



<b>POLICY/INSTRUCTION:</b> 7.2.3/2	<b><i>Criminal Background Checks</i></b>
<b>SUPERSEDES:</b> 7.2.3/1	<b>APPLICABLE TO: ALL EMPLOYEES EXCEPT SWORN PERSONNEL</b>

**Metro reserves the right to eliminate, change, or modify this policy at any time. Additionally, the language used in this policy should not be construed as creating a contract of employment between Metro and any of its employees or otherwise altering an employee's at-will employment relationship with Metro.**

**1.00 PURPOSE**

This policy/instruction (P/I) establishes the process and procedures by which candidates and employees are screened for criminal history.

- 1.01 Washington Metropolitan Area Transit Authority (Metro) conducts Background Checks in order to promote a safe and secure environment for all Metro employees, Metro customers, and the general public.
- 1.02 Further, Metro conducts Background Checks in a consistent manner; expects candidates and employees to provide truthful information about their criminal records; and uses such information to exclude individuals from employment only to the extent that such exclusion is job-related and consistent with business necessity.
- 1.03 Consistent with Metro's commitment to Equal Employment Opportunity (EEO) and Title VII of the Civil Rights Act, as amended, it is Metro's policy to treat all candidates for employment and employees in a fair and equitable manner.
- 1.04 Any third party authorized to conduct Background Checks on behalf of Metro shall do so in accordance with applicable federal law, and shall review candidates and employees according to job-related information, documenting the job requirements and work setting characteristics associated with the job category for which they are being considered.

**2.00 SCOPE**

- 2.01 This P/I applies to all candidates and employees, except for sworn positions and sworn employees of the Metro Transit Police Department (MTPD) as specified below.
- 2.02 Candidates for sworn positions and sworn employees of the MTPD are subject to MTPD pre-employment background screening requirements specific to law enforcement standards.
- 2.03 In accordance with Section 5.01 of this P/I, all external candidates covered by this P/I must undergo a Background Check before receiving a final offer of employment.
- 2.04 Current and returning employees may be subject to a Background Check in accordance with Section 5.02 of this P/I.

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2.05 This P/I and its Appendices are applicable exclusively to criminal Background Checks and are not designed to address other employment related checks/screenings required under the Recruitment and Hiring policy.

**3.00 DEFINITIONS**

3.01 Background Check - the process of obtaining, verifying, and evaluating an individual's Criminal History Information to determine eligibility for employment, promotion, or transfer to another position based on the duties, work requirements, and work settings of the position.

3.02 Screening Group - the Background Check screen(s) applicable to a particular position with Metro based upon the duties, work requirements, and work settings that constitute the defining job-related characteristics of the position.

3.03 Criminal Conviction - a criminal prosecution that results in a judgment of guilt, regardless of whether the judgment is the result of:

- (a) entry of a plea of guilty, nolo contendere, no contest or the equivalent; or
- (b) a verdict or finding of guilty in a court of law or military tribunal.

For purposes of this policy, probation before judgment (PBJ) is not a conviction.

3.04 Criminal History Information - information contained in federal, state, and local records pertaining to an arrest, indictment, criminal information, misdemeanor complaint, or conviction of a crime.

3.05 Investigative Background Check - a Background Check conducted in accordance with Section 5.02(f) of this P/I.

3.06 Contingent Offer of Employment - an offer of employment extended after interviews and all other screenings have been successfully completed, except the Background Check and, if applicable, medical exam.

3.07 10-Year Disqualifying or 10-Year Disqualification - disqualifying offenses where an individual was convicted during the 10 years preceding the Background Check, for which the individual may not request an individualized assessment.

3.08 Presumptively Disqualifying or Presumptive Disqualification - offenses where an individual may request an individualized assessment in accordance with Appendix C to this P/I.

**4.00 RESPONSIBILITY**

4.01 Chief Human Resources Officer (CHRO), or designee, has overall responsibility for the administration, interpretation, application, process and maintenance of this P/I, including providing all needed training. Additionally, the CHRO is responsible for maintaining all

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Background Check records in a manner that ensures confidentiality and integrity of information. The CHRO is the sole officer authorized to initiate an Investigative Background Report.

- 4.02 Department Heads/Directors are responsible for advising hiring officials, managers, and supervisors of the Background Check requirements and processes, and for cooperating with Human Resources in the application of this P/I.
- 4.03 Managers/Supervisors are responsible for understanding and communicating the requirements of this P/I to their employees.
- 4.04 Employees and Candidates are responsible for being truthful, and cooperating fully and in good faith with the Background Check requirements and process.

## **5.00 POLICIES AND PROCEDURES**

### **5.01 Background Checks for External Candidates**

- (a) It is WMATA's policy not to consider or request Criminal History Information until after a Contingent Offer of Employment has been made. Except as provided in this P/I, no Metro employee may inquire about an external candidate's Criminal Information prior to the candidate receiving a Contingent Offer of Employment.
- (b) HR will notify external candidates in writing that a Background Check will be conducted and obtain the candidate's written consent to perform it. HR must provide the written notification and obtain written consent on an approved authorization form in advance of the Background Check.
- (c) HR will consider an external candidate's failure to authorize the required Background Check as a voluntary withdrawal from employment consideration.
- (d) If an external candidate voluntarily provides information about their Criminal History Information before a Contingent Offer of Employment has been made, the candidate should be advised that their Criminal History Information may not automatically disqualify them from consideration for employment with Metro. Any external candidate questions about Metro's background screenings should be referred to the Manager, Employee Relations.
- (e) In addition to an authorization form, HR will provide a Criminal Disclosure Form to any external candidate who has received a Contingent Offer of Employment. The Criminal Disclosure Form directs the candidate to provide HR with information about that candidate's criminal history, including pending charges.
- (f) The external candidate's Criminal Disclosure Form will be evaluated by HR to determine eligibility for employment in accordance with Appendices A & B to this policy.

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- (g) Any significant discrepancy or misrepresentation found as a result of differences between the Background Check and the information received that cannot be successfully resolved will serve as a basis to disqualify the candidate from employment eligibility.

**5.02 Background Checks for Current Employees**

- (a) WMATA will conduct Background Checks on current employees consistent with the requirements under the Fair Credit Reporting Act (FCRA). Where required by the FCRA, HR will obtain the employee's written consent on an approved authorization form before conducting a Background Check. For all new hires after the effective date of this P/I, this written consent will be obtained at the time of hire. New hires will be required to complete a one-time authorization allowing WMATA to conduct future Background Checks as outlined below.
- (b) **Change in Position** - Background Checks may be conducted for employees who are being transferred, promoted or demoted into a position with heightened Background Check requirements based upon job-related work requirements and work settings. Screening will be based on the criteria and timelines in Appendix B.
- (c) **Return to Duty Checks** - Employees who have been away from work for 90 calendar days or more will be subject to a return-to-duty Background Check for the period of time the employee is absent from the job. Employees subject to the 90-day return-to-duty Background Check will be allowed to return to work pending the results of the check. A returning employee's Criminal History will not be considered unless:
  - (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted during the period of absence prior to returning to work;
  - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or
  - (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (d) **Random Checks** – Beginning on or about July 1, 2018, all employees will be subject to random Background Checks regardless of position or work status. An employee's Criminal History Information will not be considered unless:
  - (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted, during the 365 day period prior to the date that the Background Check is conducted;
  - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or

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(3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.

(e) **Reinstated Employee Checks** - Background Checks will be conducted for employees who are reinstated following a period of absence. A reinstated employee's Criminal History Information will not be considered unless:

- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted, during the period of absence prior to reinstatement;
- (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or
- (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.

(f) **Investigative Background Checks** may be conducted in connection with:

- (1) an investigation into suspected misconduct relating to employment;
- (2) compliance with Federal laws and regulations;
- (3) compliance with pre-existing written Metro policies or procedures.

(g) Consistent with the Uniformed Services Employment and Reemployment Rights Act (USERRA), HR will not delay the prompt reemployment of employees returning from military service while awaiting the results of a Background Check.

**5.03 Information Excluded from Background Checks**

- (a) In conducting a Background Check, HR will not request or consider Criminal History Information relating to arrests, indictments, or complaints that have been resolved without a conviction.
- (b) HR will not consider Criminal History Information relating to:
  - (1) a conviction that has been judicially dismissed, expunged, or ordered sealed; or
  - (2) juvenile case records, as that term is defined in D.C. Code § 16-2331.

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**5.04 Consideration of Arrests, Warrants, and Pending Charges**

- (a) If a Background Check reveals that criminal charges are pending against an external candidate, HR will apply the standards in Appendix A to determine whether a final conviction on these charges would be 10-Year or Presumptively Disqualifying.
  - (1) If a conviction would not be 10-Year or Presumptively Disqualifying, Metro will not consider the pending charges further in evaluating the applicant's suitability for employment. The applicant will continue through the hiring process.
  - (2) If a conviction would be 10-Year or Presumptively Disqualifying, Metro will send the applicant a preliminary notice of disqualification and place the application on hold for a period of 90 calendar days, but will not suspend the hiring process. If the applicant provides Metro with notice that the charges have been resolved within the 90 calendar day period, Metro will further consider the applicant for employment in accordance with this P/I, if the position is still open and/or available. Applicants with pending charges not resolved in 90 calendar days will be removed from the hiring process and must re-apply for any future employment opportunity.
- (b) Employees who are arrested, charged with, or convicted of a crime while employed by Metro are responsible for notifying their immediate supervisors or managers in accordance with Metro P/I 7.8.6, *Disclosure and Disposition of Arrests and Convictions*. Employees who fail to do so will be subject to disciplinary action, up to and including termination.
- (c) If a Background Check reveals that a warrant has been issued for the arrest of an external candidate or employee, Metro will notify the individual of this information, provide the individual with a copy of the Background Check report, and inform the individual that the warrant must be executed, revoked, or otherwise resolved within 10 business days. This period may be extended in writing at the discretion of the Chief Human Resources Officer or designee. Failure to satisfy this requirement within the time period proscribed will result in revocation of the candidate's Contingent Offer of Employment or termination of the employee's employment, and will disqualify the individual from future employment with Metro until such time as the warrant is resolved.

**5.05 Confidentiality**

- (a) Metro takes the protection of applicant and employee information seriously and will take reasonable measures to protect unauthorized access to applicant or employee information collected pursuant to this policy. To the extent permitted by law, Metro will restrict access to such information to Metro employees who need to know as a function of their positions within Metro.
- (b) All information obtained as a result of a Background Check will be used solely for employment purposes.

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**5.06 Adjudication of Adverse Information**

- (a) If a Background Check reveals adverse Criminal History Information, this information will be evaluated in accordance with Appendices A and B to this P/I. If it is determined that this information would make the applicant or employee disqualified for employment, the applicant or employee will be sent a pre-adverse information notification.
- (b) Before making any final determination based on adverse information discovered through a Background Check, the individual will:
  - (1) have an opportunity to review and dispute the accuracy of the Criminal History Information after receiving the pre-adverse information notification; and
  - (2) for Presumptive Disqualifications only, have an opportunity to request an individualized assessment in accordance with Appendix C to this P/I. Individualized assessments do not apply to 10-Year Disqualification criminal offenses.
- (c) Individualized assessments conducted pursuant to Section 5.06(b) of this P/I are adjudicated on a case-by-case basis in accordance with Appendix C. Accordingly, as a general rule, an adverse adjudication pursuant to this P/I will not necessarily preclude the applicant or employee from future employment with Metro.

**6.00 ENFORCEMENT**

Failure to comply with the requirements of this P/I may result in discipline, up to and including involuntary separation.

**7.00 EXCEPTIONS**

- 7.01 Sworn employees of the Metro Transit Police Department (MTPD).
- 7.02 Contractors and/or consultants performing work on behalf of Metro.

**8.00 RELATED POLICIES, REGULATIONS & RESOLUTIONS**

- 8.01 P/I 7.1.1 – Equal Employment Opportunity Including Affirmative Action and Alternative Dispute Resolution
- 8.02 P/I 7.2.2 – Recruitment and Hiring
- 8.03 P/I 7.8.6/1 – Disclosure and Disposition of Arrests and Convictions
- 8.04 D.C. Code § 16-2331 Juvenile Case Records; Confidentiality; Inspection and Disclosure
- 8.05 USERRA – Uniformed Services Employment and Reemployment Rights Act

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**9.00 LIST OF APPENDICES, ATTACHMENTS OR FORMS**

- 9.01 Appendix A – Screening Procedures
- 9.02 Appendix B – Screening Grid
- 9.03 Appendix C – Procedures for Individualized Assessments of Presumptive Disqualification

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**APPENDIX A: Screening Procedures**

1. This Appendix sets forth the procedures for evaluating an individual's Criminal History Information. The evaluation shall be conducted by an individual or entity designated by the Chief Human Resources Officer (CHRO) and trained in the administration of Metro's Criminal Background Check Policy Instruction. For purposes of this Appendix, the party conducting this evaluation will be referred to as the "Evaluator."
2. This Appendix is intended to be comprehensive. However, circumstances may arise where this Appendix does not provide sufficiently clear guidance or the application of this Appendix would lead to unfair or irrational results. In these circumstances, the Evaluator should contact the CHRO or his or her designee for additional guidance. Metro expressly reserves the right to determine the appropriate Offense Category when evaluating an individual's Criminal History Information
3. An individual's Criminal History Information will be referred to the Evaluator for review if a Background Check reveals that an applicant or employee:
  - a. has been convicted of a crime; or
  - b. faces pending charges for a crime.
4. As a first step, the Evaluator will review the individual's Criminal History Information to determine whether he or she is disqualified from employment due to a 10-Year Disqualification offense. The following felonies are 10-Year Disqualification offenses if the individual was convicted during the 10 years preceding the employment application date:
  - a. Murder
  - b. Assault with intent to murder
  - c. Terrorism
  - d. Rape or aggravated sexual offenses
  - e. Unlawful possession, use, sale, distribution, or manufacture of an explosive
  - f. Armed robbery
  - g. Aggravated Assault
  - h. Arson
5. As a second step, for individuals who are not disqualified by a 10-Year Disqualification offense, the Evaluator will determine if he or she is a "Presumptively Disqualified Repeat Offender." For purposes of this Appendix, a "Presumptively Disqualified Repeat Offender" is an individual who:
  - (1) In two or more separate proceedings:

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- (a) has been criminally convicted, or released from incarceration in the past 10 years; or
- (b) has been criminally convicted or released from incarceration in the past 10 years, and faces pending criminal charges; or
- (c) faces pending criminal charges; AND

(2) Has 4 or more points from the above-referenced convictions or pending charges, calculated by assigning 2 points to each separate proceeding involving a felony, and 1 point to each separate proceeding involving a misdemeanor. If a single proceeding involves multiple crimes, the crime with the higher point value should be applied (e.g., one proceeding resulting in a felony and misdemeanor conviction would be 2 points).

6. As a third step, for individuals who are not Presumptively Disqualified Repeat Offenders, the Evaluator will review the individual's Criminal History Information using the Screening Grid as follows:

- a. The Evaluator will identify the Screening Group(s) that apply to the position that the individual is seeking to fill.
- b. Using Section 7 of this Appendix, the Evaluator will review the convictions and pending charges in the individual's criminal history report and place each conviction or charge in the appropriate Offense Category. Where more than one Offense Category may apply, the Evaluator shall apply the Offense Category with the longer lookback period.
- c. Using the Screening Grid, the Evaluator will determine whether the individual has been convicted or charged with a single offense (felony or misdemeanor) in an Offense Category that has an unlimited lookback period. If so, the individual is Presumptively Disqualified from employment, but may ask for an Individualized Assessment.
- d. If the individual has not been convicted or charged with a crime that is Presumptively Disqualifying due to an unlimited lookback period, the Evaluator will next determine the lookback period that applies to each of the individual's charges or convictions. 2 points will be assigned to each felony and 1 point to each misdemeanor that
  - (1) resulted in a conviction entered within the applicable lookback period;
  - (2) resulted in a conviction entered outside the applicable lookback period, but the individual was released from confinement during the lookback period; or
  - (3) has not yet resulted in a conviction, and the charge is still pending.
- e. An individual will be Presumptively Disqualified from employment if he or she has two or more points, e.g., 2 points for one felony or 2 points for two misdemeanors during the applicable lookback period.

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7. The Offense Categories are defined as follows:

- a. "Bias-related Offenses" include all criminal acts that result in a conviction due to the accused's prejudice towards the victim's actual or perceived membership in a protected class. Examples of Bias-related Offenses include, but are not limited to, offenses punishable pursuant to 18 U.S.C. § 249 or D.C. Code § 22–3703.
- b. "Drug Distribution Offenses" include all offenses that involve (i) the manufacture, sale or distribution of a controlled substance or (ii) possession with intent to sell, or distribute a controlled substance, with the exception of Section 9 Offenses.
- c. "Drug Possession Offenses" include all offenses, other than Drug Distribution Offenses, that involve the unlawful purchase, use, or possession of a controlled substance. Section 9 Offenses are excluded from drug possession offenses.
- d. "Offenses of Dishonesty" include all offenses involving fraud or dishonesty. Offenses of Dishonesty include, but are not limited to, fraud (including voter fraud and securities fraud), embezzlement, perjury, identity theft, impersonation of a police officer, forgery, false advertising, and counterfeiting.
- e. "Weapons Offenses" include all nonviolent offenses involving the unlawful possession, manufacturing, sale, brandishing, use, or discharge of a firearm, explosive, or deadly weapon, including felon in possession of a firearm, brandishing a firearm, and unlawful carrying of a concealed weapon.
- f. "Offenses of Sexual Violence" include (i) all sexual offenses involving force or the threat thereof and (ii) all sexual offenses involving sexual contact where the victim is unable to consent due to incapacity or otherwise, but not statutory rape. Examples of Offenses of Sexual Violence include, but are not limited to, offenses such as rape, sexual assault, sexual abuse, child sexual abuse, and child molestation.
- g. "Property Offenses" include all offenses involving (i) the destruction or defacement of property or (ii) unauthorized entry onto property. Examples of Property Offenses include, but are not limited to, arson, destruction of property, vandalism, and trespass.
- h. "Driving Offenses" include reckless driving; careless driving; driving without a license; and driving a motor vehicle without owner's consent. The Evaluator will consider these offenses only for positions in Screening Group C that require operation of a Metro vehicle.
- i. "Serious Driving Offenses" include all offenses involving (i) the operation of a vehicle while under the influence of intoxicating substances, (ii) fleeing the scene of a vehicular accident, or (iii) driving offenses involving death or serious injury. Examples of Serious Driving Offenses include, but are not limited to, vehicular homicide, vehicular manslaughter, driving while intoxicated, hit-and-run, and fleeing the scene of an accident.

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- j. "Societal Offenses" include the following crimes: resisting arrest, violation of a protective order, human trafficking, stalking, racketeering, gang-related offenses, escape, money laundering, bribery, obstruction of justice, involuntary manslaughter, witness tampering, and criminal neglect.
  - k. "Serious Violent Offenses" include all offenses involving physical violence against a person or the threat thereof that (i) are punishable as felonies or (ii) involve aggravating circumstances such as intent to kill, use of a weapon, or targeting a vulnerable individual. Examples of Serious Violent Offenses include, but are not limited to, murder, voluntary manslaughter, mayhem, assault with intent to kill, aggravated assault, assaulting a police officer, assault with a deadly weapon, armed robbery, child abuse, kidnapping, and carjacking.
  - l. "Sexual Offenses" include all sexual offenses that (i) do not meet the definition of an Offense of Sexual Violence and (ii) are not listed in Section 9 of this Appendix. Examples of Sexual Offenses include, but are not limited to, indecent exposure, enticing a minor, possession or distribution of child pornography, mailing/displaying/sending obscene materials, solicitation of prostitution, prostitution, pimping, and statutory rape.
  - m. "Terrorism Offenses" include all criminal offenses involving or relating to "international terrorism" or "domestic terrorism," as those terms are defined in 18 U.S.C. § 2331. Examples of Terrorism Offenses include, but are not limited to, providing material support to terrorists or to designated foreign terrorist organizations.
  - n. "Theft Offenses" include all offenses involving (i) the wrongful taking of another's property through means other than fraud or dishonesty. Examples of Theft Offenses include, but are not limited to, extortion, blackmail, larceny, burglary, petty theft, shoplifting, trafficking or receiving stolen property, and possession of burglary tools.
  - o. "Violent Offenses" include all offenses involving physical violence against a person or the threat thereof. Examples of Violent Offenses include, but are not limited to, offenses such as assault, domestic violence, resisting arrest (physical force), robbery, and battery.
8. For purposes of this Appendix, a conviction for an attempt to commit a crime is equivalent to a conviction for the crime itself. Similarly, a conviction for a conspiracy to commit a crime is equivalent to a conviction for the crime itself.
9. **Section 9 Offenses and Repeat Offenders.** A candidate for employment will not be Presumptively Disqualified based on a conviction or combination of convictions for any of the following offenses, which will not be considered when applying the Screening Grid (collectively referred to as the "Section 9 Offenses"):
- a. Societal offenses: harboring a fugitive; smuggling contraband into prison; vagrancy; loitering; contempt of court; panhandling; ordinance violations; cruelty or neglect to animals; unauthorized entry or re-entry into the United States; abusive language; disorderly conduct; disturbing the peace; drunk and disorderly; unlawful assembly.

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- b. Alcohol and marijuana offenses: minor in possession of alcohol; misdemeanor possession of marijuana; misdemeanor possession of marijuana paraphernalia.
- c. Private sexual offenses: sodomy and bigamy.

However, because repeated convictions for these crimes may be evidence of an inability or unwillingness to abide by the law, Section 9 Offenses other than sodomy and bigamy will be considered in determining whether the candidate is a Repeat Offender.

10. **Screening Group Definitions.** These descriptions for each screening group are based on the duties, work requirements, and work settings that define the job-related characteristics of the positions in that group.

- a. **SCREENING GROUP A - No Heightened Risk Facts.** These positions are not safety-sensitive, do not require significant interaction with the public, and the ability to handle conflict is less important. The workers in these positions may still pose a risk to coworkers or have access to Metro resources, but there are no job or work context factors that present heightened risk.
- b. **SCREENING GROUP B - Significant Interaction with the Public.** The positions within this screening group involve substantial interaction with members of the public. As such, these workers are more likely to be responsible for the health, safety, and well-being of members of the public. Also, these workers may be exposed to, and have to handle, unpleasant, discourteous, and potentially aggressive interactions with the public.
- c. **SCREENING GROUP C - Use/Operation of Valuable Equipment or Access/Exposure to Hazardous Materials.** The nature of these positions and the circumstances under which the work is performed may involve immediate and/or direct threats to the health or safety of others. These workers may have access/exposure to, or must operate or use, valuable equipment or hazardous materials, including the operation of a motor vehicle. These positions pose heightened risk because a momentary lapse in judgment could result in either injury or death to another person or significant financial loss to Metro.
- d. **SCREENING GROUP D - Access to Significant Resources or Personally Identifiable Information (PII).** The positions in this screening group have access to significant or valuable company resources, or personally identifiable information that, if misused or stolen, could result in significant losses or liability for Metro and/or its employees, customers, contractors or other third parties.
- e. **SCREENING GROUP E - Unsupervised Responsibility for a Vulnerable Population.** The positions within this screening group involve workers who provide direct care and unsupervised assistance, outside of the public eye, to members of vulnerable populations, including children, the elderly, and individuals with a mental or physical disability.

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**APPENDIX B: Screening Grid**

Category of Offenses	Lookback Period				
	<u>Screening Group A</u> (No heightened risk factors)	<u>Screening Group B</u> (Significant interaction with the public)	<u>Screening Group C</u> (Operation of equipment or exposure to hazards)	<u>Screening Group D</u> (Access to significant resources or PII)	<u>Screening Group E</u> (Unsupervised responsibility for vulnerable population)
Bias-related offenses	7 Years	10 Years	7 Years	7 Years	10 Years
Drug Distribution Offenses	5 Years	7 Years	7 Years	10 Years	10 Years
Drug Possession Offenses	5 Years	5 Years	7 Years	7 Years	7 Years
Offenses of Dishonesty	5 Years	5 Years	5 Years	10 Years	10 Years
Weapons Offenses	7 Years	10 Years	10 Years	7 Years	UL
Offenses of Sexual Violence	10 Years	10 Years	10 Years	10 Years	UL
Property Offenses	5 Years	5 Years	10 Years	10 Years	10 Years
Serious Driving Offenses	5 Years	5 Years	10 Years	5 Years	5 Years
Societal Offenses	5 Years	7 Years	7 Years	7 Years	7 Years
Serious Violent Offenses	10 Years	10 Years	10 Years	10 Years	UL
Sexual Offenses	7 Years	10 Years	7 Years	7 Years	UL
Terrorism Offenses	10 Years	10 Years	10 Years	10 Years	10 Years
Theft Offenses	5 Years	7 Years	5 Years	10 Years	10 Years
Violent Offenses	5 Years	7 Years	7 Years	5 Years	UL
Driving Offenses	N/A	N/A	10 Years	N/A	N/A

**OTHER THAN UL, 2 POINTS IN LOOKBACK PERIOD = PRESUMPTIVELY DISQUALIFYING  
 FELONY = 2 POINTS MISDEMEANOR= 1 POINT**

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**POLICY/INSTRUCTION: 7.2.3/2 – Criminal Background Checks**

**APPENDIX C: Procedures for Individualized Assessments of Presumptive Disqualification**

1. When information from a Background Check would render an employee or candidate presumptively disqualified for employment, a written notice of Presumptive Disqualification will be sent to the employee or candidate. A packet with instructions for requesting an individualized assessment of the decision will accompany the written notice of Presumptive Disqualification in the adverse notification letter.
2. The purpose of this review process is to allow candidates for employment and current employees to submit additional information that will help Metro determine whether the disqualification from employment is job-related and consistent with business necessity.
3. The Individualized Assessment Panel is responsible for resolving review requests. The Individualized Assessment Panel may consist of: Manager of Employee Relations, Director of Labor Relations and EEO liaison. A representative from the Office of General Counsel will serve as legal advisor to the panel, as needed.
4. For a written request to be timely, it must be postmarked, e-mailed or hand-delivered within seven business days after the date on the notice of Presumptive Disqualification in the adverse notification letter. Failure to timely submit a written request for review constitutes waiver of the right to an Individualized Assessment.
5. The individual may attach documents and other information he or she wishes the Individualized Assessment Panel to consider. The request for review should be mailed or delivered to: WMATA CBC Administrator, Department of Human Resources, 600 Fifth Street, NW, Washington, DC 20001. If delivered via email, the request and documentation should be sent to [CBCAppeals@WMATA.com](mailto:CBCAppeals@WMATA.com).
6. Upon timely receipt of a request, copies of the following documents will be transmitted to the Individualized Assessment Panel:
  - a. The individual's job application;
  - b. The individual's Criminal Disclosure Form;
  - c. The Background Check report containing the individual's Criminal History Information; and
  - d. Any written documentation or other information submitted by the individual.
7. The Panel will review the information provided, giving consideration to the following:
  - a. The facts and circumstances surrounding the offense or conduct
  - b. The number of offenses for which the individual was convicted
  - c. Older age at the time of conviction or release from prison
  - d. Evidence that the individual performed the same type of work after his/her conviction with no known incidents of criminal conduct
  - e. The length and consistency of employment history before and after the offense or conduct

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**APPENDIX C: Procedures for Individualized Assessments of Presumptive Disqualification**

- f. Evidence of the person’s rehabilitation efforts, e.g., education/training
  - g. Employment or character references and any other information regarding fitness for the particular position
  - h. Whether the individual is bonded under a federal, state, or local bonding program.
  - i. Extent of opportunity to engage in further criminal activity
  - j. Age of the person at the time of the commission of the offense
  - k. The time elapsed since last criminal activity
  - l. The legitimate interest of Metro in protecting property and the safety and welfare of specific individuals or the general public
8. If the position in question is an open position (one under continuous recruitment), the request for review will be completed within 30 calendar days from the date the Panel receives the request for review. If the request for review is resolved in favor of the employee or candidate, the individual will be placed in the next hiring class.
9. If the position in question is not an open position (a position with a defined open and close date), the request for review will be resolved within three business days of receipt of a request for review. The position will be held open until the review is complete. If Metro does not receive a request for review within seven business days of the date on the notice of Presumptive Disqualification, the employee or candidate will be deemed to have waived their right to a review, and Metro may offer the position to a different employee or candidate.
10. The Individual Assessment Panel will review the material and determine whether disqualification of the individual is job related and consistent with business necessity. The CBC Administrator will notify the applicant or employee in writing of the Panel’s decision within 2-working days of receipt of the decision. The decision of the Panel is final.

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