

FACULTY AND STAFF COUNCIL DRAFT

UNC Charlotte University Policy 101.23 Criminal Background Checks and Criminal Activity Reporting

Approval: Initially approved by the Chancellor XXX, 2013

Applicable Procedures:

- [Criminal Background Report Procedure for SPA Positions](#)
- [Criminal Background Report Procedure for EPA Faculty/Non-Faculty Positions](#)

1. Policy

- To provide a safe learning and working environment for its students, staff, faculty, visitors, and volunteers, and to protect the University's financial, property, and other assets, UNC Charlotte will conduct background checks on all persons at the time of initial employment, on current employees who otherwise become subject to a background check as indicated in this Policy, on employees with Sensitive Duties every five years, and on certain volunteers and contractors.
- In accordance with the procedure in Section 6 below, an Employee must report any Conviction for an Unlawful Offense (excluding minor traffic violations), regardless of when or where such a Conviction occurs, including, but not limited to:
 - DUI/DWI.
 - Other drug- or alcohol-related offenses.
 - Offenses related to child molestation, child pornography, indecency with a minor, or other sexual offenses.
 - Crimes of violence (as defined in [Chapter 1, Section 16 of Title 18, United States Code](#)).
 - Fraud, theft, or any other misuse of money, funds, credit, or government property.
 - Invasion of privacy, identity theft, or stalking.
- The University will ensure that all background checks are conducted in compliance with applicable federal and state statutes and University policy, including but not limited to the Fair Credit Reporting Act (FCRA), Title VII of the Civil Rights Act, and [University Policy 101.5, Equal Employment Opportunity](#). Information obtained from background checks will not be used as the sole basis for denying or terminating employment unless it is determined that the issue relates to an essential job-related qualification or function.

2. Definitions

For the purposes of this Policy, the following definitions apply:

- "Charge" means an accusation of a crime by a formal complaint, information, or indictment.
- "Conviction" means a guilty verdict, guilty plea, or a "no contest," *nolo contendere*, or Alford plea, or any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. For Employees who drive a dedicated State vehicle as part of their job, or to whom a State vehicle is provided to for the purposes of conducting University business, suspension or loss of driving privileges will also be considered a Conviction.
- "Sensitive Duties" include:

- i. Direct responsibility for the care, safety, and security of vulnerable populations (e.g., non-student minors or animals). Positions with these Sensitive Duties will be identified by Risk Management, Safety, and Security and Research and Economic Development.
 - ii. Direct access to or responsibility for cash and cash equivalents, credit card information, University property disbursements or receipts, or extensive authority for committing the financial resources of the University. Positions with these Sensitive Duties will be identified by the Controller's Office.
 - iii. Direct access to or responsibility for controlled substances, select agents, or hazardous materials. Positions with these Sensitive Duties will be identified by Environmental Health and Safety.
 - iv. Master key access to buildings, residence halls or other secure facilities. Positions with these Sensitive Duties will be identified by Housing and Residence Life, Facilities Management, and Risk Management, Safety, and Security.
 - v. Direct access to, or responsibility for, information or areas designated by the University as safety or security sensitive. Positions with these Sensitive Duties will be identified by Information and Technology Services, Research and Economic Development, and Facilities Management.
- d. "Employee" means any individual employed by the University in a permanent, temporary, or time-limited faculty, EPA non-faculty, SPA staff, or post-doctoral position.

3. Covered Individuals

Unless excepted under Section 4 of this Policy, the following individuals are subject to background checks:

- a. The final candidate for all Employee positions.
- b. All Employees who engage in Sensitive Duties are subject to background checks at least every five (5) years as a condition of continued employment. Individual programs or units may require more frequent background checks at their own expense.
- c. Current Employees who assume new Sensitive Duties in their current position or through promotion, transfer, or reassignment.
- d. Motor Vehicle Records (MVR) checks will be conducted periodically throughout employment for any Employees who drive a dedicated State vehicle as part of their job, and on Employees to whom a State vehicle is provided to for the purposes of conducting University business.
- e. Current Employees who receive a Conviction for an Unlawful Offense after **XXXX XX**, 2013.
- f. Volunteers and third-party contractors who are identified as performing functions similar to Sensitive Duties or who work with information or in areas designated by the University as safety or security sensitive.
- g. Individuals, including current students and Employees, who work or volunteer as part of a summer camp or a University-sponsored program offered to non-student minors are subject to background checks on an annual basis.

4. Exceptions

Background checks are not required for the following individuals:

- a. Students who work or volunteer (secondary to their primary role as a student at UNC Charlotte), unless the student is to assume Sensitive Duties or driving responsibilities in such capacity.

- b. Faculty members under consideration for reappointment, promotion to a new professorial rank or departmental chair position, or the conferral of permanent tenure.
- c. Individuals who provide volunteer services that are limited in nature (such as a lecture or presentation), or who have no direct individual contact with, or oversight of, non-student minors.
- d. Public school teachers who work or volunteer do not require background checks if an adequate background check is required, and completed, by their respective public school system.

5. Scope and Types of Background Checks

- a. Criminal history, MVR, and sex offender checks will be conducted on all covered individuals in accordance with the procedure applicable to the individual's position designation.
- b. Credit history checks may be conducted on Employees identified by the Controller's Office as having direct access to or responsibility for cash and cash equivalents, credit card information, University property disbursements or receipts, or extensive authority for committing the financial resources of the University.

6. Procedure for Reporting Convictions

- a. An Employee is required to report a Conviction to his/her immediate supervisor or unit head as soon as possible and no later than the beginning of the next business day immediately following the Conviction. In lieu of notifying the immediate supervisor or unit head, SPA and EPA staff may notify the Department of Human Resources through its Director of Employee Relations, Training, and Compliance and faculty may notify the Associate Provost for Academic Budget and Personnel.
- b. Supervisors of SPA and EPA staff who receive notice of a Conviction are required to notify the Director of Employee Relations, Training, and Compliance (Human Resources) within one (1) business day following receipt of such notification. Supervisors of faculty who receive notice of a Conviction are required to notify the Associate Provost for Academic Budget and Personnel within one (1) business day following receipt of such notification.

7. Disciplinary Actions and Investigatory Suspension

- a. Employees of the University are employees of the State of North Carolina and, as such, are expected to adhere to all federal and state laws both in the workplace and in the community. A Conviction for an Unlawful Offense may be considered unacceptable personal conduct for staff (specifically, conduct unbecoming a State employee that is detrimental to State service) or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, and, accordingly, may result in disciplinary action up to and including separation from University employment.
- b. Convictions for an Unlawful Offense that do not result in separation from University employment will be considered should the Employee apply for other positions ~~(including promotional opportunities)~~ within the University.
- c. Nothing in this Policy requires Employees to self-report Charges when there has been no Conviction for an Unlawful Offense. However, if an Employee receives a Charge for an Unlawful Offense, the totality of the circumstances surrounding the Charge may be sufficient to be considered unacceptable personal conduct for staff or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty.
- d. Employees may be placed on investigatory suspension pending the outcome of University disciplinary proceedings if the nature of a Charge or Conviction for an Unlawful Offense and the associated facts indicate that the Employee's continued presence within the University community would (i) constitute a clear and immediate danger to the health or welfare of other members of the University community,

- (ii) substantially impair the Employee's ability to carry out the Employee's job responsibilities, or (iii) do significant damage to the University's reputation. Such investigatory suspensions will be conducted in accordance with relevant provisions of the [State Personnel Manual](#) and [University Policy 102.13, Tenure Policies, Regulations, and Procedures of the University of North Carolina at Charlotte](#).
- e. Any discovery of fraudulent disclosure or willful nondisclosure of information related to application for University employment will be evaluated in accordance with [University Policy 101.12, Fraudulent Disclosure or Willful Nondisclosure in Applying for Employment](#).
- f. Violations of this Policy, including failure to consent to any background checks required by this Policy, may result in disciplinary action in accordance with the policies and procedures applicable to the Employee's position designation.
- g. Employees who incur disciplinary action due to a Charge or Conviction for an Unlawful Offense, or due to a violation of this Policy, will have appeal rights in accordance with the policies and procedures applicable to the Employee's position designation, as follows:
- i. SPA Employees: [PIM 35, Grievance and Appeal Procedures for Employees Subject to the State Personnel Act](#)
 - ii. EPA Staff: [University Policy 102.7, Personnel Policies for Designated Employment Exempt from the State Personnel Act](#)
 - iii. Faculty: [University Policy 102.13, Tenure Policies, Regulations, and Procedures of the University of North Carolina at Charlotte, Section 8](#)