EXECUTIVE SUMMARY OF PROPOSED POLICY:
Criminal Conviction Investigations

New Policy □ or Substantive Revision ☒
Policy Type: Administrative
Responsible Office: VCU Human Resources, Division of Administration
Draft Date: 09/28/2018
Initial Policy Approved: 12/01/1993
Revision History: Revised 04/10/2011, 04/21/2015, and 08/10/2015

Governance Process Tracking:
If new BOV policy, enter date and name of President (or designee) approving development of policy: N/A
If new Administrative policy, enter date and name of President’s Cabinet member approving development of policy: N/A
Integrity & Compliance Office Review: 07/06/2018; 10/02/2018
University Counsel Review: MM/DD/YYYY
Public Comment Posting: MM/DD/YYYY
University Council Academic Affairs and University Policy Committee Review: MM/DD/YYYY
University Council Review: MM/DD/YYYY
President’s Cabinet Approval: MM/DD/YYYY
Board of Visitors Approval (if applicable): MM/DD/YYYY

1. Why is this policy being created □ or revised ☒?
   Policy revised to clearly state purpose of the policy, to update the procedures to accurately reflect Human Resources (HR) practices and procedures, to state post-hire reporting requirements, and to align this policy with the Working at VCU: “Great Place” HR Policies

2. New policy □: What are the general points or requirements covered in this policy? or
   The current policy was revised to indicate that it applies to all VCU employees (including faculty and postdoctoral scholars). Applicant Disclosure section was removed due to duplication of information about the disclosure requirement in the “Sensitive positions” section. The “Sensitive positions” section was expanded to include positions with access to or control over
### Revised policy ☒: What are the substantive differences between this draft and the current policy?

Patient data. A specific timeframe for background check was added for employees seeking transfer or promotion into resource critical position. Additional positions, employees working in the VCU Health facilities and child care positions, were added as positions that require additional checks. To ensure the most recent history is on file, timeframe of the completion of the background check prior to the date of hire was corrected to accurately reflect HR practice. A post-hire reporting requirement to support the purpose of the policy was also added.

### 3. Which stakeholder offices or personnel have provided input into this policy draft?

VCU Human Resources and Division of Administration

### 4. Which other universities’ policies or resources (e.g., laws, regulations, etc.) did you consider when preparing this draft?

- Working at VCU: “Great Place” HR Policies
- Virginia Department of Social Services Standards for Licensed Child Day Care Centers
- Governor’s Executive Order 41 (2015), “Ban the Box”
- VCU Policy: Postdoctoral Scholars
- VCU Policy: Alcohol and Other Drugs
- VCU Policy: Vehicle Accident Prevention and Safety
- UVA Policy: Background Checks and Ongoing Responsibility for Employees to Disclose Criminal Convictions

### 5. What is your general assessment of this policy’s impact on the university community?

This policy will ensure that leaders are able to make more well-informed hiring decisions that will mitigate risk to the university community as well as ensure the welfare and safety of our students, patients, employees, visitors, and university resources. This policy also ensures the welfare and safety of all stakeholders with the addition of a post-hire reporting requirement that is aligned with other VCU policies that have reporting requirements, such as the VCU Policy: Alcohol and Other Drugs and VCU Policy: Vehicle Accident Prevention and Safety.
[DRAFT] Criminal Conviction Investigations

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Responsible Office: VCU Human Resources, Division of Administration
Initial Policy Approved: 12/01/1993
Current Revision Approved: mm/dd/yyyy

Policy Statement and Purpose

The purpose of this policy is to describe the criminal background review to which every VCU employee is subject. Virginia Commonwealth University makes every effort to provide reasonable safeguards to protect the welfare and safety of its students, patients, employees and visitors and the university's institutional resources. As a part of these efforts, VCU Human Resources will provide for criminal conviction investigations to be performed on all new and rehired employees. Criminal conviction investigations also will be conducted in connection with certain transfers, promotions and other business needs as described within this policy. (Note: Based on the duties being performed, VCU also may request criminal conviction investigations for unpaid interns, volunteers and affiliates.)

The accuracy and completeness of the disclosure of prior law violations revealed or identified in the hiring/orientation process will be verified. Convictions disclosed or discovered in the hiring/orientation process may influence the final offer of employment only where such offenses are considered "job related." Convictions related to drugs, violence and/or sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors and institutional resources. The job relatedness of all convictions will be considered on a case-by-case basis and relevant factors will include, but not be limited to, the nature and gravity of the offense(s), time that has passed since the conviction(s) and/or completion of the sentence(s) and the nature of the job sought (i.e., the work environment, specific responsibilities of the position, access to and interaction with students, patients and the public, etc.).

Noncompliance with this policy may result in disciplinary action up to and including termination of employment. VCU supports an environment free from retaliation. Retaliation is prohibited against any employee who brings forth a good faith concern, asks a clarifying question or participates in an investigation.
Table of Contents

Who Should Know This Policy .......................................................... 2
Definitions ......................................................................................... 2
Contacts ............................................................................................ 3
Policy Specifics and Procedures ......................................................... 3
Forms .................................................................................................... 5
Related Documents ............................................................................. 5
Revision History .................................................................................. 6
FAQ ........................................................................................................ 6

Who Should Know This Policy

All employees (including faculty and postdoctoral scholars) are responsible for knowing this policy and familiarizing themselves with its contents and provisions.

Definitions

Child Care Positions
These are positions that involve or relate to the care of children, which require additional background processing in accordance with requirements of the Virginia Department of Social Services policy or Virginia Board of Education.

Rehire
For purposes of this policy, this term means employment after any separation from VCU service as reflected in the Banner system. Periods of payroll inactivity are not included unless the employee is separated from employment in Banner.

Resource Critical Positions
These are positions with access to or control over confidential student and/or employee data and/or access to or control over significant institutional assets.

Sensitive Positions
These are positions that have direct responsibility for the health, safety and welfare of the general populace or protection of critical infrastructures and are identified as sensitive and require fingerprinting:

- positions responsible for safety, such as police and security staff;
- positions with access or contact with research animals;
- positions with access to certain hazardous materials;
- positions with access to or control over patient data and/or responsible for direct patient care; and
- other positions, as deemed sensitive by management.
Contacts

VCU Human Resources officially interprets this policy and is responsible for obtaining approval for any revisions as required by the policy Creating and Maintaining Policies and Procedures through the appropriate governance structures. Please direct policy questions to VCU Human Resources.

Policy Specifics and Procedures

1. **Extent of Background Check:** Human Resources will conduct confidential criminal conviction investigations as follows:
   - Employees hired, transferred or promoted into sensitive positions require a fingerprint check (Virginia Code § 2.2-1201.1). These investigations are conducted through VCU Police interface with the FBI’s database prior to the start date.
   - All other newly hired or rehired employees require an investigation conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven years.* (Exception: Employees who do not yet have a social security number and are on a new visa, issued within the past 30 days, screened by the U. S. Department of Homeland Security are not rescreened.)
   - In addition, the Virginia Department of Social Services also requires that a check of the Child Abuse and Neglect Complaints Central Registry and Virginia State Police be completed on applicants seeking hire, rehire, transfer or promotion into child care positions. The full process recurs every three years during the incumbent’s employment.
   - Current employees seeking transfer or promotion into resource critical positions after a year from their last background check will undergo an additional background check conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven years.

   *Certain positions also may require additional checks after hire based on grant, security, accreditation or other agency requirements (e.g., VCU Police staff; employees working in the VCU Health facilities; child care positions, employees requiring unescorted access to hazardous materials). Employees in those positions will be notified during the hiring, certification or funding process, or other business process.

2. **Condition of Employment:** The university will investigate past criminal convictions as a condition of employment after a candidate has signed a waiver authorizing release, been found otherwise eligible for the position and is being considered for a specific position. Employment is subject to final review and evaluation of the criminal conviction history.
   - Any person refusing to complete and sign appropriate authorization for release of criminal history information prepared in accordance with the Governor of Virginia’s Executive Order 41 (2015) may have their application removed from further consideration.
   - All employees will be advised that their employment is conditional upon a job related background check.
All background checks will be conducted after the conditional offer of employment and prior to the selected candidate’s start date as required by this policy. To ensure the most recent history is on file, criminal conviction investigations must be completed no more than 45 days prior to the employee’s start date. Criminal history records will be received and processed as part of a confidential practice in Human Resources.

3. Review Process: Criminal conviction(s) identified in the hiring/orientation process will be confidentially reviewed by Human Resources and may render the selected candidate ineligible for holding a specific position(s) based on the nature and gravity of the offense(s), time that has passed since the conviction and/or completion of the sentence and the nature of the job sought. Any additional convictions that may be revealed from the criminal record check will be confidentially reviewed by Human Resources and may be considered cause for rescinding the conditional offer and/or termination of employment based on the nature of the job and job relatedness of the conviction(s).

Current employees who apply for transfer or promotion into child care, resource critical or sensitive positions will be subject to criminal history checks as described above under “Extent of Background Check.” Information obtained through the check may affect the employee’s ability to remain in the new or current position, depending on the relevance of the information to the position. Current employees who transfer into a new position may start the new position while the background check is still in progress.

Decisions regarding termination of employment or other action will be made in conjunction with the appropriate department head, dean, vice president and/or president. If a final recommendation for termination of employment is made by Human Resources, only the president or a vice president can waive that recommendation and approve the department’s request to retain the employee.

4. Reporting Requirements for Current Employees: During the course of employment, all employees are required to report any criminal conviction, including major traffic violations, within five calendar days of conviction via the Virginia Commonwealth University Criminal Conviction Online Self-Disclosure form. Major driving violations are any moving violation conviction including but not limited to: driving under the influence (DUI) of drugs or alcohol; knowingly operating a vehicle while driver’s license is suspended or revoked for any reason, use of a vehicle in commission of a felony; hit and run accident or failure to stop after an accident; or knowingly making a false statement to a police officer concerning an accident. Minor driving violations such as speeding over the posted speed limit, traffic light or stop sign violations, and/or improper lane changes do not need to be reported. However, all university employees and students who drive a VCU vehicle for the purpose of conducting university business, as well as the supervisors and heads of departments that own or lease one or more vehicles should refer to the Vehicle Accident Prevention and Safety policy for guidance regarding reporting any moving traffic violations.

Employee self-disclosures will be evaluated by Human Resources individually and will not necessarily affect employment. Human Resources will notify the employee’s department of the conviction only if it is determined that the conviction is pertinent to the employee’s ability to carry out the duties or functions of their position. Depending on the facts and the employee’s involvement in the events leading to the conviction, reported convictions may result in disciplinary
action up to and including termination. Failure to report a criminal conviction may also result in disciplinary action up to and including termination.

If deemed appropriate, Human Resources may refer the disclosure to the threat assessment team and other pertinent offices to evaluate whether there is potential risk to warrant further action.

5. **Investigations for Cause:** When circumstances are identified that warrant further investigation, the university reserves the right to conduct a criminal conviction investigation on an employee who is charged with any crime that reflects on or gives rise to questions as to the employee’s suitability for continued employment or during the course of an administrative investigation. The results of the investigation will be reviewed as described above under “Review Process” and may be considered cause for termination of employment based on the nature of the employee’s job and the job relatedness of the charge(s)/conviction(s).

**Forms**

1. [Virginia Commonwealth University Criminal Conviction Online Self-Disclosure form](#)

**Related Documents**

1. Virginia Department of Social Services Standards for Licensed Child Day Care Centers (background checks)
   http://www.dss.virginia.gov/files/division/licensing/background_index_childrens_facilities/fingerprint_based_background_checks/child_day_care/background_investigation_procedures_child_day_care_programs.pdf

2. Governor's Executive Order 41 (2015), "Ban the Box"

3. VCU Policy: [Alcohol and Other Drugs](#)

4. VCU Policy: [Classified Employment, Promotion and Transfer](#)

5. [Faculty Salary Administration Guidelines](#)

6. VCU Policy: [Postdoctoral Scholars](#)

7. VCU Policy: [Vehicle Accident Prevention and Safety](#)

8. VCU Policy: [Working @ VCU: “Great Place” HR Policies](#)

9. Federal Fair Credit Reporting Act
   https://www.ftc.gov/system/files/545a_fair-credit-reporting-act.pdf

10. State Policy 1.05, Alcohol and Other Drugs
    http://web1.dhram.virginia.gov/itech/hrpolicy/pol1_05.html
Revision History

This policy supersedes the following archived policies:

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<thead>
<tr>
<th>Approval/Revision Date</th>
<th>Title</th>
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<tbody>
<tr>
<td>April 10, 2011</td>
<td>Criminal Conviction Investigations</td>
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<tr>
<td>April 21, 2015</td>
<td>Criminal Conviction Investigations – revision due to Governor’s</td>
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<tr>
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<td>Executive Order 41 (2015), “Ban the Box,” implemented April 21,</td>
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<td>2015, which reforms state hiring practices by removing questions</td>
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<td>regarding criminal history from the state employment application.</td>
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<tr>
<td>August 10, 2015</td>
<td>Criminal Conviction Investigations</td>
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FAQ

There are no FAQ associated with this policy and procedures.