

October 14, 2020

Laura Dugan
Chair, University Senate
2131 LeFrak Hall
University of Maryland
College Park, MD 20742

Dear Senate Chair Dugan,

I am writing on behalf of the joint subcommittee tasked with considering the “Policy on Criminal Background Checks for Faculty and Staff Employees” (Senate Document #18-19-36). The Senate Executive Committee (SEC) jointly charged the Faculty Affairs and Staff Affairs Committees with reviewing this item by March 30, 2020. The SEC recently extended the deadline to November 10, 2020, due to delays related to the COVID-19 pandemic. I am writing to respectfully request an additional extension for the committee’s review of this charge.

The subcommittee has been working diligently to consider the charge since summer 2019, but this charge has proved to be incredibly complex. It has involved consultation with a wide range of stakeholders on campus, as the proposal would involve implementing criminal background checks campus-wide, which would have an impact on faculty and staff from a wide range of circumstances. An overview of the subcommittee’s work to date is included below:

- The subcommittee reviewed the proposal and the USM policy on background checks.
- It discussed how the background checks would work in practice and the impact of background checks on potential applicants who have criminal or arrest records.
- It considered practices at Big 10 and other peer institutions.
- It met with representatives of:
 - University Human Resources including Jewel Washington, Assistant Vice President for Human Resources;
 - the Division of Administration & Finance including Carlo Colella, Vice President for Administration & Finance;
 - the University of Maryland Police Department, including David Mitchell, Director of Public Safety & Chief of Police;
 - the Office of General Counsel, including Mike Poterala, Vice President and General Counsel;
 - the Office of Diversity and Inclusion, including Georgina Dodge, Vice President for Diversity and Inclusion; and
 - the Office of Faculty Affairs, including John Bertot, Associate Provost for Faculty Affairs.
- It reached out to units that already conduct or facilitate background checks in AGNR and EDUC to consider whether best practices exist at UMD already.
- It also reached out to units that may be most affected by this policy due to high turnover rates in order to gather feedback on the impact of a policy of this nature.

After delays in the spring 2020 semester due to the pandemic, the subcommittee reconvened in September 2020 and has already met twice. The subcommittee has been working to develop its recommendations for consideration by the Faculty Affairs and Staff Affairs Committees in fall 2020. The subcommittee needs additional time to finalize its recommendation, and the full committees need time to fully consider that recommendation. This is a sensitive topic that has led to a lot of debate in the subcommittee so it is likely that it will require more discussion in the full committees as well. The additional time would allow for the subcommittee to do a thoughtful and comprehensive job in developing the recommendation, and would also allow for the committees to refine the recommendations based on any feedback they receive from their members.

Because of the complex nature of the charge and the necessity of ensuring a thoughtful recommendation, I respectfully request an extension until January 15, 2021. The subcommittee hopes to complete its work shortly, and the full committees will submit their recommendations as soon as possible. Thank you for your consideration of this request.

Sincerely,

Sarah Hughes
Senior Policy Advisor, University Senate
Coordinator, Subcommittee on Criminal Background Checks

Enclosure: Charge from the SEC



Policy on Criminal Background Checks for Faculty and Staff Employees (Senate Document #18-19-36)

Faculty Affairs Committee | Chair: Jack Blanchard
Staff Affairs Committee | Chair: Fulvio Cativo

The Senate Executive Committee (SEC) and Senate Chair Walsh request that the Faculty Affairs and Staff Affairs Committees jointly review the attached proposal entitled, *Policy on Criminal Background Checks for Faculty and Staff Employees*, along with the proposed draft policy and procedures attached to the proposal.

Specifically, it asks that you:

1. [Review the University System of Maryland \(USM\) Policy on Criminal Background Checks for Faculty and Staff Employees \(VII-1.15\)](#).
2. Review similar policies on criminal background checks at Big 10 and other peer and University System of Maryland (USM) institutions.
3. Consult with the Assistant Vice President, University Human Resources (UHR).
4. Consult with the Associate Provost for Faculty Affairs.
5. Consult with a representative of the Graduate School.
6. Consult with a representative of Office of Civil Rights and Sexual Misconduct (OCRSM).
7. Consult with the Council of Associate Deans for Faculty Affairs (CADFA).
8. Consider the financial implications associated with conducting background checks and verifications as part of the hiring process for all new employees.
9. Consult with a representative of the Office of General Counsel on any proposed changes to University policy or associated guidelines.
10. If appropriate, recommend whether the University should establish a formal criminal background check policy for all employees.

We ask that you submit a report to the Senate Office no later than **March 30, 2020**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



Submitted on: March 26, 2019

POLICY ON CRIMINAL BACKGROUND CHECKS FOR FACULTY AND STAFF EMPLOYEES

NAME/TITLE	Jewel Washington Assistant Vice President University Human Resources and John Bertot, Associate Provost for Faculty Affairs		
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UNIT	UHR/Office of Faculty Affairs	CONSTITUENCY	

DESCRIPTION OF ISSUE

Currently the University of Maryland performs background checks only for those roles/functions that are mandated by federal, state, and applicable USM policies. These roles/functions include individuals working with/in:

- Certain programs involving minors
- Adult dependent populations
- Transportation of hazardous materials
- Law enforcement
- Access to regulated risk, significant hazardous materials, and security safeguards information
- Certain federally-funded units
- Third parties serving populations that meet Mandatory Criminal Background Checks requirement of USM Policy VII—1.15 who use (lease, rent, license) university facilities

A survey of the Big Ten Academic Alliance member schools shows that we lag in this area of improved safety practices: (note 10 of the 14 schools that participated in the survey responded, Maryland, Northwestern, Rutgers, and Purdue are not reflected).

- **Faculty** – All schools except for Nebraska perform some type of background check for tenured/tenure-track, non-tenure track, post-doctoral scholar/researcher employees.
- **Staff** – All schools perform some type of background check for exempt and non-exempt staff employees.

A separate survey of the schools within the University System of Maryland shows that 10 of the 12 schools perform some type of background check on either all or specific employment categories. Some institutions also complete background checks for students in certain programs such as Nursing, or volunteers depending on the sensitivity of the position.

Expanding our current screenings to include new hires in all positions is intended to support the verification of credentials, criminal history, and other information related to employment and appointment decisions that assist the University in meeting its commitments to keep our campus safe for students, staff, faculty, and the public. The University has specific requirements under Title IX and implementing these procedures will help ensure compliance with these obligations.

DESCRIPTION OF CHANGE YOU WOULD LIKE TO SEE

In order to maintain and promote a safer and more secure working and learning environment, the University of Maryland (UMD) is expanding its process for conducting pre-employment background reviews as a condition of employment. This expansion is authorized per **USM Policy VII-1.15 – POLICY ON CRIMINAL BACKGROUND CHECKS FOR FACULTY AND STAFF EMPLOYEES**. The requirement will apply to all selected candidates and contract employees for positions within UMD. With the exception of Public Safety, all appropriate background check activities will be coordinated with University Human Resources (UHR) and the Office of Faculty Affairs (OFA).

SUGGESTION FOR HOW YOUR PROPOSAL WOULD BE PUT INTO PRACTICE

UHR and OFA have developed explicit, uniform processes and procedures for conducting background checks and verifications for the hiring process.

ADDITIONAL INFORMATION

According to the FBI 2010 report on targeted violence affecting institutions of higher education, there were 53,125 crimes on campuses around the country ranging from murder to arson - (<https://www.fbi.gov/stats-services/publications/campus-attacks>). For example:

- 2019 - Oregon State University employee convicted of rape of student employee
- 2019 – University of Virginia professor convicted of assault and battery
- 2014 – University of Pittsburgh professor convicted of murder of colleague/wife via poison purchased through university lab
- 2012 - University of Alabama Huntsville professor convicted for murder of three colleagues
- 2010 - Professor kills three professors and injures three others at University of Alabama Huntsville
- 2008 - Staff member sets himself on fire at University of Washington
- 1992 - University of Toledo police officer convicted in murder of student

Although we are in compliance with mandated areas, there is no central authority, repository, or centralization for conducting background checks or verifying education, credentials, or prior work history. In addition, there are thousands of employees (faculty, staff, and students) who do not have background checks performed before employment at the university, and these employees often work in occupations that could pose a risk to the University if left unchecked.

VII – 1.15(A) – UNIVERSITY OF MARYLAND POLICY ON CRIMINAL BACKGROUND CHECKS

I. PURPOSE AND SCOPE

A. Purpose: This policy outlines the University's use of background checks to support a safe and secure campus environment in order to protect students, employees, property, information, and the public, as well as to enable prudent employment decisions based on comprehensive information. This policy establishes the University's use of background checks in compliance with the USM Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15).

B. Scope: A criminal background check is required for all newly hired employees and all returning employees with a break of one (1) year or more in service. In certain cases, volunteers may also be subject to a criminal background check. Primarily, these background checks shall apply to:

1. Paid full-time and part-time tenured and tenure track faculty, professional track faculty, adjunct faculty, all librarian faculty, and faculty holding administrative positions.
2. All Regular and Contingent, Exempt and Non-Exempt, Bargaining and Non-Bargaining Staff Applicants.

Typically, University Human Resources will coordinate background check activities. In the case of faculty hires, the Office of Faculty Affairs will also be included in the process.

II. BACKGROUND CHECKS

A. Mandatory Background Checks: Under state and federal law, institutions are required to obtain and review Criminal Justice Information Services (CJIS) criminal background checks for their employees under certain circumstances, as described within the USM Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15).

B. Permissive Background Checks: In addition to the circumstances under which the University must obtain and review a background check, the University exercises its discretion to require background checks of applicants and volunteers. The standards and processes for guiding the acquisition of permissive criminal background checks are described in the Procedures for Criminal Background Checks.

C. If a foreign national has been residing in the United States for twelve (12) months or more prior to their appointment, they will be required to undergo a criminal background check. If the foreign national has been residing in the United States for less than twelve months prior to their appointment, they will have obtained the necessary background clearances through the Department of Homeland Security and do not have to go through a criminal background check, but will have to submit the background information form to the vendor.

III. RIGHT TO REFUSE EMPLOYMENT

The University reserves the right to decline employment to any applicant whose criminal background is deemed incompatible with the position the applicant is seeking.

Any candidate who provides false or misleading information will be eliminated from further consideration of any position within the University for three (3) years. If false or misleading information is discovered after the candidate has been appointed in a faculty, staff, or executive management position, this will be regarded as grounds for disciplinary action up to and including termination, pursuant to the appropriate dismissal procedures.

IV. UNIVERSITY RESPONSIBILITIES

A. University Human Resources and the Office of Faculty Affairs are responsible for developing standards and procedures for the acquisition and use of criminal background checks, consistent with this policy.

B. In order to provide the maximum degree of protection for a candidate's privacy, all records pertaining to criminal background checks will be maintained in a secure location separate from personnel records. Criminal background check records will be maintained on a confidential basis to the maximum extent required by law.

C. In compliance with federal and state law, this policy prohibits the University from using CJIS Criminal Background Checks or information obtained therefrom to make employment decisions that include discrimination based on race, color, sex, pregnancy, gender identity or expression, sexual orientation, marital status, age, national origin, political affiliation, physical or mental disability, religion, protected veteran status, genetic information, personal appearance, or any other legally protected status in all aspects of employment.

D. The University shall not deny employment to an applicant based solely on a record of arrest in the absence of a conviction, other criminal penalty, or substantiation of facts underlying the arrest which relate to the applicant's fitness to perform the duties of the job.

E. University Human Resources and the Office of Faculty Affairs provides training to hiring officials and hiring coordinators who hire employees regarding the appropriate methods for acquiring, using, and maintaining background check information.

V. APPEALS PROCESS

A candidate may dispute the accuracy or completeness of the records included in the background check, and may provide additional information for the University's consideration.

Related USM Policies

VI - 1.50 - Policy on the Reporting of Suspected Child Abuse and Neglect

VII - 1.01 - Policy on Recruitment and Selection

VII - 1.15 – Policy on Criminal Background Checks for Faculty and Staff Employees

VII - 1.24 - Policy on Termination with Prejudice

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Background Check Procedures for Hiring Authorities

I. INTRODUCTION

To maintain and promote a safer and more secure working and learning environment, UMD conducts background checks as a condition of employment. These procedures are intended to guide the verification of credentials, criminal history, and other information related to employment and appointment decisions to assist the University of Maryland, College Park (UMD) in meeting its commitments.

These procedures are authorized per USM Policy VII-1.15 – POLICY ON CRIMINAL BACKGROUND CHECKS FOR FACULTY AND STAFF EMPLOYEES and the corresponding UMD Policy VII-1.15(A). Background checks are required for all candidates selected as finalists for positions within UMD. With a few exceptions¹, all appropriate background check activities are to be coordinated with University Human Resources (UHR). In the case of faculty hires, the Office of Faculty Affairs (OFA) is also be included. Pre-employment background checks are conducted at the unit/department's expense. The University contracts with a third-party provider to conduct the background checks.

II. POSITIONS ELIGIBLE FOR A BACKGROUND CHECK

Based on the presumption that the following categories meet one or more of the tests set forth in policy, the following positions are subject to a criminal background check prior to hire:

- Paid full-time and part-time tenured and tenure track faculty, professional track faculty, adjunct faculty, all librarian faculty, and faculty holding administrative positions.
- All Regular and Contingent, Exempt and Non-Exempt, Bargaining and Non-Bargaining Staff Applicants.

The President, Provost, and Vice President of Administration and Finance (or their designees) will have the ability to waive the background check on a case by case basis for unique and compelling circumstances.

III. TYPES OF BACKGROUND CHECKS

Basic Checks

A basic background check is required for all new hires, and all re-hires with a break in service of one (1) year or more. A description of the various types of background checks is included in Appendix A. At a minimum, the basic background check includes the following:

- Criminal Felony and Misdemeanor up to and including the last 10 years
- Federal Criminal – all districts as revealed per trace

¹ Currently, examples of these exceptions include: the Department of Public Safety, the Center for Young Children, units with personnel connected to the nuclear reactor and units with personnel connected to youth programs.

- Statewide Criminal Search (current state of residence)
- SSN Trace
- SSN Validation
- Education Report
- National Sex Offender Registry
- Wide Screen Plus National Criminal Search

Optional Checks

Other optional screens and searches as are appropriate to the position (e.g. credit checks [as allowed by law], professional license checks, professional reference checks) may be requested by the unit/department. A list of positions that may require additional checks may be obtained from UHR.

Timeline for Background Checks

On average, background checks are returned within 72 hours, provided all information was supplied by the candidate, the information was accurate, and that the candidate responds to requests for information from the vendor timely.

IV. CRITERIA FOR DETERMINING ELIGIBILITY FOR HIRE

The results of a background check are assessed by the vendor according to criteria provided by the University, and results are subsequently assessed by the University to determine whether the selected finalist is eligible to be hired. The assessment of a selected finalist with a criminal history will consider:

- The nature and gravity of any criminal offense(s);
- The individual's age at the time of the offense(s);
- The number and type of offense(s) (felony, misdemeanor, traffic violations, etc.);
- The sentence or sanction for the offense(s) and compliance with the sanction(s);
- The amount of time that has passed since the offense and/or the completion of the sentence(s);
- Whether there is a pattern of offense(s);
- Whether the offense arose in connection with the applicant's prior employment;
- Information supplied by the applicant about the offense(s);
- Work record and references after the offense(s);
- Subsequent criminal activities;
- Truthfulness of the applicant in disclosing the offense(s).

The University shall not deny employment to an applicant based solely on a record of arrest in the absence of a conviction without evidence of other criminal penalties or substantiation of facts underlying the arrest which relate to the applicant's fitness to perform the duties of the job.

Employees who participate in the assessment of a candidate's criminal history shall be trained on the use of the criteria.

V. CONSIDERATIONS FOR ADVERSE FINDINGS

Selected finalist with convictions in the following areas are thoroughly reviewed:

- Crimes against children, students, the elderly, or the disabled
- Hate crimes
- Physical violence or weapons violations
- Sex offenses
- Stalking and harassment
- Embezzlement (particularly for accounting/cash handling positions)
- Burglary or home invasion
- Forgery
- Arson
- Misuse of access to confidential information/technology
- Illegal use of drugs and pharmaceuticals
- Traffic offenses other than minor violations (particularly for positions that require driving)

VI. BACKGROUND CHECK PROCESS

Selected finalists for all eligible positions are subject to the basic check as described above. Units/departments should decide if any optional checks should be conducted based on the position.

Posting/Search Guidelines

In cases where the position will be filled through a posting and search process, the posting must include language stating that the position is subject to a background check. The following process will be used:

1. The unit/department creates the Job Posting in eTerp. eTerp should be pre-populated with language such as: ***University of Maryland conducts background screenings on job candidates upon acceptance of a contingent job offer and may use a third-party administrator to conduct background screenings. Background screenings are performed in compliance with the Fair Credit Reporting Act. A signed authorization for release of personal information will be required if selected as a finalist.*** Upon creating the job posting in eTerp, the unit/department should determine if the position will require any optional checks beyond the basic background check.
2. The unit/department completes the search and selection process as specified in the Search and Selection Guidelines <insert hyperlink to guidelines>.
3. Once a final candidate is selected, the unit/department is to follow the Conditional Offer process outlined below.
4. The unit/department should not release other candidates from the search pool until the background check process is completed. In the event the selected candidate does not clear the background check process, and the conditional offer is rescinded, the

unit/department may identify another candidate and complete additional reference checks as required until the position is filled.

5. If a position is a split position, the unit with the primary position is responsible for initiating the background check.

Non-Posted Positions

Candidates for positions that are not filled through a posting and search process, such as Contingent I staff, Adjunct Faculty, and employees hired through a Search Waiver, are subject to a basic check as described above. Units/departments may decide that optional checks should also be conducted, based on the position. The unit/department should give the candidate a link to the background check application at the time a conditional offer is extended, as described below. The background check process must be completed before the hire is finalized or a contract is signed.

Conditional Offers

1. The unit/department is responsible for making a conditional offer of employment for faculty and staff candidates. The following language should be included in offers of employment: ***"This offer of employment is contingent on the satisfactory completion of a background screening. Using the link below, please begin the background check process. It is critical that you complete this information as soon as possible to expedite the hiring process (add link here)."***
2. Separate from the conditional offer letter, the candidate will be given a release form that states: ***"I have read and understand the provisions of this offer of employment, and I accept the above conditional job offer." Date: Signature: Here is a sample document <add link to a sample>.***
3. The candidate will receive the e-mail, fill in the information, sign the release, and submit the form directly to the vendor.
4. The UHR/OFA coordinator is notified in the background check system that the check is in progress, completed, or pending adjudication. The UHR/OFA coordinator may also view real time notes in the system for updates or get alerts/notifications.
5. The unit/department records the confirmation ID number in PHR when he/she builds the appointment to document the date the check was completed.

Results of Background Checks

1. No Adverse Finding

In cases where there is no adverse finding, the vendor will send UHR a report showing no adverse findings. UHR will notify the hiring official to proceed with official hire. In the case of faculty hires, the OFA will also be notified.

2. Adverse Finding

If adverse findings are present, UHR, and/or OFA, and/or general counsel notifies the hiring official of the findings, and works with them to determine eligibility to hire using the criteria stated above. If the decision is to not hire, then the UHR/OFA coordinator

notifies the vendor to send the pre-adverse action letters and the selected finalist will be given the opportunity to dispute with the Hiring Official, UHR/OFA if so desired.

If there is disagreement between UHR/OFA and the hiring official over whether the selected finalist is eligible to be hired, the Assistant Vice President of UHR and/or the Associate Provost of the OFA consults with the hiring official and other university departments such as, Office of General Counsel and Public Safety to provide guidance on how the criteria should apply given the relevant adverse findings.

In the rare event there is still disagreement, the Vice President for Administration and Finance and the Provost are consulted and provide guidance to the hiring official as the hiring official works to make the final determination on eligibility to hire.

If a determination is made that the candidate is not eligible to hire for the position, the vendor sends the pre-adverse or adverse action letters as appropriate. The selected finalist may dispute the accuracy or completeness of information. A selected finalist is provided seven (7) business days to dispute any information they believe is not accurate, or requires supporting information. After seven business days, the hiring official may move to the next candidate for hiring.

VII. NONDISCRIMINATION

Even a neutral policy or practice regarding Background Investigations has the potential to have a disparate impact on a class of individuals. No candidate or covered person may be excluded from employment based upon generalized University policies or practices regarding the use of background investigations without an individual assessment that includes the factors described in this section.

In compliance with federal and state law, these procedures prohibit the University from using background checks or CJIS Criminal Background Checks or information obtained therefrom to make employment decisions based on race, color, national origin, sex, religion, disability, genetic information (including family medical history), age, or any other protected characteristic. Adverse impact is regularly monitored through the University's Affirmative Action Plan.

VIII. APPEALS PROCESS

In the event the selected finalist disputes the factors surrounding the accuracy or completeness of the review after the background check process is completed, he/she may provide additional information and evidence to the hiring official, UHR, and/or OFA for the University's consideration. The hiring official, in consultation with UHR and/or OFA, Office of General Counsel, and Public Safety should consider whether the additional information was available or considered when the selected finalist was given the opportunity to work with the vendor to validate or correct data. The hiring official, in consultation with UHR and/or OFA and other offices (e.g. Office of General Counsel, Public Safety) may reconsider the final determination if appropriate.

IX. CONFIDENTIALITY OF CRIMINAL RECORD INFORMATION

Background check records are maintained by the vendor for six (6) years, in accordance with federal and state law and regulations. The University may review records at any time.

Records are kept confidential, maintained securely, are not subject to disclosure to any individual except to the extent necessary to administer and enforce these procedures, or as required by law or appropriate legal process.

X. UNIVERSITY RIGHTS

The University reserves the right to decline employment to any applicant whose pre-employment criminal history is deemed incompatible with the position the applicant is seeking. Nothing in these procedures negates the possibility of performing a more comprehensive background check pursuant to state or federal law for certain sensitive positions such as those with significant financial responsibilities, or for existing faculty, staff, or executive management who are:

- (1) legally required to have a background check;
- (2) required to have a criminal background check to conduct youth programs on campus;
- (3) working in facilities that require a criminal background check; or
- (4) assigned new duties that involve significant safety or security considerations or financial responsibilities.

Effective Date: _____