

Fingerprint-Based Criminal History Background Check Requirements for TCHATT Staff

Issue Brief

# Purpose

To implement a new policy for fingerprint-based background checks for certain Texas Child Health Access Through Telemedicine (TCHATT) staff.

# Issues

## Issue #1: Multiple Fingerprinting for Independent School Districts (ISDs)

Texas public schools require that any person working with students directly and on an ongoing basis must undergo a fingerprint-based background check. Criminal history background checks are also required by most Health-Related Institutions (HRIs) for credentialed employees who provide TCHATT services. The criminal history background check results are available to all ISDs, however, some TCHATT staff have been required by certain school districts to submit duplicate sets of fingerprints to check their criminal history.

## Issue #2: Inconsistent HRI Institutional Fingerprinting

The results of ISD-initiated background checks of TCHATT staff are not shared with HRIs. While fingerprint-based background checks are conducted – and criminal history is checked regularly – for some clinicians as part of the HRI credentialing process, there is not a consistent process for conducting fingerprint-based background checks for staff who have direct, ongoing contact with students.

# Background[[1]](#footnote-2)

## Institutional Fingerprint-Based Background Checks

Fingerprint-based background checks yield more accurate results and reduce the risk of false positive results compared to name-based background checks, however, not all TCHATT staff with direct, ongoing contact with students are required by their institution to submit fingerprints for a background check.

Mental health clinicians undergo credentialing by their HRI, which includes a regular review of criminal history, including new criminal activity since the last credentialing period. Not all HRIs require fingerprint-based background checks for credentialing.

HRIs do not require fingerprint-based criminal background checks for non-licensed staff who interact with students. These staff undergo name-based background checks for employment and rechecks are not conducted regularly.

## School Requirements for Fingerprint-Based Background Checks

Regardless of licensure and credentialing requirements, according to Texas Education Code, a contractor who provides services to a school district or charter school must be fingerprinted before providing services in the school if the contractor will have direct, ongoing contact with students. Many TCHATT staff, most of whom are clinicians, are subject to these requirements. This means that all TCHATT clinicians should expect to undergo a fingerprint-based background check to provide services to students.

The Texas Department of Public Safety (DPS) Fingerprint Application Clearinghouse of Texas (FACT) is the state’s database of fingerprint-based criminal history. Texas ISDs are required to obtain national criminal history information through the Clearinghouse. FBI rap-back results are also captured in the Clearinghouse, which provides information about criminal activity that occurs after the initial check. Fingerprints are ordered under a “pass,” which governs who has access to the results. ISDs can order fingerprints under either a Local Education Agency (LEA) pass or a Texas Education Agency (TEA) pass.

Although all ISDs have access to results ordered by another ISD under a LEA or TEA pass, some ISDs are unable to view the results ordered by another ISD. This may be because after 30 days, there is a $1 fee to view results from previously conducted background checks. Additionally, ISDs are permitted to impose additional requirements for fingerprinting and background checks beyond what is required in Texas Education Code. As a result, some TCHATT staff are being fingerprinted multiple times. In addition to the time and effort to obtain these additional fingerprints, there is a cost of $38.25 each time an employee is fingerprinted. Thus, additional fingerprints unnecessarily increases program costs and impacts how quickly a clinician can begin providing services to students.

### NCPA-Qualified School Contractors

According to the Texas Government Code, an organization can be deemed a “qualified school contractor” [[2]](#footnote-3) by the DPS under the National Child Protection Act (NCPA) and be given access to the Clearinghouse and results from fingerprints ordered under an NCPA pass, including FBI rap-back results. NCPA-qualified school contractors submit employee information[[3]](#footnote-4) through the Clearinghouse, certify to the district/school that the employee’s criminal history has been received, and ensure that the employee meets the statutory requirements[[4]](#footnote-5) for being employed. This means that the ISD does not need to order fingerprints or conduct the review of results; the NCPA contractor takes the responsibility. However, results ordered through an NCPA pass are not visible to ISDs, and some ISDs may not accept a contractor’s attestation, preferring to confirm criminal history results themselves.

The Consortium believes that its participating HRIs meet the criteria for a qualified school contractor. We are not aware, however, of any HRI that has gone through the process of applying and has been granted access to the DPS Clearinghouse. There is no cost to apply or access the Clearinghouse. Initial results are available at no cost to view for up to 30 days. After 30 days, there is a $1 fee to view the results for another 30 days.

Access to the DPS Clearinghouse does not guarantee that every school will accept an HRI’s certifications. It may, however, reduce the number of requests for staff to be fingerprinted multiple times. With direct access to fingerprint-based criminal histories, HRIs can also monitor for new criminal activity of their employees, especially those who are not subject to institutional fingerprint-based background check requirements but who do have direct, ongoing contact with students, minimizing the risk of employing staff who would not be appropriate to provide TCHATT services.

# Recommendations

## #1: Reduce the likelihood of duplicative fingerprinting by applying for NCPA contractor status

1. HRIs should assess if applying for access to the DPS FACT Clearinghouse as an NCPA contractor will benefit them. If found to be beneficial, HRIs should apply and implement any additional infrastructure needs, such as developing policies and procedures. HRIs should also identify staff with Clearinghouse access to review results.
2. Some HRIs have chosen to subcontract with hospital systems or behavioral health provider organizations to provide TCHATT services. In these cases, the subcontracted partner should apply for Clearinghouse access. If the HRI also employs staff with ongoing, direct contact with students, the HRI should apply for Clearinghouse access separately.

## #2: Add language to specific documents to ensure criminal background checks have been conducted per Texas Education Code and ISD requirements

1. Participating Institution Agreements (PIAs) between UT System and HRIs should be amended to include requirements for ensuring fingerprint-based background checks per Texas Education Code. Contracts between HRIs and hospital systems/other contractors may require amendments to ensure the hospital staff are implementing the Consortium’s policy on fingerprint-based background checks, however, each HRI should consult its legal team to determine the extent of the amendments.
2. HRIs should consider amending MOUs with ISDs to ensure fingerprint-based background checks are conducted and PIA requirements are met. The Consortium suggests that amended language stipulate the ISD will:
	1. Accept the HRI’s certification of employees’ background checks as an NCPA contractor, or
	2. Send staff for fingerprinting under a LEA or TEA pass at the HRI’s expense if employees have not already been fingerprinted under a LEA or TEA pass, and
	3. Obtain existing fingerprint-based background check results from a LEA or TEA pass in the DPS Clearinghouse at no additional cost to the HRI or the employee.

HRIs should consult their legal teams to determine whether and to what extent their MOUs should be amended. Some HRIs already include language in their MOUs about background checks. See [Attachment 1](#_Attachment_1:_Example) for examples.

1. HRIs should consider adding language in outreach and/or onboarding materials about the expectations for fingerprint-based background checks.

TEA has offered to revise language on its website regarding ISDs’ options for satisfying fingerprint-based background check requirements to clarify state requirements and potentially reduce duplicative fingerprinting for any school contractor, including TCHATT programs. Additionally, DPS has offered to conduct informational webinars with ISDs to provide additional clarification and education. ESC representatives have offered to assist in coordinating with ISDs to schedule these webinars.

UT System can facilitate discussions between HRIs, TEA, and DPS when requested to assist in implementing these recommendations.

## #3: Maintain fingerprint-based background checks for staff who have direct, ongoing contact with students

1. HRIs should identify a process for every TCHATT employee with direct, ongoing contact with students to undergo initial (prior to having contact with students) fingerprint-based background checks and regular re-checks (at least every three years) with results that are accessible to the institution.
2. HRIs should ensure that trainees are accompanied by a clinician who has undergone a fingerprint-based background check when interacting with students. If this level of supervision cannot be guaranteed for every interaction, HRIs should identify a process for these staff to undergo initial and regular fingerprint-based background checks with results that are accessible to the institution.

HRIs may apply for access to the DPS FACT Clearinghouse as an NCPA-qualified school contractor to meet these requirements.

Undergraduate and graduate students of mental healthcare disciplines and other non-credentialed staff are an important element of the TCHATT program. A demonstrated commitment to training and recruiting students after graduation increases retention and ensures long-term program sustainability. Therefore, the Consortium recommends retaining these roles and staff, provided their criminal histories would not bar them from providing services to students.

## #4: Adopt a policy to define expectations for fingerprint-based background checks

UT System recommends that the Consortium adopt a policy on fingerprint-based background checks to govern expectations for HRIs and their subcontractors. See [Attachment 2](#_Attachment_2:_Draft_1) for a draft policy.

The Consortium will work with the Centralized Operations Support Hub (COSH) to identify an implementation timeline and support HRIs with resources and technical assistance during implementation. HRIs may include implementation costs associated with the resolution of these issues in their Consortium budgets.

# Attachments

## Attachment 1: [Example MOU Language](https://utsystemadmin-my.sharepoint.com/%3Aw%3A/r/personal/rjew_utsystem_edu/Documents/Documents/Issue%20Briefs/Background%20Checks/Attachment%201%20-%20Example%20MOU%20Language.docx?d=w9490a45f9455497eb28f6e865be683e1&csf=1&web=1&e=JmFTSC)

Examples from HRIs’ existing school MOUs that reference expectations for background checks.

## Attachment 2: [Draft Background Check Policy](https://utsystemadmin-my.sharepoint.com/%3Aw%3A/r/personal/rjew_utsystem_edu/Documents/Documents/Issue%20Briefs/Background%20Checks/Policy%20-%20Fingerprint-Based%20Background%20Checks.docx?d=we0e0d7ef633c42efb525dad518dfc5b9&csf=1&web=1&e=s8wEz9)

A draft of the proposed TCMHCC policy on fingerprint-based background checks.

1. Background information was obtained from [Texas Education Code Chapter 22](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.22.htm#22.0834), [Texas Government Code Chapter 411](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.411.htm#411.0845), the Texas Education Agency’s webpage, [Requirements for School District Contractors | Texas Education Agency](https://tea.texas.gov/texas-educators/investigations/fingerprinting/requirements-for-school-district-contractors), the Texas Department of Public Safety’s webpages, [FACT Clearinghouse | TxDPS Crime Records Division (texas.gov)](https://securesite.dps.texas.gov/Clearinghouse/) and [Fingerprinting Services | Department of Public Safety (texas.gov)](https://www.dps.texas.gov/section/crime-records/fingerprinting-services), and consultation from TEA, ESC, and DPS employees. [↑](#footnote-ref-2)
2. Per Section 411.12505(a) of [Texas Government Code](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.411.htm#411.12505), an organization is a qualified school contractor if it:

	1. contracts to provide services to a school district, charter school, or shared services arrangement; and
	2. is determined eligible by DPS to obtain criminal history record information by meeting the following criteria:
		1. The organization provides care or care placement services; and
		2. The organization is based in Texas [↑](#footnote-ref-3)
3. Per Section 411.084(e) of [Texas Government Code](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.411.htm#411.12505), DPS requires the following information to be submitted through the DPS Clearinghouse:

	1. The person’s full name, date of birth, sex, and social security number
	2. The number assigned to any form of unexpired U.S. state-/territory-issued identification card
	3. A recent electronic photograph of the person
	4. A complete set of the person's fingerprints
	5. Any other information required by DPSEmployee fingerprints are required to be captured by DPS’ contracted vendor, IDEMIA, which has [fingerprinting locations across the state](https://www.dps.texas.gov/section/crime-records-service/fast-submission-locations). After employees visit a location and provide fingerprints, IDEMIA will provide fingerprints directly to DPS to facilitate a background check. [↑](#footnote-ref-4)
4. Per Section 22.0834(q) of [Texas Education Code](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.22.htm#22.0834), as a qualified school contractor, an HRI must certify to a school district that it “has received all criminal history record information relating to a person who is employed by or under a current offer of employment by the qualified school contractor.” Per Section 22.0834(o), a qualified school contractor “may not permit an employee…to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Section [22.085](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.22.htm#22.085)(a).” [↑](#footnote-ref-5)