

## DEFINITIONS

Arrest: The taking of a person into custody, that s/he may be held to answer for a criminal charge.

Conviction: A judgment on a verdict or a plea of guilty or *nolo contendere*, and/or a finding of guilt substantiated by the evidence which results in the payment of fines, forfeiture of collateral or bond, restitution, deferred adjudication or sentencing, probation, confinement, suspended sentence, pre-trial diversion agreement, or any other penalty imposed by a court of law or agreed upon by the accused for a crime.

Crime: A felony or misdemeanor for which a person might be imprisoned.

Infraction: A violation of a statute for which a person might be fined, but not imprisoned.

Nexus: The following factors may be considered in determining whether pending charges or convictions have a nexus to the employee's duties and responsibilities: the facts and circumstances, including the nature and seriousness of the offense; the number of offenses for which the individual was convicted; sentence imposed; other convictions/infractions; specific proscription in Indiana Code; effect on any license which is requisite to performance of the job; risk of recidivism, reasonable inferences about problems with self control, propensity for violence, honesty, or dependability; erosion of confidence in or impugning the reputation of the individual or agency; objections the victim/citizen may have to being the perpetrator's employer; the offender's age at the time of conviction and age when released from incarceration; the time elapsed since the offense occurred, conviction and/or completion of the sentence; the nature of the job held or sought; the length and consistency of employment history before and after the offense; whether the offender performed the same type of work, post-conviction, with no known misconduct; rehabilitation efforts undertaken (e.g., education & training); employment or character references; and any other information regarding fitness for a particular job.

## RESPONSIBILITIES

Employees are responsible for:

- reporting arrests and/or convictions, and certain citations within five (5) calendar days from the date of the arrest, conviction, or citation along with any materials thought relevant in the consideration of potential actions by the employer consistent with this policy.

Supervisors are responsible for:

- implementing this policy in an appropriate and consistent manner by basing determinations on individual assessments;
- developing and/or distributing agency procedures identifying the person(s) to be notified of arrests and convictions; and
- taking appropriate actions, including discipline, when an employee fails to abide by the requirements of this and related policies.

HR staff are responsible for:

- maintaining records on criminal history checks.

## PROCEDURES

1. A satisfactory criminal history check is a condition of employment in certain jobs, certain volunteer work and some contracts. This requirement will ensure the State is in compliance with statutes and has fully analyzed the nexus between a crime committed and the person's job duties and responsibilities. Convictions and arrests with pending charges found during a background check performed when a current state employee transfers, promotes, or demotes to another position or agency will be considered in determining whether the employee will be transferred, promoted or demoted or whether disciplinary action, including dismissal from state employment, is appropriate.
2. Citations for infractions which occur during the employee's off duty hours must be reported if the citation will have an impact upon the employee's ability to perform assigned duties (e.g. loss/suspension of driving privileges). Such report is required in writing to the Appointing Authority or designee as soon as possible but not more than five (5) calendar days from the date of the citation.
3. Whenever an employee is: (a) cited for an infraction while on duty or (b) arrested for any misdemeanor or felony, the employee shall report this matter, in writing, to the Appointing Authority or designee as soon as possible but not more than five (5) calendar days from the date of the arrest or citation. Failure to report in accordance with the above shall be considered a violation of this policy and may subject the staff person to discipline, up to and including dismissal.
4. It is the responsibility of any employee with pending criminal charges to provide to the Appointing Authority or designee written documentation (i.e., court record) of the disposition of the charges within five (5) calendar days after receiving notification. Failure to do so will be considered a violation of this policy and may subject the employee to discipline, up to and including dismissal.
5. At the discretion of the Appointing Authority or designee, the employee may be carried on Unauthorized Leave (UL) for time spent in jail and subject to disciplinary action. Five (5) consecutive UL days may be cause for dismissal for employees in the classified service. Personal leave may not be taken to cover periods of incarceration. Vacation leave may not be taken to cover periods of incarceration, unless the vacation was scheduled for a purpose unrelated to incarceration prior to the employee being incarcerated.
6. An employee who has been arrested and charged with a crime may be suspended pending an administrative investigation and/or the disposition of any charges filed against the employee. The determination as to whether an employee is suspended shall be based upon the nature and circumstances of the alleged offense and other factors relating to nexus.
7. If the employee is on suspension pending administrative investigation and/or the disposition of any charges, and the outcome is favorable to the employee, s/he shall be returned from suspension and made whole, less any wages that the person earned during the period of suspension.
8. Disciplinary action, including dismissal, may be taken if the investigation or disposition of the charges establishes just cause. If the individual is employed at-will, disciplinary action,

including dismissal, may be taken if the underlying behavior is such that it warrants disciplinary action.

<b>REFERENCES</b>
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IC 35-33-1-5  
IC 4-13-2-14.7  
IC 12-24-3-2  
IC 4-15-2.2-10  
IC 4-15-2.2-30  
31 IAC 5-12-2  
Background Checks for State Employment Policy/R&P