



## **PERSONNEL POLICY**

### **SUBJECT: CRIMINAL BACKGROUND CHECK**

DATE: January 20, 2021

Number: 303-16

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#### **I. Statement of the Policy**

A criminal background check shall be conducted at or prior to employment for every individual who is employed by Fulton County to fill either a full-time, part-time, seasonal or temporary position within the County. A criminal background check may be required for current employees on a Department-wide basis in periodic intervals if established in a written supplemental departmental procedure. The County will consider job duties, among other factors, in determining what constitutes satisfactory completion of the background check. All information obtained as a result of a background check will be used solely for employment purposes.

It is the intent and purpose of this policy to (a) assist the successful reintegration of formerly incarcerated individuals back into the community; (b) to enhance the health and security of the community by assisting people with criminal records to provide for their families and themselves; and (c) to ensure that just and fair measures are implemented and practiced within Fulton County Government when screening and identifying prospective employees who may or may not have criminal records.

#### **II. Background and Applicability**

This policy shall apply to all Fulton County departments and agencies unless herein or otherwise exempt. To the extent that it may conflict with Georgia law, Georgia law shall govern.

#### **III. Establishment and Implementation of Procedure**

The County Manager, in consultation with the Chief Human Resources Officer and the County Attorney, is authorized to establish and modify, as needed, a procedure for implementing this policy.

These policies do not create a contract of employment. Employment for non-classified employees remains "at will".



## **PERSONNEL PROCEDURE**

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#### **I. Initial Application of Employment and First Interview**

Fulton County shall not make any inquiry regarding an applicant's criminal history during the application process or before or during the first interview. If an Appointing Authority does not conduct an interview, the Appointing Authority is prohibited from making any inquiries or gathering any information regarding the applicant's criminal convictions during the application process. If an applicant voluntarily discloses any information regarding his or her criminal convictions by unsolicited written or oral disclosure prior to or during the first interview, an Appointing Authority may discuss the criminal convictions disclosed by the applicant.

#### **II. Second Interview**

Although criminal history inquiries are permitted as of the second interview and beyond, Fulton County shall not require any applicant to disclose or reveal:

- Any arrest or criminal accusation made against the applicant, which is not then pending against that person and which did not result in a conviction;
- Any records which have been erased, expunged, the subject of an executive pardon, or otherwise legally nullified; and
- Any juvenile adjudications of delinquency or any records which have been sealed.

#### **III. Authorization**

When a background check is required, applicants/employees must complete the County's background check authorization form. Failure to timely complete an authorization form may result in removal from further consideration and/or termination of employment. Falsification or omission of information may result in denial of employment or discipline, up to and including termination.

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#### **IV. Fingerprint and Records Check**

Fulton County may require a fingerprint and records check of any applicant who has accepted an offer of employment or promotion. An Appointing Authority may require a fingerprint and records check of current employees on a Department-wide basis in periodic intervals if established in a written supplemental departmental procedure. Prior to conducting any fingerprint and records check about an applicant/employee, Fulton County shall provide standard written notification advising the applicant/employee that, upon his or her written consent, Fulton County will conduct such an inquiry.

The Appointing Authority shall make a final hiring, promotion or retention decision after reviewing the results of the fingerprint and records check and consulting with the Department of Human Resources Management and/or the Office of the County Attorney. If after conducting a fingerprint and records check the Appointing Authority makes an adverse employment decision, including, but not limited to, the refusal, rescission, or revocation of a conditional offer of employment, or termination of employment, Fulton County must, within a reasonable period of time, not to exceed thirty days:

- Notify the applicant/employee of the adverse employment decision;
- Provide the applicant/employee with a photocopy of the results of the criminal history inquiry, indicating the particular conviction(s) that relate(s) to the position's responsibilities; and
- Take any additional steps as may be required by applicable law.

#### **V. Factors for Consideration**

The County recognizes the Equal Employment Opportunity Commission's guidance that exclusionary employment policies should be job related and consistent with business necessity to avoid potential disparate impact. For these reasons, the County conducts criminal background checks targeted to consider the following factors:

- The nature and gravity of the offense;
- The amount of time elapsed since the date of offense; and
- The nature of the position being sought in relation to the offense.

#### **VI. Confidentiality:**

Any information obtained by Fulton County that pertains to an applicant's criminal history:

- Shall remain confidential;
- Shall only be shared with individuals that have a need to know the contents for the purpose of evaluating candidates or employees in a manner consistent with this policy, except as dictated by law;

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- Shall not be used, distributed, or disseminated by Fulton County for any use other than those permitted under this policy; and
- Shall not be used, distributed, or disseminated by Fulton County to any other entity or individual, except as dictated by state or federal law.

## **VII. Prohibition Exceptions**

The prohibitions and limitations of this policy shall not apply to any position, including any law enforcement, public safety, legal, judicial or other Superior, State, Juvenile, Magistrate or Probate court positions, for which any federal or state law or regulation requires the consideration of applicant's criminal history for the purposes of employment, provided the exemption is limited to those offenses or types of offense that federal or state law or regulation requires Fulton County to consider. The prohibitions of this policy also shall not apply to any positions designated by Fulton County to participate in a federal or state government program or obligation that is designed to encourage the employment of individuals with criminal histories.

## **VIII. Administration of Background Check Policy and Procedure**

The Department of Human Resources Management is responsible for the administration of this policy. If you have any questions regarding this policy or if you have any questions about background checks that are not addressed in this policy, please contact the HR Operations Division of the Personnel Department.

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