, restorations, commissioners, interns, students, volunteers, and contract workers, both permanent and temporary, as well as employees who are (1) changing their items/classifications or (2) transferring or promoting from within DPH or from other County departments are covered by this policy and are to be fingerprinted. Fingerprints are submitted to the State Department of Justice for a criminal records background check. Employment is contingent upon the outcome of the background check. Certain criminal offenses may disqualify an individual from employment.

The DPH shall not place a person in a sensitive position if he/she has been convicted of a felony or misdemeanor, except that such conviction may be disregarded if it is determined that there were mitigating circumstances or that the conviction is not related to the position and poses no threat or risk to the County or the public. Each case is to be individually reviewed and evaluated by the Public Health Human Resources Director or his/her designee.

The DPH shall consider as sensitive any position involving duties which pose a threat or risk to the Department or to the public when performed by persons who have a criminal history incompatible with those duties, whether those persons are employees of the Department or perform those services pursuant to contract or a volunteer basis.

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Any current workforce member **charged** with any crime (including, traffic violations, if position requires driving on County business) shall report being charged with such crime to DPH Human Resources within 72 hours of becoming aware of the charge. A current workforce member **convicted** of a crime (including a traffic violation, if the position requires driving on County business) shall report the conviction to DPH Human Resources Performance Management Unit within one working day subsequent to the conviction. Failure to report may result in disciplinary action, including discharge from the County or termination from the assignment.

**GUIDELINES: A. Mandatory Criminal History Information Request – Sensitive Positions**

The Department of Public Health must secure criminal history information on selected candidates for vacant positions, contract personnel, interns, and volunteers performing duties within the following categories:

- Positions that involve the care, oversight, or protection of persons through direct contact with such persons (e.g., Public Health Nurses, Home Nursing Attendant, Clinical Social Worker, Community Workers, Clinic Driver, Licensed Vocational Nurse, etc.).
- Positions having direct or indirect access to funds or negotiable instruments, (e.g., Chief Financial Officer, Finance Manager, Revenue Manager, Deputy Purchasing Agent, Cashier, etc.).
- Positions that require state and/or professional licensing (e.g., Physician, Registered Nurse, Certified Public Accountant, Pharmacist, Physical Therapist, etc.).
- Positions that involve public safety and/or law enforcement, (e.g., Safety Police Officer, Probation Officer, Public Health Investigator, Environmental Health Specialist, Health Facilities Evaluators, etc.).
- Positions that have access to or charge for drugs or narcotics (e.g., Pharmacist, Pharmacist Technician, Pharmacy Helper, Physician, Registered Nurse, etc.).
- Positions that have access to confidential or classified information including criminal conviction information (e.g., Personnel Officer, Department Personnel Technician, Psychiatric Social Worker, etc.).
- Positions that involve the care, oversight, or protection of County, public, or private property (e.g., Estate Property Custodian, Warehouse Worker, etc.).

**B. Potentially Disqualifying Job Related Offenses**

The following identifies offenses which, under certain conditions, may be incompatible with specific work functions. These lists shall be used as general

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guidelines in determining which criminal offenses are related to the duties of sensitive positions.

- **Function – Care, Oversight, or Protection of Persons through Direct Contact with Such Persons. Offense:**

Robbery	Intoxication	Theft
Embezzlement	Fraud	Forgery
Kidnapping	Manslaughter	Assault
Homicide	Elder Abuse	Child Abuse
Receiving Stolen Property	Drug or Narcotics Offenses	
Sex Offenses which involve Victims; e.g., Rape, Child Molestation, etc.		

- **Function – Direct or Indirect Access to Funds or Negotiable Instruments. Offense:**

Bribery	Robbery	Theft
Fraud	Embezzlement	Forgery
Receiving Stolen Property		

- **Function – Requirement of State and/or Professional Licensing. Offense:**

Violation of any certification or licensing provisions relating to duties of the position in question may also be the basis for disqualification.

- **Function – Public Safety or Law Enforcement. Offense:**

Robbery	Theft	Perjury
Embezzlement	Kidnapping	Fraud
Homicide	Intoxication	Assault
Drug or Narcotics Offenses		Forgery
Sex Offenses which involve Victims; e.g., Rape, Child Molestation, etc.		

- **Function – Access to or Charge for Drugs or Narcotics. Offense:**

Robbery	Fraud	Theft
Embezzlement	Forgery	
Receiving Stolen Property	Drug or Narcotics Offenses	

- **Function – Access to Confidential or Classified Information Including Criminal Conviction Information. Offense:**

Extortion	Robbery	Theft
Fraud	Forgery	Perjury
Receiving Stolen Property		

- **Function – Charge of Access to County, Public or Private Property. Offense:**

Robbery	Embezzlement
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Receiving Stolen Property Theft

**C. Hiring Standards**

Persons with criminal records may be eligible for placement in a sensitive position for which they otherwise qualify and in which their previous conviction does not pose a risk. Each case is to be individually reviewed and the evaluation should consider:

- The nature of the offense in relation to the position's duties.
- The seriousness of the offense as evidenced by conditions surrounding the crime and the sentence given. Any extenuating circumstances are to be taken into consideration.
- The recency of the offense.
- The age of the individual at the time the offense and the conviction took place.
- The extent of the individual's criminal record. Was the offense and conviction an isolated incident or does it represent a continuing pattern?
- The evidence and extent of rehabilitation by the individual.
- The subsequent period of stability (i.e., has the applicant been free from further convictions?).
- Employee's work history (e.g., performance evaluations, length of service, prior disciplinary action, commendations, etc.).
- Disclosure of convictions on Employee Information Sheet and/or applications.

**PROCEDURES:** The DPH Human Resources Director is designated as the custodian of information regarding criminal convictions and will be responsible for its security and confidentiality. Therefore, the DPH HR Director will ensure the following:

- All fingerprinting and criminal conviction information is maintained under lock and key and does not leave the premises of DPH HR.
- It is determined whether or not there is a legitimate "need to know" reason for any request by an individual to review DOJ information.
- A Live Scan Visitors Log is maintained that contains (1) the name and title of the individual reviewing the information; (2) the date and time the individual examined the information; (3) the "need to know" reason for viewing; (4) and the DPH HR Director's signature approving the examination of the information.
- DOJ Information is accessed by designated staff only.

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- A log for all individuals to be fingerprinted is maintained that contains the following information: name, date of birth, social security number, job title/position, program name, date submitted, date results received, initial of the HR staff member performing the LIVE SCAN, Applicant Transaction Identifier (ATI) number, cleared status yes/no.
- All automated systems containing conviction information is secured to prevent unauthorized access, alteration, deletion, or release of the information.
- Live Scan Computer terminals are located in secure premises.
- Retention or sharing of conviction information by unauthorized staff is strictly prohibited.
- Criminal history information will only be used for hiring/appointing purposes and is not to be reproduced for secondary dissemination.
- All staff with access to criminal history information is certified to function as an operator and is trained and counseled on the handling of the strictly confidential criminal history information.
- For any individual who has a record of criminal arrests or convictions, a thorough review is conducted to determine if a job nexus would exist. This would include performing the following:
  - Obtaining court record information
  - Obtaining written statement from individual
  - Evaluating the conviction to the job or service being performed (see Hiring Standards above).
  - Assessing work history
- A No Longer Interested Notification Form to DOJ is submitted to discontinue receipt of subsequent report notification when employment is terminated or the applicant is not hired.
- The Job Nexus Evaluation Form is completed when a criminal record is reported by the DOJ.

**LIVESCAN:**

All individuals who are required to be digitally fingerprinted shall be advised in writing that employment is contingent upon the outcome of the criminal records background check and that any conviction(s) disclosed in the background check may be cause for DPH not to appoint the individual.

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In addition, any criminal record that is subsequently disclosed via the Live Scan and which was not disclosed on the applicant's application and/or Employee Information Sheet will subject that individual to direct disqualification, or if an employee applicant, to disciplinary action in accordance with the Department of Public Health Employee Evaluation and Discipline Guidelines.

- (1) Designated DPH HR staff shall assist the individual/applicant in completing the REQUEST FOR LIVE SCAN SERVICE, Applicant Submission form (DOJ form #BCII 8016, Attachment I), accurately and clearly.
- (2) Each candidate must furnish a current and valid photo identification, i.e., Driver's License, Passport, etc. The candidate will then be fingerprinted via the Live Scan terminal.
- (3) The information from the Applicant Submission form is entered into the Live Scan terminal using the Live Scan Data Entry Guide, and fingerprints are then scanned.
- (4) After successful entering of information and electronic capture of fingerprints, the information is electronically transmitted to the State of California Department of Justice.
- (5) Upon clearance, the program office will be notified, and the final hiring or appointment process will be initiated.

Designated DPH HR staff will follow-up with the Department of Justice regarding fingerprint results that have not been returned within ten (10) working days.

Upon determination of the individual's fitness for the position, the record results shall be destroyed to the degree that the identity of the individual can no longer be reasonably ascertained.

Retention of criminal history records will be based upon documented legal authority and need. These records will be stored in a secure, confidential manner.

DPH will also receive subsequent notification from the Department of Justice if the individual has been arrested any time after his/her LIVESCAN has been processed. These notifications will be forwarded to the DPH Performance Management Unit for follow-up and corrective action.

**AUTHORITY:**

- California Code of Regulations, Title 11, Section 708
- Penal Code Sections 11105 (b)(10) and 13300 (b)(10)
- County Code Civil Service Rules 6.04 and 18.03

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- Los Angeles County Department of Human Resources Policy #514:
- Designation of Sensitive Positions and Requirements for Criminal History Information
- November 10, 1998, Resolution of the Board of Supervisors of County of Los Angeles declaring its intention to provide for the access of criminal history information for employment in sensitive positions
- Los Angeles County Department of Human Resources Accessing & Assessing Criminal History Information Guide – 2008/2009

### **Criminal Offenses that may be Incompatible with Certain Work Function**

Note: This is not meant to be an exhaustive list, and other offenses may result in a determination of unsuitability for employment based upon job nexus. Additionally, the list of offenses under each function is not meant to be exhaustive, and may include other offenses as well.

- **Function: Care, Oversight, or Protection of Persons through Direct Contact with Such Persons:**  
  
Robbery; Intoxication; Theft; Forgery; Embezzlement; Kidnapping; Homicide; Fraud; Manslaughter; Assault; Child Abuse; Drug or Narcotics Offenses; Elder Abuse; Receiving Stolen Property; Sex Offenses including, but not limited to: Rape, Child Molestation, etc.
  
- **Function: Direct or Indirect Access to Funds or Negotiable Instruments:**  
  
Bribery; Robbery; Theft; Fraud; Embezzlement; Forgery; Receiving Stolen Property;
  
- **Function: Requirement of State and/or Professional Licensing:**  
  
Violation of any certification or licensing provisions;
  
- **Function: Access to or Charge of Drugs or Narcotics:**  
  
Robbery, Fraud, Theft, Embezzlement, Forgery, Drug or Narcotics Offenses, Receiving Stolen Property;
  
- **Function: Access to Confidential or Classified Information Including Criminal Conviction Information:**  
  
Extortion, Robbery, Theft, Fraud, Perjury, Receiving Stolen Property;
  
- **Function: Charge of, or Access to County Property**  
  
Robbery, Embezzlement, Theft, Receiving Stolen Property