

# Criminal Background Check Policy

## Tides Policy for Projects

Effective 8/15/11, Revised 9/30/14

### **Purpose**

Tides believes that it is of the utmost importance to ensure a safe and secure work environment for our project employees, volunteers and contractors. It is also essential that we provide this same safe and secure environment for the client populations that Tides and Tides projects serve. This policy requires criminal background checks for all employees, volunteers and contractors who supervise, have disciplinary power over, provide care for, and/or maintain security for vulnerable populations including: youth, elderly, handicapped, and mentally impaired.

It is important to note that criminal background checking results will show all criminal convictions, no matter how minor. Tides is committed to handling and evaluating all results carefully and confidentially while focusing only on those criminal convictions that are detrimental to Tides legitimate business interests and/or the safety of our client populations.

### **Policy**

Tides requires all new and current project employees, volunteers, and contractors who supervise, have disciplinary power over, provide care of, and/or maintain security for vulnerable populations to have a complete criminal background check on file with Tides Human Resources. Employees not currently working with vulnerable populations who have a change in duties or transfer to a position that does include this work will also need to have a complete criminal background check on file with Tides Human Resources prior to beginning the new assignment.

It is important to note that all employment, volunteer, and contract opportunities that involve working with vulnerable populations are contingent upon completion of a satisfactory criminal background check. The background check will be conducted only after a conditional employment offer has been made or after a live interview (whether in person or on the telephone). Tides cannot permit or allow any individual to engage in work with vulnerable populations until they receive approval from Tides Human Resources.

One-time project volunteers will not be subject to this policy if they are directly and continually supervised at all times by a Tides project employee who has successfully completed the criminal background check required under this policy.

If a licensed professional has already been criminal background checked in accordance with applicable state laws and can provide a copy of both their current license and proof that the necessary background check has been run as part of the licensing process, Tides Human Resources will review this documentation. If it is found acceptable, the requirement to have the criminal background check repeated by Tides will be waived.

Tides Project Directors at projects that serve vulnerable populations are required to consult with Human Resources before hiring or rehiring employees, volunteers or contractors, to ensure that we are in compliance with this policy. In addition, all current employees, volunteers and contractors directly working with these vulnerable populations must be

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identified to Tides upon the project receiving notice of their inclusion under this policy and have current criminal background checks completed, reviewed and approved by Tides Human Resources within 60 days.

All those subject to this policy will be required to complete and sign a Criminal Background Check Agreement, Release, and Authorization form authorizing Tides to conduct the criminal background check and receive the results. In the state of California they will also be required to complete a Department of Justice Request for Live Scan Service form, and in San Francisco they must receive a copy of the Office of Labor Standards Enforcement's Fair Chance Ordinance Notice. Costs associated with securing background checks for prospective and current project employees, volunteers and contractors are the responsibility of the Tides project.

Employees, volunteers or contractors who have been criminal background checked under this policy and are then rehired within three months of the end of their previous employment or engagement will not be required to have their criminal background check repeated if subsequent arrest notifications are still in force.

## **Criminal Background Check Results**

Upon receipt of a clear criminal background check, Tides Human Resources will notify the Project Director that they are able to move forward with the employment, retention, rehire, volunteer position or contract opportunity. In accordance with applicable law, Tides will also furnish a copy of the results to the applicant if asked with notification that the results are for his or her personal review only and should not be furnished to another agency or person.

Tides will not hire, retain or offer a volunteer or contract opportunity to any individual who has been convicted of an adult misdemeanor or felony offense within the last seven years that Tides deems detrimental to legitimate business interests and/or the safety of its client populations.

If prior criminal history is disclosed during this process or if the criminal background check comes back with criminal findings, Tides Human Resources will review all adult misdemeanor or felony offenses that fall within seven years and engage in a discussion with the Project Director to determine whether and how to move forward. Employment, engagement or retention consideration will be determined on a case-by-case basis, and will include a confidential discussion with the individual to determine the circumstances of the criminal history.

Employment or engagement consideration for individuals with pending criminal offenses will be delayed until criminal proceedings have been finalized, at which time the guidelines outlined in this policy will be followed. In all cases Tides Human Resources retains the ultimate discretion to determine satisfactory results of criminal background check verifications.

The following factors represent many, but not all, of the considerations that will be evaluated before making a final determination about suitability for employment, retention, rehire, and volunteer or contract position with a Tides project. In accordance with law, Tides will not take any adverse action based on legal infractions or arrests, but only on felony or misdemeanor convictions.

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- The nature of the conviction and its relationship to the position;
- The amount of time that has elapsed since the conviction;
- The extent to which the conviction or unresolved arrest has a direct and specific negative bearing on a candidate's ability to perform the duties of the job;
- Evidence of inaccuracies in the applicant's conviction history;
- The degree to which the applicant or employee has been rehabilitated and/or has been pardoned, or if the sentence has been commuted or reversed on appeal;
- The nature of the employee or applicant's employment and personal history since the commission of the offense, and evidence of rehabilitation; and
- Other mitigating factors.

There are no strictly prohibited offenses that would bar an individual from employment, retention, rehire and volunteer or contract position with Tides. However Tides Human Resources and the Project Director will pay particular attention and specifically and carefully review the following types of misdemeanor or felony convictions, including (but not limited to):

- Violent crimes, such as sexual assault, rape, assault and battery, armed robbery, or murder;
- Unlawful sexual intercourse;
- Crimes against children, including child abuse;
- Registered sex offenders;
- Drug felonies;
- Arson; or
- Theft, shoplifting, or burglary.

A conviction for any of the following misdemeanor or felony offenses would not strictly prohibit an applicant from employment, volunteering or contracting with a Tides project but will be evaluated based on the duties the individual would be performing:

- Driving under the influence of alcohol or open container violations;
- Trespassing;
- Disorderly conduct;
- Traffic offenses;
- Criminal pranks; or,
- Other offenses deemed not to be detrimental to Tides' and the project's legitimate business interests.

If an employer receives any of the information below, it may not use it in any manner for purposes of making an adverse action decision.

- Arrests not leading to conviction (except currently active and pending arrests)
- Participation in or completion of a diversion or deferral of judgment program
- Convictions dismissed, expunged, voided, or invalidated
- Sealed or juvenile convictions

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- Convictions older than 7 years from the date of the conviction/sentencing
- Marijuana convictions older than 2 years
- Offenses other than felonies or misdemeanors (such as infractions)

If Tides intends to take an adverse action based on a person's conviction history, prior to taking this action Tides shall provide the person with a copy of their criminal background check report and shall notify the person of the prospective adverse action and the reason for it.

If, within seven days of the notification by Tides, the person gives Tides notice, orally or in writing, of evidence of the inaccuracy of the item or items on their criminal background check report or any evidence of rehabilitation or other mitigating factors, Tides shall delay taking any adverse action for a reasonable period after receipt of the information. During that time, Tides shall reconsider the prospective adverse action in light of the information and will hold the position open until the matter is resolved.

Upon taking any final adverse action based on the criminal background check results, Tides shall notify the person of the final adverse action taken.

Tides shall not retaliate against any applicant or employee who exercises rights under federal, state, or local law.

## **Confidentiality and Retention of Records**

Materials related to criminal background checks will be handled, retained and stored in a confidential manner in accordance with applicable federal, state and local laws. As Tides criminal background check compliance is periodically monitored by project funding entities, these records will be retained as long as business necessity and applicable law requires.

To comply with legal requirements, projects will need to retain the following for a minimum period of three years:

- Copies of ads and job postings;
- Job application forms submitted by applicants;
- Documentation of employment interviews;

Tides will retain the following documents in our confidential files:

- Any background check reports obtained;
- Information provided to applicants regarding potential adverse action;
- Information received from an applicant or employee in response to a background check;
- Documentation of all individualized assessments conducted;
- Documentation of rehabilitation or mitigating factors submitted by applicants or employees;
- Documentation of adverse actions based on unresolved arrest or conviction records; and
- Documentation of hiring or promoting individuals after considering unresolved arrest or conviction records

Records will be kept in a secure and locked location, with access limited only to authorized personnel.