Attached is a report approved by the committee members listed above that details the nature of its review and recommendations involving a more comprehensive approach for addressing off-campus conduct that may affect university employment. The committee determined several steps that must be taken to address the requirements of the Criminal Background Check Policy and to provide a more thorough review of off-campus conduct.

The most significant recommendation of the committee is the additional analysis of whether off-campus conduct inhibits the University from advancing the University’s Mission, Core Values and Code of Conduct. This review will augment the previous focus of off-campus conduct presenting safety concerns to the campus and campus community.

Additionally, it was determined that in order to hold staff and faculty accountable for the self-disclosure provision of the Criminal Background Check policy, greater efforts must be made to (a) inform the campus about the disclosure requirement and (b) make failures to disclose subject to disciplinary measures.
President’s Charge

The President asked us to serve on a committee¹ to review current university policies and procedures, and best practices relating to off-campus employee conduct, and consider how that off-campus conduct may affect the university. Specifically, the Committee examined whether certain types of serious misconduct by university employees that occur off-campus may nonetheless impact the employee’s on-campus duties and/or the employee’s ability to perform his or her professional responsibilities. The President asked the Committee to provide written recommendations by March 30, 2018, regarding whether existing university policies should be modified, including made clearer; enhanced to represent best practices; and/or revised to better reflect the university’s core values. As part of the Committee’s review, we considered the university’s Criminal Background Check Policy (HOP 5-1140), which, *inter alia*, requires all employees to “report to their supervisor in writing, within five business days, any criminal complaint, information, indictment, no contest plea, guilty plea or criminal convictions [...]”, excluding misdemeanor offenses punishable only by fine.” This requirement applies regardless of whether the employee’s conduct occurred on- or off-campus. The Committee was also asked to make a recommendation regarding potential disciplinary procedures or sanctions, including termination, in the event a university employee fails to make the required disclosure under the policy.

Activities

The Committee met three times. During its meetings, the Committee reviewed and discussed relevant university and University of Texas System policies; the university’s Code of Conduct; the university’s Mission and Core Values; similar policies from other large public universities; the Equal Employment Opportunity guidelines regarding the proper use of criminal background information; the university’s Human Resource webpages describing the basis of review of criminal histories; and input from various university constituencies, including Student Government, the Title IX Taskforce, and others regarding.

A. Policies reviewed:

- *Criminal Background Check policy*, Handbook of Operating Procedures, [HOP 5-1140](#);
- *Prohibition of Sexual Discrimination, Sexual Harassment, Sexual Misconduct, Interpersonal Violence, and Stalking*, [HOP 3-3031](#);
- *Standards of Conduct, the University of Texas System Rules and Regulations of the Board of Regents*, [Rule 30103](#);
- *Policies and Procedures for Discipline and Dismissal of Employees*, [HOP 5-2420](#);
- *Prohibition of Campus Violence*, [HOP 8-1010](#);
- *Student Discipline and Conduct*, Institutional Rules on Student Services and Activities, Appendix C, [Chapter 11, Subchapter 11-100 et seq.](#);
- *Attachment A for 2-9991-PM-Information for New Tenured and Tenure-Track Faculty Members*; *Attachment B for 2-9991-PM-Information for New Tenure Track Faculty Members*;
- *The University’s Mission, Core Values and Code of Conduct*;
- *Faculty Grievance Procedure*, [HOP 2-2310](#).

---

¹ Darrell Bazzell, Jaime Davis, Janet Dukerich, Steven Hoelscher, Debra Kress and Patti Ohlendorf served as Committee members.
B. The Committee reviewed similar policies from the following public universities:

- Ohio State University
- Pennsylvania State University
- Purdue University
- Texas A&M
- University of California, Berkeley
- University of California, Los Angeles
- University of Illinois
- University of Michigan
- University of North Carolina
- University of Washington
- University of Wisconsin

Conclusions

1. The university’s review and evaluation of an employee’s misconduct occurring off-campus should be expanded to consider whether the alleged misconduct violates the University’s Mission, Core Values, and Code of Conduct.

a. When a university employee or applicant makes a required disclosure under the Criminal Background Check Policy (HOP 5-1140), to date, those university employees\(^2\) tasked with evaluating the disclosure use a standard of review that focuses on whether the employee/applicant does or would present a safety concern to the campus and the campus community.

- The law requires that when an employer makes an employment-related decision on the basis of an employee’s or applicant’s past criminal conduct or history, such review must be individualized and case specific. The university’s current policy and practice require the same nuanced evaluation. Some factors considered include the nature and gravity of the offense; the harm caused by the conduct; time that has passed since the offense (or completion of the sentence) and the employment relationship at issue; and relevance of the criminal misconduct to the position’s job duties.
- The Equal Employment Opportunity Commission promulgated guidelines (which can be found on the university’s Human Resources webpage) to help employers properly use and consider criminal background checks in order to avoid disparately impacting a certain group or groups of people. The EEOC’s criteria are instructive in helping the university evaluate whether the conduct would be of concern to the safety and protection of the campus community and/or property.
- When reviewing an employee’s self-disclosure, one must remember that an arrest is not a “final conviction,” and terminating the employee based solely on the arrest would be highly scrutinized and could potentially expose the university to legal risk. Of course, the

\(^2\) Such disclosures are reviewed by members from the Department of Human Resources; Chief of Police; and Legal Affairs. In the case of faculty disclosures, the Provost’s Office and Legal Affairs perform the review.
university can take other, less drastic action, against the employee after an arrest or complaint, such as removal of certain duties pending final criminal resolution of the matter (e.g. a case of a theft charge against an employee whose current duties involve the handling of money), or placing the employee on an alternative work assignment in order not to have daily interaction with other members of the university community, including students.

b. The Committee determined that, in addition to the above criteria, the university should also start considering whether the employee's conduct negatively impacts the university's mission. In conducting such a review, one could consider whether:

- As a large public university, does the misconduct that the employee committed off-campus fall within the scope of the university's mission, core values or Code of Conduct?
- When the criminal justice system addresses the conduct, is additional action by the university appropriate? Is there a university purpose in proposing disciplinary action to demonstrate a violation of policy, mission, values or code of conduct?
- Is there a nexus between the off-campus conduct and the interests of the university?
- Is the conduct committed off-campus indicative of conduct demonstrated in the workplace?

2. The committee concluded that the university’s current policies require no substantive changes, with the exception of one clarifying amendment that would require an employee to self-disclose the final disposition of his or her criminal case.

Specifically, the Criminal Background Check policy, Handbook of Operating Procedures HOP 5-1140, requires review of criminal misconduct prior to and during employment.

- The policy specifies the positions which serve as reviewers of criminal histories and the process for which decisions are made. (See VII. B. 1-4; VII. C. 1 and 2).
- This particular policy further describes the requirement to notify the applicant or employee of the criminal histories discovered, providing them an opportunity to clarify, explain or deny the information (See VII. D and E).
- The policy also requires all employees self-report any criminal complaint, information, indictment, no contest plea, guilty plea, or criminal conviction (and whether the employee is registered as a sex offender or will be required to register as a sex offender), excluding misdemeanor offenses punishable only by fine. (See VII. I.) The Committee believes that for greater clarity to staff and faculty regarding their obligations under this policy, this provision should be amended to require all employees to also self-report the final disposition of their criminal case.
- Those responsible for reviewing this information with the department are specified as well as the types of employment actions that can be taken including, but not limited to, reassignment, leave without pay, paid leave, or termination after a report of an arrest, complaint, or indictment. And in this review, if any of
the conduct renders an employee unable to perform the essential functions of his/her job, the university may terminate the employee. (See VII. 2. b. and c).

- In the case of a final conviction, disciplinary actions from reprimand, suspension, demotion or termination are available for staff and for faculty, reprimand, suspension without pay, demotion and professional sanctions can be considered. (See HOP 5-2420 and HOP 2-2310).

Recommendations

1. Review Process: Cases that involve employee misconduct resulting in criminal charges or a conviction should be reviewed under two primary criteria. The first criteria is to provide for the safety of campus and the campus community, and a second criteria to determine whether the conduct violates the university’s Mission, Core Values, and Code of Conduct.

2. Communication: The university, in order to hold staff and faculty accountable for the self-disclosure requirements of the Criminal Background Check policy, will communicate the policy’s requirements at orientation and on a periodic basis so that failure to follow the policy will result in disciplinary action. Additionally, the university’s Mission, Core Values and Code of Conduct should be more prominently accessible and branded for campus constituents.

3. Policy Changes: The Criminal Background Check policy should be amended to require all employees self-disclose the final disposition of their criminal case and the review criteria stated above should be included in the policy.

4. Investigation: When pertinent, current scientific study on recidivism or increased violence should be included in the factual review of a relevant case and determination as to whether hiring of an applicant or continued employment of an employee would be a safety factor to the campus.

5. Audit: Annual review of overall case analysis made with identified campus leaders, including the Faculty Council Executive Committee and the Staff Council Executive Committee, in order to assure consistency of practice and monitoring of standards used in the review of such cases.