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| Policy #  **Background Checks** | Related Policies: | |
| *This policy is for internal use only and does not enlarge an employee’s civil liability in any way. This policy should not be construed as creating duty to act or a higher duty of care, with respect to third party civil claims against employees or the department. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.* | | |
| Applicable KY Statutes: Ky. Rev. Stat. § 17.160; Ky. Rev. Stat. § 431.078  Applicable KY Regulations: 104 KAR 1:050 | | |
| OSHA: | | |
| NFPA Standard: | | |
| Date Implemented: | | Review Date: |

**Purpose:** The purpose of this policy is to outline and direct the background investigation process and practices for employment as a sworn member of this department.

**Policy:** The policy of this department is to hire only those persons qualified for employment as firefighters. This department requires the highest level of professionalism and integrity by its members and recognizes that this commitment begins with the selection of candidates for employment. A demonstrated propensity to commit acts of moral turpitude, including but not limited to criminal acts, is inconsistent with the requirements of being a firefighter. In addition the propensity to commit certain acts may place co-workers and members of the public at risk due to the unique nature of the job of a firefighter.

The department also acknowledges its responsibility to comply with state and federal law. An employer’s use of an individual’s criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended. The department is committed to complying with the requirements as outlined by the U.S. Equal Employment Opportunity Commission’s guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

The department will obtain credit history information on all final candidates for employment prior to issuance of a conditional offer of employment. In doing so the department shall comply with the Fair Credit Reporting Act before obtaining a job-related credit history.

The department will conduct a criminal history record review for all final candidates for employment prior to issuance of a conditional offer of employment and will determine through the individualized assessment procedures described below whether the individual should be excluded from employment.

The department will conduct a motor vehicle driving history and driving offense review on a candidate for employment prior to issuance of a conditional offer of employment. The department will evaluate the candidate’s driving history through an individualized assessment procedure and determine whether the individual should be excluded from employment.

**Editor’s Note:** Departments need to decide if they will perform all three of the above checks and if not, edit this policy accordingly. Some departments may choose to do credit history reviews on new hires of a certain rank (eg. captain and above, battalion chief and above, etc.), and/or promotions to a certain rank. In addition some departments may decide to perform these background investigations after issuance of a conditional offer of employment, and some may incorporate reference checks.

**Scope:** This policy applies to all applicants for all positions, including full-time and part-time employees, paid and unpaid interns, temporary employees, contract staff employees, and volunteers.

# PROCEDURES:

1. Consumer Credit Reports
2. Definitions
3. “Adverse action” includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.
4. “Consumer report” includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person’s eligibility for employment.
5. “Consumer reporting agency” is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
6. “Employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.
7. Obtaining Reports

The department may not procure a consumer report for employment purposes unless:

1. The department has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.
3. Adverse Action

Before taking any adverse action based on the consumer report, the department shall provide the applicant or employee a copy of the consumer report and a written description of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

1. Notice of Address Discrepancy

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

1. When the department receives a notice of address discrepancy, it will compare the information in the consumer report provided by the consumer reporting agency with information the department maintains in its own records, such as applications, change of address notifications, and other personnel records. In addition, the department will verify the information in the consumer report provided by the consumer reporting agency with the consumer.
2. If the department regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the department will furnish an address for the consumer, which the department has reasonably confirmed is accurate, to the consumer reporting agency. The department will reasonably confirm an address is accurate by verifying the address with the consumer about whom it has requested the report; reviewing its own records to verify the address of the consumer; or using other reasonable means.
3. Disposal of Records

The department must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

“Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.
4. Documentation of Adverse Action

The department shall prepare an investigation report on all applicants for whom an adverse action is taken based upon information contained in a consumer report. This report shall indicate the reason for the adverse action and shall provide enough information to support the employment decision. The report shall also include any responsive documentation an applicant has provided to the department to rebut anything in the consumer report. A copy of the report shall be retained by the department for a minimum of ten (10) years.

EDITOR’s Note: The purpose of retaining this information for ten years is to ensure that if the department is sued by the applicant for the adverse action OR if the department is accused of having a pattern and practice of excluding applicants within a certain protected class, the department has sufficient information with which to support each and every employment decision.

1. Criminal History Review
2. Individualized Assessment

Only department employee(s) authorized to view criminal history records will be involved in conducting an individualized criminal history record review.

Consistent with business necessity, the department shall disqualify from employment a person whose criminal history is inconsistent with the job duties of the position of firefighter.

The department shall perform an individualized assessment of criminal history record information when determining a person’s eligibility for employment. The department shall take into account a variety of factors, including the following:

1. The nature and gravity of the offense;
2. The facts and circumstances surrounding the offense;
3. The number of offenses;
4. The age of the person when the offense was committed;
5. The date of the offense, the date of the release from prison, and how much time has elapsed with no further offenses;
6. The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest plea, or received deferred adjudication);
7. The length and consistency of the person’s work history before and after the offense;
8. Rehabilitation efforts;
9. Employment or character references and any other information regarding fitness for the position as firefighter;
10. The nature and responsibilities of the job of firefighter;
11. The accuracy of the person’s disclosure of his or her criminal history during the selection process; and
12. Any further information provided by the person concerning his or her criminal history record.

In conducting the individualized assessment, the department will consider both the factors set out above and any additional information provided by the individual. The department may obtain court records, if needed, to validate the information provided.

Using the available information, the department will determine whether or not exclusion from employment is consistent with business necessity.

Failure to disclose criminal history on an employment application will exclude a candidate from employment with the department, regardless of whether the candidate’s criminal history alone would have disqualified him or her for employment.

1. Arrests

The fact of an arrest alone does not establish that criminal conduct has occurred, and the department shall not disqualify a person based solely on an arrest.

However, the department may investigate the circumstances of an arrest to determine if the conduct underlying the arrest did in fact occur and whether it justifies an adverse employment action. When appropriate the department shall conduct an individualized assessment of the facts and circumstances and where it appears that the conduct that did occur was of a nature that makes the person unfit for the position of firefighter, the department shall exclude a candidate from further consideration. Such a determination may not be based solely on an arrest.

1. Notice to Candidate for Employment

A candidate for employment who has a criminal history record will be notified in writing that he or she may be excluded from employment due to criminal history. The candidate will be given an opportunity to provide additional information concerning his or her criminal history record to be considered as part of the individualized assessment process.

Additional information may include:

* Documentation showing inaccuracies in the criminal record;
* Any evidence related to the factors for individualized assessment listed above;
* Evidence that he or she has performed the same type of work, since the incident(s) noted on the criminal history record, with no known incidents of criminal conduct;
* Rehabilitation efforts, including education and training;
* Employment or character references; and
* Whether or not he or she is bonded (if a bond is required for the job position with the department).

If the individual does not provide additional information in a timely manner, the department will proceed with an individualized determination with the information available to the department.

1. Claim of Errors in the Record

A candidate for employment who claims that the reported criminal history record is erroneous may be provided a copy of the record so that he or she can undertake efforts to correct the record.

1. Offenses for Which Exclusion is Likely

A record of certain offenses carries a high likelihood that the department will exclude the individual from employment. Subject to an individualized assessment, the following classes of offense will likely preclude employment with the department:

* Any offense for which employment of the individual places the safety of other employees at risk regardless of the date of the offense, its relation to the employee’s job, or the age of the victim.
* Any offense that, because of the relationship between the offense and the duties and responsibilities of the position of firefighter, creates a risk to the best interests of the department and the public.
* Any felony conviction that occurred within the ten years prior to application for employment with the department.
* Any misdemeanor conviction involving moral turpitude within the ten years prior to application for employment with the department.

**EDITOR’s Note:** The above provision is intended to comply with the U.S. Equal Employment Opportunity Commission’s guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Fire departments should discuss this provision with their legal counsel and human resources department to determine if such a policy is in line with local needs and requirements. Some departments may choose to adopt a strict exclusion of applicants with prior felonies, or certain types of felonies, regardless of time frame or whether the offense was expunged, sealed or set aside. This issue should be discussed first, and the above language edited as appropriate to reflect the fire department’s desired policy.

The following alternative language is also provided for (5) above:

*A record of certain offenses carries a high likelihood that the department will exclude the individual from employment. Subject to an individualized assessment, the following classes of offense will likely preclude employment with the department:*

*-  Any offense for which employment of the individual likely places the safety of other employees at risk regardless of the date of the offense or duties and responsibilities of the position of firefighter.* *Such offenses include: homicide, murder, capital murder, unlawful transport, false imprisonment, trafficking of persons, sexual assault, aggravated sexual assault, rape, child abuse, sale or purchase of a child, arson, robbery, aggravated robbery, prostitution or solicitation of prostitution, child pornography, and sexual solicitation of a child.*

*-  Any offense that, because of the relationship between the offense and the duties and responsibilities of the position of firefighter, creates a risk to the best interests of the department and the public. For example, a person who has committed a theft-related offense or an arson related offense will not normally be eligible for a position as a firefighter.*

*-  Any felony conviction that occurred within the ten years prior to application for employment with the department.*

*-  Any misdemeanor conviction involving moral turpitude within the ten years prior to application for employment with the department.*

1. Adjudication of Offenses

In considering the adjudication of the offense, the following standards apply.

* Conviction: The department will ordinarily treat a conviction as proof of guilt. A conviction record constitutes reliable evidence that a person engaged in the criminal conduct “beyond a reasonable doubt.”
* Arrest: An arrest record alone does not establish criminal conduct. Before the department makes an employment decision based on an arrest, the department will examine the circumstances surrounding the arrest and will make any necessary inquiries. The department is not required to conduct an extensive investigation to determine the individual’s guilt or innocence but need only make inquiries that could shed light on the likelihood of the individual’s guilt in committing the underlying offense.
* An arrest will be treated as a conviction when inquiries suggest a high likelihood that the individual committed the underlying offense. Where such a determination is not found, the arrest will not be used to take an adverse employment action against the individual.
* Deferred Adjudication: A grant of deferred adjudication resulting from a no contest or guilty plea will ordinarily be treated as an admission of guilt. However, the department will make inquiries similar to the inquiries made when an arrest is reported. When such inquiries suggest a high likelihood that the individual committed the underlying offense, deferred adjudication will be treated as a conviction. Where such a determination is not found, deferred adjudication will not be used to take an adverse employment action against the individual.
* Not Guilty, Withdrawn, or Dismissed Charges: For a not guilty, withdrawn, or dismissed adjudication, the individual will be asked to explain, in writing, the circumstances and must provide a certified copy of the court paperwork showing the final disposition of every charge. The department may make additional inquiries into the surrounding circumstances.
* The charges will be treated as a conviction when such inquiries suggest a high likelihood that the individual committed the underlying offense. Where such a determination is not found, the criminal history in question will not be used to take an adverse employment action against the individual.

1. Types of Convictions

If the criminal history record shows a conviction, or if inquiries made during the record review indicate a high likelihood of guilt and/or recurrence, then the following employment restrictions will apply:

1. *Felony:* For a felony offense for which a conviction occurred within the ten years before application for employment, see OFFENSES FOR WHICH EXCLUSION IS LIKELY, above.

If the individual was convicted a felony offense more than ten years before application for employment, the department will determine whether the conviction was for an offense that generally requires exclusion by law or by policy or, if not, whether the underlying offense relates to the duties and responsibilities of a firefighter.

The following guidelines will apply:

* If the offense does not relate to the duties and responsibilities of a firefighter; does not place the safety of other employees and the public at risk; does not create a risk to the best interests of the department and the public; and was not for an offense that would otherwise preclude employment, the individual may be considered for employment.
* If the offense is related to the duties and responsibilities of a firefighter; or places the safety of other employees and the public at risk; or creates a risk to the best interests of the department and the public, the department will consider the likelihood of recurrence of the criminal behavior. Only if a determination can be made that the behavior is highly unlikely to recur - will the individual be eligible for employment; a finding to the contrary will result in the individual being ineligible for employment.

1. *Misdemeanors:* An individual may be eligible for employment if the conviction for a misdemeanor is not related to the duties and responsibilities of the position of firefighter; does not place the safety of other employees and the public at risk; does not create a risk to the best interests of the department and the public; and has occurred more than five years prior.

If the conviction occurred in the past five years and does relate to the duties and responsibilities of a firefighter; or places the safety of other employees and the public at risk; or creates a risk to the best interests of the department and the public, the employee is ineligible for employment unless it is determined that the behavior is highly unlikely to recur.

1. *Misdemeanors involving moral turpitude:* For a misdemeanor offense involving moral turpitude for which a conviction occurred within the ten years before application for employment, as applicable, see OFFENSES FOR WHICH EXCLUSION IS LIKELY, above.

If convicted of a misdemeanor that involves moral turpitude and that occurred more than ten years prior to the application for employment, the department will determine whether the underlying offense relates to the duties and responsibilities of the desired position.

The following guidelines will apply:

* If the offense does not relate to the duties and responsibilities of a firefighter; does not place the safety of other employees and the public at risk; does not create a risk to the best interests of the department and the public; and was not for an offense that would otherwise preclude employment, the individual may be considered for employment.
* If the offense is related to the duties and responsibilities of a firefighter; or places the safety of other employees and the public at risk; or creates a risk to the best interests of the department and the public, the department will consider the likelihood of recurrence of the criminal behavior. Only if a determination can be made that the behavior is highly unlikely to recur - will the individual be eligible for employment; a finding to the contrary will result in the individual being ineligible for employment.

1. *Multiple Offenses:* An individual with multiple offenses that individually do not make him or her ineligible for employment may be deemed ineligible for continued employment when repetitious criminal behavior indicates a high degree of likelihood for recurrence of the behavior.
2. *Unlisted Criminal History:* If a criminal history record does not list an event reported by the candidate for employment, he or she will be asked to explain, in writing, the circumstances for each reported incident. A certified copy of pertinent court paperwork showing final disposition of the charge must be included. The department may make additional inquiries.
3. *Other Grounds of Elimination:* Applicants are subject to elimination under other department policies, state or local laws, or certification requirements where the applicant’s criminal history limits his or her ability to perform the essential functions of the position or obtain necessary certifications, licenses or credentials. These include requirements for certification and/or licensure as a firefighter, fire officer, emergency medical technician, and paramedic.
4. Motor Vehicle Driving History and Driving Offense Review
5. Individualized Assessment

Only department employee(s) authorized to view driving history records will be involved in conducting an individualized driving history and driving offense record review.

Consistent with business necessity, the department shall disqualify from employment a person whose driving history is inconsistent with the job duties of the position of firefighter.

The department shall perform an individualized assessment of driving history and driving offense record information when determining a person’s eligibility for employment. The department shall take into account a variety of factors, including the following:

1. The nature and gravity of any offenses and/or at-fault accidents;
2. The facts and circumstances surrounding the offense or accident;
3. The number of offenses or at-fault accidents;
4. The age of the person when the offense and/or at-fault accidents was committed;
5. The date of the offense and/or at-fault accidents and how much time has elapsed with no further offenses or at-fault accidents;
6. The adjudication of the offense;
7. Rehabilitation and/or training efforts including educational programs;
8. The nature and responsibilities of the job of firefighter;
9. The accuracy of the person’s disclosure of his or her driving history during the selection process; and
10. Any further information provided by the person concerning his or her driving history record.

In conducting the individualized assessment, the department will consider both the factors set out above and any additional information provided by the individual. The department may obtain court records, if needed, to validate the information provided.

Using the available information, the department will determine whether or not exclusion from employment is consistent with business necessity.

1. Notice to Candidate for Employment

A candidate for employment who has a driving history and driving offense record that may cause him/her to be excluded from further consideration will be notified in writing that he or she may be excluded from employment due to the driving history or driving offense record. The candidate will be given an opportunity to provide additional information concerning his or her driving history or driving offense record to be considered as part of the individualized assessment process.

Additional information may include:

* Documentation showing inaccuracies in the record;
* Any evidence related to the factors for individualized assessment;
* Evidence that he or she has performed the same type of work, since the incident(s) noted on the driving history record, with no known incidents of at fault accidents or driving offenses;
* Rehabilitation efforts, including education and training;
* Employment or character references; and
* Whether or not he or she is bonded (if a bond is required for the job position with the department).

If the individual does not provide additional information in a timely manner, the department will proceed with an individualized determination with the information available to the department.

1. Claim of Errors in the Record

A candidate for employment who claims that the reported driving history and driving offense record is erroneous may be provided a copy of the record so that he or she can undertake efforts to correct the record.

1. Documentation of Adverse Action

The department shall prepare an investigation report on all applicants for whom an adverse action is taken. This report shall indicate the reason for the adverse action and shall provide enough information to support the employment decision. The report shall also include any responsive documentation an applicant has provided to the department to rebut or explain anything in a Consumer Report, Criminal History Review, or Motor Vehicle Driving History and Driving Offense Review. A copy of the report shall be retained by the department for a minimum of ten (10) years.

**EDITOR’s Note:** The purpose of retaining this information for ten years is to ensure that if the department is sued by the applicant for the adverse action OR if the department is accused of having a pattern and practice of excluding applicants within a certain protected class, the department has sufficient information with which to support each and every employment decision.