A. PURPOSE

The purpose of this policy is to establish the University’s guidelines and parameters for conducting criminal background checks to provide a safe and secure environment for its employees, students and visitors.

B. AUTHORITY

Code of Virginia Section 23.1-1301, as amended, grants authority to the Board of Visitors to make rules and policies concerning the institution. Section 6.01(a)(6) of the Board of Visitors Bylaws grants authority to the President to implement the policies and procedures of the Board relating to University operations.

Code of Virginia Section 2.2-1201.1, as amended, Criminal Background Checks for Certain Positions

Virginia Department of Human Resource Management Policy 2.10 - Hiring

C. DEFINITIONS

Administrative and Professional (AP) Faculty – Employees who perform work directly related to the management of the educational and general activities of the institution, department or subdivision or whose professional positions serve the educational, research, athletic, medical, student affairs, and development functions or activities of the institution.

Adjunct Faculty – Employees appointed to academic adjunct ranks who teach part time and whose compensation is based upon the number of credit hours taught.

Classified Employee – A salaried employee whose terms and conditions of employment are subject to the Virginia Personnel Act, Code of Virginia Section 2.2-2900 et seq., as amended, and who is employed in a classified position.

Criminal Background Check – A report that includes criminal felony and misdemeanor courts records searches based on a social security trace, a national sex offender registry search as well as other appropriate sources of background information.
Minor – A person under the age of 18 who is not enrolled or accepted for enrollment at the University. Students who are “dually enrolled” in University courses while also enrolled in elementary, middle or high-school courses are not included in this policy unless such enrollment includes overnight housing in University facilities.

Non-Instructional Part-time Faculty – A person hired in a part-time non-teaching and non-research position with responsibilities that are comparable to administrative and professional faculty. This category is also referred to as “4031,” which is the budget subaccount code used to designate the funding for this type of employee.

Rehired Employee – An employee who previously separated and is currently employed again at the University.

Sensitive Position - The Code of Virginia (§2.2-1201.1) defines sensitive positions as those “generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures; that have access to sensitive information, including access to federal tax information in approved exchange agreements with the Internal Revenue Service or Social Security Administration; and that otherwise required by State or Federal law to be designated as sensitive.” Examples of sensitive positions include police officers, nurse practitioners, and information systems security administrators. Teaching positions are generally excluded.

Teaching and Research Faculty - Employees whose work assignments primarily involve instruction, research, and scholarly activities, and who hold academic rank/titles of professor, associate professor, assistant professor, senior lecturer, lecturer, instructor or the equivalent in an academic unit.

Wage Employee - A non-salaried employee who receives pay for hours worked and is not covered by the provisions of the Virginia Personnel Act. Wage employees are sometimes referred to as hourly employees. Wage employees have no guarantee of employment for a particular term or a particular daily or weekly work schedule; they serve at the will of the designated hiring official and may be terminated at anytime.

D. SCOPE

This policy applies to new and rehired classified employees, teaching and research faculty, administrative and professional faculty, adjunct faculty, non-instructional part-time faculty, and wage employees. Current employees who are transferred or promoted into sensitive positions are also subject to this policy.

Student employees, graduate assistants, volunteers and interns who are in certain positions that handle confidential or restricted data and/or work with minors may also be required to undergo criminal background checks. For more information on programs involving minors, please see University Policy 3014, Minors on Campus.

Contract workers or vendors performing work or providing services for the University are not covered by this policy but may be required under University contracts to undergo criminal background checks.
Federal and State laws or regulations or professional licensing standards may require background checks or other forms of screening or testing for certain University positions. Such checks, screening, or testing are outside the scope of this policy.

E. POLICY STATEMENT

As a condition of employment, the Department of Human Resources and the Office of Academic Affairs will conduct confidential criminal background checks on new and rehired teaching and research faculty, administrative and professional faculty, adjunct faculty, non-instructional part-time faculty, classified employees and wage employees. A background check will not be conducted on employees who are rehired within six months of their separation date if a background check was previously conducted.

Criminal background checks will also be conducted on current employees who are transferred or promoted into sensitive positions. Virginia Code 2.2-1201.1 requires that fingerprint-based criminal history checks must be conducted on finalists for sensitive positions.

Criminal background checks may also be conducted on student employees, graduate assistants, interns and volunteers who are in certain positions that handle confidential or restricted data and/or work with minors.

Job postings for confidential or restricted positions will state that a criminal background check is required for the position.

Criminal background checks on volunteers will be conducted in accordance with University Policy #6023, Policy for the Use of Non-Research Related Volunteers.

The following departments conduct their own criminal background checks:

1. ODU Police Department - The ODU Police Department conducts its own background investigation of applicants for sensitive positions within the Department.

2. Office of Teacher Education Services – The Office of Teacher Education Services conducts its own background checks for student teacher supervisors.

3. Darden College of Education - The Darden College of Education conducts its own criminal conviction investigation of applicants for positions working with children in the Children’s Learning and Research Center, which includes a sexual assault/molestation, child abuse and criminal history background check.

4. College of Health Sciences – Select programs in the College of Health Sciences require background checks when clinical placements or service learning activities involve working with patients or other vulnerable population in the community. The background check includes The Patriot Act search, Social Security Alert, residency history, criminal records, Federal criminal records and sex offender.

Other University activities and programs may require criminal background checks as required by law. Certain other positions not described above may also require a criminal background check.
F. PROCEDURES

1. Conducting the Criminal Background Checks

Selected candidates for positions at the University must complete an Authorization and Consent for Release of Information form to consent to a criminal background check. In compliance with the Fair Credit Reporting Act (FCRA), the candidate will also receive a copy of A Summary of Your Rights and Consumer Disclosure Form.

Criminal background checks will include a criminal felony and misdemeanor court search based on a social security number trace and a National Sex Offender Registry search as well as other appropriate sources of background information. The Department of Human Resources and the Office of Academic Affairs staff will conduct the criminal background check in the appropriate systems. The Office of Risk Management will administer the background screening of staff and volunteers participating in programs involving minors in accordance with University Policy 3014, Minors on Campus. For candidates who resided in the Commonwealth of Virginia within the last seven years, the background check is conducted in the Virginia State Police criminal record check system. If the candidate has lived outside of the Commonwealth of Virginia within the last seven years, an alternate system will be used. Background screening requirements for programs involving minor children will be administered according to University policy 3014, Minors on Campus.

2. Review Process

Although a background check will include at a minimum a criminal history and social security number trace, it is the responsibility of the hiring manager to check employment and/or personal references and to verify required professional licenses and certifications prior to submitting a request for a formal background check. Academic degrees will continue to be verified through the National Student Clearinghouse, the appropriate institution, or vendor. If required for the position, a Motor Vehicle Report (MVR) may also be requested by the hiring official. Depending on the job-relatedness, additional background information may be requested by the hiring official. This determination will be made in consultation with the Department of Human Resources.

If criminal convictions are found and are considered job-related, the Department of Human Resources or the Office of Academic Affairs staff will notify the hiring manager as soon as possible. In compliance with FCRA, the candidate will be given an opportunity to explain any negative information and a copy of a summary of his or her rights under the FCRA. The candidate may be asked to provide additional information about the offense(s); the job-relatedness of the convictions will be determined by the Department of Human Resources. The determination may be in consultation with University Counsel, the Office of Institutional Equity and Diversity, the Dean of the College, the Chair of the Department, and the hiring manager. The candidate will be granted a reasonable period (five days) to contest the information. Failure of the applicant to provide requested documentation may result in the applicant’s removal from further consideration for employment. The decision to offer employment must be based on the following factors:
a. the nature and gravity of the offense or offenses;
b. the time that has passed since the conviction and/or the completion of the sentence; and
c. the nature of the job.

The hiring manager must submit a written justification of the decision to hire to the Vice President for Human Resources. If the hiring manager and the Vice President for Human Resources agree on the decision, the approval will be documented and the Department of Human Resources and/or the Office of Academic Affairs will notify the applicant accordingly. If the hiring manager and the Vice President for Human Resources are in disagreement, the Vice President for Human Resources and University Counsel (and Assistant Vice President for Equity and Diversity if necessary) will make the final determination in consultation with the appropriate senior administrator.

A note regarding the outcome of the criminal background check is retained in the confidential position recruitment file. The criminal history report obtained during the hiring process will be destroyed by shredding once it has served that purpose.

If an adverse employment action is taken as a result of the criminal background check, the Department of Human Resources, as required by the Fair Credit Reporting Act, will provide the candidate the name, address, and phone number of the agency that provided the information.

3. Preliminary Offers

Employment offers are not made until after the results of the background check have been received; however, contingent offers may be made to candidates for teaching and research faculty, administrative and professional faculty, adjunct faculty and non-instructional part-time faculty positions. The offer letter must include language that the continuation of employment is contingent on the satisfactory results of the background check.

4. Access to Criminal Background Check Details

Virginia law limits access to the details contained in a criminal background check. This policy limits access only to those persons permitted access by law. The persons permitted access are required to maintain the confidentiality of the information in such reports.

5. Sanctions

Violations of University policies, including providing false or misleading information used for any of the above background checks, will be handled in accordance with applicable University policies and procedures, which may include corrective actions up to and including separation from the University.

G. RECORDS RETENTION

Applicable records must be destroyed in accordance with the Commonwealth’s Records Retention Schedule 103, Series 02349 (Criminal History/Background Check Records) at the conclusion of the recruitment.
H. RESPONSIBLE OFFICER

Director of Total Compensation and Staffing, Office of Human Resources

I. RELATED INFORMATION

The National Child Protection Act of 1993
Code of Virginia Section 19.2-389, as amended, Dissemination of Criminal History Record Information
Commonwealth of Virginia Executive Order 41 (2015), Implementation of “Ban the Box” Hiring Policies in the Commonwealth
Board of Visitors Policy 1450 – Faculty Sanctions
University Policy 6600 – Standards of Conduct for Classified Employees
Information Technology Standard 02.3.0 – Data Administration and Classification Standard
POLICY HISTORY
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Policy Formulation Committee (PFC) & Responsible Officer Approval to Proceed:

/s/ Nadine Faulcon-Johnson  August 8, 2019
Responsible Officer

Policy Review Committee (PRC) Approval to Proceed:

/s/ Donna W. Meeks  July 25, 2019
Chair, Policy Review Committee (PRC)

Executive Policy Review Committee (EPRC) Approval to Proceed:

/s/ September Sanderlin  August 8, 2019
Responsible Oversight Executive

University Counsel Approval to Proceed:

/s/ James D. Wright  August 8, 2019
University Counsel

Presidential Approval:

/s/ John R. Broderick  August 9, 2019
President

Policy Revision Dates:  May 14, 2018; August 9, 2019
Scheduled Review Date:  May 14, 2023