	DEPARTMENT OF CORRECTIONS AND REHABILITATION DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: January 01, 2024	POLICY NO.: ADM.03.11
		SUPERSEDES (Policy No. & Date): ADM.03.11 of May 02, 2023	
	SUBJECT: BACKGROUND SUITABILITY DETERMINATION		Page 1 of 11

1.0 PURPOSE

To establish procedures for determining employment suitability, in accordance with federal and state laws and employment practices, civil service laws, rules and regulations, applicable collective bargaining agreements, and memorandums.

2.0 SCOPE

This policy applies to current and prospective Department of Corrections and Rehabilitation (DCR) employees. To the extent that any Department of Corrections and Rehabilitation policies or directives conflict with this statewide policy, ADM.03.11 shall take precedence. If any part of this policy is found to be in conflict with law or otherwise rendered invalid, the remainder of this policy shall be considered severable and remain in effect.

3.0 REFERENCES, DEFINITIONS & FORMS

.1 References

- a. Federal Gun Control Act – Lautenberg Amendment: Title 18, U.S. Code, Chapter 44, § 922(g)(9).
- b. Hawaii Revised Statutes (HRS), § 76-14, Merit appeals board.
- c. HRS, § 76-22.5, Recruitment.
- d. HRS, § 76-29, Person ineligible for appointment.
- e. HRS, § 78-2.7, Criminal history record checks.
- f. HRS, § 353C-1, Director of Corrections and Rehabilitation, Powers and Duties.
- g. HRS, § 353C-5, Criminal history record checks.
- h. HRS, § 706-624, Conditions of Probation.
- i. HRS, § 831-3, Rights retained by convicted person.
- j. HRS, § 831-3.1, Prior convictions; criminal records;

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noncriminal standards.

- k. HRS, § 853-1, Deferred Acceptance of Guilty Plea or Nolo Contendere Plea.
- l. Hawaii Administrative Rules (HAR), § 23-1-5, Director's Authority.
- m. HAR, § 23-10, Suitability Determinations for Staff Members and Prospective Staff Members.
- n. HAR, § 14-3.01-10, Scope and Character of Examinations.
- o. HAR, § 14-3.01-11, Disqualification of Applicants.
- p. HAR, § 14-3.01-14, Notification of Results of Examination.
- q. HAR, § 14-3.01-15, Administrative Review of Examination Rating.
- r. HAR, § 14-3.01-17, Protection of Confidentiality of Materials.
- s. HAR, § 14-3.01-18, Records and Reports of Examination.
- t. Department of Human Resources Development (DHRD), Policy 601.001, Discrimination/Harassment-Free Workplace Policy.
- u. DHRD, Policy 601.002, Reasonable Accommodations for Employees and Applicants with Disabilities.

.2 Definitions

- a. Class or class of work: Grouping of jobs for which duties, responsibilities, qualifications, and conditions of employment are sufficiently alike to justify the same treatment with respect to personnel practices.
- b. Detainee/Inmate: A person in the custody of the DCR and whose freedom of movement is at the will of the DCR personnel.
- c. False statement: A concealment or misrepresentation of a fact that is disqualifying if intentionally made or caused to be made, by an applicant or

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appointee on his/her behalf.

- d. **Felony:** Any offense punishable by imprisonment for a period longer than one year.
- e. **Material Fact:** A fact of such serious nature that justifies denial and/or disqualification of employment to an applicant or removal of an appointee.
- f. **Misdemeanor:** An offense punishable by imprisonment for a period of less than one year.
- g. **Human Resources Officer (HRO):** As used in this policy, the HRO refers to Staffing and Technical Services Unit in the Human Resources Office which conducts departmental administrative services to facilitate the position classification and compensation, recruitment, examination, and background checks for vacant positions and new hires on a timely and consistent basis.
- h. **Suitability:** Fitness for employment after consideration of such factors such as character, criminal history, military record (if applicable,) and employment record.

.3 Forms

- a. HRD 329b, Request, Consent, and Notification for Fingerprint Clearance for State Civil Service, Non-Civil Service, and Exempt Employees.
- b. Orientation Checklist.
- c. HRD 329b, Authorization Certificate for Release of Employment Information.
- d. HRD 329b, Applicant's Consent, Authorization, and Request to Release Information and Waiver.
- e. HRD 329b, Applicant's Personal History Questionnaire.
- f. Confidential Employer Questionnaire.
- g. DCR 1406, Applicant Data Sheet (if needed).

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h. DCR 8318, PREA Form.

4.0 POLICY

The Department shall ensure that all current and prospective Department of Corrections and Rehabilitation employees undergo a suitability determination conducted by the Human Resources Office prior to advancement or starting employment.

This policy shall not conflict with any federal or state law, Department of Human Resources Development (DHRD) policy, applicable collective bargaining agreement and/or memorandum.

5.0 PROCEDURES

.1 Responsibility

The Human Resources Office shall be managed by the Departmental Human Resources Officer (DHRO).

.2 General Information

- a. All qualified prospective employees and staff members will receive consideration for employment in accordance with existing DCR policies without regard to race, color, sex, gender identity or expression, sexual orientation, condition of pregnancy, religion, national origin, ancestry, age, disability, genetic information, marital or civil union status, arrest and court record (except as permitted by applicable laws), income assignment for child support, national guard absence, uniformed service, veteran status, citizenship, credit history or credit report (unless directly related to a bona fide occupational qualification), domestic or sexual violence victim status if the domestic or sexual violence victim provides notice or other classification protected under applicable state or federal laws.
- b. The suitability determination shall be based on any and all records, information, opinions, criminal history records (state and national), employment records, professional and personal references, and other suitability standards set forth in this policy.

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.3 Guidelines

The following are guidelines and do not limit the individual's responsibilities.

a. DHRO or their designee:

1. Verifies the qualifying credentials of each applicant;
2. Conducts criminal history record checks from state (e.g., Hawaii Criminal Justice Data Center) and national databases (e.g., National Crime Information Center, National Decertification Index);
3. Conducts fingerprinting of each applicant;
4. Notifies the applicant and the appropriate division, branch, section or staff office of the suitability determination.
5. Conduct reference checks with past employers during the previous five (5) years using the Confidential Employer Questionnaire (or review past Job Performance Appraisals for satisfactory ratings, in the case of an applicant who is a current Department employee);
6. Conducts personal and professional reference checks; and
7. Recommends suitability determination to the DHRO and/or Director's approval.

- b. A thorough background investigation will be conducted by investigators trained to collect the required information on applicants for sworn positions prior to appointment.

.4 Suitability Determination and Standards

- a. The DHRO or their designee shall conduct a suitability determination of each applicant for a new position within the DCR.

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b. The following standards shall be used to assist in determining suitability:

1. Discharge from Previous Employment: Applicants who have been dismissed (or resigned while charges were pending) from public or private employment for serious cause will be deemed not suitable for hire. Examples of serious cause include, but is not limited to:

- a) Misuse of government property;
- b) Use of narcotics;
- c) Habitual use of intoxicants to excess;
- d) Reporting to duty under the use of intoxicants; or
- e) Dishonest conduct or insubordination.

2. Discharge from Armed Forces Under Other Than Honorable Conditions:

If the discharge occurs within one year before the application is received by the DCR, the applicant may be rated not suitable unless the appropriate service department reports that the applicant would be acceptable for induction, despite the circumstances of the discharge.

3. Applicants with felony convictions will be disqualified and not eligible for employment. At the discretion of the Director, it may be reviewed on a case-by-case basis.

4. Parole, Probation, or Suspended Sentence Status

An applicant on parole, probation, or who has received a suspended or deferred sentence of which the term of suspension has not yet expired, shall be considered not suitable for employment.

5. Persons Under Indictment

A person under indictment may be conditionally deemed suitable but

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will not be eligible for hire until he/she submits official court documentation showing the outcome of the criminal trial or the dismissal of the indictment. Following submission, the person's application will be processed in accordance with this policy.

6. Criminal Charges Dismissed or Prosecution Declined (Nolle Prossed)

The HRO shall conduct a suitability study of an applicant who has had criminal charges against him/her dismissed or nolle prossed.

7. Juvenile Cases

a) An applicant who committed an offense while a juvenile which was adjudicated by a juvenile court shall not be required to answer the conviction question on the application form(s) affirmatively with respect to such offense. If the applicant chooses to admit to any offense, this information shall not be used as a factor to determine suitability.

b) However, an applicant who is applying for a class(es) of work that requires the use of a firearm and has a conviction for a violent offense that will prohibit the applicant from carrying a firearm until the age of 21 will be deemed not suitable for that position.

8. False Statements, Concealment, and Misrepresentation

a) The DHRO or their designee shall consider the materiality of any false statement, concealment or misrepresentation when deciding whether an applicant is suitable for employment.

b) An applicant who has exaggerated his/her experience or education shall not be deemed unsuitable if he/she meets the minimum qualification requirements for that position.

9. Unsatisfactory/Disciplinary Employment Record

An applicant whose employment history is unsatisfactory or who has been the subject of a disciplinary action may be deemed not suitable,

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at the discretion of the DHRO or their designee.

10. Conviction of Domestic Violence Crime

An applicant applying for a class of work that requires the use of a firearm shall be considered not suitable if he/she has been convicted of a felony or misdemeanor crime of domestic violence.

.5 Processing

- a. The DHRO or their designee shall send each applicant the following documents:
 1. Orientation Checklist;
 2. Request, Consent, and Notification for Fingerprint Clearance for State Civil Service, Non-Civil Service and Exempt Employment
 3. Applicant's Consent, Authorization and Request to Release Information and Waiver
 4. Applicant's Personal History Questionnaire; and
 5. DCR Form 1406, Applicant Data Sheet (if applicable).
- b. Following completion of all documents, applicants shall make an in person appointment with the DHRO or their designee who shall:
 1. Review documents for completeness;
 2. Review the orientation checklist with the applicant; and
 3. Fingerprint the applicant.
- c. The DHRO or their designee shall review the information disclosed as part of the suitability determination.
- d. The DHRO or their designee shall also:

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1. Verify the applicant's qualifying credentials; and
2. Conduct a criminal history record check using state and national databases, including the Hawaii Criminal Justice Data Center, the National Criminal Information Center, the National Decertification Index, and National Sex Offender Registry.
3. Conduct reference checks with past employers during the previous five (5) years using the Confidential Employer Questionnaire (or review past Job Performance Appraisals for satisfactory ratings, in the case of an applicant who is a current Department employee,
4. Conduct reference checks with at least three (3) personal and professional references.
5. Make a review of the National Decertification Index (NDI), other relevant national or state decertification resources, if available.

.6 Truth Verification Interview/Examination

- a. Each applicant who applies for a class of work that requires the use of firearms shall undergo a computer voice stress analysis (CVSA), truth verification interview/examination conducted by a certified voice stress analyst, who is certified by the National Institute for Truth Verification Federal Services.
- b. Prior to the examination, the DCR shall provide applicants with a list of topics from which the questions will be drawn.
- c. The CVSA results shall be used as an investigative tool in the recruitment process and shall not be used as a single determinant to disqualify an applicant.
- d. Certified Voice Stress Analyst shall forward the CVSA results to the Suitability Office.

.7 Notifying Suitable Applicants

- a. The DHRO or their designee shall determine which applicants are suitable

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for employment based on the results of the above-listed verifications and checks.

- b. The DHRO or their designee shall contact each applicant informing him/her of the suitability determination. Notification shall be in writing and within 30 days of such decision.
- c. An applicant deemed not suitable for employment may request an administrative review of his/her suitability determination by submitting an Internal Complaint Form and/or documentation and information to substantiate the request, to the DHRO within 7 working days following the date of notification of the suitability determination.

.8 Appealing the Administrative Decision

Following an administrative review and decision of a suitability determination, an applicant shall be entitled to submit an appeal to the State Merit Appeals Board in writing within 20 calendar days from the date of notification of the results of the administrative review and decision.

.9 Confidentiality

- a. All materials contained in an applicant's file shall be considered confidential and stored in a secure area when not in use.
- b. No information regarding any applicant shall be disclosed which by law or practice is not available to the public.
- c. When not used for internal management purposes, confidential materials may be released only for the following reasons:
 - 1. Upon written permission from the applicant;
 - 2. Upon receipt of a court order or subpoena for their release, and upon consultation with the Attorney General; or
 - 3. In order to comply with applicable federal laws and regulations.
- d. Upon request, an applicant may be given a copy of any material in his/her


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file, unless prohibited by law.


- e. The Human Resources Office shall maintain an applicant's confidential materials for two (2) years from the date of record creation or personnel action involved or final disposition of charges whichever occurs first.
- f. After two (2) years, the Human Resources Office shall destroy all confidential materials and records, including all digital and electronic files.

APPROVAL RECOMMENDED:




Deputy Director for Administration JAN 0 1 2024
Date

APPROVAL RECOMMENDED:



Deputy Director for Corrections JAN 0 1 2024
Date

APPROVED:



DIRECTOR JAN 0 1 2024
Date

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