# Statewide Policy on Employment Background Checks

## Overview

**Objective**

Background checks are conducted to support workplace productivity, safety and security by ensuring applicant backgrounds and qualifications are suitable for the position being considered and the public trust inherent in State employment.

**Policy Statement**

Agencies conducting background checks shall implement an effective background check system so employee selection decisions are supported by lawful and thorough background research.

The background check system must be designed to ensure that:

1. Background checks are conducted in compliance with all applicable rules, regulations and laws, including but not limited to the Minnesota Government Data Practices Act (M.S. 13), the Minnesota Human Rights Act (M.S. 364A), Title VII of the Civil Rights Act, and, whenever applicable, the Fair Credit Reporting Act (FCRA), Access to Consumer Reports (M.S. 13C), EEOC Enforcement Guidance on criminal background checks, and the Criminal Offenders; Rehabilitation statute (M.S. 364);

2. Background checks are job-related and consistent with business necessity;

3. All necessary background checks are conducted, including those required by statute, rule or other legal obligation, and those required by this policy;

4. Special consideration is given to the background checks required for positions performing job duties involving the health, safety, and welfare of clients, the public, and/or state employees;

5. The background check system is effectively managed and communicated through agency specific policies and procedures.

**Scope**

This policy applies to all background check activities for applicants and employees of the Executive Branch of Minnesota State Government.

This policy does not affect or supersede other background checks required by law or as a condition of funding from any federal or state agency.

**Definitions**

For purposes of this policy, the terms listed in this section have the following meaning:

**Background Check**

is a review of an applicant’s background for the purpose of determining suitability for a position.
Finalist(s) is the person or person(s) under final consideration in the selection process.

Reference Check is an inquiry made to a previous employer and/or other sources about an applicant’s work performance, competencies, and disciplinary history.

Exclusions
This policy does not apply to background checks conducted for non-employee positions such as contractors and volunteers. This exclusion should not be construed as prohibiting agencies from conducting background checks for non-employee positions.

Legal and Policy References
Includes but is not limited to: 15 U.S.C. § 1681 et. seq., Fair Credit Reporting Act (FCRA); Public Law 88-352, Title VII of the Civil Rights Act of 1964 (as amended); M.S. 13, Data Practices Act; M.S. 13C, Access to Consumer Reports; M.S. 16C, State Procurement; M.S. 138.17, Subd. 7 Government Records; M.S. 364A, Human Rights Act; M.S. 364, Criminal Offenders; Rehabilitation; Minnesota Rules 3900.7500; Statewide Policy on Driver’s License and Records Checks; PERSL 1414 – Background Checks for Current and Former State Employees

GENERAL STANDARDS AND EXPECTATIONS

I. BACKGROUND CHECKS REQUIRED
   A. Agencies shall conduct all background checks required by law that are relevant to the agency’s programs and positions.
   B. Agencies shall verify all job-related information on finalist(s) pursuant to Minnesota Rule 3900.7500 (e.g. licenses and certifications required as a minimum qualification for the position, etc.).
   C. Agencies shall conduct Drivers’ License checks on the finalist(s) and incumbents of each position the agency determines are covered by the Statewide Policy on Driver’s License and Record Checks.

II. BACKGROUND CHECKS RECOMMENDED
   A. It is strongly recommended that agencies conduct an employment reference check on the finalist(s) for each position by contacting the applicant’s current and former supervisors and Human Resources office(s) for the past three positions held or for the past 10 years of employment, whichever is greater. It is recommended that the inquiry include a discussion about work performance, competencies, a review of prior performance evaluations and an inquiry about discipline or discharge. For instruction on conducting background checks on current or former state employees, agencies should refer to the procedures in PERSL #1414.
   B. Agencies are encouraged to conduct a criminal history background check on the finalist(s) for each position for which the agency determines that there is a job-related basis to do so. The check should include all states in which the applicant has lived. If the criminal background check returns conviction data, the agency shall, unless exempt, follow the provisions of M.S. 364 (Criminal Offenders; Rehabilitation) to determine if the applicant should be disqualified from the position. This analysis includes determining if the criminal conviction directly relates to the employment sought and if the applicant can show sufficient evidence of rehabilitation.

   Note: Unless statutorily exempted from M.S. 364, a public employer may not conduct a criminal background check until it has offered an interview. Agencies should refer to M.S. 364 for all applicable statutory criteria and procedures.

III. POLICY REQUIREMENTS
   Agencies that conduct any type of background check shall have a policy covering the following:

   A. A purpose statement indicating why background checks are being conducted:
B. The agency division(s)/unit(s) responsible for administering and enforcing the background check policy (e.g., HR, supervisors, internal affairs, etc.);

C. The process used (prior to job posting or recruitment) to ensure that all background checks are job-related and consistent with business necessity and that the background check data is analyzed and evaluated in compliance with all applicable laws; policies, rules, etc.

When determining job-relatedness and business necessity, some considerations include:
1. Background checks required by law;
2. Background checks required for federal funding;
3. Job duties involving the health, safety or welfare of clients or the public;
4. The level of access to statutorily protected or sensitive information, or to money or fiscal data;
5. The level of interaction with or exposure to the public, including children and vulnerable adults;
6. The work setting and type of interaction with colleagues or customers;
7. The level of authority, decision-making and impact on the organization;
8. The educational degrees, licensures, certifications and work experience required to qualify for hire.
9. Other.

IV. PROCEDURAL CONSIDERATIONS

When implementing background checks, the agency should:

A. Refer to MMB’s guidance documents on conducting background checks which includes information on:
   1. The process for conducting background checks, providing disclosure, obtaining signed consent, and, where applicable, providing written notice/s to finalists (e.g., adverse impact required by the Fair Credit Reporting Act, notification required by M.S. 364);
   2. What information may and may not be collected and disseminated under law;
   3. The method used to notify applicants that a background check is a part of the hiring process (i.e. the job posting);
   4. The confidentiality, storage and retention of private data, including those in the agency whose job reasonably requires access to background check data.

B. Consider whether there are ongoing background checks needed for current employees and, if so, contact MMB labor relations for further guidance.

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<td>- House Research Department Revised: January 2010 Criminal Background Check Statutes Overview <a href="http://www.house.leg.state.mn.us/hrd/pubs/bkgdcheck.pdf">http://www.house.leg.state.mn.us/hrd/pubs/bkgdcheck.pdf</a></td>
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<td>- PERSL #1414 Background Checks for Current and Former State Employees <a href="http://www.mmb.state.mn.us/doc/persl/1414.pdf">http://www.mmb.state.mn.us/doc/persl/1414.pdf</a></td>
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- PERSL #1384 New Legal Requirement for Reference Checks and Personnel Files http://www.beta.mmb.state.mn.us/lr-persls