



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.3.55	Subject: CRIMINAL CONVICTION IN EMPLOYMENT
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 5 and Attachment
Section 3: Human Resources	Effective Date: 01/03/2017
Signature: /s/ Brian Gootkin	Revised: June 16, 2021

I. POLICY

The Department of Corrections conducts criminal background checks as a condition of employment. Evidence of a conviction may not automatically disqualify an applicant or an employee from continued employment. If an individual has a criminal history, the Department will consider the following factors before extending an offer of employment or continuing employment: the nature and gravity of the offense; the time since the completion of the sentence; and the nature of the job held or sought along with the relatedness of the conviction.

II. APPLICABILITY

All divisions, facilities and programs Department-owned.

III. DEFINITIONS

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

Brady Act & Lautenberg Amendment – Any person who has been convicted of a misdemeanor crime of domestic violence or is the subject of a court order of protection for “an intimate partner or child of such intimate partner” cannot lawfully possess a firearm or ammunition. *See* 18 U.S.C. § 922(g)(8) & (9).

Criminal Conduct – A charge or conviction of a violation of city, county, state, or federal law, including all felonies and serious misdemeanors, including but not limited to: assault; sexual assault; traffic violations, e.g., hit and run, driving under the influence (DUI), reckless driving; or other violations by staff that could result in the imposition of a jail sentence and/or suspension or revocation of the violator's driver license.

Department Employee – A person employed by the Department of Corrections who has attained permanent status or is eligible to attain permanent status, as provided in § 2-18-101(20), MCA; a volunteer, an intern, or a temporary or short-term worker. This term does not include service providers.

Facility/Program – Refers to any division, prison, secure care correctional facility, correctional or training program, or community-based program under Department jurisdiction or contract. This term includes the facility building or residence, including property and land owned or leased and operated by the Department.

POST Certified – Refers to any public safety officer, as defined under § 44-4-401(2), MCA, certified by the Montana Public Safety Officer Standards and Training Council.

Service Providers – This term includes contracted persons or other vendors providing service whose assignment is primarily on Department premises, e.g., facility or program office.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. The Department is committed to protecting the safety of all employees and other individuals in our workplace, as well as state assets.
2. The Department will comply with all federal anti-discrimination laws in all employee selection processes.
3. The Department recognizes the important role obtaining meaningful employment plays in the successful reintegration of offenders into the community.
4. Consideration of criminal background information will be based on relevancy to the specific position held or sought.
5. The Department's correctional officers and probation and parole officers, as well as their respective chains of command, are subject to POST certification requirements and the Brady Act & Lautenberg Amendment. Candidates who have been convicted of any felony or a misdemeanor crime of domestic violence or were issued a court order of protection are not qualified for POST certified positions.
6. For positions which may have contact with offenders, the Department will not hire, enlist the services of, or continue employment of an employee or service provider who:
 - a. has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;
 - b. has been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force or coercion, or if the victim did not consent or was unable to consent or refuse;
 - c. has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (b) of this subsection; or
 - d. has contact with youth and is listed on the DPHHS child abuse registry.
7. Employees have a continuing affirmative duty to disclose any of the misconduct listed in Section IV.A.6 of this policy.
8. Prior to hiring, promoting, or enlisting the services of any individual who may have contact with offenders, the Department will consider any incident where the individual engaged in sexual harassment.
9. Upon hire, transfer, promotion, and every five years thereafter, Human Resources will ensure that criminal background checks are conducted on employees and service providers who may have contact with offenders and ensure a DPHHS child abuse registry search for employees or service providers who may have contact with youth.

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10. All employees who may have contact with offenders must complete the [Policy Acknowledgement and Disclosure Form in written applications or interviews](#) for hiring and promotion and annually. The form will be submitted to Human Resources.
11. Employees must self-report criminal charges and convictions within five days of either the charge or conviction to their immediate supervisor and Human Resources.
12. If an administrator or supervisor has reason to believe a current employee may have been involved in criminal conduct, he or she will notify Human Resources immediately.
13. The Department will abide by the Fair Credit Reporting Act, Montana human rights statutes, and all applicable laws to ensure individuals are not discriminated against.

B. Criminal Background Checks in Hiring

1. Criminal background checks will be conducted on finalists for vacant positions, as identified in the vacancy announcement, and on all individuals assigned to work at the Department by service providers.
2. If the criminal background check indicates there are no convictions, Human Resources will inform the hiring manager that the candidate is eligible for employment.
3. If the criminal background check indicates any convictions, Human Resources will notify the administrator and hiring manager and will follow Section IV.D. of this policy.

C. Convictions During Employment

1. Criminal background checks are conducted every five years on existing employees and service providers in accordance with the *Prison Rape Elimination Act of 2003*.
2. The Department may further review an employee's criminal background during their employment at any time for due cause.
3. If the criminal background check indicates any conviction, Human Resources will then determine whether the conviction was previously disclosed either during the employee's initial hiring process or subsequently to their immediate supervisor, or whether the conviction presents new information not previously known by the Department. If the conviction represents new information, Human Resources will notify the administrator and follow Section IV.D. of this policy.
4. In all cases, the Department will take appropriate action based on the information discovered relative to the position the employee currently holds.

D. Evaluation of Criminal Record History

1. If a pre-employment criminal background check reveals any conviction which the individual disclosed in the recruitment process, Human Resources will consider the factors for each conviction, including any additional information that the individual provides before the offer of employment is confirmed or withdrawn. In consultation with Human Resources and the Department's legal counsel, the administrator supervising the

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position and the hiring manager will determine a course of action. The existence of a conviction does not automatically disqualify an individual from employment.

2. If an unreported conviction for an employee or applicant is discovered in a criminal background check, and unless the individual proves that the report is in error, the offer of employment may be withdrawn, or, if employed, the employee may be subject to formal discipline up to and including termination from employment. DOC will consider the factors for each conviction, including any additional information that the individual provides. In consultation with Human Resources and the Department's legal counsel, the administrator supervising the position and the hiring manager will determine a course of action.
3. Factors to be considered when reviewing convictions are:
 - a. nature and gravity of the offense;
 - b. nature of the job held; and
 - c. time since completion. This factor may not be considered if the employee is POST certified or may have contact with offenders
4. Any decision to reject an applicant or formally discipline an employee up to and including termination with reported, unreported, or new convictions is solely at the discretion of the Department.

E. Confidentiality

1. All information pertaining to an employee's or applicant's criminal conviction history is confidential communication. Access to this information is limited to those who have a legitimate need to know and will only be disseminated in conformity with relevant laws and Department policy. Records gathered as a result of a criminal background check will be kept by Human Resources. These records will include:
 - a. authorization Form;
 - b. information collected from the check;
 - c. analysis and decision regarding any convictions;
 - d. correspondence related to criminal background check.
2. The records will be securely maintained in accordance with state retention policy.
3. The Department will provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom the employee has applied to work.

V. CLOSING

Provisions of this policy not required by statute will be followed unless the provisions conflict with negotiated labor contracts, which will take precedence to the extent possible.

Questions concerning this policy should be directed to Human Resources.

VI. REFERENCES

A. 53-1-203, MCA; 44-4-401 MCA

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B. 28 CFR Part 115, Prison Rape Elimination Act of 2003

C. DOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA)

VI. ATTACHMENTS

[Policy Acknowledgement and Disclosure Form](#)