



**Review of the Interim University Policy on Criminal Background Checks (Senate Document #21-22-21)**

**TO Darryll J. Pines | President**

**FROM Ellen D. Williams | Chair, University Senate**

I am pleased to forward the accompanying legislation for your consideration and approval. William Reed, Chair of the Faculty Affairs Committee, and Lisa Klein, Chair of the Staff Affairs Committee, presented the committees' Review of the Interim University Policy on Criminal Background Checks (Senate Document #21-22-21), which the University Senate approved at its meeting on April 26, 2022. Please inform the Senate of your decision and any administrative action related to your conclusion.

**Approved:**

**Darryll J. Pines  
President**

**Date:**

**05-11-2022**

Copies of this approval and the accompanying legislation will be forwarded to:

- Jennifer King Rice**, Senior Vice President and Provost
- Reka Montfort**, Executive Secretary and Director, University Senate
- Michael Poterala**, Vice President and General Counsel
- Dylan Baker**, Associate Vice President for Finance and Personnel
- John Bertot**, Associate Provost for Faculty Affairs
- Elizabeth Beise**, Associate Provost for Academic Planning & Programs
- Rhonda Smith**, Director, Division of Academic Affairs
- Rythee Lambert-Jones**, Assistant Vice President, University Human Resources
- Michele Eastman**, Assistant President and Chief of Staff, Office of the President
- Carlo Colella**, Vice President for Administration
- Anne Martens**, Assistant Vice President and Chief of Staff, Division of Administration
- Kimberly Watson**, Assistant Vice President Procurement & Business Services, Division of Administration
- William Reed**, Chair, Faculty Affairs Committee
- Lisa Klein**, Chair, Staff Affairs Committee

**Enclosure – Memo: Senate Document #21-22-21, Review of the Interim University Policy on Criminal Background Checks**



OFFICE OF THE PRESIDENT

May 11, 2022

MEMORANDUM

**TO:** Professor Rochelle Newman  
Chair, University Senate

**FROM:** Darryll J. Pines   
President

**SUBJECT:** Senate Document #21-22-21, Review of the Interim University Policy on  
Criminal Background Checks

I approve the above-referenced Senate Document on Criminal Background Checks subject to the two clarifications below.

- 1) The “Recommendations for Implementation” will be excluded from the policy—currently they appear to be one document—and only the policy will be posted on the university’s website. On the advice of the university’s Vice President and General Counsel, we need to avoid any confusion whereby applicants or others see the recommendations and rely on them as if they were policy.
- 2) With respect to the set of implementation recommendations, I believe these are very detailed in directing how University Human Resources (UHR) should implement, down to details on the data to be collected and that UHR should use expertise outside of UHR to analyze the data. Administrators with fiduciary responsibilities need the maximum flexibility to implement policies. Some of the recommendations may require significant resources, both financial and personnel. I accept the Administrative Recommendations with the following edits **in bolded red**. Please note that there are no changes to the Administrative Recommendations numbered six through nine and are included for reference only.
  1. The committees recommend that the University should **consider** developing guidance for applicants and finalists on what to expect in the background check process, including clarifying information on the specific time period covered by a criminal background check, the steps in the University’s review process, how criminal history will be assessed relative to the position, and that a criminal history does not automatically disqualify a Finalist from employment.
  2. The University should **consider** providing information to applicants who receive a pre-adverse action letter on the process for disputing the accuracy or completeness of the records or otherwise providing additional information to contextualize an adverse finding. The University should also **consider** providing information on assistance that

can be provided or may be available to resolve issues related to language and access barriers.

3. The University should **consider taking** steps to protect the privacy rights of Finalists by ensuring that the direct hiring official for the position or search cannot request a Finalist's birth name or legal name for purposes of conducting a background check.
4. The University should **consider collecting** data on applicant pools, finalists, and the background check process in order to inform reviews of the efficacy and impact of the policy. Data to **consider collecting might** include, but not be limited to, the following:
  - Statistics and demographic data on applicant pools and finalists broadly by job title, both from prior to and after the implementation of the policy;
  - Statistics and demographic data on those for whom a pre-adverse action letter is issued;
  - Statistics and demographic data on those for whom the adverse finding results in an offer of employment being rescinded;
  - Demographics as noted above should include race, gender, ethnicity, veteran status and/or disability status, to the extent provided by the applicant; and
  - Eligibility to hire success and failure rates in cases where there was an adverse finding by type of position and salary range.
5. The University should **consider reviewing** the data collected on the background check process every three years to consider whether the policy is having an impact on hiring generally, as well as whether the policy has a disproportionate impact on applicants from marginalized backgrounds. The University should **consider leveraging** existing expertise on campus in collecting and interpreting these types of data and assessing the impact of background checks on the University's diversity, equity, and inclusion goals. University Human Resources should **consider reporting** to the Senate Executive Committee on the results of the review.
6. The University should consider developing a plan for communicating information on the background check process clearly and consistently to applicants in plain language, both on the application and through other information available to applicants online.
7. The University should consider whether the process for reviewing the results of a background check received from the vendor could take a double-blind approach, or whether the University can take other steps to remove personally identifiable information from documentation prior to the review by the Hiring Eligibility Review Group (HERG).
8. The University should consider how background checks should be implemented in instances where a student employee needs to transition to a staff position for a period of up to six weeks in order to complete their employment following their graduation.

Professor Rochelle Newman

May 11, 2022

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9. The University should consider assessing its agreements with third-party contractors and vendors whose employees work in University facilities to determine whether those employees are or should be subject to a background check with their employers.



## **Review of the Interim University of Maryland Policy on Criminal Background Checks**

**PRESENTED BY** William Reed and Lisa Klein, Chairs

**REVIEW DATES** SEC – April 12, 2022 | SENATE – April 26, 2022

**VOTING METHOD** In a single vote

**RELEVANT POLICY/DOCUMENT** [VII-1.15\(A\)](#) – University of Maryland Policy on Criminal Background Checks

**NECESSARY APPROVALS** Senate, President

### **ISSUE**

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The University Senate’s Faculty Affairs and Staff Affairs Committees have been reviewing issues associated with criminal background checks since 2019. In April 2019, the committees were charged with considering a proposal on whether to institute a policy requiring criminal background checks for all new hires of faculty and staff employees. A joint subcommittee was created, and thought its work was delayed by the pandemic, it developed its final recommendations in June 2021. In September 2021, President Pines informed the Senate Leadership and the Senate Executive Committee (SEC) that after consulting with the Office of General Counsel, he decided that it was important for the University to have a criminal background policy in place as soon as possible. He stated that he would be approving a new University policy on criminal background checks on an interim basis, pending Senate review. Following the President’s action, the SEC voted to jointly charge the Faculty Affairs & Staff Affairs Committees with a review of the Interim University of Maryland Policy on Criminal Background Checks, and to close the committee’s pre-existing charge on criminal background checks, at its meeting on September 20, 2021. On September 22, 2021, the President formally announced his approval of the new University of Maryland Policy on Criminal Background Checks (VII-1.15[A]), effective October 1, 2021.

### **RECOMMENDATION(S)**

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The Faculty Affairs Committee and Staff Affairs Committee jointly recommend that the proposed revisions to the Interim University of Maryland Policy on Criminal Background Checks (VII-1.15[A]), as shown immediately following this report, be approved.

In addition, the committees present nine additional administrative recommendations to guide the implementation of the policy and the criminal background checks process. All recommendations can be found in the report.

### **COMMITTEE WORK**

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The Faculty and Staff Affairs Committees began their review of the interim policy in October 2021. Each committee reviewed the charge; the USM Policy on Criminal Background Checks for Faculty

and Staff Employees (VII-1.15); the Interim University of Maryland Policy on Criminal Background Checks (VII-1.15[A]); the report from the Joint Faculty and Staff Affairs Committee Criminal Background Check Subcommittee; and policies at other USM institutions on criminal background checks in the course of their review.

The committees met with the Chief Human Resources Officer, the Vice President and Chief Administrative Officer, and the Deputy General Counsel from the Office of General Counsel to learn more about the need for the interim policy and the legal framework surrounding criminal background checks. The committees also consulted with the Associate Provost for Faculty Affairs and the Vice President for Diversity & Inclusion, and received information from the Department of Criminology and Criminal Justice (CCJS) on scholarly research related to criminal background checks.

In the course of their reviews, the Faculty Affairs and Staff Affairs Committees raised concerns about the need for criminal background checks, as well as the potential impact of criminal background checks on underrepresented minority applicants for faculty and staff positions. However, the committees recognized that the President and the administration felt strongly that this was a necessary step for the University as a major employer. The committees felt that the rationale put forth by the institution, related to minimizing liability and institutional risk, were likely strong motivators for the President. The committees decided to focus their discussions on whether there are ways to improve the policy and process, in order to better align with the institution and the President's stated goals for recruiting a diverse faculty and staff. The committees each identified specific issues that impact faculty and staff, and considered ways to address them within the policy and the recommendations.

In spring 2022, the committees focused their reviews on the specific decision-making aspects of the charge and on the policy language. They developed recommendations that were supported by both committees. After due consideration, the Faculty Affairs and Staff Affairs Committees voted to approve proposed revisions to the interim policy and associated administrative recommendations via an email vote concluding on April 11, 2022.

## **ALTERNATIVES**

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The Senate could decline to approve the recommendations. However, the interim policy would stand as the permanent policy, and the University would lose an opportunity to improve the policy and process for future finalists and other affected individuals.

## **RISKS**

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There are no risks to the University in adopting these recommendations.

## **FINANCIAL IMPLICATIONS**

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There may be financial implications involved in implementing the recommendations, in addition to the financial implications of background checks, which are currently being addressed centrally.



## **REVIEW OF THE INTERIM UNIVERSITY OF MARYLAND POLICY ON CRIMINAL BACKGROUND CHECKS**

### **Faculty Affairs Committee**

**William Reed** (Chair)  
**John Bertot** (Ex-Officio - Provost's Rep)  
**Michele Eastman** (Ex-Officio - President's Rep)  
**Alex Franklin** (Graduate Student)  
**Mark Fuge** (Faculty)  
**Saverio Giovacchini** (Faculty Senator)  
**Tracy Huard** (Faculty Senator)  
**Gideon Mark** (Faculty Senator)  
**Rythee Lambert-Jones** (Ex-Officio - Director of Human Resources Rep)  
**Shawn Nijjar** (Undergraduate Student)  
**Karen O'Brien** (Ex-Officio - Ombuds Officer)  
**Jessica O'Hara** (Faculty)  
**Colleen O'Neal** (Faculty)  
**Terry Owen** (Faculty)  
**Autumn Perkey** (Graduate Student)  
**Mary Shelley** (Staff)  
**Beth St Jean** (Faculty)  
**Wendy Stickle** (Faculty)  
**Jennifer Wallace** (Faculty Senator)

### **Staff Affairs Committee**

**Lisa Klein** (Chair)  
**Alex Aiosa** (Non-Exempt Staff Division)  
**Joseph Azzarello** (Exempt Staff Division)  
**Amelia Barabak** (Ex-Officio - Provost's Rep)

**Meredith Carpenter** (Ex-Officio - CUSS Rep Non-Voting)  
**Shirlene Chase** (Ex-Officio - VP Student Affairs Rep)  
**Marie-Justine Curney** (Non-Exempt Staff Academic)  
**Joni Floyd** (Faculty)  
**Anthony Harmon** (Non-Exempt Staff Division)  
**Elizabeth Hinson** (Ex-Officio - CUSS Rep)  
**Dolores Jackson** (Ex-Officio - CUSS Rep Non-Voting)  
**Shafali Jalota** (Non-Exempt Staff Contingent II)  
**Jerry Lewis** (Ex-Officio - CUSS Rep Non-Voting)  
**Anne Martens** (Ex-Officio - VP Administration Rep)  
**Raymond Nardella** (Exempt Staff Division)  
**Louisa Nkrumah** (Exempt Staff Contingent II)  
**Shivani Paleti** (Student)  
**Kalia Patricio** (Ex-Officio - CUSS Rep)  
**Jacqueline Richmond** (Ex-Officio - Director of Human Resources Rep)  
**Manuel Rodriguez** (Exempt Staff Academic)  
**Maureen Schrimpe** (Ex-Officio - CUSS Rep)  
**Kristin Stenson** (Exempt Staff Academic)  
**Amy Yaich** (Non-Exempt Staff Academic)

### **Date of Submission**

**April 2022**

## **BACKGROUND**

In April 2019, the University Senate's Faculty and Staff Affairs Committees were charged with reviewing a proposal ([Senate Document #18-19-36](#)) from key administrators that cited potential risk to the University from the lack of a policy requiring criminal background checks for all new hires for faculty and staff positions. The proposal suggested that the University should develop a new criminal background check policy that would expand the scope of criminal background checks beyond the existing mandatory pre-employment background reviews that were already a condition of employment for certain positions, as required by law and noted in the University System of Maryland (USM) Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15). The committees formed a joint subcommittee that was tasked with tackling this complex issue by conducting the background research and consultations defined in the charge in order to make a recommendation to the full committees. While the subcommittee was in the depth of its work, it was significantly derailed by the onset of the Covid-19 pandemic in March 2020, which not only affected its ability to operate but also made it challenging for the subcommittee to engage with relevant

administrators on its work. Despite these issues and the ongoing pandemic, the subcommittee finalized its recommendations in June 2021.

In September 2021, President Pines informed the Senate Leadership and the Senate Executive Committee (SEC) that after consulting with the Office of General Counsel, he decided that it was important for the University to have a criminal background policy in place as soon as possible. He stated that he would be approving a new University policy on criminal background checks on an interim basis, pending Senate review. Following the President's action, the SEC voted to jointly charge the Faculty Affairs & Staff Affairs Committees with a review of the Interim University of Maryland Policy on Criminal Background Checks, and to close the committee's pre-existing charge on criminal background checks, at its meeting on September 20, 2021 (Appendix 1). On September 22, 2021, the President formally announced his approval of the new Interim University of Maryland Policy on Criminal Background Checks (VII-1.15[A]), effective October 1, 2021.

## **PRIOR COMMITTEE WORK**

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The Joint Faculty and Staff Affairs Committee Criminal Background Check Subcommittee considered how the proposed criminal background checks would work in practice, reviewed policies and practices at Big 10 and other peer institutions, and considered the impact of criminal background checks on potential applicants who have criminal or arrest records. The subcommittee consulted extensively with representatives of University Human Resources (UHR); the Division of Administration; the University of Maryland Police Department; the Office of Diversity and Inclusion; the Office of General Counsel; and the Office of Faculty Affairs. It also reached out to units that it felt may be most affected by such a policy due to their need for high numbers of seasonal and temporary staff, in order to gather feedback on and assess the impact of a policy of this nature.

The Joint Subcommittee thoroughly considered a number of complex issues, related to the impact of a potential policy on underrepresented minorities; the potential cost and logistical concerns related to such a policy; and how to ensure appropriate consideration of criminal background checks in alignment with the University's diversity, equity, and inclusion principles.

After a thorough review, the Subcommittee finalized its recommendations in June 2021. It recommended that the University adopt a limited policy that expands criminal background checks to certain positions, rather than to all positions. The Subcommittee determined that it was unclear whether criminal background checks would increase safety, because many violent crimes do not result in convictions, and since many incidents are first offenses and crimes of opportunity. The Subcommittee felt that the limited benefits to the safety of the campus community were outweighed by the potential negative implications of criminal background checks, particularly for those from underrepresented minority backgrounds who may face unequal treatment by the criminal justice system. The Subcommittee developed its recommendations with the objective of enhancing safety while upholding the University's values related to equity and equal employment opportunity.

## **INTERIM POLICY**

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On September 22, 2021, the University community was informed that the President had approved a new University of Maryland Policy on Criminal Background Checks (VII-1.15[A]), effective October 1, 2021. In a message to the campus community, the Vice President & Chief Administrative Officer and the Assistant Vice President and Chief Human Resources Officer noted that the University of Maryland has a responsibility as a major employer in the County and as the State's flagship institution "to provide as safe a learning and working environment for the UMD community as

possible” and indicated that conducting pre-employment criminal background checks is an important step to “reduce the risk of negligent hiring liability” (Appendix 2).

The interim policy indicates that the University is in compliance with the University System of Maryland Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15), which requires mandatory criminal background checks through the Criminal Justice Information System (CJIS) for specific types of positions. Beyond the mandatory checks, the interim policy explains that the University of Maryland also requires a criminal background check for all new hires of faculty and staff employees, as well as any hires of returning employees with a break in service of one year or more. The policy notes that volunteers may also be subject to a criminal background check. These provisions affect all full-time and part-time employees; they do not affect student employees or graduate assistants, until and unless they move into a faculty or staff position.

The interim policy notes that University Human Resources and the Office of Faculty Affairs will develop procedures and standards for implementing the policy. The policy clearly states that the University reserves the right to decline employment due to the results of a criminal background check review, and that finalists will not be denied employment due to an arrest record alone without additional convictions or criminal penalties. The policy also allows finalists to dispute the accuracy or completeness of the Criminal Background Check.

A phased implementation of the policy began in October 2021. UHR, working with various partners in the administration, developed a process for running and reviewing criminal background checks, and began deploying the process in October.

## **IMPLEMENTATION PROCEDURES**

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In order to implement the interim policy, the University has developed a contract with HireRight, a criminal background check screening services vendor that is already used by the University of Maryland - Baltimore (UMB), as well as a majority of other Big 10 institutions. When hires are initiated as the result of a search process, a finalist is given an offer letter that indicates that the offer is conditional on the successful completion of a criminal background check. The letter provides a link for the finalist to begin the criminal background check process with HireRight. When new hires do not require a formal search process, the individual must be given the link to begin the process prior to being added to the Payroll and Human Resources (PHR) database.

After HireRight receives the necessary information from the finalist, it will run a criminal background check that includes a criminal felony and misdemeanor check for the past seven years, as well as a check against the National Sex Offender Registry. Criminal background check results will typically be returned to the University within 72 hours or less. The results will note any criminal convictions or other notable flags on an individual’s record as “adverse findings;” the results are reviewed by the UHR Employment Compliance Team. In the case of an adverse finding, the UHR Team will conduct an individualized assessment of the offense and the job duties, and may reach out to the unit Equity Administrator for more information about the position, if needed. At the conclusion of the review by the UHR Employment Compliance Team, if the individualized assessment indicates that the individual is eligible to be hired, UHR will inform the Hiring Official.

If the criminal background check cannot be resolved by the UHR Employment Compliance Team and needs further consideration, UHR will initiate the process to send the finalist a "Pre-Adverse Action Letter," which details the results of the criminal background check and informs the finalist of their right to provide additional context to the University or correct information in the report. The finalist has seven days to respond.

Further consideration of the criminal background check is undertaken by the Hiring Eligibility Review Group (HERG), which is made up of the Chief Human Resources Officer (CHRO), the Associate Provost for Faculty Affairs, a representative of the Office of General Counsel, a representative of the University of Maryland Police Department (UMPD), and the appropriate Equity Administrator. HERG is responsible for reviewing the criminal background check results as well as any additional information or context provided by the finalist in response to the pre-adverse action letter. HERG then conducts an individualized assessment to make a determination on eligibility to hire. If HERG determines the finalist is eligible to hire and the CHRO agrees, UHR informs the Hiring Official that the finalist is cleared to be hired. If the HERG recommends that the finalist not be hired, it will consult with the appropriate Dean or Vice President (VP). The CHRO, in consultation with the Dean or VP, makes the final decision. If the hire is not approved, UHR will notify the Hiring Official, but no details about the criminal background check are given. UHR will also send a final adverse action determination letter to the finalist, and will either rescind the conditional offer of employment or terminate employment, in the rare case that a finalist has been approved to begin working while the criminal background check results are pending.

## **COMMITTEE WORK**

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The Faculty and Staff Affairs Committees began their review of the interim policy in October 2021. Each committee reviewed the charge elements; the USM Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15); the Interim University of Maryland Policy on Criminal Background Checks (VII-1.15[A]); and the report from the Joint Faculty and Staff Affairs Committee Criminal Background Check Subcommittee. The committees also reviewed policies at other USM institutions on criminal background checks in the course of their review.

Early in the review, the committees each met with the Chief Human Resources Officer, the Vice President and Chief Administrative Officer, and the Deputy General Counsel from the Office of General Counsel to learn more about the need for the interim policy and the legal framework surrounding criminal background checks. Both committees had opportunities in their meeting and in subsequent follow-ups to ask questions of administrators. The committees also consulted with the Associate Provost for Faculty Affairs and the Vice President for Diversity & Inclusion during the review, and received information from the Department of Criminology and Criminal Justice (CCJS) on scholarly research related to criminal background checks.

In spring 2022, the committees focused their reviews on the specific decision-making aspects of the charge and on the policy language, using a decision matrix and Google form surveys of the committees to guide their discussions. The chairs of the two committees collaborated to align the work between the two committees, and each committee met at the end of March to develop recommendations that were supported by both committees. After due consideration, the Faculty Affairs and Staff Affairs Committees voted to approve proposed revisions to the interim policy and associated administrative recommendations via an email vote concluding on April 11, 2022.

Major considerations of the review process are summarized below.

### *Peer Institution Research*

As requested in the charge, the committees conducted peer institution research on other USM institutions in order to better understand how institutions operating under the same USM policy and state laws address criminal background checks. The committees found criminal background check policies at nearly all USM institutions (Appendix 3). Findings from the research include the following:

- Most institutions in the USM focus on pre-employment criminal background checks and limit the policy focus to finalists; a few institutions have provisions that focus on current employees or go beyond finalists to any group of candidates or finalists.
  - Bowie State and Towson focus their policies on current employees.
  - Coppin State includes language extending the policy to current employees that take on new roles or change status, especially if the new position involves managing sensitive materials. These provisions apply to employees working in an interim or acting capacity.
  - Salisbury also includes “current employees who change jobs and whose new duties may be subject to a background check.”
  - Students are not included in criminal background checks at most USM peers; student employees are only addressed at Salisbury, Bowie State (if they are working with minors), and Towson (certain student employees who are engaged in highly sensitive activities).
  - Many peers explicitly include volunteers, and Salisbury addresses contractors as well.
- Most peers have provisions on false or misleading information, suggesting that it may lead to termination; most also have provisions noting that the focus is on convictions, not arrests.
- Where institutions address gaps in service, the time period ranges from three months (Coppin State) to three years (Salisbury); a time period is not specified in the policy for Frostburg, and gaps in service are not addressed in policies at UMGC, UMES, and Bowie State.
- Where appeals are discussed, they are typically in the form of correcting information or challenging information in the criminal background check. Towson University is the only USM peer to explicitly allow a finalist to challenge why the results of the criminal background check disqualified them from employment.

The committees also considered whether peer institution information outside of the State of Maryland would be instructive. The Joint Subcommittee had conducted research on Big 10 institutions in September of 2019 (Appendix 4), which both committees reviewed. However, the committees found that it is difficult to compare UMD’s situation with that of other Big 10 institutions on this particular policy, as other institutions are bound by state laws or system regulations that differ from those that affect UMD. The committees decided to rely on the USM peers in their consideration instead.

### *Legal Framework*

In their consultations, the committees learned that the University has a duty under the law to act reasonably as an employer, and courts expect that the University and all major employers exercise basic due diligence to learn about experiences or behaviors that could result in harm. Criminal background checks are widely accepted as a measure of due-diligence for employers to avoid liability for negligent hiring practices.

There are a few major laws and guidelines that provide a framework for pre-employment criminal background checks. The federal Fair Credit Reporting Act (FCRA) enforced by the Federal Trade Commission (FTC) sets guidelines and standards for using criminal background checks. It requires consent from finalists to conduct a criminal background check, and that finalists receive notice that a criminal background check may be used in employment decisions, as well as notice in the case of an adverse finding or action ([15 U.S.C. §§ 1681-1681x](#)). Prince George's County has a "ban the box" law that prohibits inquiring about criminal records until after an initial interview, and requires

that employers limit their consideration to offenses that specifically relate to the duties of the position for which the finalist is applying ([CB-078-2014](#)). This law also requires that if an offer is to be rescinded, the finalist must be notified; the notice must include the specific disqualifying information, a copy of the criminal background check, and details on how the finalist can submit additional information for consideration.

The University is also responsible to the Equal Employment Opportunity Commission (EEOC), which has established guidelines and best practices for the use of criminal background checks in employment to avoid claims of disparate treatment and disparate impact ([EEOC Enforcement Guidance Number 915.002](#)). The EEOC best practices include:

- Ensuring there is separation between the review of an individual's qualifications for the position and a review of the criminal background check report;
- Maintaining confidentiality of records;
- Conducting an individualized assessment of the finalist's criminal background, which take into account factors such as the nature and gravity of the offense and the length of time since the offense;
- Using non-discriminatory assessment criteria;
- Giving finalists an opportunity to correct inaccurate information in the report; and
- Limiting criminal background checks to the past 7 years.

The interim policy was developed with a focus on these best practices, as well as the parameters of the FCRA and the Prince George's County law.

### *Scholarly Research*

In the course of its review, the Faculty Affairs Committee consulted with representatives of the Department of Criminology and Criminal Justice (CCJS) to better understand scholarly research related to criminal background checks. The committee met with the chair of the department, Sally Simpson, and received additional information from faculty within and affiliated with the department. The Faculty Affairs Committee shared the research with the Staff Affairs Committee.

The scholarly research on criminal background checks is extensive, and includes research on the way criminal background checks are utilized, the consequences of criminal background checks, and the disparity that is associated with criminal records and the use of criminal records. An overview of the literature shows evidence of inequities in the distribution of criminal records across the population. Communities of color are disproportionately policed in American society, and therefore have a disproportionate likelihood of generating a record. This is related to where policing is targeted; the resources available or unavailable to the offenders; how likely offenders are to have their cases dismissed; and how likely offenders are to have additional information that is brought to bear on their case. In addition, research shows that having a criminal record increases the risk of subsequent charges and a more extensive criminal record.

The committees learned that the use of criminal background checks in employment decisions does not take into account the redemption effect noted by scholars in the field. Research suggests that as time goes on, a person with a criminal record is no more likely than anyone else to engage in criminal behavior. CCJS faculty noted that this raises concerns that criminal background checks introduce bias and stigma without clear empirical benefit. They also noted that there is evidence of significant issues with the accuracy of publicly available criminal history data, as sources of this

information often lack data quality standards or accountability and studies have confirmed errors in information gathered from public and third-party data sources that are used by most companies that conduct criminal background checks.

In higher education contexts, there is limited information on the efficacy of criminal background checks, and the few studies that exist related to higher education specifically do not show evidence that criminal background checks are an effective mechanism for reducing campus crime. However, surveys of the industry show that the vast majority of institutions do conduct criminal background checks on prospective faculty members. The research indicates that there are measures that can be taken to reduce negative effects of criminal background checks, including ensuring adherence to the EEOC guidelines and crafting explicit policies and procedures.

## COMMITTEE FINDINGS

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In the course of their reviews, the Faculty Affairs and Staff Affairs Committees raised concerns about the need for criminal background checks, as well as the potential impact of criminal background checks on underrepresented minority applicants for faculty and staff positions. The committees had early discussions that called into question whether they were allowed to explore recommendations to remove the policy entirely because of their strong concerns about diversity, equity, and inclusion. However, the committees recognized that the President and administration felt strongly that this was a necessary step for the University as a major employer. The committees felt that the rationale put forth by the institution, related to minimizing liability and institutional risk, were likely strong motivators for the President, and it would be very challenging to put forward a recommendation to remove the policy, even if the committee were to determine that the diversity, equity, and inclusion concerns should be weighed more heavily than issues of safety and institutional risk. Instead of pursuing further discussions down that path, the committees decided to focus their discussions on whether there are ways to improve the policy and process, in order to better align with the institution and the President's stated goals for recruiting a diverse faculty and staff.

The committees each identified specific issues that impact faculty and staff, and considered ways to address them within the policy and the recommendations. An overview of the key issues reflected in the recommendations is included below.

### *Impact on Marginalized Groups*

The overriding concern for both committees during the review was whether conducting criminal background checks would have a chilling effect that would adversely impact the diversity of applicant pools and eventually the diversity of the faculty and staff at the University. Both committees raised concerns that excellent candidates may choose not to apply, and also noted that criminal background checks may be perceived as undermining the University's commitment to diversity, equity, and inclusion.

Both committees focused much of their deliberations on ways to mitigate any harmful effects of criminal background checks. In considering any potential impacts on the LGBTQ+ community, the committees felt it important to ensure that applicants maintain control over how they present themselves to Hiring Officials, so they developed an administrative recommendation to ensure that finalists are not required to report their legal or birth name to the Hiring Official. In considering this recommendation, the committees noted that the vendor that runs the criminal background checks may still ask for the legal name; in that case, the finalist would be providing it to a third-party, rather than the individual who would become their supervisor if they were to be employed. The committees

also noted that the vendor will ask for other identifying information like Social Security numbers, which are more reliable and verifiable data points for conducting the criminal background check than the legal name.

In considering the potential impact of criminal background checks on underrepresented minority candidates, the committees were encouraged to learn that the University has incorporated the EEOC guidelines into its processes for considering the results of criminal background checks. A few key steps included in the University's process include:

- reviewing the results of criminal background checks centrally within UHR, rather than at the unit level, which ensures consistency in decision-making and also allows for more safeguards to ensure that Hiring Officials or other unit employees are not aware of the results of a criminal background check;
- conducting an individualized assessment of any adverse findings on criminal background checks to take into account various factors including the time since the offense, the nature and severity of the offense, and other factors that may mitigate or aggravate the offense;
- reviewing the adverse findings on the criminal background check against the specific responsibilities of the position and examining whether there is a business necessity for denying employment in each specific case;
- allowing finalists who have an adverse finding on a criminal background check to provide additional information and/or correct inaccurate information in the criminal background check; and
- considering the totality of the circumstances as the adverse findings are reviewed.

The committees noted that while the University may be implementing best practices and doing its due diligence to eliminate bias from the process, applicants and finalists currently do not have any information about the process that would lead them to believe their information will be handled sensitively. The committees felt that explaining and demystifying the process for reviewing criminal background checks is an important step the University should take to reduce any chilling effect on applicants and finalists. The committees developed recommendations related to communication of the policy, both on the job posting and on the UHR website, to help applicants understand the process and know what to expect.

### *Returning Employees*

The interim policy indicates that it applies to “all returning employees with a break in service of one (1) year or more” (see I.B. of the policy). The committees raised concerns over how long a criminal background check is valid for an intermittent employee, and whether the provision may have an outsized impact on seasonal workers and adjunct faculty.

The committees considered whether there may be faculty or staff who would be subject to repeated criminal background checks that may be unreasonable; for instance, the Faculty Affairs Committee explored issues related to adjunct faculty who consistently teach one semester each year but are not employed for the rest of the year, or who consistently teach a specific program requirement on an inconsistent timeline depending on the unit's needs. Likewise, the Staff Affairs Committee considered whether there may be seasonal workers who are employed around the same timeframe each year but are not employed consistently throughout the year. UHR reported that it has received feedback from Dining Services in particular that a 12-month gap in service may cause difficulties for some of its seasonal employees.

After consideration, both committees agreed that extending the gap in service provision to 18 months rather than 12 months would help to avoid any issues faced by returning seasonal workers or adjunct faculty, and they developed revisions to the policy to that effect.

### *Role of the Hiring Official*

In its prior review, the Joint Subcommittee identified concerns with the proposed criminal background check process due to the inclusion of the Hiring Official, given that Hiring Officials may have biases that could become a factor in the decision-making process or could bias their later decisions about work assignments or performance issues after a candidate becomes an employee. After the development of the interim policy, UHR clarified that it was implementing the policy in a way that removed Hiring Officials from the process; the results of the criminal background check are instead reviewed centrally by UHR and other administrative offices that have been trained on how to conduct criminal background checks in a neutral and unbiased manner.

Both committees were relieved to learn that the Hiring Official would not be a part of the process, as they agreed that allowing a Hiring Official to know that there was an adverse finding on a criminal background check, or to know what the adverse finding was, may bias them if the finalist later becomes their employee. The committees acknowledged that this may make it more difficult to assess the job-related responsibilities against the adverse finding, but UHR clarified that the relevant equity administrator would be included in the review process in order to provide a local perspective.

While the implementation of the interim policy does not currently include Hiring Officials, the committees felt strongly that the principle of excluding Hiring Officials should be codified in the policy, to ensure that the principle continues to be upheld regardless of any future changes in policy implementation. The committees developed policy revisions to clarify that the Hiring Official does not have a role in the review process, and will not have access to the results of a criminal background check.

### *Data and Review*

While the committees understood and acknowledged the institution's interest in conducting criminal background checks, they remained concerned that there is no evidence that supports the argument that criminal background checks reduce harm, and that there could be very real impacts on the University's ability to recruit diverse faculty and staff. As a result, both committees felt strongly that the University must collect data to be able to better understand whether the policy has an impact on the recruitment and hiring of underrepresented minorities.

The committees developed administrative recommendations on data collection and policy review to ensure that the University can make more informed decisions in the future. They outlined components that would be important data points in future reviews, and recommended that UHR review the data every three years to assess whether there has been an impact on hiring and whether the criminal background checks have had a disproportionate impact on applicants from underrepresented minority backgrounds. The committees recognize that data-collection will be limited in part by the information that applicants choose to provide on an application, but noted that having the information to the extent that it is available will be very helpful in future assessments.

### *Addressing Outlier Situations*

As the Staff Affairs Committee reviewed the interim policy and discussed the process for conducting criminal background checks, it identified a few situations that it felt are not adequately addressed by the policy and implementation procedures. The committee explored options for resolving those issues administratively, and developed administrative recommendations to ensure further consideration.

One such scenario impacts student employees who graduate but plan to continue their employment until the end of the fiscal year. Upon graduation, these employees are no longer eligible to be student employees because they are no longer students, so they are typically moved to a Contingent I contract to finish their employment. This short-term transition moves them from a student role to a staff role, which requires that they go through a criminal background check before the transition could be completed in the Payroll and Human Resources (PHR) system. The committee noted that it seems inefficient to require criminal background checks in these situations, since those affected only intend to work for a period of weeks, and since their work responsibilities and scope do not change in the transition. They are also impacted by different rules and regulations in the transition from student to staff, as well, and the committee's administrative representatives indicated that there are broader issues in the transition that merit consideration. As a result, the Staff Affairs Committee decided to develop an administrative recommendation to ensure further consideration of these issues.

The Staff Affairs Committee also raised concerns about the lack of consistency in requiring criminal background checks for UMD employees but not for employees of third-party contractors who work on campus in the same types of roles. There are cases where these employees are doing the same work as UMD employees and have the same level of access to students, and therefore the same capacity to present a risk to the institution. From a safety perspective, the Staff Affairs Committee felt that it may be beneficial to consider extending criminal background checks to employees of third-party contractors, but it also acknowledged that there are additional complexities to be considered with the Office of Procurement, including issues related to contract terms and potential impacts on contracts with small businesses. The committee agreed that an administrative recommendation focused on considering this further might be beneficial.

## RECOMMENDATIONS

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### *Policy Recommendation*

The Faculty Affairs Committee and the Staff Affairs Committee jointly recommend that the proposed revisions to the University of Maryland Policy on Criminal Background Checks (VII-1.15[A]), as shown immediately following this report, be approved.

### *Administrative Recommendations*

1. The committees recommend that the University should develop guidance for applicants and finalists on what to expect in the background check process, including clarifying information on the specific time period covered by a criminal background check, the steps in the University's review process, how criminal history will be assessed relative to the position, and that a criminal history does not automatically disqualify a Finalist from employment.
2. The University should provide information to applicants who receive a pre-adverse action letter on the process for disputing the accuracy or completeness of the records or otherwise

providing additional information to contextualize an adverse finding. The University should also provide information on assistance that can be provided or may be available to resolve issues related to language and access barriers.

3. The University should take steps to protect the privacy rights of Finalists by ensuring that the direct hiring official for the position or search cannot request a Finalist's birth name or legal name for purposes of conducting a background check.
4. The University should collect data on applicant pools, finalists, and the background check process in order to inform reviews of the efficacy and impact of the policy. Data collected should include, but not be limited to, the following:
  - Statistics and demographic data on applicant pools and finalists broadly by job title, both from prior to and after the implementation of the policy;
  - Statistics and demographic data on those for whom a pre-adverse action letter is issued;
  - Statistics and demographic data on those for whom the adverse finding results in an offer of employment being rescinded;
  - Demographics as noted above should include race, gender, ethnicity, veteran status and/or disability status, to the extent provided by the applicant; and
  - Eligibility to hire success and failure rates in cases where there was an adverse finding by type of position and salary range.
5. The University should review the data collected on the background check process every three years to consider whether the policy is having an impact on hiring generally, as well as whether the policy has a disproportionate impact on applicants from marginalized backgrounds. The University should leverage existing expertise on campus in collecting and interpreting these types of data and assessing the impact of background checks on the University's diversity, equity, and inclusion goals. University Human Resources should report to the Senate Executive Committee on the results of the review.
6. The University should consider developing a plan for communicating information on the background check process clearly and consistently to applicants in plain language, both on the application and through other information available to applicants online.
7. The University should consider whether the process for reviewing the results of a background check received from the vendor could take a double-blind approach, or whether the University can take other steps to remove personally identifiable information from documentation prior to the review by the Hiring Eligibility Review Group (HERG).
8. The University should consider how background checks should be implemented in instances where a student employee needs to transition to a staff position for a period of up to six weeks in order to complete their employment following their graduation.

9. The University should consider assessing its agreements with third-party contractors and vendors whose employees work in University facilities to determine whether those employees are or should be subject to a background check with their employers.

## **APPENDICES**

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- Appendix 1 — Charge from the Senate Executive Committee
- Appendix 2 — Message to Campus Community
- Appendix 3 — USM Peer Institution Research
- Appendix 4 — Big 10 Peer Institution Research (Conducted September 2019)

New Text in Blue/Bold (**example**), Removed Text in Red/Strikeout (~~example~~), Moved Text in Green/Bold (**example/example**)



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

(Approved by the President on an interim basis effective October 1, 2021, pending University Senate review)

### I. PURPOSE AND SCOPE

**Purpose:** This **P**olicy outlines the University of Maryland's ("the University") use of criminal 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 **P**olicy establishes the University's use of criminal background checks in compliance with the University System of Maryland (USM) Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15).

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

~~1. All paid full time and part time tenured and tenure track faculty, professional track faculty, adjunct faculty, permanent status and permanent status track faculty, and faculty holding administrative positions.~~

~~2. All Regular and Contingent Exempt and Non-Exempt staff.~~

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

### II. DEFINITIONS

**A. "Affected Individual" means those individuals required to undergo a Criminal Background Check in alignment with this Policy. This includes:**

**1. A Finalist;**

2. **Current employees at another USM institution who are selected for employment at the University of Maryland; and**
  3. **A returning University employee with a break in service of eighteen (18) months or more.**
- B. “Criminal Background Check” means a **pre-employment** review of various aspects of **an Affected Individual’s new-employee’s** background including, but not limited to criminal background, educational background, a trace of an individual’s social security number, and driving and credit histories, ~~(based on the employment position).~~
- C. “Criminal Justice Information System (CJIS) Record History” means a criminal background check completed by the Maryland Department of Public Safety and Correctional Services of all criminal history information **related to regarding** an individual **that is** maintained by the CJIS Central Repository, consistent with the requirements of the Maryland Annotated Code ~~(Md. Code Ann.)~~, Criminal Procedure Article, Section 10-201 et seq. A CJIS Record History is based upon national and state criminal history records and uses an individual’s fingerprints and other identifying information.
- D. “Finalist” means a candidate who meets the minimum qualifications for a specific position at the University **and who has been extended a conditional offer of employment.** ~~Candidates become finalists once they have either advanced through the search and selection process or have otherwise qualified to be one of the final individuals being considered for employment at the University.~~

### III. **SCOPE AND APPLICABILITY CRIMINAL BACKGROUND CHECKS**

- A. Mandatory Criminal Background Checks: Under state and federal law, institutions are required to obtain and review CJIS Record History for their employees under **specific certain** circumstances. **To meet its obligation under state and federal law, the University conducts CJIS Record History checks in alignment with the circumstances outlined as described** within the USM Policy on Criminal Background Checks for Faculty and Staff Employees (VII-1.15).
- B. Permissive Criminal Background Checks: In addition to the circumstances under which the University is required by law to obtain and review CJIS Record History, the University exercises its discretion to require Criminal Background Checks ~~of all Finalists and volunteers~~ **under the conditions below:-**
1. **A Criminal Background Check is required for every Affected Individual.**
  2. **Permissive Criminal Background Checks will not be conducted on current University employees as a condition of continued employment, unless otherwise required by the University.**
  3. **Criminal Background Checks will not be conducted on a current**

University employee who has accepted or is appointed to a new position with the University as part of selection, promotion, transfer, reclassification, or reevaluation processes, unless otherwise required by law, position duties, policy, or is otherwise required by the University.

4. Criminal Background Checks will be conducted for the following positions:
  - a. All paid full-time and part-time: tenured and tenure-track faculty, professional-track faculty, adjunct faculty, permanent status and permanent status-track faculty, and faculty holding administrative positions.
  - b. All Regular and Contingent Exempt and Non-Exempt Staff.
5. Volunteers may also be considered Affected Individuals subject to a Criminal Background Check when circumstances warrant.

~~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 may have to submit the criminal background information form to the vendor.~~

#### IV. RIGHT TO REFUSE OR TERMINATE EMPLOYMENT

- A. Offers of employment are conditional on the Affected Individual's completion of a Criminal Background Check.
- B. The University reserves the right to rescind an offer of employment or otherwise refuse ~~decline or terminate~~ employment for ~~to~~ any Affected Individual ~~Finalist~~ whose criminal background is deemed incompatible with the position they ~~are~~ ~~Finalist is~~ seeking, regardless of when the Criminal Background Check is completed.
- CB. Any Affected Individual ~~Finalist~~ 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 Affected Individual ~~Finalist~~ has been appointed in a faculty or staff position, this will be considered ~~regarded as~~ grounds for disciplinary action, up to and including termination, pursuant to the appropriate dismissal procedures.

#### V. 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 **P**olicy.

- B. **The University will ensure that**~~In order to provide the maximum degree of protection for a Finalist's privacy,~~ all records pertaining to Criminal Background Checks **are** ~~will be~~ maintained **securely and kept** ~~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 **P**olicy prohibits the University and its employees from using a CJIS Record History or the information obtained from Criminal Background Checks 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 reserves the right to determine an Affected Individual's a-**~~Finalist's~~ **suitability for a position based on the information reported by the Criminal Background Check vendor and other information provided by the Affected Individual to the University.** The University **will** ~~shall~~ not deny employment to an **Affected Individual** ~~Finalist~~ 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 **Affected Individual's** ~~Finalist's~~ fitness to perform the duties of the job.
- E. University Human Resources ~~and the Office of Faculty Affairs~~ will provide training **to the individuals involved in the review of Criminal Background Check information** ~~to hiring officials and hiring coordinators who are responsible for hiring employees~~ on the appropriate methods for acquiring, using, and maintaining Criminal Background Check information.

## VI. GUIDING PRINCIPLES

- A. **The review of Criminal Background Check results shall be guided by principles that are consistent with the University's values and its commitment to diversity, equity, and inclusion, and that recognize factors such as systemic oppression and criminalization in the legal system that affect marginalized communities.**
- B. **The following should guide the University's implementation of this Policy:**
  - 1. **The scope of Criminal Background Checks should be guided by industry best practices, and the specific time period considered by the University should be conveyed to all candidates on the job posting.**
  - 2. **The review of Criminal Background Check information should be conducted centrally by University Human Resources, and should be kept confidential from the direct Hiring Official for the position in question.**

3. The Affected Individual may dispute the accuracy or completeness of the information included in their Criminal Background Check, and will be given an opportunity to provide additional information for the University's consideration.
4. Consideration of Criminal Background Check information should be guided by an assessment of the duties of the position and the totality of the circumstances.

## ~~VI. APPEALS PROCESS~~

~~A Finalist may dispute the accuracy or completeness of the records included in their Criminal 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



### **Review of the Interim University of Maryland Policy on Criminal Background Checks**

**(Senate Document #21-22-21)**

**Faculty Affairs Committee | Chair: William Reed**

**Staff Affairs Committee | Chair: Lisa Klein**

The Senate Executive Committee (SEC) and Senate Chair Williams request that the Faculty and Staff Affairs Committees review the Interim University of Maryland Policy on Criminal Background Checks (VII-1.15[A]).

The Faculty and Staff Affairs Committees should:

1. Review the University System of Maryland (USM) Policy on Criminal Background Checks for Faculty and Staff Employees ([VII-1.15](#)).
2. Review the Interim University of Maryland Policy on Criminal Background Checks ([VII-1.15\[A\]](#)).
3. Review the report from the Joint Faculty and Staff Affairs Committee Criminal Background Check Subcommittee.
4. Review criminal background check policies and any data or best practices associated with implementation at other USM institutions.
5. Consult with a representative of University Human Resources.
6. Consult with a representative of the Office of Faculty Affairs.
7. Consult with a representative of the Office of Diversity and Inclusion (ODI).
8. Consult with a representative of the Division of Administration.
9. Consult with the Office of General Counsel on the legal, compliance, and liability issues associated with the criminal background checks.
10. Consult with the Special Committee on University Finance (SCUF) on possible direct or indirect consequences/costs to the hiring units related to criminal background checks and any appeals process.
11. Consider whether the scope and criteria of the interim criminal background check policy are appropriate, including provisions related to affected positions, gaps of employment, and transitions within the University as an employee or when changing status from a student to an employee.
12. Consider the potential impacts of the criminal background checks on underrepresented minorities, the LGBTQ community, and other marginalized groups.
13. Consider the efficacy, fairness, and legal liability issues associated with the process for making a decision on whether a finalist is eligible for employment when their criminal background check shows a criminal record or other adverse finding.

14. Consider whether the University should establish a record-keeping process on various impacts of the Policy, and what metrics could be used.
15. Consider what opportunities finalists should have to explain or contextualize the results from a background check, or to appeal a decision not to hire based on a background check.
16. Consider whether principles associated with the implementation procedures should be incorporated into the criminal background check policy.
17. Consider whether a review of the impact of the Policy on hiring at the University should be required at some specified time after its implementation.
18. Consult with a representative of the Office of General Counsel on any proposed revisions to the policy.
19. If appropriate, recommend whether the interim policy and procedures should be revised and submit recommended revisions.

We ask that you submit a report to the Senate Office no later than **March 4, 2022**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, [reka@umd.edu](mailto:reka@umd.edu).

## Appendix 2 - Message to Campus Community



**September 22, 2021**

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Dear colleagues,

As a major employer in Prince George's County and the State's flagship higher education institution, the University has a responsibility to provide as safe a learning and working environment for the UMD community as possible. An important aspect of keeping the community safe is ensuring that those who are employed with the university have been appropriately screened before their first day of work, via a background check.

Conducting pre-employment background checks is common practice among private and public sector employers, including higher education. Following this process for every new hire can improve faculty and staff quality, verify the honesty and integrity of applicants, and reduce the risk of negligent hiring liability.

We take very seriously our commitment to hiring the best faculty and staff. In consultation with campus leaders, we are implementing the [\*\*Interim Policy on Criminal Background Checks\*\*](#) authored by University Human Resources (UHR) and the Office of Faculty Affairs. On October 1, 2021, UHR will begin a department-by-department implementation of the interim policy, applying only to new hires. UHR will communicate details of the implementation plan to department leaders in the coming days. UHR and the Office of Faculty Affairs will be available to answer questions about the interim policy to help make this implementation as seamless as possible. The interim policy will also undergo a review by the University Senate.

Consistent with the University's commitment to non-discrimination, results of background checks will be adjudicated by staff trained in EEO best practices and other federal, state and county regulations.

I appreciate your cooperation and engagement in this initiative. If you have questions, please contact Rythee Lambert-Jones, Interim Assistant Vice President of Human Resources at [rljones7@umd.edu](mailto:rljones7@umd.edu) or John Bertot, Associate Provost for Faculty Affairs at [jbertot@umd.edu](mailto:jbertot@umd.edu).

Sincerely,

**Carlo Colella**

*Vice President & Chief Administrative Officer*

He/Him/His

**Rythee Lambert-Jones**

*Assistant Vice President and Chief Human Resources Officer*

She/Her/Hers



UNIVERSITY OF  
MARYLAND

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**The Flagship Institution of the State of Maryland**

College Park MD 20742-5035, USA

Phone: 301.405.1000

## Appendix 3 - USM Peer Institution Research

Institution	Policy / Procedures Link	Who is subject to a check?	Is there a gap in service provision?	Who coordinates/ conducts the check?	Finalists or Candidates?	False or Misleading Info Provision?	Records Protection/ Confidentiality Provision?	Arrests or Convictions?	Appeals?	Implementation?	Review of Policy Efficacy?
<b>Bowie State University</b>	<a href="https://www.bowiestate.edu/files/resources/minor-protection-policy-approved-4-12-17.pdf">https://www.bowiestate.edu/files/resources/minor-protection-policy-approved-4-12-17.pdf</a> ; <a href="https://bowiestate.edu/about/administration-and-governance/legal-and-government-affairs/university-policies/section-vi-general-administration/vi--300--policy-on-minors-on-campus.php">https://bowiestate.edu/about/administration-and-governance/legal-and-government-affairs/university-policies/section-vi-general-administration/vi--300--policy-on-minors-on-campus.php</a>	Faculty, staff, students who have direct contact with minors are required to have a current background check on record with the University.	No	University Human Resources	At the time of hire and/or beginning work with the minors	No	Records of background checks will be maintained separately from an individual's personnel or student file.	No discussion of arrests. A prior conviction shall not automatically disqualify a person from participating in a program or activity.	Not discussed	Not discussed. References an Appendix on Background Check Specifics, but appendix is not available online.	Not discussed
<b>Coppin State University</b>	<a href="https://www.coppin.edu/sites/default/files/pdf-library/2021-05/coppin_state_university_s_background_check_policy_and_procedures_for_faculty_and_staff_employees_af-hr-002.pdf">https://www.coppin.edu/sites/default/files/pdf-library/2021-05/coppin_state_university_s_background_check_policy_and_procedures_for_faculty_and_staff_employees_af-hr-002.pdf</a>	All job candidates offered employment and status change roles; applies to all regular and contractual faculty, regular and contingent staff, applicants for employment, volunteers, chaperones of camps and enrichment programs or any position that involves working with minors, adult dependent populations and positions that transport hazardous materials.	More than 3 months of separation from the University	Office of Human Resources	All candidates for new hire, rehire and reinstatement that have more than 3 months of separation from the University, and transfers from other state agencies; Current employees that change positions or acquire new responsibilities that involves managing sensitive materials may be required to have an updated or new credit history or criminal background check. This includes employees working in an interim or acting capacity; Any employee convicted of a crime, beyond a traffic infraction, must inform the CHRO and their supervisor of this conviction within five business days.	Failure to disclose accurate information to avoid obtaining information of criminal conviction(s), is deemed to of have provide falsification of application and may result in termination. An employee who fails to disclose being convicted of a crime within five (5) business days is considered to be in violation of a condition of continued employment and may result in termination.	Chief Human Resources Officer and OHR are responsible for ensuring confidentiality; records stored separate from employment files; confidentially report ineligibility to hiring official; violation of confidentiality may lead to disciplinary action	Arrests not discussed; background check focuses on convictions	Yes; If the candidate is not hired or promoted based on the background check results, the candidate has five (5) business days from the date of notice, to send a written appeal to the University's OHR, CHRO to contest the accuracy of the results. The CHRO will review the appeal to determine if there was an error in the accuracy of the background check results. The CHRO will provide final decision within 15 days of receiving written appeal and send it to the candidate's home address on file.	Procedures are included as part of the policy document	This policy shall be reviewed and revised annually, if necessary, to become effective at the beginning of the University's fiscal year, unless otherwise noted.
<b>Frostburg State University</b>	<a href="https://www.frostburg.edu/human-resources/files/pdfs/background-check-procedure.pdf">https://www.frostburg.edu/human-resources/files/pdfs/background-check-procedure.pdf</a>	all new applicants for employment	No	Office of Human Resources	Seems like it could be any group of candidates/finalists, at the discretion of the hiring manager, but has to include the final candidate to be hired.	No	No	Not discussed	Not discussed	Information included in the procedures.	Not discussed

<b>Salisbury University</b>	<a href="https://www.salisbury.edu/administration/general-counsel/policies/session/VIII/SU%20BOR%20VII-1.15.pdf">https://www.salisbury.edu/administration/general-counsel/policies/session/VIII/SU%20BOR%20VII-1.15.pdf</a>	Newly hired and rehired employees (Faculty, staff, student, contingent employees); Current employees who change jobs AND whose new duties may be subject to a new background check; Rehired contractual employees who have had a break in service of more than three years; those who work with minors; Volunteers; and Contractors, consultants or others if the University determines the background checks conducted by their agencies are not satisfactory (Student employees only required if their job involves specific duties)	Yes - for contractual employees, 3 years.	Human Resources Office	Finalists - conduct a background check only after a candidate for employment has been offered and accepted a conditional offer of employment with the University.	Yes - If the University determines that a candidate has provided false or misleading information regarding criminal convictions, the candidate may be ineligible for the current position or may be subject to disciplinary action up to and including termination	Yes - Review of background check results will be held in strict confidence by reviewers.	Convictions - The University will 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 that relate to the individual's fitness to perform the duties of the job.	May challenge the information in the background check, but not the decision on whether they are eligible for employment based on that information.	Some procedures included in the document.	Not discussed
<b>Towson University</b>	<a href="https://www.towson.edu/about/administration/policies/07-01-04-background-investigations.html">https://www.towson.edu/about/administration/policies/07-01-04-background-investigations.html</a>	All staff and faculty, certain Volunteers and certain student employees who are engaged in highly sensitive activities (e.g., those conducting financial transactions, working with vulnerable populations, or otherwise specified in this policy). In the relatively rare case in which relevant facts justify an exception, the Office of Human Resources (OHR) may waive the requirement for a criminal history background check on a specific Covered Person.	The University may require re-investigation if there has been a break in service.	Responsible Executive: Associate Vice President of Human Resources Responsible Office: Office of Human Resources	Candidates selected for hire	Not discussed	Yes - The Criminal Background Investigation results shall be maintained in the strictest confidence in a separate and secure file that may include an online vendor database.	Convictions - The University may not deny employment to a Candidate 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 Candidate's fitness to perform the duties of the position.	Challenges addressed, the candidate may challenge why the results of the check should not disqualify them for employment.	Not discussed	Not discussed
<b>University of Baltimore</b>	None found										
<b>University of Maryland Baltimore</b>	<a href="https://www.umaryland.edu/policies-and-procedures/library/human-resources/policies/vii-101a.php">https://www.umaryland.edu/policies-and-procedures/library/human-resources/policies/vii-101a.php</a>	UMB requires pre-employment background investigations as a condition of hire for each applicant selected for a covered position. Current Regular and C II employees of UMB will not undergo background investigations as part of promotion, transfer or reevaluation processes unless required by the law, position duties, or policy.	Current employees who separate from employment with UMB and return after one year will be subject to a background investigation	Human Resource Service	As a condition of hire	If it is found that an applicant did not fully disclose or misrepresented information on the application, the applicant will be ineligible for hire and employment of the applicant may be terminated if the applicant is currently employed with UMB.	Information reported on background investigations will be treated as confidential, maintained by HRS, and released by HRS only when deemed necessary to support a decision.	Convictions - Criminal convictions and open criminal cases will be taken into account when reviewing a tentatively selected candidate's background. The Executive Director, HRS will assess the circumstances surrounding the criminal conviction, the time frame and the nature and gravity of the offense, and the relevancy of the criminal conduct to the duties of the announced position.	In accordance with the Fair Credit Reporting Act, HRS will provide a copy of the investigative report to applicants who are denied employment based on the background investigation, and guidelines for appeal.	Not discussed	Not discussed

**University of Maryland Baltimore County** None found. Seems that some positions may require it due to USM policy, but did not find UMBC specific policy.

<b>University of Maryland Eastern Shore</b>	<a href="https://www.umes.edu/HR/Pages/Policy-on-Background-Checks/">https://www.umes.edu/HR/Pages/Policy-on-Background-Checks/</a>	Background checks for candidates for hire for any position with the university including all regular faculty and staff appointments, any contingent (contractual) new hires, and volunteers	No	Office of Human Resources Management	Finalists - conducted once a tentative offer of employment is extended and accepted by the candidate	Not discussed	All criminal records received by the University will be kept in strict confidence within the Office of Human Resources Management and held on a need to know basis.	Convictions	Yes - candidates will be notified of any adverse information and will be given an opportunity to verify and reply to this information. Any appeal should be directed to the Director of the Office of Human Resources Management.	Not discussed	Not discussed
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<b>University of Maryland Global Campus</b>	<a href="https://www.umgc.edu/administration/policies-and-reporting/policies/human-resources/criminal-background-checks-staff-faculty-policy.cfm">https://www.umgc.edu/administration/policies-and-reporting/policies/human-resources/criminal-background-checks-staff-faculty-policy.cfm</a>	UMGC may elect to obtain criminal background checks with respect to any position.	No	Chief Human Resources Officer (CHRO)	Unclear	Not discussed	Records will be maintained confidentially	May not be based on arrest records alone.	UMGC commits to providing a process for contesting the accuracy of the records upon which a denial was based.	CHRO is responsible for implementing, communicating, and developing procedures.	Not discussed
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**University of Maryland Center for Environmental Science** None found. Seems that some positions may require it due to USM policy, but did not find UMCES specific policy.

## Appendix 4 - Big 10 Peer Institution Research (Conducted Sept 2019)

Institution	Policy	Last Updated	Covers Faculty	Covers Staff	Other Categories	Appeal/challenge info	Who pays	State law?	Other
University of Iowa	<a href="https://opsmanual.uiowa.edu/human-resources/hiring-and-appointments/criminal-background-check-point-hire">https://opsmanual.uiowa.edu/human-resources/hiring-and-appointments/criminal-background-check-point-hire</a>	9/17/19	Yes	"All regular merit, professional and scientific, and faculty positions"	Flexibility to determine whether temporary, fixed-term, or student positions are "security sensitive"	Opportunity to provide clarifying info on a conviction.	Campus level	Yes*	The expectation is that each individual college/division covers their costs but have the flexibility of how to do so. The vast majority charge back to the individual hiring unit. However, a few do set aside central funds to pay. Several policies explicitly address third-party vendors/staffing
Indiana University	<a href="https://policies.iu.edu/policies/hr-02-10-background-checks/index.html">https://policies.iu.edu/policies/hr-02-10-background-checks/index.html</a>	9/2013	All (no precise definition but faculty don't seem to be split out in HR definitions).	All new receive minimum, further for positions involving finances	Required for temporary employees, "including individuals with student status," as well. Additional info on foreign nationals.	May appeal withdrawn offer or separation if based on un reported conviction.	Fees responsibility of hiring department.	No	Checks good for 12 months
University of Illinois-Urbana Champaign	<a href="https://humanresources.illinois.edu/assets/docs/University-Background-Check-Policy-4-12-2016.pdf">https://humanresources.illinois.edu/assets/docs/University-Background-Check-Policy-4-12-2016.pdf</a>	1/16	Yes	Yes	Also includes employees transitioning into new position that requires checks by law or policy. "background checks will not be conducted with respect to graduate or undergraduate student employees, pre- or post-doctoral fellows, volunteers, individuals appointed to non-paid positions, contractors"	Opportunity to provide clarifying info on a conviction.			
University of Michigan	<a href="https://spg.umich.edu/policy/201.95">https://spg.umich.edu/policy/201.95</a>	Reviewed 1/19	Yes	Yes, regular and temporary	Also covers Graduate Student Instructors, Graduate Student Staff Assistants and Graduate Student Research Assistants.	Opportunity to provide clarifying info on a conviction.		No	Katie McCollum is contact
Michigan State University	<a href="https://www.hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/CriminalCheck.html">https://www.hr.msu.edu/policies-procedures/faculty-academic-staff/fas-policies-procedures/CriminalCheck.html</a>	2/18	Yes	Yes	Includes visiting, unpaid appointments.	Opportunity to provide clarifying info on a conviction.	Covered centrally		

<b>University of Minnesota</b>	<a href="https://policy.umn.edu/hr/backgroundverification">https://policy.umn.edu/hr/backgroundverification</a>	1/18	Yes	Yes	Non-employees, students if performing security-sensitive work; additional levels for senior admins.	Opportunity to provide clarifying info on a conviction in associated procedures.	Fees responsibility of hiring department.	No	Checks good for 12 months
<b>University of Nebraska</b>	<a href="https://hr.unl.edu/policies/criminal-background-check/">https://hr.unl.edu/policies/criminal-background-check/</a>	12/6 (staff)	No (just asked general question before final hire)	Full/part-time, regular and temporary	Also includes employees transitioning into new position that requires checks by law or policy.	Opportunity to provide clarifying info on a conviction or challenge.	Fees responsibility of hiring department.	No	Cannot ask about criminal background on application.
<b>Northwestern University</b>	No policy, procedures here: <a href="https://www.northwestern.edu/hr/for-managers/hiring/hiring-process/offer.html">https://www.northwestern.edu/hr/for-managers/hiring/hiring-process/offer.html</a>		Not required for faculty (except when working with minors)	Regular and temporary	Required of interns/volunteers over age 18.		Central	No	Check is good for 12 months <a href="https://www.northwestern.edu/hr/for-managers/hiring/hiring-process/offer.html">https://www.northwestern.edu/hr/for-managers/hiring/hiring-process/offer.html</a> Added approximately in 2011 for all staff (previously just those who work with minors). Re-check for all internal movements that are posted if it's been more than a year since last check.
<b>Ohio State University</b>	<a href="https://hr.osu.edu/wp-content/uploads/policy415.pdf">https://hr.osu.edu/wp-content/uploads/policy415.pdf</a>	12/18	Regular faculty (associated faculty and visiting scholars)	Regular staff (including temporary, term, seasonal, intermittent)	Student employees/GA w/access to restricted data;	Can dispute (Fair Credit Reporting Act related); Opportunity to provide clarifying info on a conviction.		No	For internal candidates, checks good for 12 months; required after break in service unless <12 months AND associated faculty or student/GA. Detail in toolkit: <a href="https://hr.osu.edu/wp-content/uploads/policy415-standards.pdf">https://hr.osu.edu/wp-content/uploads/policy415-standards.pdf</a> Good model.
<b>Penn State University</b>	<a href="https://policy.psu.edu/policies/hr99">https://policy.psu.edu/policies/hr99</a>	2/16	Faculty (including adjunct), post-doc scholars/fellows, visiting	Regular and temporary	Volunteers (if sensitive), GAs, student employees, work study students, interns (paid or unpaid)	Required notification pursuant to FCRA.	University covers	No	Break in service of <5 years, no check required (unless new position requires different checks); breaks of longer than 6 months required to complete self-disclosure form. Becky Folk (847.491.8573)
<b>Purdue University</b>	<a href="https://www.purdue.edu/policies/human-resources/vif6.html">https://www.purdue.edu/policies/human-resources/vif6.html</a>	9/16	Faculty (full and part)	Full/part benefits-eligible, temporary	Not required of student/grad student appointments (GA?), non-paid positions, outside staffing agencies.	Required notification pursuant to FCRA.	Basic covered by U, more extensive by department.		
<b>University of Wisconsin - Madison</b>	<a href="https://www.wisconsin.edu/regents/policies/university-of-wisconsin-system-criminal-background-check-policy/">https://www.wisconsin.edu/regents/policies/university-of-wisconsin-system-criminal-background-check-policy/</a>	12/12	Yes	Yes	Required of individuals in a "position of trust." Discretionary: temporary or limited term, hourly student employees, interns. Required of volunteers in position of trust.				

<b>Rutgers</b>	<a href="https://discover-uhr.rutgers.edu/forms/background-checks-staff-faculty-positions">https://discover-uhr.rutgers.edu/forms/background-checks-staff-faculty-positions</a>	12/18	Yes (regular and temp)	Yes (regular and temp)		Required notification pursuant to FCRA.			Break in service up to 1 year allowed.
<b>UC - Berkeley</b>	<a href="http://policy.ucop.edu/doc/4010394/PSPM-21">http://policy.ucop.edu/doc/4010394/PSPM-21</a>	11/18	Unclear (critical positions)	Unclear (critical positions)		Opportunity to provide clarifying info on a conviction.	Hiring department	No	Break in service up to 6 months allowed.
<b>University of North Carolina-Chapel Hill</b>	<a href="https://hr.unc.edu/managers/hiring/background/">https://hr.unc.edu/managers/hiring/background/</a>		Yes (paid/unpaid, permanent/temporary), post-doc fellows	Yes (full/part, permanent/temporary)	Not required of students if position is "incidental" - not required for GAs or work study. If working w/minors, yes.	Required notification pursuant to FCRA.	Hiring department	No	Checks good up to 6 months (after review for staff). Students who continue work after graduating must undergo checks.
<b>UCLA</b>	<a href="https://www.chr.ucla.edu/news/procedure-21-appointment">https://www.chr.ucla.edu/news/procedure-21-appointment</a>	1/18	Unclear (critical positions)	Unclear (critical positions)		Opportunity to provide clarifying info on a conviction.			

### USM INSTITUTIONS

<b>Bowie State Coppin State</b>	No institutional policy <a href="https://www.coppin.edu/sites/default/files/pdf-library/2021-05/background_check_policy_and_procedures_for_faculty_and_staff_employees.pdf">https://www.coppin.edu/sites/default/files/pdf-library/2021-05/background_check_policy_and_procedures_for_faculty_and_staff_employees.pdf</a>	6/17/2019	All regular and contractual	Regular and contractual, contingent, volunteers, chaperones		Opportunity to provide clarifying info on a conviction or challenge, can appeal decisions.			
<b>Frostburg</b>	Procedures: <a href="https://www.frostburg.edu/human-resources/_files/pdfs/background-check-procedure.pdf">https://www.frostburg.edu/human-resources/_files/pdfs/background-check-procedure.pdf</a>						Hiring department		
<b>Salisbury</b>	<a href="https://www.salisbury.edu/administration/general-counsel/policies/section_VII/SU%20BOR%20VII-1.15.pdf">https://www.salisbury.edu/administration/general-counsel/policies/section_VII/SU%20BOR%20VII-1.15.pdf</a>								
<b>Shady Grove</b>	UMCP and USM								

<b>Towson</b>	<a href="https://www.towson.edu/about/administration/policies/07-01-04-background-investigations.html">https://www.towson.edu/about/administration/policies/07-01-04-background-investigations.html</a>	8/16	Yes	All staff and faculty, certain Volunteers and certain student employees who are engaged in highly sensitive activities (e.g., those conducting financial transactions, working with vulnerable populations, or otherwise specified in this policy).		Centrally for fingerprinting and background	
<b>U of Baltimore</b>	No institutional policy						
<b>UMB</b>	<a href="https://www.umaryland.edu/policies-and-procedures/library/human-resources/policies/vii-101a.php">https://www.umaryland.edu/policies-and-procedures/library/human-resources/policies/vii-101a.php</a>		Not covered?	Regular and CII	Not required for CI or students. Not required for staff promotions unless new position mandates.	Units pay (fingerprinting done for certain positions)	Break in service up to 1 year allowed.
<b>UMBC</b>	No institutional policy						
<b>UMES</b>	<a href="https://www.umes.edu/HR/Pages/Policy-on-Background-Checks/">https://www.umes.edu/HR/Pages/Policy-on-Background-Checks/</a>		Yes	Yes, including contingent		Opportunity to provide clarifying info on a conviction.	
<b>UMGC</b>	<a href="https://www.umgc.edu/administration/policies-and-reporting/policies/human-resources/criminal-background-checks-staff-faculty-policy">https://www.umgc.edu/administration/policies-and-reporting/policies/human-resources/criminal-background-checks-staff-faculty-policy</a>	1/17	Not clearly defined (when required by law, procedures)	Not clearly defined (when required by law, procedures)	Can conduct permissive checks when appropriate.	Must ensure a process for contesting accuracy of any record on which a denial is based.	
<b>USM Hagerstown/Southern MD</b>	No institutional policies						