

	<b>FGCU POLICY 3.037</b>	<b>Responsible Unit:</b> Human Resources
	<b>Criminal and Background Checks</b>	

## A. POLICY STATEMENT

The University is committed to the safety, security, and health of its Students, Employees, and others, as well as safeguarding the interests of the institution. To that end, the University requires that a Level 1 Criminal Background Check be conducted on all prospective and current regular Employees, and non-student OPS Employees and Students applying for positions open to non-students. Level 2 Criminal Background Checks will also be conducted on Students, Non-Compensated Appointees, and other identified appointments when required by law or if involving a position of special trust, responsibility, or requiring access to sensitive information.

## B. REASON FOR POLICY

This Policy is created to outline the protocols to be utilized, as well as the responsibilities involved, in conducting criminal background checks. Criminal background checks will be used only for the purpose of verification of the current Employee's, as appropriate, or prospective Employee's criminal history or that of a prospective Non-Compensated Appointee in a position of special trust as defined in this Policy. This Policy will also outline the protocols to be utilized for background checks for Employees or Volunteers assisting with FGCU Summer Camps.

## C. DEFINITION OF TERMS

1. *Courtesy Appointee:* An individual receiving a courtesy faculty or researcher appointment. Courtesy Appointees are unpaid, are not Employees of the University, and do not carry academic rank.
2. *Courtesy Appointment:* The unpaid appointment of a person from outside the University or from a non-academic unit within the University. A Courtesy Appointment is a distinct type of Volunteer.
3. *Crimes Against Minors:* Those offenses against a person under eighteen (18) years of age, include, but are not limited to, those covered under the following Florida Statutes: section 782.07, as it relates to manslaughter of a child; section 782.09, relating to killing of an unborn quick child by injury to the mother; section 784.011, relating to assault, if the victim of the offense was a minor; section 784.03, relating to battery, if the victim of the offense was a minor; section 787.025, relating to luring or enticing a child; section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings; section 787.04(3), relating to carrying a

child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person; section 794.05, relating to unlawful sexual activity with certain minors; section 826.04, relating to incest; section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child; section 827.04, relating to contributing to the delinquency or dependency of a child; section 827.05, relating to negligent treatment of children; section 827.071, relating to sexual performance by a child; chapter 847, to the extent that it involves minors; and chapter 893, relating to drug abuse prevention and control, if any other person involved in the offense was a minor. This definition is intended to encompass similar laws in all other jurisdictions.

4. *Criminal Background Record*: Information regarding the criminal history of a person being checked. Notwithstanding, the criminal background record will exclude an individual's arrest record and conviction records that have been sealed by court order. In the event arrest record information is provided, it will not be relied upon by the University, unless required by law.
5. *Employee*: Any person employed by Florida Gulf Coast University where there is an employment relationship and the individual receives compensation.
6. *FGCU Summer Camp*: A Summer Day Camp or Summer 24-hour Camp operated by FGCU, including FGCU athletic institutional camps, camps classified as requisite or non-requisite pursuant to FGCU Policy 3.026, Use of University Facilities, but does not include non-FGCU Summer Camps such as athletic coaches' independent camps, camps classified as a University-sponsored event or private event pursuant to FGCU Policy 3.026, Use of University Facilities, or camps managed and coordinated by an entity that is not recognized as under the direction or authority of FGCU.
7. *Level 1 Criminal Background Check*: For the purposes of this Policy, a Level 1 Criminal Background Check encompasses a criminal records check through a third party provider, including county level criminal history searches, a national criminal database search, and a national sex offender search, and may include a FDLE statewide search.
8. *Level 2 Criminal Background Check*: For the purposes of this Policy, encompasses a criminal records check through the FDLE and the Federal Bureau of Investigation (FBI) databases, and requires submission of biometric information, including fingerprints (for verification of identity), to search for national criminal background information.
9. *Non-Compensated Appointees*: For the purpose of this Policy, Non-Compensated Appointees includes Volunteers, Courtesy Appointees, fellows, and interns.
10. *Sex Crimes*: These offenses, sexual in nature, include, but are not limited to, those covered under the following Florida Statutes: sections 393.135, 394.4593, 916.1075, 985.701 relating to sexual misconduct; section 794.011, relating to sexual battery; section 794.05, relating to unlawful sexual activity with certain minors; sections 798.02 and

825.1025, relating to lewd and lascivious behavior; chapter 800, relating to lewdness and indecent exposure; sections 810.14 and 810.145, relating to voyeurism and video voyeurism, if the offense is a felony; section 826.04, relating to incest; and section 827.071, relating to sexual performance by a child. This definition is also intended to encompass similar laws in all other jurisdictions.

11. *Short Term Volunteer*: Volunteers who are only on campus to volunteer for a single special event, or volunteer on occasion to speak to a class, as a guest speaker, and who do so in the presence of an Employee who has received a criminal background check.
12. *Student*: A person whose primary purpose is to pursue an education. Graduate Assistants, Teaching Assistants, and Resident Assistants are considered Students. A Student applying for an employment position that is open to non-students or is considered a position of special trust, responsibility, or working directly with other Students or minors would be required to complete a criminal background check.
13. *Summer Day Camp*: Defined in section 409.175, Florida Statutes, as recreational, educational, and other enrichment programs operated during summer vacations for children who are five (5) years of age on or before September first (1<sup>st</sup>) and older.
14. *Summer 24-hour Camps*: Defined in section 409.175, Florida Statutes, as recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacations for children who are five (5) years of age on or before September first (1<sup>st</sup>) and older, that are not exclusively educational.
15. *Volunteer*: A person who, of his or her own free will, provides services to the University without monetary or material compensation for his or her efforts. This does not include Volunteers for registered student organizations who are not otherwise Volunteers of the University.

## **D. PROCEDURES**

1. Information Collection, Evaluation, and Retention
  - a. Human Resources is responsible for coordinating and conducting criminal background checks for all Employees, and Non-Compensated Appointees under this Policy. For Level 1 Criminal Background Checks, the applicant for employment that has received an offer of employment contingent upon completion of a criminal background check, or the applicant for a Non-Compensated appointment will submit personal information required to complete the criminal background check directly to the University's outside vendor and will be able to access their screening information. In the case of a Level 2 Criminal Background Check, the University's outside vendor will, with a complete set of fingerprints, submit a request to the appropriate agency for the Criminal Background Record of persons covered under this Policy. That agency will, in turn, submit the request to the Federal Bureau of Investigation (FBI)

for national processing. Except for institutional camps, the cost of fingerprinting will be centrally funded by the University, as will Level 1 Criminal Background Checks required by this Policy.

- b. Newly hired Employees, or other individuals subject to this Policy, who do not reside in southwest Florida may use the outside vendor in the area in which they live to complete their Level 2 Criminal Background Check process, if applicable. Where the outside vendor submits the request for a Level 2 Criminal Background Check, results will be routed directly to the University Police Department (UPD) by the outside vendor.
- c. When the Criminal Background Record has been obtained, the designated Human Resources representative will access the report in the case of Level 1 Criminal Background Check, and in the case of a Level 2 Criminal Background Check, UPD will review the results to determine whether any criminal convictions are indicated.
  - 1) Standing alone, a current Employee's employment status will be unaffected by a prior criminal conviction. However, any Employee who, at the time of application, failed to disclose on his or her application a prior conviction for a Sex Crime, or Crimes Against Minors, as defined by law, will be separated from the University. Current Employees separated from the University under this Policy may appeal such separation under a collective bargaining agreement, or FGCU Regulation 5.020, Appeal of Disciplinary Actions, or its corresponding University policy, as appropriate.
  - 2) Criminal Background Records for prospective (i.e. post conditional offer) Employees and Non-Compensated Appointees, will be verified and evaluated consistent with Section D.1.e.1) of this Policy by the designated Human Resources representative, and the hiring official, in consultation with UPD and the Office of the General Counsel, when the criminal background check discloses a conviction(s).
- d. In addition to criminal background checks for prospective Employees and certain Non-Compensated Appointees, a Level 2 Criminal Background Check will be required of persons appointed to University-designated positions of special trust, responsibility, or requiring access to sensitive information, which are positions with duties that include one (1) or more of the following:
  - 1) Working with minors or children as defined in the National Protection Act of 1993 as amended, or minors and children, defined as any person under the age of eighteen (18), as mandated under section 827.01, Florida Statutes, or similar law(s) in all other jurisdictions;
  - 2) Access to cash, credit card numbers, or demand deposits, as the job requires, as well as social security numbers;

- 3) Access to campus buildings as a result of being assigned building master keys;
  - 4) Ability to complete final processing of payroll, investments, or purchase orders;  
or
  - 5) Regular unsupervised Student contact such as resident assistants, teaching assistants, graduate assistants, tutors, orientation leaders, etc.
- e. If under this Policy a position or appointment requires a criminal background check and the candidate for the position or appointment refuses to undergo all or a portion of the criminal background check process, that person will be ineligible for further consideration for the position, appointment, or Volunteer capacity in which they are interested. Employees who are separated from employment at FGCU for thirteen (13) months or more must have another background check performed prior to being re-employed. Notwithstanding, such former Employees who have been rehired are still required to self-report any new convictions subsequent to their previous date of hire.
- 1) If a criminal background check of a prospective Employee reveals any conviction of a felony or misdemeanor, before making any employment decision, the following factors will be considered:
    - a) The nature and gravity of the offense(s) and the circumstances surrounding the offense(s);
    - b) The time that has passed since the conviction and/or the completion of the sentence;
    - c) The rehabilitation record and actions and activities of the individual since the conviction, including subsequent work history; and
    - d) The nature of the job sought and whether the conviction is related to the job in any meaningful way.
- f. The existence of a conviction does not automatically disqualify an individual from employment. Adverse information triggers a process, not a result. Each case will be evaluated on its own merit with respect to the above factors; however, for employment consideration, the individual must have made a truthful and comprehensive disclosure of the conviction. If a charge is pending at the time of application, applicants have an obligation to supplement their application and report any resulting conviction. Guilty verdicts, guilty pleas, and pleas of nolo contendere (no contest) must be included in the disclosure. Individuals will have an opportunity to present relevant information after the University's receipt of the Criminal Background Record for consideration in making any employment or appointment decision.

- 1) All current Employees must report to their supervisor and the designated Human Resources representative, any conviction occurring subsequent to their date of hire or during their employment with the University. Failure to do so may result in separation from the University. Employees separated from the University under this Policy may appeal such separation under the applicable collective bargaining agreement or through the process provided in FGCU Regulation 5.020, Appeal of Disciplinary Actions, and its corresponding policy, as appropriate.
- 2) All Criminal Background Records obtained by the University are controlled by federal laws. As such, these records are confidential and will not be comingled with other public records or maintained in an Employee's personnel file. However, information created by the University related to an Employee's Criminal Background Record is subject to the Florida Public Records laws.
- 3) The University will ensure that all Criminal Background Records are held in compliance with federal and state statutes.
- 4) Criminal Background Records will not be used to discriminate on the basis of race, color, marital status, sex, religion, national origin, disability, age, genetic information, sexual orientation, gender identity or expression, or military status.
- 5) Effective January 1, 2013, the University will not enter into an employment relationship until the results of the criminal background check have been received, reviewed, and a determination made, if necessary. If, however, extenuating circumstances interfere with, or prevent a Criminal Background Record from being obtained, the Employee or Non-Compensated Appointee may begin employment, or appointment, with the understanding that, if once received, the results of the Criminal Background Record make the Employee or Non-Compensated Appointee ineligible for hire or service, the Employee or Non-Compensated Appointee would be separated immediately and the appointment, along with any privileges, would be removed.

## 2. Summer Camps

The following defines the background and screening requirements for University departments, registered student organizations, or other University entities conducting FGCU Summer Camps, but does not include camps falling outside the definition of Summer Day Camps or Summer 24-hour Camps:

- a. Pursuant to section 409.175, Florida Statutes, and rules adopted by the Florida Department of Children and Families (DCF), all Employees and Volunteers who will work within an FGCU Summer Camp must complete a DCF Level 2 background check, including submission of a DCF Clearinghouse Background Screening Request, a DCF Privacy Policy acknowledgement form, and a DCF Affidavit of Good Moral

Character. No additional screening beyond the Level 2 criminal background check required by this Policy shall be required for an Employee or Volunteer who is a guest speaker or presenter at the FGCU Summer Camp for a portion of the day. Such speaker must be at all times in the presence of Employees or Volunteers who have had a DCF Level 2 background check described in section 409.175, Florida Statutes. A guest speaker or presenter is merely a guest and not considered an instructor or camp worker.

- b. New Employees hired for an FGCU Summer Camp must comply with University hiring and background check procedures. A DCF background check will satisfy the FGCU background check requirement. However, FGCU will not approve for hire any person who has not been cleared to work by DCF.
- c. Prospective Employees and Volunteers of FGCU Summer Camps must have fingerprints and photograph taken by a DCF-approved vendor;
- d. Prospective Employees and Volunteers of FGCU Summer Camps must be approved by DCF evaluation of the DCF Level 2 background check;
- e. Annual Renewal: Once screened through the DCF Clearinghouse, the current Employee, Volunteer, or re-hire will have the FBI portion of the background check re-run for an up-to-date DCF acceptance before each FGCU Summer Camp program; and
- f. Every fifth (5<sup>th</sup>) summer, the entire process of the DCF Level 2 background check will be completed prior to working an FGCU Summer Camp.

### 3. Exemptions

This Policy provides exemptions from criminal background checks for individuals who meet the following conditions unless their job duties require them or they are required by law or internal procedure to undergo a criminal background check. The exemptions are as follows:

- a. Students, generally, will not be subject to criminal background checks. However, Students who are employed in a job open to non-students or who work directly with other Students (whether minors or not), are resident assistants, or are working in any camp, are designated as being in a position of special trust or responsibility pursuant to this Policy;
- b. Short Term Volunteers;
- c. Volunteers who were previously checked within the last six (6) months by the University, unless working in an FGCU Summer Camp;

- d. Employees and Courtesy Appointees, who otherwise would be required to obtain a Level 2 background check, who do not work on campus and have received a verified Level 2 Criminal Background Check through another agency;
- e. Employees that are in a part-time temporary OPS classification anticipated to perform services for one month or less, such as temporary instructors in the Office of Continuing Education & Off-Campus Programs;
- f. Employees working on campus otherwise required by DCF to undergo a criminal background check because of their employment and job responsibilities with the University; and
- g. Employees who had a previous background check, maintained continuous employment at FGCU, and were subsequently reclassified, laterally moved, or began a new appointment.

*Authority*

*Section 409.175, Florida Statutes*

*BOG Regulation 1.001, University Board of Trustees Powers and Duties*

*FGCU Regulation 5.006, Employee Criminal and Background Checks*

*History of Policy*

*New 01/22/13; Amended 05/20/14; Amended 11/01/17 (Organizational Change); Amended 09/18/19; Amended 06/17/20*

**APPROVED**

\*s/Michael V. Martin  
Michael V. Martin, President

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Date