

	<b>Florida Gulf Coast University</b> Policy Manual	Policy: 3.037 Approved: 05/20/14
	<b>Criminal Background Checks Policy</b>	<b>Responsible Executive:</b> Vice President and General Counsel  <b>Responsible Office:</b> Human Resources

## I. 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 2 criminal background check be conducted on all current regular employees, full time OPS employees and prospective regular employees. Criminal background checks will also be conducted on students and volunteers when required by law or if involving a position of special trust, responsibility or requiring access to sensitive information.

## II. 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 or prospective employee's criminal history.

## III. DEFINITION OF TERMS (For purposes of this Policy only)

- A. *Employee*: Any person employed by Florida Gulf Coast University who receives some form of compensation.
- B. *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.
- C. *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 with other students and/or minors would be required to complete a criminal background check.
- D. *Criminal Background Record*: Information regarding the criminal history of a person being checked. Notwithstanding, the Administration's criminal background check 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 viewed by Administration or relied upon by the University.
- E. *Level 1*: Only provides Statewide criminal background information.

- F. *Level 2*: With fingerprints (for verification of identity), provides national criminal background information.
- G. *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; Section 827.071, relating to sexual performance by a child. This definition is also intended to encompass similar laws in all other jurisdictions.
- H. *Crimes Against Minors*: Those offenses against a person under 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; 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.

#### IV. PROCEDURES

##### A. Information Collection, Evaluation and Retention

1. The University Police Department (UPD) will, with a complete set of fingerprints, submit a request for the criminal background record of persons covered under this policy to the Florida Department of Law Enforcement (FDLE). FDLE will, in turn, submit the request to the Federal Bureau of Investigation for national processing. The cost of fingerprinting will be centrally funded by the University.
2. Newly hired employees who have yet to relocate to the area may use the “Out-of-Area” background check process in lieu of utilizing UPD. Background check results from the area where the person resides will be routed directly to UPD by

the FGCU outside vendor for this purpose. The person subject to the background check is responsible for the up-front cost of the service when scheduling an appointment with the FGCU outside vendor. The up-front cost will be reimbursed upon submission of an invoice and payment confirmation by payee to Human Resources.

3. When the criminal background record has been obtained, UPD will determine whether any criminal convictions are indicated.
  - a) 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 a crime where the victim of the offense was a minor, will be separated from the University. Current employees separated from the University under this policy may grieve such separation under the Collective Bargaining Agreement or FGCU-PR5.020, as applicable. This provision is only applicable to persons employed with the University at the initial implementation of this policy. This provision excludes those new employees who have been hired prior to the implementation of this policy, subject to the completion of their criminal background check, but have not submitted to such check.
  - b) Criminal background check records for prospective (i.e. post conditional offer) employees will be verified and evaluated consistent with Section IV. A. 5a) of this Policy.
4. A criminal background check will be required of OPS employees and volunteers in University-designated positions of special trust, responsibility, or requiring access to sensitive information, and whose duties may include one or more of the following:
  - a) 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 18, as mandated under Florida Statute Section 827.01, or similar law(s) in all other jurisdictions;
  - b) Access to cash, credit card numbers and/or demand deposits, as the job requires, as well as social security numbers;
  - c) Access to campus buildings as a result of being assigned building master keys;
  - d) Ability to complete final processing of payroll, investments or purchase orders.
5. a) If a prospective employee or volunteer refuses to undergo all or a portion of the criminal background check process, that person will be ineligible for further

consideration for the position or volunteer capacity in which they are interested. Employees who are separated from employment at FGCU for 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.

- b) 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:
  - 1) The nature and gravity of the offense(s) and the circumstances surrounding the offense(s);
  - 2) The time that has passed since the conviction and/or the completion of the sentence;
  - 3) The rehabilitation record and actions and activities of the individual since the conviction, including subsequent work history; and
  - 4) The nature of the job sought and whether the conviction is related to the job in any meaningful way.
6. 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 check record for consideration in making any employment decision.
  - a) Cooperation and compliance with this policy by current employees is expected. Consequently, an employee's refusal to comply with all or a portion of the criminal background check process will result in separation from the University.
  - b) All current employees must report to their supervisor and the Director of Human Resources 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 grieve such separation under the Collective Bargaining Agreement or FGCU-PR5.020, as applicable.

- c) All criminal background check records obtained from FDLE by UPD 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 information is subject to the Florida Public Records laws.
- d) The University will ensure that all criminal background check records are held in compliance with federal and state statutes.
- e) Criminal background check 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.
- f) 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.

#### B. 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:

1. Students and volunteers, generally, will not be subject to criminal background checks. However, students who are employed to work directly with other students (whether minors or not), including those working in any camp, are designated as being in a position of special trust and/or responsibility. A department may also request Human Resources to designate limited positions as subject to a criminal background check. If a student applies for a position which requires a background check and one has been performed for the student within the previous 13 months as part of a program enrollment requirement, the former background check may be used for employment purposes only if the student advises the Human Resources department of the previous background check and provides written permission in the form of a FERPA third party release for the results to be disclosed by the University Police Department to the Human Resources Department.
2. Short term volunteers who are only on campus for a single special event.
3. Volunteers who were previously checked within the last six (6) months by the University.
4. Employees who do not work on campus AND have received a verified level 2 criminal background check through another agency.

5. Employees working on campus required by Department of Children and Family Services to undergo a criminal background check because of their employment and job responsibilities with the University.
6. Employees who had a previous background check, maintained continuous employment at FGCU, and were subsequently reclassified, laterally moved, or began a new appointment, unless the employee begins employment in a different position which duties require a criminal background check.

**V. HISTORY**

New 01/22/13; Amended 05/20/14

**APPROVED**

  
President

May 20, 2014  
Date

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