

	P - § 04.0	Policy Name: Effect of Criminal Conviction or Arrest	Approved Date:
	Prepared By: Human Resources		Adopted Date: August 4, 1993
	Amended Date: June 1, 2005; February 6, 2019		

A. PURPOSE

The purpose of this policy is to set forth guidelines regarding job candidates and current employees who are subject to arrest, criminal investigation, and/or criminal conviction. This policy applies to all County employees and volunteers as well as job candidates.

B. DEFINITIONS

Administrative Leave – paid or unpaid leave from work that is taken at the direction of management, for purposes of investigation or a step in the disciplinary process, and without impact to an employee’s accrued leave.

Arrested – detained by law enforcement for suspicion of committing a criminal act.

Barrier Crimes – crimes set forth in §63.2-1719 of the *Code of Virginia*, which automatically bar an individual convicted of same from employment or volunteer services. Traditionally involves crimes of abuse or neglect but also include assault, terrorism, firearm-related crimes, drug crimes, crimes with minors, etc.

Crime – an action or omission that constitutes an offense that may be prosecuted by the state and is punishable by law; includes any felony or misdemeanor, regardless of degree. Traffic infractions are not included in this definition.

Disposition – in relation to a crime, means conviction, entering any plea other than “not guilty”, sentencing, and any court order that takes a finding of guilt under advisement or requires a defendant to take some action or meet some requirement in lieu of a conviction.

C. ROLES AND RESPONSIBILITIES

Employees – Must endeavor to report any event described in this policy to their supervisor on the next business day unless good cause is shown.

Supervisors – Must contact Human Resources upon learning that any event described in this policy has occurred.

Human Resources – Processes and keeps records of all background and other checks.

D. POLICY

It is the County's policy not to employ or to continue the employment of any person who may be deemed unsuitable for employment by reason of arrest and criminal conviction or information appearing in the registry of founded cases of child abuse and neglect maintained by the Department of Social Services. While an arrest or conviction of a crime, in and of itself, may not be an automatic bar to employment, if an arrest or conviction relates to the individual's suitability to perform duties in a particular position, such person may be denied employment or, in the case of current employees, may face disciplinary action up to and including termination. The County shall have the sole discretion to determine whether any conviction is related to the duties of the position for which application is made or whether it affects the fitness of the applicant to work for the County.

1. Applicants for Employment

a. Criminal Proceedings

Virginia Code § 15.2-1505.3 prohibits Virginia agencies and localities from requiring prospective employees to complete an application that asks about prior criminal arrests, charges, or convictions. There are exceptions for certain positions (e.g., law enforcement, schools, health and safety, etc.); and some departments may ask applicants about criminal matters during or after an interview and may consider such information after conclusion of an interview, as outlined in Virginia Code.

b. Disclosure of Criminal Record

If an applicant discloses a criminal record that reveals a conviction, or arrest awaiting final disposition of a crime, a prospective employee, intern, or volunteer may or may not be offered the volunteer position, dependent upon the crime and the relationship to the position sought.

As a condition of employment, an applicant shall be required to submit to a background check once an offer of employment has been made. Offers of employment may be rescinded based on the results of a background check.

c. Founded Cases of Child Abuse and Neglect

Applicants must disclose whether they are the subject of a founded case of child abuse or neglect. As a condition of employment for certain positions, applicants are required by the Virginia Department of Social Services to provide written consent for the County to search the registry of founded cases of child abuse and neglect.

2. Employees

a. Criminal Proceedings

Employees must disclose to their supervisors any crimes for which they have been arrested or received a disposition, whether the conduct was committed on- or off-duty, on the next business day. Employees must then provide copies of any summonses, warrants, and orders as then become available. Late notification is, itself, a Category II offense, unless good cause is shown.

In determining appropriate action, the County will consider the seriousness of the offense and the relationship between the offense and the employee's position. An employee may be placed on administrative leave, with or without pay, pending the conclusion of the case. If the County finds substantial evidence that the employee committed the charged crime, employment may be terminated prior to disposition.

Upon the conclusion of an investigation by law enforcement agencies or of a court action, the County has the discretion to:

- I. Impose disciplinary action, up to and including termination in accordance with the Employee Discipline policy: or
- II. If an employee is exonerated of any crime or misconduct, the County will reinstate the employee to the same or comparable position, as permissible by Virginia Code and County policy.

The County reserves the right to refill any position at any time to alleviate undue hardship resulting from staffing inadequacies.

b. Founded Cases of Child Abuse and Neglect

Employees must disclose whether they are the subject of a Social Services investigation for child abuse or neglect, or of a founded case of child abuse or neglect. Whether such status is grounds for immediate termination is based upon the seriousness of the offense and the relationship between the offense and the employee's position. Certain positions are forbidden by the Virginia Department of Social Services from being occupied by the subject of a Social Services investigation for child abuse or neglect, or of a founded case of child abuse or neglect.

c. Barrier Crimes

A current employee, intern or volunteer will be subject to termination if a criminal record reveals a conviction for crimes set forth § 63.2-1719 of the *Code of Virginia* ("barrier crimes"). If there is an arrest waiting final disposition, the employee will be placed on administrative leave without pay pending investigation. An intern or volunteer will be dismissed from their position.

3. Notice of Adverse Actions

If an application is denied, offer rescinded, or an employee is disciplined or terminated under this policy, the County will notify that person and provide a copy of background check, DMV, sex offender registry, or other report that formed part of the basis of the County's decision.

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