

City of Virginia Beach CRIMINAL AND ADMINISTRATIVE CHARGE AND CONVICTION POLICY	Policy Number:	6.02A
	Date of Adoption:	September 14, 1999
	Date of Prior Revision:	September 3, 2010
	Date of Current Revision:	June 26, 2013
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1.0 PURPOSE:

The City of Virginia Beach (“City”) expects full-time and part-time employees, volunteers and temporary service employees to uphold the highest standards of conduct and requires all workers to obey the federal, state and local laws in order to maintain the public trust.

2.0 DEFINITIONS:

2.1 ADMINISTRATIVE OFFENSE: For the purposes of this policy shall include noncompliance with regulations in the Virginia Administrative Code that are subject to the Virginia Administrative Process Act, e.g. non-compliance with publicly funded assistance programs and/or a founded complaint of child abuse or neglect.

2.2 BARRIER CRIME: For the purposes of this policy shall mean a crime(s) which prohibits the hiring of an applicant or continued employment of a worker pursuant to Federal, State, or local law, rule, or regulation and/or City departmental policies. This includes, but is not limited to, all prohibitions set forth in Virginia Code §§ [37.2-314](#) and [37.2-506](#).

2.3 CONVICTION or any derivation thereof in this policy: Shall include a conviction by a judge or jury, a plea of guilty, and/or a judicial finding, e.g. a deferred finding, where sufficient evidence exists to convict the worker; a conviction or finding by an administrative hearing officer of non-compliance; or a founded complaint of child abuse or neglect.

2.4 CHARGE AND CONVICTION PANEL: Shall mean a group of individuals consisting of at least one representative each from the Department of Human Resources, the Police Department and the affected City Department.

2.5 CRIMINAL OFFENSE: For the purposes of this policy shall include any felony, or any misdemeanor involving moral turpitude, criminal sexual assault, violence (including domestic assault), driving under the influence, reckless driving, and/or any applicable barrier crime.

2.6 CRIMINAL SEXUAL ASSAULT: Shall mean a crime as defined by Virginia Code §[18.2-61 et seq.](#)

- 2.7** EXONERATION: Shall mean a criminal charge that is dismissed, nolle prossed, and/or an individual being found not guilty by a judge or jury.
- 2.8** LEGAL DETAINMENT: Shall mean being in the custody of a law enforcement agency. A worker released from the custody of a law enforcement agency, but subject to further legal or judicial proceedings, shall not meet the definition of legal detainment.
- 2.9** MORAL TURPITUDE: Shall mean lying, cheating or stealing, or any derivation thereof.
- 2.10** PUBLIC EMPLOYEE DISHONESTY COVERAGE: Shall mean insurance coverage for the loss of or damage to City property as a result of employee dishonesty.

3.0 APPLICABILITY:

- 3.1** This policy applies to all full-time and part-time employees as defined by the Code of the City of Virginia Beach. This policy will only apply to employees working within Constitutional Offices, if the City's policies have been adopted by written consent of the appropriate elected official. All temporary services workers and City volunteers, other than volunteer rescue squad members, shall be governed by the provisions of this policy.
- 3.2** Volunteer rescue squad members shall be subject to the panel proceedings as outlined in the Department of Emergency Medical Services' Activity Reporting Policy No. 103.01.01 and Corrective Action Policy 106.03.01.
- 3.3** This policy shall not apply to employees of the Commonwealth Attorney's Office and Sheriff's Office.

4.0 POLICY STATEMENT:

- 4.1** The City shall hold all workers accountable and take appropriate action upon notification that a City employee, volunteer or temporary services employee is charged with, convicted of, pled guilty to or had a judicial finding, e.g. a deferred finding, entered for any criminal or administrative offense.

- 4.2** With the exception of workers outlined in Section 4.3, the Department of Human Resources shall convene the Charge and Conviction Panel upon notification of a worker's
- A. Charge of any criminal offense as defined in [Section 2.5](#).
 - B. Conviction of any criminal offense as defined in [Section 2.5](#).
 - C. Founded complaint for an administrative offense as defined in [Section 2.1](#).
- 4.3** The scope of the Charge and Conviction Panel shall not extend to review charges or convictions of the following individuals:
- A. Police recruits, probationary police officers, and Department of Criminal Justice Services (DCJS) certified police officers;
 - B. The City Manager, Deputy City Managers, and all heads of departments or offices who are appointed by the City Manager; and
 - C. All appointees of the City Council
- 4.4** In cases involving a charge or conviction of a crime that may affect coverage of an employee under the City's Public Employee Dishonesty Policy, the Department of Human Resources shall also notify the Risk Manager, or designee.

5.0 CHARGED WITH CRIMINAL OFFENSE(S):

5.1 Notification Requirements

- A. Worker's Responsibility to Notify Immediate Supervisor
Applicable workers who are charged with or legally detained for **any** criminal offense are required, either personally or through a third party representative, to notify their immediate supervisor within 72 hours following such criminal charge or legal detainment.
 - (1) Workers charged with a criminal offense shall advise the immediate supervisor of the nature of the charge and if legally detained, shall advise the supervisor of the geographic location of the legal detainment, the reason for the legal detainment, and the length of the legal detainment, if known. In addition, workers shall immediately notify their supervisor upon release from legal detainment.

- (2) Workers whose original criminal charge is upgraded or changed in any manner shall immediately advise the immediate supervisor of the new criminal charge.
- (3) Failure of a worker to provide notice of a criminal charge or legal detainment within the required time period shall subject the worker to discipline up to and including dismissal from employment or restriction from providing volunteer or temporary services to the City.

B. Immediate Supervisor's Responsibility to Provide Notification

- (1) Upon knowledge of a criminal charge or legal detainment, the worker's immediate supervisor is required to ensure notification is made to the appropriate department Director and the Director of Human Resources, or designee via the chain of command. Any supervisor, who has knowledge of and fails to report a worker's criminal charge or legal detainment in accordance with this procedure, may be subject to discipline.
- (2) Upon receiving notice of a criminal charge or legal detainment from a source other than the worker or a third party representative, e.g. notification from the prosecutor, in addition to the notification requirements in [Section 5.1B\(1\)](#), the supervisor shall inform the worker that such notification of a criminal charge or legal detainment has been received. The worker shall be given the opportunity to respond to the supervisor regarding the criminal charge or legal detainment, but is not required to do so.

5.2. Charge and Conviction Panel

- A. The Charge and Conviction Panel shall recommend to the City Manager the suspension without pay or restriction from providing volunteer or temporary services, of any worker charged with a criminal offense pending resolution of the criminal charge where the Charge and Conviction Panel determines that:
 - (1) the worker's continued presence on the job or at the volunteer site is deemed to be a threat or danger to the workplace or the public;

- (2) the charge relates to the work performed or the position held by the worker;
 - (3) the charge harms the City's interests; OR
 - (4) the charge precludes the worker from coverage under the City's Public Employee Dishonesty Coverage.
- B. If the Charge and Conviction Panel makes a determination that [Sections 5.2A\(2\)](#) and/or [5.2A\(3\)](#) apply, but not [5.2A\(1\)](#), the Charge and Conviction Panel may recommend to assign the worker to administrative or limited duties, if available, rather than a suspension without pay.
- C. If a worker is suspended without pay, the worker's department shall contact Communications and Information Technology Department to also suspend the worker's computer access during the period of the suspension.

6.0 CONVICTION OF CRIMINAL OFFENSE(S):

6.1 Notification Requirement

A. Worker Notification

- (1) Applicable workers who have a conviction for a criminal offense, as defined in this policy, are required, either personally or through a third party representative, to notify their immediate supervisor within 24 hours of the conviction.
- (2) Failure of a worker to provide notice of a criminal offense shall subject the worker to disciplinary action, up to and including dismissal or restriction from providing voluntary or temporary services to the City.

B. Immediate Supervisor's Responsibility to Provide Notification

- (1) Upon knowledge of a conviction, the worker's immediate supervisor is required to ensure notification is made to the appropriate department Director and the Director of Human Resources, or designee via the chain of command. Any supervisor who has knowledge of and fails to report a worker's conviction, in accordance with this procedure, may be subject to discipline.

- (2) Upon receiving notice of a conviction from a source other than the worker or a third party representative, e.g. notification from the prosecutor, in addition to the notification requirements in [Section 6.1B\(1\)](#), the supervisor shall inform the worker that such notification of a criminal conviction has been received. The worker shall be given the opportunity to respond to the supervisor regarding the criminal conviction, but is not required to do so.

6.2 Charge and Conviction Panel

- A. The Charge and Conviction Panel shall recommend to the City Manager the dismissal of any worker convicted of a criminal offense where the Charge and Conviction Panel determines that:
 - (1) the dismissal is required by federal or state law;
 - (2) the worker's continued presence on the job or at the volunteer site is deemed to be a threat or danger to the workplace or the public;
 - (3) the conviction relates to the work performed or the position held by the worker;
 - (4) the conviction harms the City's interests; OR
 - (5) the conviction precludes the worker from coverage under the City's Public Employee Dishonesty Coverage.
- B. **DUI/DWI Conviction**
In lieu of dismissal, the Charge and Conviction Panel may recommend, to demote and transfer the employee to a position where driving is not an essential functions when a position is available, and the Charge and Conviction Panel makes a determination that [Sections 6.2A\(3\)](#) and/or [6.2A\(4\)](#) apply, but not [6.2A\(1\), \(2\) and \(5\)](#).
- C. Workers whose job duties require them to routinely testify in court and who are convicted of a felony or a misdemeanor involving moral turpitude, shall be dismissed from City employment.
- D. **Appeals**
The Charge and Conviction Panel shall convene based on a conviction, even in the event where the worker appeals the conviction to a higher court. Thereafter, the Charge and Conviction

Panel shall only reconvene based on the following circumstances that result from the appeal:

- (1) Should the worker be retained based on the conviction and the appeal is ultimately upheld, the Charge and Conviction Panel shall reconvene only when the sentence affects the worker's position.
- (2) Should the worker be retained based on the conviction and the appeal is ultimately overturned, the Charge and Conviction Panel shall reconvene only when the worker is exonerated of a criminal charge and had previously been suspended without pay during the time the charge was pending and/or demoted based on the conviction.

7.0 EXONERATION:

7.1 Notification Requirements

- A. Worker Notification
Any applicable worker who is exonerated from a criminal charge shall, either personally or through a third party, notify their immediate supervisor of such exoneration by providing a certified copy of court documents.
- B. Immediate Supervisor Notification
Upon knowledge that a worker has been exonerated of a criminal charge the supervisor is required to ensure notification is made to the appropriate department Director and the Director of Human Resources, or designee via the chain of command.

7.2 Charge and Conviction Panel

- A. The Department of Human Resources shall reconvene the Charge and Conviction Panel upon verification that a worker has been exonerated of a criminal charge as defined in this policy, only if the worker was suspended without pay during the time the charge was pending.
- B. The worker shall be reinstated and in regard to City employees only, the Charge and Conviction Panel shall make a recommendation to the City Manager whether to grant back pay for the time during the suspension.

- C. The recommendation whether to grant back pay will be made on a case-by-case basis. In making the recommendation whether to grant back pay the Charge and Conviction Panel shall consider:
- (1) if the charge was nolle prossed or never adjudicated by a court;
 - (2) if a judge or jury dismissed the charge after a full trial or on motions;
 - (3) if the facts were determined to be less or more serious than initially believed;
 - (4) if the criminal charge was dismissed on a technicality; AND
 - (5) if the worker was cooperative and compliant with all notification requirements.

8.0 ADMINISTRATIVE OFFENSES:

8.1 Notification Requirements

A. Worker Notification

- (1) Applicable workers with an administrative offense, as defined in this policy, are required either personally or through a third party, to notify their immediate supervisor within 24 hours of the finding.
- (2) Failure of a worker to provide notice of an administrative offense shall subject the worker to disciplinary action, up to and including dismissal or restriction from providing volunteer or temporary services to the City.

B. Immediate Supervisor's Responsibility to Provide Notification

- (1) Upon knowledge of an administrative offense, the worker's immediate supervisor is required to ensure notification is made to the appropriate department Director and the Director of Human Resources, or designee via the chain of command. Any supervisor who has knowledge of and fails to report a worker's administrative offense, in accordance with this procedure, may be subject to discipline.

- (2) Upon receiving notice of an administrative offense from a source other than the worker or a third party representative, e.g. notification from the prosecutor, in addition to the notification requirements in [Section 8.1B\(1\)](#), the supervisor shall inform the worker that such notification for an administrative offense has been received. The worker shall be given the opportunity to respond to the supervisor regarding the administrative offense, but is not required to do so.

8.2 Charge and Conviction Panel

- A. The Department of Human Resources shall convene the Charge and Conviction Panel upon notification that a worker has a founded complaint for an administrative offense.
- B. The Charge and Conviction Panel shall recommend to the City Manager the dismissal of any worker with an administrative offense where the Charge and Conviction Panel determines that:
 - (1) dismissal is required by federal and/or state law;
 - (2) the worker's continued presence on the job or at the volunteer site is deemed to be a threat or danger to the workplace or the public;
 - (3) the finding relates to the work performed or the position held by the worker;
 - (4) the finding harms the City's interests; OR
 - (5) the finding precludes the worker from coverage under the City's Public Employee Dishonesty Coverage.

9.0 CHARGE AND CONVICTION PANEL:

- 9.1** The City Attorney's Office shall provide legal counsel to the Charge and Conviction Panel as necessary, but shall not serve as a member of the panel.
- 9.2** If a unanimous decision cannot be made by the Charge and Conviction Panel then a letter shall be forwarded to the City Manager summarizing the available facts, advising that the Charge and Conviction Panel is split and setting forth how the Panel is split on the decision. In these

situations, the City Manager shall make the final determination regarding the worker's employment status.

- 9.3 The Department of Human Resources shall maintain a record of the findings and recommendations of the Charge and Conviction Panel.
- 9.4 The City Manager, or designee, has the authority to approve or disapprove all Charge and Conviction Panel recommendations made pursuant to this policy.
- 9.5 The Department of Human Resources shall notify the appropriate department representative of the City Manager's decision.
- 9.6 Based on notification from the Department of Human Resources of the City Manager's decision, the worker's department shall be responsible for implementing the approved action in accordance with all applicable Human Resource policies. When a suspension or dismissal is recommended to and approved by the City Manager, the fact-finding meeting and pre-disciplinary meeting procedures referred to in Sections 6.1 and 6.3 of the City's [Discipline Policy and Procedure, No. 4.02](#), are not required under the provisions of this policy. For further information, also see Section 7.2(B) of the City's [Discipline Policy and Procedure, No. 4.02](#).
- 9.7 The worker shall not appear before the Charge and Conviction Panel and the Charge and Conviction Panel shall not have authority to question the worker.

10.0 APPLICANTS FOR EMPLOYMENT:

See [Recruitment, Applications and Employment Policy, No. 1.01](#), for guidance on how to handle situations when applicants have charges or convictions on their criminal background check and/or listed on their application or responses to supplemental questions.

11.0 RISK MANAGEMENT:

Risk Management shall report to the City's bonding company all incidents involving current employees or newly hired employees who have a pending charge(s) or have been convicted of a criminal offense(s), as defined herein, in order to determine whether such criminal charge or conviction precludes the person from coverage under the City's Public Employee Dishonesty Coverage.

12.0 APPLICABILITY OF OTHER POLICIES:

Notwithstanding the provisions of this policy, a department shall not be prohibited from pursuing appropriate administrative action against an employee for violation of any Federal, State or local law; and/or violation of any City or departmental policy, procedure or rule. Refer to the City's [Discipline Policy and Procedure, No. 4.02](#).

13.0 GRIEVABILITY:

13.1 Full-time and part-time employees of the City of Virginia Beach who are placed on suspension pending adjudication of charges and/or dismissed based on a conviction may grieve the disciplinary action to the extent permissible by the City's [Grievance Policy and Procedure, No. 4.04](#).

13.2 Volunteers and temporary service workers do not have grievance rights under the City's [Grievance Policy and Procedure, No. 4.04](#).

14.0 POLICY REVISION:

The City Manager, or designee, may revise or rescind this policy, or any portion thereof, at any time.