

GSGA42-R20

A Resolution Calling for the Review of Criminal Background Checks for New Employees

Summary: This resolution calls upon the University to review the policy that requires background checks for new employees, including faculty and staff, and its impacts and to clarify what results from a check may or may not be disqualifying. We understand the desire to ensure campus safety, but enforcing background checks that may disqualify candidates who do not pose a threat to campus safety does not prevent crime from occurring and may introduce racial bias into hiring practices.

WHEREAS, criminal background checks are required for individuals that have been extended conditional offers of employment by the University¹;

WHEREAS, criminal background checks disqualify individuals whose “criminal background is deemed incompatible with the position they are seeking,” which suggests that some individuals who have legal system involvement may pass the background check, but which circumstances would qualify are not made clear. Individuals who have been arrested without further penalty will not be denied employment, but this is the most specificity that the policy provides²;

WHEREAS, the University’s policy prevents the use of criminal background checks from discriminating based on a protected class, but this may not be avoidable given the disproportionate contact that Black and Latinx communities have with the criminal legal system^{3,4}. In addition, Black individuals are more likely to be discriminated against for having a criminal record than White individuals⁵;

WHEREAS, gainful employment after incarceration can prevent recidivism and future arrest, particularly as one gets older⁶. This is particularly relevant here as the University System

¹ <https://policies.umd.edu/personnel/university-of-maryland-policy-on-criminal-background-checks>

² Ibid. Section V. University Responsibilities.

³ One example from Baltimore can be found here:

https://content.govdelivery.com/attachments/MDBALTIMORESAAO/2022/03/16/file_attachments/2104881/FINAL_REPORT_ON_RACIAL_DISPARITY_FEB_2022.pdf

Individuals of color, particularly Black citizens, are overrepresented at every stage of the criminal legal system. Thus, they are more likely to have criminal records than White individuals.

⁴ The exception in the policy for those who are arrested without a conviction may benefit White applicants more than Black applicants because Black individuals are more likely to be convicted due in part to a greater likelihood of serving pretrial detention (Leslie & Pope, 2017) and face more punitive outcomes (Kutateladze et al., 2014).

⁵ Job applicants with criminal records are less likely to be hired than similarly qualified people without criminal records. However, Black applicants without criminal records were more likely to be discriminated against than White applicants with criminal records (Pager, 2003). A similar pattern is shown for undergraduate admissions (Stewart, 2019).

⁶ Uggen, 2000

of Maryland is the second largest employer in the state⁷; thus, they provide many opportunities for justice-involved individuals to be employed in the state;

WHEREAS, promoting campus safety is important, but the background checks required for students may not lead to a statistically significant reduction in overall campus crime⁸. The potential impact of criminal background checks on crimes committed by faculty is hard to ascertain as the Clery Act does not require campus security to disclose the proportion of crimes committed by faculty versus students⁹. Additionally, according to the age-crime curve, faculty and staff would be less likely on average to commit crime than students¹⁰;

WHEREAS, Ban the Box policies, which remove the question on applications that ask for criminal background information for candidates, have gained more popularity as of late in multiple hiring sectors. The University System already implements one version of Ban the Box by not conducting background checks until late into the hiring process. However, careful consideration needs to be taken to not induce statistical discrimination¹¹;

WHEREAS, it is understandable that the University System takes steps to promote public safety, but it is unclear who they deem unsafe to work on campus. Those who have been incarcerated for violent offenses are less likely to recidivate than those convicted of lower-level offenses¹². Those who have been incarcerated for offenses such as drug possession may not pose a direct safety threat to students or faculty compared to those incarcerated for other crimes;

THEREFORE, IT BE RESOLVED THAT University Human Resources reviews their background check policy and its impacts to ensure that 1) policies are clear to potential applicants who may be impacted¹³ and 2) the University promotes equity and inclusion by carefully examining the assumptions that they make about a particular person or type of criminal history¹⁴.

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<https://www.heraldmillmedia.com/story/news/state/2023/01/04/the-10-biggest-employers-in-maryland-for-2022/69741502007/>

⁸ Hughes, Elliot, & Myers, 2014

⁹ https://www.umpd.umd.edu/stats/clery_stats.cfm

Additionally, it is unknown from these reports whether the perpetrators are affiliated with the university at all; only the location of the incident is reported.

¹⁰ The age-crime curve is a long-standing finding in criminological studies in which the most common time in which people commit crime is late adolescence and early adulthood. Crime rapidly declines throughout one's adult years (e.g., Braithwaite, 1989; Moffitt, 1993; Piquero et al., 2008; Sweeten et al., 2013).

¹¹ Statistical discrimination occurs if employers are less likely to offer jobs to Black men under BTB policies because they assume that Black men have a criminal record (Raphael, 2021).

¹² E.g., Moore & Eikenberry, 2021

¹³ One example would be to make it clear to applicants which offense histories would preclude someone from a particular position (e.g., someone convicted of embezzlement cannot have access to the university's bank accounts but can work elsewhere on campus).

¹⁴ Questions for the Office of Human Resources to reflect on: "How are current hiring practices discriminating against individuals based on the assumption of a criminal history?" "Which criminal histories are deemed..."

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Action(s) Taken:

Decision of GSG President

Signature of GSG President

Date

acceptable? Who do we assume are threats to campus safety, and do these assumptions align with research evidence?" "What is the context of this person's criminal history and what does that mean for our perceptions of their ability to work effectively and safely on campus?"