

**Policy 1321
Criminal Background Checks**

Date of Current Revision: November 2024
Responsible Officer: Director of Human Resources
Secondary Officer: Chief of Police

1. PURPOSE

This policy is intended to protect the university's interests and the well-being of its students, faculty, staff, and the public. It 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 employment or affiliation decision where the conviction is position-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 § 23.1-1600; § 23.1-1301. The board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATION

Code of Virginia 19.2-389.A24.
Code of Virginia 2.2-1201.1

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)
- Driver's license number
- Visa number
- Passport number
- TIN/Vendor ID that is SSN
- Biometric identifiers
- Personal health information

Minor

Any person under the age of 18 years.

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.

The provisions of this policy also apply to student employees, graduate assistants, affiliates, and volunteers who are directly associated with minors and/or who are granted access to highly confidential data. See definition of highly confidential data.

5.2 Duty to Report Subsequent Convictions

Any individual covered by the provisions of section 5.1 is required to report criminal convictions or position-related convictions which occur after being cleared by an initial criminal background check.

5.3 Additional Background Investigations

The university reserves the right to conduct criminal background investigations when a covered individual is known to have been convicted of any crime that reflects on their suitability for continued employment or affiliation, during the course of an administrative investigation, when the individual is transferred or hired into a new position, or when circumstances are identified that warrant further investigation.

5.4 Commencing Employment or Affiliation

No individual requiring a criminal background investigation under the provisions of this policy shall begin employment or affiliation until they have successfully cleared the background screening process according to the procedures described in section 6.

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 PageUp applicants who apply through the JMU employment online applicant tracking system
- Departmental employment interviews
- Departmental engagement of volunteer assistance
- Departmental offer of employment letters
- Classified employee welcome letters
- During onboarding sessions with the Recruitment and Employment Services Team.

6.2 Initiating the Criminal Background Check

Candidates selected for employment 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 working with children who has had a criminal background check within one year of their affiliate application will not be required to have another background check; verify with the Office of Youth Safety on confirmation process. Refer to Policy [1337](#) – Affiliates and Policy [3118](#) - Programs, Events, and Camps Involving Minors.

Student employees and graduate assistants who are granted access to highly confidential data must complete a release form if the individual has not previously undergone a background check with the university. Student employees and graduate assistants who are directly associated with minors are required to have completed a criminal background check within one year of their role working with individuals under the age of 18 years; verify with the Office of Youth Safety on confirmation process. Refer to Policy [3118](#) - Programs, Events, and Camps Involving Minors and the [Office of Youth Safety Procedures Manual](#). Recruitment and Employment Services or Student Employment will contact the department with the results if the investigation reveals a position-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 vice president), Human Resources, the individuals involved in the assessment of position-relatedness or high-risk nature, JMU Police Department, Office of University Counsel, and Audit & Management Services should be granted access to information on the criminal background of an individual.

The Finance Office pays for background checks requested through Student Employment for students and graduate assistants who work with highly confidential data. If a department requests a background check of a student employee or graduate assistant for any other reason, the department is then responsible for payment. Human Resources will pay for employee background checks. Relevant department(s) pay for background checks for affiliates and volunteers.

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

Classification of individual	Rehire status	Prior background check at JMU?	Need a new background check?	Who initiates the background check?	Who pays for the background check?
Employee	Separated more than one year	Had a background check at JMU	Yes	HR initiates	HR pays
Employee	Rehired within one year of separation	Had a background check at JMU	No, unless directly associated with minors; then check must be less than one year old.	N/A	N/A
Employee	Rehired within one year of separation	Has not had a background check while at JMU	Yes	HR initiates	HR pays
Student Employee Graduate Assistant	N/A	N/A	Yes, if directly associated with minors and not with highly confidential data	Department initiates with the Student Employment	Hiring department pays
Student Employee Graduate Assistant	N/A	N/A	Yes, if working with highly confidential data	Department initiates with the Student Employment	Finance Department pays
Student Employee Graduate Assistant	N/A	N/A	No, if not directly associated with minors and/or highly confidential data	N/A	N/A

Volunteer	N/A	N/A	Yes, if directly associated 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	Yes, if directly associated 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	No, if <u>not</u> directly associated with minors Yes, if directly associated 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 Position-Related or High-Risk Convictions

For employees, Recruitment and Employment Services, or Student Employment, in the case of student or graduate student positions, will initially review the criminal background check to determine position-related or high-risk offense nature. If the individual has convictions that are position-related, the university will normally deny employment. For both undergraduate and graduate student employment, Student Employment would be responsible for the initial review of the criminal background check. 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 division vice president, in accordance with the policy. The decision to employ an individual with a position-related conviction requires the written approval of the division vice president.

If the individual has convictions that are deemed high-risk in nature, the hiring authority, in consultation with the JMU Police Department, Threat Assessment Team (TAT), Human Resources, and the administrative line up to and including the division vice 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 division vice president.

In making the determination of position-related 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 of Employment

Departments may make an offer of employment to the selected candidate; however, the offer is contingent on the results of the criminal background check, and employment may not begin until the candidate successfully clears the criminal background check. Recruitment and Employment Services, or Student Employment, in the case of student or graduate student positions, will contact the department with the results of the criminal background check as soon as possible if a questionable record is discovered. The hire date may be delayed until the results of the checks are received and evaluated.

6.5 References

See Policies [1320](#) – Employment Reference Information; [2101](#) – Faculty Selection and Hiring Procedures; [1337](#) – Affiliates; [3118](#) - Programs, Events, and Camps Involving Minors; and [Office of Youth Safety Procedures Manual](#) for more information about respective populations.

7. RESPONSIBILITIES

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

Hiring supervisors of student employees or graduate assistants and sponsoring departments for affiliates and volunteers are responsible for requesting criminal background checks through Student Employment, Human Resources, or Office of Youth Safety in accordance with this policy when directly associating with minors and/or have access to highly confidential data

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

Student Employment is responsible for requesting student employee criminal background checks, reviewing results, and reporting discovered offenses to hiring departments.

The Office of Youth Safety manages Program, Event, or Camp Staff (PEC Staff) who interact with, supervise, chaperone, or otherwise oversee minors in JMU Affiliated PECs and Non-JMU Affiliated PECs. This includes, but is not limited to, all university employees, student employees, graduate assistants, affiliates, and volunteers.

All departments, offices and employees that generate, receive or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) – **Records Management**.

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, unless they will work with minors.
- Any employee hired to work that is under the age of 18 at the time of hire.
- 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).
- Employees of the James Madison University Police Department; JMUPD initiates and pays for necessary vetting.

The criminal background checks process regarding individuals who provide supervision of minors is described within Policy [3118](#) – Programs Involving Minors.

10. INTERPRETATION

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

Previous Version: January 2016

Approved by the President: November 2024