

 <p style="text-align: center;"><b>KENTUCKY CORRECTIONS</b> Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References	Subject	
<p>KRS 18A.145, 196.035, 197.020, 335B, 18 U.S.C. 922(g)(9) and 403.720(1), 42 U.S.C. 1997 ACA 2-CO-1C-18 P&amp;P ACA 3A-02, 3E-07, 28 CFR § 115.17 28 CFR § 115.217</p>	<p><b>BACKGROUND INVESTIGATIONS OF EMPLOYEES AND APPLICANTS FOR PROMOTION AND EMPLOYMENT OF EX- OFFENDERS</b></p>	
	3.6	2
		August 1, 2013

## I. DEFINITIONS

“Controlled substance” is defined in KRS 218A.010.

“Domestic violence” is defined in KRS 403.720(1).

“Misdemeanor crime of domestic violence” is defined in 18 U.S.C. 921.

## II. POLICY AND PROCEDURE

This policy applies to all employees of and volunteers for the Department of Corrections, contract facilities and contractors who may have contact with inmates.

### A. EMPLOYEES

1. Designated staff of the Office of Adult Institutions and the Office of Community Services and Facilities, shall conduct a background investigation on prospective employees. Investigations shall be conducted after an initial offer of employment has been extended. Every effort shall be made to complete the background investigation prior to the employee starting to work, however, if not feasible, the investigation shall be completed as close as possible to the employee’s starting date.
2. During the initial job interview, a prospective employee shall be informed of the background investigation procedure. The prospective employee shall be advised that an authorization form shall be signed to initiate the background investigation and that this may include being fingerprinted for submission to the Kentucky State Police and the Federal Bureau of Investigation. The fingerprinting may occur during the interview process. The background investigation may include, but not be limited to: driver history records, criminal background checks, credit history checks, and local records checks.

Policy Number	Effective Date	Page
3.6	August 1, 2013	2

3. All current employees and contractors who may have contact with inmates shall have a background investigation conducted at least every five years.

**B. PROMOTIONAL APPLICANTS**

Designated staff of the Office of Adult Institutions and the Office of Community Services and Facilities shall conduct background investigations on applicants for promotion.

**C. CONTRACTORS**

Designated staff of the Office of Adult Institutions and the Office of Community Services and Facilities shall conduct a background investigation for contractors completed prior to the approval of the contractual agreement.

- D.** A person's criminal record shall be pursued in depth to determine the nature and disposition of any charge.

- E.** Any arrest on record shall be followed to final disposition. If the charge is filed away, or the individual is found not guilty, the arrest shall not preclude consideration of the individual for permanent employment.

- F.** In compliance with 28 CFR 115. 17 an applicant shall not be considered for employment, promotion or enlisted for services if the applicant:

1. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution (as defined in 42 U.S.C. 1997);
2. Has been convicted of engaging 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; or
3. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph 2 of this section.

- G.** The Department of Corrections will make its best effort to contact all prior confinement facility employers to obtain and consider any information as required in 28 C.F.R. §115.17. Consideration shall also be given to any incident of sexual harassment in determining whether to hire or promote any employee, or enlisting the services of any contractor who may have contact with offenders.

- H.** During the initial pre-employment interview, an applicant shall be advised, that if he has been convicted a misdemeanor crime of domestic violence, a felony or

Policy Number	Effective Date	Page
3.6	August 1, 2013	3

trafficking in narcotics, dangerous drugs or controlled substances, he shall not be considered for employment with Corrections in the following positions:

1. Probation and Parole Officer;
  2. Classification and Treatment Officer;
  3. Correctional Officer; and
  4. A position that requires the carrying of a firearm or transportation of an inmate.
- I. In compliance with 18 U.S.C. 922 (g)(9), each applicant shall be required to fill out a Qualification Inquiry Form. The applicant shall be provided with a copy of the statutory definition of a misdemeanor crime of domestic violence to assist with completing the form.
- J. If an applicant is denied employment, notice of the denial shall conform to KRS 335B.030.

### QUALIFICATION INQUIRY FORM

**Employee Name:** \_\_\_\_\_

**Social Security #:** \_\_\_\_\_

**Agency:** \_\_\_\_\_

### INQUIRY

1. Have you ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute (18 U.S.C. 921)?    **YES**\_\_\_\_\_    **NO**\_\_\_\_\_
2. If you answered **YES** to question number (1), provide the following information with respect to the conviction:

**Court/Jurisdiction:** \_\_\_\_\_

**Docket/Case Number:** \_\_\_\_\_

**Statute/Charge:** \_\_\_\_\_

**Date Sentenced:** \_\_\_\_\_

Within ten (10) working days of receipt, you are required to complete this Inquiry and provide it to your immediate supervisor. Please be advised of the following:

- A. You have a duty to complete this form. Agency disciplinary action, including dismissal may be undertaken if you refuse to answer or if you fail to reply fully and truthfully.
- B. Due to the seriousness of the penalties associated with this law, Central Office staff shall also conduct a records check through the LINKS program to ensure accuracy of information received.
- C. Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for violation of Title 18, United States Code, Section 922 (g) (9). However, the answers you furnish and any information or evidence resulting therefrom, may be used against you in a prosecution for knowingly and willfully providing false statements or information, and in the course of agency disciplinary proceedings.

**I hereby certify, to the best of my information and belief, all the information provided by me is true, correct, complete and made in good faith. I understand that false or fraudulent information provided herein may be grounds for adverse action, up to and including my dismissal, and is also criminally punishable pursuant to federal law, including 18 U.S.C. 1001.**

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**Employee Signature**

**Date**

cc: Personnel File

## **Authorization to Conduct Criminal Records Check, Driving History Records Check, and Credit Reports Check**

(Please Read Carefully Before Completing and Signing)

*The items of personal information requested below are needed to process your background investigation. This information is intended solely for that purpose and shall not be used in a discriminatory manner by the parties noted below in the making of appropriate business decisions.*

Printed full name of applicant and current address:

Name (First, Middle, Last) \_\_\_\_\_  
Address Line 1 \_\_\_\_\_  
Address Line 2 \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

Social Security Number \_\_\_\_\_ Date of Birth (m/d/y) \_\_\_/\_\_\_/\_\_\_

Driver's License Number \_\_\_\_\_ Race \_\_\_\_\_

***Have you ever been convicted of a crime (Omit minor traffic offenses)?*** Yes \_\_\_ No \_\_\_

***If Yes, please explain charges and disposition. (Use an additional sheet of paper if necessary)***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***What State, What County, and What Year did these convictions occur?*** \_\_\_\_\_

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Have you ever engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution (as defined in 42 U.S.C. 1997)? Yes \_\_\_ No \_\_\_

Have you been convicted of engaging 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? Yes \_\_\_ No \_\_\_

Have you been civilly or administratively adjudicated to have engaged in the activity described in the previous question? Yes \_\_\_ No \_\_\_

Have you been involved in any incidents of sexual harassment?      Yes      No \_\_\_\_\_  
Date: \_\_\_\_\_ Location: \_\_\_\_\_  
Findings: \_\_\_\_\_

*I authorize the Kentucky Department of Corrections and their agents to investigate my background as part of my application for employment, promotion or as a contractor or volunteer. This may include information contained in public records, which may include credit history, criminal files at the county, state and federal jurisdiction levels, and motor vehicle records. Moreover, I hereby release the State of Kentucky and the Kentucky Department of Corrections and any agent acting on its behalf from any liability of whatsoever nature of requesting information from any person.*

**Signature of Applicant** \_\_\_\_\_ **Date** \_\_\_\_/\_\_\_\_/\_\_\_\_

18 U.S.C.A. § 921

**(33)(A)** Except as provided in subparagraph (C), [FN1] the term "misdemeanor crime of domestic violence" means an offense that--

- (i)** is a misdemeanor under Federal or State law; and
- (ii)** has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

**(B)(i)** A person shall not be considered to have been convicted of an offense for purposes of this chapter, unless--

- (I)** the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- (II)** in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
  - (aa)** the case was tried by a jury, or
  - (bb)** the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

**(ii)** A person shall not be considered to have been convicted of an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.