

## TAG – State Human Resources Policy and Procedures

## SECURITY - Felonies

### References

TAG Policy Letter #28  
K.A.R. 1-9-19

### Definitions - For purposes of this policy

1. **Conviction:** Conviction includes a plea or finding of guilty, a plea of *nolo contendere* (no contest), and all other actions tantamount to a finding of guilty, including adjudication withheld, deferred prosecution, diversion, expungement entry into adult or juvenile pretrial intervention programs, and any similar disposition of charges.
2. **Criminal Law.** A criminal law includes any military or other Federal criminal law; any state, district, commonwealth, or territorial or equivalent criminal law or ordinance; any criminal law or ordinance of any county, parish, municipality, or local subdivision of any such authority. Motor vehicle violations that do not involve a court appearance are excluded.
3. **Flag.** To annotate, mark, designate, a member employee's personnel file or employment application when felony charges are verified pending or a felony conviction is verified adjudicated.
4. **Member Employee.** Any and all full and part-time State employees, persons of the Kansas Adjutant General's Department and persons applying for employment with the Kansas Adjutant General's Department.
5. **Responsible authority.** The employee's division director or worksite manager.
6. **Volunteer.** Person performing services without compensation.

### Policy

1. The purpose of this policy is to: document all member employees and volunteers with felonies; determine appropriate action, if any, by the Kansas Adjutant General's Department; and determine during the application and hiring/selection process the appropriateness of a person's prospective employment or volunteerism.
2. Although it is the intent of the Adjutant General to protect employees' rights until a case is adjudicated by civilian authority, the Adjutant General will take all reasonable and prudent steps to ensure the safety and security of other member employees and the public and maintain public confidence in the Adjutant General's Department.
3. Persons convicted of a felony and sentenced to prison for more than one year are definitely prohibited from employment and volunteer opportunities with the Adjutant General's Department as they would not pass the minimum background check criteria established by the Department of Defense.
4. Persons convicted of a felony and sentenced to prison for less than one year may be prohibited from employment and volunteer opportunities, depending on the circumstances of the respective case.
5. All employees, applicants and selectees for employment, and potential/existing volunteers must **self-report** all felony arrests, pending felony charges and convictions\* the next agency working day following the event as describe in the 'Procedures' section of this document.

*\*With respect to felony convictions, this requirement applies even if the sentence has not been imposed or the member employee intends to appeal the conviction.*

**6. Employees:**

- a) Classified employees may be relieved of duty with pay pending an investigation.
- b) Unclassified employees may be relieved of duty with (or without) pay pending an investigation.
- c) The official personnel file, held in the State Human Resource Office, will be flagged. The flag will not be lifted until the civilian criminal charges are resolved and appropriate legal, administrative, and/or personnel action, if any, is completed.
- d) Employees may not be transferred/promoted/demoted to another position, work schedule, location, organizational unit or have any changes in pay without consultation and approval of Legal and the SHRO Director.
- e) After review of the documentation, information from the employee and/or an internal investigation, the Adjutant General will determine the appropriate action for an employee, if any, to be taken. Action could include dismissal.

**7. Applicants and Selectees:**

- a) After review of the documentation and/or information obtained from, or on, an applicant/selectee, a determination will be made as to the appropriateness of a person's prospective employment.
- b) Applicants may be allowed to continue with the selection process or they may have their application withdrawn from consideration for that opening as well as not being considered for future openings with the Adjutant General's Department.
- c) Selectees may be allowed to continue with the selection process, have their conditional offer of employment withdrawn or be allowed to be hired pending the results of the criminal action or results of a more thorough background investigation.

**8. Volunteers:**

- a) May temporarily or permanently be relieved of their association with the agency.
- b) May not be moved to another volunteer position, work schedule, location, organizational unit or have any other changes made without consultation and approval of Legal and the SHRO Director.
- c) After review of the documentation and/or information obtained from, or on, a potential or existing volunteer, a determination will be made as to the person's continued association with the Adjutant General's Department.

9. The responsible authority will, in cooperation with Legal and SHRO, be informed and, when required, engaged in all facets of the case.

10. Any disagreements with the recommendation of the responsible authority, Legal or SHRO will be resolved by the respective chain of command with The Adjutant General being the final authority.

11. Member employee's status will be determined as expeditiously as possible.

12. Failure to comply with any part of this policy or its procedures can, in itself, be grounds for appropriate legal, administrative, and/or personnel action, including immediate dismissal.

13. This policy takes precedence over any competing or contrary application of existing policies.

## Procedures

1. No later than the first agency working day following a felony arrest, pending felony charge or felony conviction, an **individual** covered by this policy **must report** the incident to their first-line supervisor, higher level supervisor, or Legal. The person receiving the report must immediately notify the reporting employee's responsible authority (division director or worksite manager.)
2. When the **responsible authority** receives or obtains verification of a felony arrest, charge or conviction, it will immediately:
  - a) Notify **Legal**.
  - b) Contact the agency's **State Human Resources Office Director** (SHRO) (or Assistant Director in the director's absence) to flag the employee's personnel file. The flag will not be lifted until the civilian criminal charges are resolved and appropriate legal, administrative, and/or, personnel action, if any, is completed.
  - c) Notify the respective **Security Manager**.
3. The **responsible authority** will also:
  - a) Consult with the **Information Management Director** (or designee) on suspending the member employee's or volunteer's computer access.
  - b) Consult with the respective **Security Manager** on suspending the member employee's or volunteer's security clearance.
  - c) Prohibit the member employee from having any unsupervised public contact until otherwise notified.
  - d) Immediately, in the case of armed staff, suspend the member employee's access to weapons and ammunition.
4. **Agency Contact Numbers:**
  - a) Legal: 785-274-1027, 1481 or 1024.
  - b) State Human Resources: 785-274-1393 or 1460.
  - c) Security Managers:
    - 1) Army: 785-274-1067
    - 2) 190<sup>th</sup>: 785-831-4209 or 4207
    - 3) 184<sup>th</sup>: 376-759-7447
  - d) Information Management: 785-274-1034 or 1031.
5. The **responsible authority, Legal and SHRO** will confer on the nature of the civilian criminal charge and determine if the member employee's presence will create a work distraction for others, is a threat to other member employees, if the person should be relieved of duty, initiate a separation action and/or take other prudent administrative actions.
6. In determining appropriate action, the **responsible authority, Legal and SHRO** will:
  - a) In the case of felony charges and/or convictions of 'Person' felonies as defined by Kansas statutes, presume that the person should be terminated/separated. The burden is on the employee to prove

that he/she should be retained. The burden is also on any responsible authority and those in the chain of command to prove otherwise, if they desire to retain an individual.

- b) In the case of felony charges and/or convictions involving ‘Dishonesty’ as defined by Kansas statutes and consultation with Legal, the member employee’s duties and responsibilities will be scrutinized to determine whether the member employee can continue in their current position. The responsible authority, Legal and SHRO will pay particular attention to, but not limited to, the member employee’s access to personal identifiable information, Federal or State funds, Government credit cards, Federal and State computer and communications systems, and overall danger (physical, material and financial) to the workforce and Kansas Adjutant General’s Department.
  - c) In the case of all other felony charges and/or convictions, determine on a case by case basis if any action is warranted.
7. The **responsible authority**, within ten (10) calendar days, will put a determination in writing with written comments from the JAG office and SHRO and forward it to the next level of authority. Each level of authority has ten (10) calendar days to add their recommendation and refer the case forward to the next level. The Adjutant General is final authority.
8. Legal will track and monitor the case until final resolution.

## Felony Policy Acknowledgement Form

I have read, understand and will adhere to the Adjutant General's Department Felony Policy.

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Print Name:

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Signature:

Date Signed