

**Policy 1321  
Criminal Background Checks**

**Date of Current Revision: January 2016**

**Primary Responsible Officer: Director of Human Resources**

**Secondary Responsible Officer: Chief of Police**

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## **1. PURPOSE**

This policy is intended to protect the university's interests and the well-being of its students, faculty, staff, and the public. This policy establishes parameters for criminal background checks on individuals who are offered employment, employed, or reemployed and those who associate with the university in various capacities. Convictions disclosed or discovered in the criminal background check process may influence the selection of the applicant where the conviction is job-related or such that the university deems the employment/affiliation of the individual poses high risk to the university community.

## **2. AUTHORITY**

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia section 23-164.6; 23-9.2:3. The Board has delegated the authority to manage the university to the president.

### **STATE OR FEDERAL STATUTE AND/OR REGULATION**

Criminal history record information shall be disseminated, whether directly or through an intermediary, only to public universities for the purpose of screening individuals who are offered or accept employment. See Code of Virginia section 19.2-389.A24.

## **3. DEFINITIONS**

### **Affiliate**

An individual who has a formal affiliation with the university and receives some services from the university, but is not a student or employee of the university, and receives no remuneration from the university. (*Formal affiliation means that a necessary relationship exists between the university and the individual to provide a service of value to the university.*)

### **Conviction**

The result of a trial or legal proceeding that ends in judgment or sentence that the person is guilty of a criminal or traffic violation.

### **Crime**

The breach of a legal duty, punishable by a penal statute, whether federal, state, or local.

### **Criminal Background Check**

A review of an individual's record of criminal convictions and traffic violations.

### **Highly Confidential Data**

As described in JMU Policy [1205](#) - University Data Stewardship, highly confidential data is any university data which, because of its associated legal restrictions or potential security ramifications, is authorized for use only on a very limited basis and only with special security precautions. When associated with name or other personal identifier, the following data are classified by the university as highly confidential:

- Credit Card/Procurement Card Information
- Banking Information (account/routing detail)
- Social Security Number (Vendor ID)

**Minor**

Any person under the age of 18.

**Volunteer**

An individual is considered to be a volunteer at James Madison University if the following conditions are met:

1. Services are performed in support of the university's mission to include civic, charitable, educational, research or humanitarian reasons without promise, expectation or receipt of compensation for services rendered.
2. If the volunteer is a current university employee, the volunteer services shall not be the same type of duties for which the university employs the individual and the services must be freely given without pressure from the university.

NOTE: The Federal Fair Labor Standards Act (FLSA) requires that non-exempt employees be compensated for all hours they are required or permitted to work. Even though non-exempt employees may volunteer to perform the duties for which they are employed beyond their normally scheduled hours, departments must compensate the employee for those additional hours worked.

**4. APPLICABILITY**

This policy applies to all individuals employed by the university. It also applies to student employees, graduate assistants, affiliates, and volunteers performing certain duties as outlined in this policy.

**5. POLICY****5.1 Criminal Background Checks**

All newly hired or rehired employees whose rehire date exceeds one year from the termination date, or those who are rehired less than one year from the termination date and have not previously had a criminal background check conducted, will undergo a criminal background check. Individuals are asked to sign a release to process the background check, Human Resources processes the check and will contact the hiring department if the results reveal a job-related or high-risk criminal history record.

The provisions of this policy also apply to student employees, graduate assistants, affiliates, and volunteers who work directly with minors and/or who are granted access to highly confidential data; including but not limited to, social security numbers, credit card and bank account information.

**5.2 Individuals Identified as Potentially Having Job-Related or High Risk Criminal Histories**

A criminal background check may also be conducted for individuals who have disclosed potentially job-related or high risk criminal histories after being hired, or who have been reported as potentially having job-related or high risk criminal histories by any source after being hired.

When it is determined that the job-relatedness or nature of the crime poses an unacceptable risk to the university community, the offer of employment or affiliation will be rescinded and the individual will be separated from the university.

### 5.3 Additional Background Investigations

The university reserves the right to conduct criminal background investigations when an employee is charged with any crime that reflects on his/her suitability for continued employment, during the course of an administrative investigation, when the employee is transferred or hired into a new position, or when circumstances are identified that warrant further investigation.

## 6. PROCEDURES

### 6.1 Communication of Policy

The provisions of the criminal background check policy will be communicated to applicants, employees, affiliates, and volunteers using the following methods:

- Affiliate Service Request form
- Application materials provided to all JobLink applicants
- Departmental employment interviews
- Departmental engagement of volunteer assistance
- Departmental employment letters of offer
- Classified employee Welcome Letters
- During Onboard @ JMU sessions

In addition, Recruitment and Employment Services will be available to discuss the provisions and procedures of the policy with supervisors, applicants, employees, affiliates, and volunteers.

### 6.2 Initiating the Criminal Background Check

The selected candidate must complete a release form, prior to or during their Onboard session.

Affiliates and volunteers who will be working directly with minors or granted access to highly confidential data must complete a release form, prior to providing services if the affiliate or volunteer has not previously undergone a background check with the university. An affiliate or volunteer who has had a criminal background check within one year of his/her affiliate application will not be required to have another background check, *unless the affiliate or volunteer will be working directly with minors*. Refer to Policy [1337](#) - Affiliates.

Student employees and graduate assistants who work directly with minors or who are granted access to highly confidential data must complete a release form, prior to providing services, if the individual has not previously undergone a background check with the university.

Recruitment and Employment Services will contact the department with the results if the investigation reveals a job-related or high-risk criminal history record.

The university reserves the right to conduct checks on the widest scope possible. Normally, criminal background checks will include a criminal felony and misdemeanor court search based on a social security trace over the past seven years and a national sex offender registry search, as well as other appropriate sources of background information.

Any information related to criminal history will be maintained in the strictest confidence possible. Only essential personnel involved in the hiring process (including the administrative line up to the president), the individuals involved in the assessment of job-relatedness or high risk nature, and Public Safety and Audit and Management Services should be informed of information on the criminal background of an individual employee, affiliate, volunteer or applicant on a need-to-know basis.

The Finance department pays for background checks requested through the Student Employment

office for students and graduate assistants who work with highly confidential data. If a department requests a background check for any other reason the department is then responsible for paying for it. Human Resources will pay for employee background checks. Departments pay for background checks for affiliates and volunteers.

A chart has been created to further explain the Criminal Background Check process:

<b>Policy 1321 Criminal Background Checks – Who Needs Them and Other Information</b>						
Employee	Separated more than one year	Had a background check at JMU	Need a new background check?	Yes	HR initiates	HR pays
Employee	Rehired within one year of separation	Had a background check at JMU	Need a new background check?	No	N/A	N/A
Employee	Rehired within one year of separation	Has not had a background check while at JMU	Need a background check?	Yes	HR initiates	HR pays
Student Employee Graduate Assistant	N/A	N/A	Need a background check?	Yes if working directly with minors and not with highly confidential data	Department initiates with Student Employment	Hiring department pays
Student Employee Graduate Assistant	N/A	N/A	Need a background check?	Yes if working with highly confidential data	Department initiates with Student Employment	Finance Department pays
Student Employee Graduate Assistant	N/A	N/A	Need a background check?	No if not working directly with minors and/or highly confidential data	N/A	N/A

Volunteer	N/A	N/A	Need a background check?	Yes if working directly with minors and/or highly confidential data	Department initiates with HR	Sponsoring department pays
Affiliate	Not an affiliate for more than one year	Had a background check at JMU	Need a new background check?	Yes if working directly with minors and/or highly confidential data	If Yes, sponsoring department initiates with HR on Affiliate Services Request Form	Sponsoring department pays
Affiliate	Affiliated within one year of prior affiliation	Had a background check at JMU	Need a new background check?	No if <u>not</u> working directly with minors or students Yes if working directly with minors and/or highly confidential data	If Yes, sponsoring department initiates with HR on Affiliate Services Request Form	Sponsoring department pays

### 6.3 Determination of Job-related or High-Risk Convictions

Recruitment and Employment Services will initially review the criminal background check to determine job-relatedness or high-risk nature. If the individual has convictions that are job-related, the university will normally deny employment. The determination to deny employment will be made by the hiring authority, in consultation with Human Resources, and the administrative line, up to and including the president, in accordance with the policy. The decision to employ an individual with a job-related conviction requires the written approval of the president.

If the individual has convictions that are deemed high risk in nature, the hiring authority in consultation with Public Safety, Faculty/Staff Assessment Team (F/SAT), Human Resources, and the administrative, line up to and including the president will make the final decision to employ or retain the individual. The decision to employ an individual with a high risk conviction requires the written approval of the president.

In making the determination of job-relatedness or high risk nature, the hiring department will consider how recently the conviction occurred; the frequency and severity of the crime(s); and the age of the individual at the time the crime was committed. The safety and security of the campus community is the university's foremost consideration.

### 6.4 Preliminary Offers

Departments may make an offer of employment to the selected candidate; however, the offer is contingent on the results of the criminal background check. Recruitment and Employment Services will contact the department with the results of the criminal background check as soon as possible if a questionable record is discovered. In some cases, the hire date may be delayed until the results of the checks are received.

If the employee commences work before the results of the criminal background check have been

received, the offer letter will note that the continuation of employment is contingent on the results of the check.

#### 6.5 References

Policy [1320](#) provides information regarding the hiring of classified and wage employees, including the university's policy on reference checks. [2101](#) provides information regarding the hiring of faculty.

[1337](#) provides information on affiliate designation.

## **7. RESPONSIBILITIES**

Hiring supervisors and sponsoring departments are responsible for adherence to this policy, including communicating it clearly to job applicants, affiliates, and volunteers.

Hiring supervisors and sponsoring departments are responsible for requesting criminal background checks through Student Employment Services or Human Resources in accordance with this policy.

HR's Recruitment and Employment Services is responsible for the management of this policy, including overseeing the criminal background check process, reviewing the checks and reporting results.

## **8. SANCTIONS**

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination.

## **9. EXCLUSIONS**

Criminal background checks will not be conducted by Recruitment and Employment Services on:

- Any employee hired to work five days or less.
- Student employees (except those with responsibilities referred to in section 5.1 and those hired into wage positions).
- Graduate assistants (except those with responsibilities referred to in section 5.1)

## **10. INTERPRETATION**

Authority to interpret this policy rests with the president but is delegated to the Director of Human Resources.

Previous Version: February 2012

Approved by the President: July 2004