Conviction and Driving Record Investigation for Employment

No. 4060

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Faculty
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Other

1.0 Purpose
2.0 Policy
3.0 Procedures
4.0 Definitions
5.0 References
6.0 Approval and Revisions

1.0 Purpose

This policy addresses the use of conviction and driving record checks during the employment process, as part of a broader effort to provide a safe and secure environment and protect university assets.

The university recognizes that its interests in investigating employees' backgrounds must be balanced with the need to protect the privacy of employees and prospective employees. Information obtained in the conviction check process is public record and is provided by a third party specializing in gathering this data. However, university policy and state and federal laws recognize the individual's right to privacy and prohibits university employees from seeking, using, or disclosing information except within the scope of their assigned duties. Any information related to personal history, including conviction records, must be maintained in confidence. Only those personnel involved in the employment process should be informed on a need-to-know basis.

2.0 Policy

In order to protect university interests, institutional resources, and the welfare of its students, employees, and the public, it is the policy of the university to conduct conviction and/or driving record checks on all newly hired[1] non-student positions for full-time, part-time and temporary/wage positions. This policy also applies to certain student positions and volunteer positions such as those that handle cash, work as resident advisors or security, come into contact with confidential information or intellectual property, or other positions as defined by senior management. Requirements of individuals working with minors is covered in Policy 4815, Minors at Virginia Tech.

Applicants will be advised in the job advertisement that a conviction and/or driving record check is required as a condition of employment. The conviction/driving check should be initiated after a contingent offer is made. At no time should a person subject to this policy begin work until the Division of Human Resources has reviewed and communicated the results of the check to those making the hiring decision.

2.1 Types of Checks

Employment checks typically consist of conviction checks and/or driving record checks. Additional employment checks such as financial/credit/licensure checks may be conducted if job-related or required by other laws or policies.

A. Conviction Checks - required for all persons subject to this policy (full-time, part-time, temporary/wage). The Division of Human Resources will obtain through a third-party vendor.
   a. An employee changing jobs through the competitive process, or adding additional job(s) beyond a primary job through the competitive process, is not subject to a second conviction check if the employee has previously undergone a conviction check with no break in service.

b. Employees changing jobs through the non-competitive process, or adding additional job(s) beyond a primary job through a non-competitive process (such as Emergency Hire, P14, Sporadic Hire) are not subject to a new/additional conviction check.

c. An employee returning to Virginia Tech in any appointment after a break in service of less than 24 months is not subject to another conviction check if the employee had previously undergone a conviction check when hired originally, or at some subsequent point. Any employee returning after a break in service of 24 months or greater is required to undergo a conviction check.

d. Hiring department, in consultation with the Division of Human Resources and senior management, may designate certain areas or job types that require a second conviction check based on job related duties, even if the candidate falls into category a, b, or c above.

B. Driving Check (Motor Vehicle Records) - required for all final candidates in a position that requires driving as part of their normal job duties. The employee may be driving a state/university vehicle, a rental vehicle, or their own personal vehicle. The employee must have an acceptable driving record, as determined by the hiring department after consultation with the Division of Human Resources, to drive as part of their job. The Division of Human Resources will obtain through a third-party vendor.

a. An employee changing jobs, or taking on new driving responsibilities, is not subject to a second driving check if the employee has previously undergone a check within the past 12 months.

b. Hiring department, in consultation with human resources and senior management, may designate certain areas or job types that required a second driving check based on job related duties, even if the candidate falls into category (a) above.

C. Other checks such as a financial/credit/licensure report, civil actions, or other related reports may be required if job-related.

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[1]Note: A faculty rank change by itself does not constitute a job change.

2.1.1 Safety Sensitive Positions Responsible for Public Welfare and Critical Infrastructures

Additionally, some positions have been identified for a fingerprint-based conviction check because the position carries direct responsibility for the health, safety, and welfare of the general populace, or protection of critical infrastructures, as required by Code of Virginia § 2.2-1201.1.

2.1.2 Checks on Current Employees

At this time, current Virginia Tech employees will not be subject to retroactive conviction/driving checks, unless the check is required by a state or federal law or university policy. Otherwise, current employees will be subject to future checks as outlined in this policy, only when changing jobs or responsibilities.

Current employees may also be required to undergo conviction and/or driving record checks if there is evidence that they may have falsified their employment applications when initially hired by the university or have subsequently current Virginia Tech employees will not be subject to retroactive conviction/driving checks, unless the check is required by a state or federal law or university policy. Otherwise, current employees will be subject to future checks as outlined in this policy, only when changing jobs or responsibilities.

2.2 Disclosure and Use of Conviction Information

The Commonwealth of Virginia McAuliffe Executive Order 41 (2015), Ban the Box reforms state hiring practices by removing questions regarding criminal history from the employment applications. It also reaffirms that (1) a conviction will not be an automatic barrier to state employment; and (2) a conviction will be judged on its own merits with respect to time, circumstances, seriousness and the extent to which it is related to the job. Hiring departments are not allowed to ask about arrests or convictions during the screening/interview process.

In accordance with McAuliffe's Executive Order 41 (2015), only individuals involved in the search process for safety sensitive positions as defined by the Code of Virginia (§ 2.2-1201.1) will be allowed to ask candidates about convictions on the application or during the interview process.

Once a finalist has been selected, a conditional offer of employment will be made to the candidate. The conditional offer will require the candidate to complete a conviction/driving check consent form and application through the third-party vendor's online process. This online application will ask the finalist to disclose any previous criminal and/or driving convictions, including misdemeanors.

Wage finalists will be asked to complete the same process as other finalists.

Falsification of the conviction/driving check application, in addition to the results of the conviction/driving check, may constitute grounds for withdrawing the conditional offer, dismissal, and/or disqualification for future university employment.

Hiring departments may ask about potentially job-related convictions only after the conditional offer has been made and the results of the conviction/driving check are provided. Discussion should be limited to determining the job-relatedness of the convictions. In making the determination of job-relatedness, consideration may be given to the date of the conviction, the frequency and severity of the crimes, the honesty of the candidate in disclosing the information, and the candidate's subsequent work history.

Any information about job-related convictions or falsification of information should be communicated to the Division of Human Resources for further investigation and appropriate action. This policy is subject to the provisions of the Fair Credit Reporting Act (FCRA).

3.0 Procedures

The hiring official is responsible for ensuring that the selected candidate completes the necessary paperwork and that a conviction check and/or driving check, or such other financial/credit/licensure check, as required, is completed prior to starting employment.

All conviction and driving record checks on university employees must be coordinated through the Division of Human Resources. The cost of conviction/driving checks are paid through a central fund account for all non-auxiliary positions. Auxiliary departments will be charged for the cost of the checks.

3.1 Initiating the Conviction and Driving Record Checks

The hiring department must complete an online request form available through the Resource Guide on the Division of Human Resources website to begin the conviction/driving check. A paper release form is also available for candidates who do not have access to an active email account. Results of the conviction/driving check are normally reported to Human Resources after the candidate submits his/her online release form.

3.2 Determination of Job-related Convictions

The Department of Human Resources will review the conviction records and/or driving records to assist the hiring manager in determining job relatedness. Human Resources will coordinate a review of any job related convictions or driving infractions and make a recommendation to the hiring official. This review may include the supervisor, senior management, Provost, Legal Counsel, and/or the Virginia Tech Police Department. The determination to deny employment to the selected candidate will be made by the hiring manager, in consultation with senior management.

3.3 Emergency Operations

Parts of this policy may be suspended or delayed in the event of a 'state of emergency' declared by the Governor of Virginia (Code of Virginia § 44-146.28(B)) or a 'university emergency' declared by the University President. Conviction/driving checks will still be required, but potential candidates may be allowed to start work prior to the availability of conviction/driving results. Ongoing employment will be determined after the results of the check(s) are received and reviewed.

4.0 Definitions

Conviction: The result of a trial that ends in judgment or sentence that the person is guilty as charged.

5.0 References

University Policy 4061, Drug, Alcohol, and Medical Testing Guidelines for Commercial Driver's License Holders and Other Identified Positions
https://www.policies.vt.edu/4061.pdf

University Policy 4815, Minors at Virginia Tech
https://policies.vt.edu/assets/4815.pdf

Governor McAuliffe's Executive Order 41 (2015) – "Ban the Box"
https://a-us.storyblok.com/f/1014904/8ce62bf806/eo-41-ban-the-boxada.pdf

Code of Virginia § 2.2-1201.1
https://law.lis.virginia.gov/vacode/title2.2/chapter12/section2.2-1201.1/

Code of Virginia § 44-146.28(B)
https://law.lis.virginia.gov/vacodepopularnames/emergency-services-and-disaster-law/

Fair Credit Reporting Act, United States Code, 15 § 1681 et seq.
https://www.ftc.gov/system/files/ftc_gov/pdf/fcra-may2023-508.pdf

6.0 Approval and Revisions

- Revision 0
  Approved August 3, 1989, by the Associate Vice President for Personnel, Robert M. Madigan.

Reviewed June 1, 1992, by Associate Vice President for Personnel and Administrative Services, Ann Spencer. No changes.

- Revision 1
  Minor wording changes and specific reference to the inclusion of temporary wage positions.

  Approved June 18, 1993, by Associate Vice President for Personnel and Administrative Services, Ann Spencer.

- Revision 2
  - Section 3.3 Initiating the Conviction Check. Procedural changes were made for the selected candidate. The employee completes the Virginia State Police Criminal History Record Request at the Personnel Services Department instead of the Virginia Tech Police Department. In addition, both on and off-campus instructions on initiating a check have been added. Personnel Services will contact the department if there is a problem with the results of the check.
  - References for additional information on temporary wage positions were previously made to Policy 4035, Wage Employment Guidelines. This policy has been rewritten and merged with other related policies; reference information can now be found in Policy 4032, Recruitment Guidelines for On- and Off-campus Wage and Salaried Classified Positions (http://www.policies.vt.edu/4032.pdf).
  - Section 3.5. Initiating the Driver's Check for On- or Off-campus Positions was added.
  - Other minor word changes and formatting for clarity.

  Approved July 20, 2000, by Assistant Vice President for Personnel Services, Linda Woodard.

October 10, 2001: Technical corrections to update policy links.

- Revision 3
  - The title of the policy was revised from "Criminal History and Driver's Record Investigation" to "Background and Driving Record Investigation." These terms were changed throughout the policy.
  - The policy was revised to include the following changes: (a) clarification that the checks are completed prior to commencement of employment; (b) stating the importance of confidentiality; (c) clarifying the types of positions for which driving records checks may be required under Section 2.1; (d) expanding the types of sensitive responsibilities under Section 2.2; (e) expanding the covered employees to include administrators, faculty, and staff in identified sensitive positions or departments; and (f) including provisions for finger-print based conviction checks for certain positions as required under Virginia Code § 2.2-1201.1.
  - Other changes included significant re-formatting.

  Approved June 19, 2006 by Kurt J. Krause, Vice President for Business Affairs.

- Revision 4
  - Major revisions to the policy were made to require that all non-student new hire employees for full-time, part-time and temporary/wage positions, including teaching and special research faculty, submit to a conviction and/or driving record check.
  - Throughout the policy, the modifying word "background" was changed to "conviction" (in reference to the type of check which will be conducted) to more accurately reflect the information collected.

  Approved by the Commission on Administrative and Professional Faculty Affairs: October 12, 2011
  Approved by University Council: February 20, 2012 Approved by the President: February 20, 2012
  Approved by the Board of Visitors (for July 1, 2012 effective date): March 26, 2012

- Revision 5
  Section 2.1, Types of Checks, was revised to 1) remove the requirement for multiple conviction checks for current employees with no break in service; 2) require a second conviction check for an employee returning to work after 24 months, rather than 12 months; and 3) still permit, in consultation with Human Resources and Senior Management, a second conviction check for certain areas or job types.

  Approved October 31, 2012 by the Safety and Security Policy Committee
  Approved November 14, 2012 by the President, Charles W. Steger

- Revision 6
  Included clarification regarding not needing a second check if adding a job through a noncompetitive hiring process. Updated section 2.2 to reflect Ban the Box information. Updated section 3.1 concerning the initiation of the conviction check process. Added section 3.3 addressing needs for conviction checks during emergency operations. Updated title to clarify that this policy does not apply to student admissions.

  Approved February 3, 2017 by the Safety and Security Policy Committee.
  Approved February 3, 2017 by President, Timothy D. Sands.

- Revision 7
  Technical updates to language of the policy to provide clarity, to provide consistency of terms, and to update department names, titles, and links to statutes and websites. Removed references to Form P12W as the form is no longer applicable for disclosure of convictions for law violations, including misdemeanors, for wage employees. Added reference to Policy 4815, Minors at Virginia Tech.

  Approved March 27, 2025 by the Chair of the University Safety and Security Committee.
  Approved April 6, 2025 by the Executive Vice President and Chief Operating Officer, Amy Sebring.