



**Undergraduate Admission Procedures Related to Criminal Background
(Senate Document #16-17-29)**

TO Wallace D. Loh | President

FROM Christopher Walsh | Chair, University Senate

I am pleased to forward the accompanying legislation for your consideration and approval. Thomas Cohen, Chair of the Academic Procedures and Standards (APAS) Committee, presented the committee's proposal on Undergraduate Admission Procedures Related to Criminal Background (Senate Document #16-17-29), which the University Senate approved, as amended, at its meeting on October 2, 2018. Please inform the Senate of your decision and any administrative action related to your conclusion.

Approved:

Date:

10-05-2018

Wallace D. Loh
President

Copies of this approval and the accompanying legislation will be forwarded to:

- Mary Ann Rankin**, Senior Vice President and Provost
- Reka Montfort**, Executive Secretary and Director, University Senate
- Michael Poterala**, Vice President and General Counsel
- Cynthia Hale**, Associate Vice President for Finance and Personnel
- John Bertot**, Associate Provost for Faculty Affairs
- Elizabeth Beise**, Associate Provost for Academic Planning & Programs
- Sylvia B. Andrews**, Academic Affairs
- Barbara Gill**, Associate Vice President of Enrollment Management
- Shannon Gundy**, Director of Undergraduate Admissions
- Andrea Goodwin**, Director of Student Conduct
- Phil Evers**, Past Chair, Academic Procedures and Standards Committee
- Tom Cohen**, Chair, Academic Procedures and Standards Committee



Undergraduate Admissions Procedures Related To Criminal Background

PRESENTED BY Philip Evers, Chair

REVIEW DATES SEC – August 27, 2018 | SENATE – October 2, 2018

VOTING METHOD In a single vote

RELEVANT POLICY/DOCUMENT NA

NECESSARY APPROVALS Senate, President

ISSUE

In February 2017, the Senate Executive Committee discussed the questions in the University's undergraduate admissions process related to criminal and disciplinary history. Concerns were raised that the questions could disproportionately discourage students with arrest records from applying to the University. The SEC considered whether there might be unintended consequences to asking such questions, and determined that further review was needed. The SEC charged the Senate Academic Procedures & Standards (APAS) Committee with considering the implications of asking applicants to disclose criminal history in the admissions process.

RECOMMENDATION(S)

The APAS Committee recommends that the University should continue to ask Judicial Information questions on its undergraduate admissions application. The APAS Committee recommends that the current questions be revised as noted in the report. The questions should continue to be answered with a yes or no answer, and if an applicant answers yes to any of the questions, they should continue to be asked to provide a detailed description on the situation and its resolution.

The APAS Committee also recommends that the text that precedes the questions on the application be revised to more strongly indicate the University's commitment to ensuring educational opportunities for those who may have a criminal background and to more clearly articulate the process for reviewing the responses to the questions on the application. The committee suggests text in the report to be considered as a replacement for the current text.

The APAS Committee recommends that the Office of Undergraduate Admissions and the Office of Student Conduct should consider how data regarding criminal background responses should be collected and kept.

The APAS Committee recommends that the Office of Undergraduate Admissions and the Office of Student Conduct should consider strategies for ensuring that students are given appropriate information on the University services and resources available to them after they enroll.

The University Senate recommends that this issue be reconsidered in five (5) years as the national landscape around criminal justice evolves and more information and data on the questions' effects becomes available.

COMMITTEE WORK

The APAS Committee consulted with representatives from the Office of Undergraduate Admissions, the Office of Student Conduct, and the Office of General Counsel throughout its review. APAS reviewed the current application questions, considered proposed questions from the Coalition for Student Success, gathered information on practices at Big 10 and other peer institutions, and reviewed research related to the impact criminal history can have on the ability to access educational and social opportunities.

In reviewing the charge, the APAS Committee felt it was presented with competing compelling concerns regarding access to education and campus safety, and it sought to find a balance that is appropriate for our campus community. APAS agrees that there is a perception that these questions pose a barrier to entry. APAS also acknowledges that the University needs to consider the safety of the campus community as of paramount importance. In developing its recommendations, APAS sought to develop an outcome that ensures campus safety while providing an open and accessible application process.

In considering campus safety, APAS found that this process is one key tool in understanding potential risks and safety concerns when new members join our community. The University's review process focuses on conduct that is so severe that it could negatively impact or harm University faculty, staff, or students. In reviewing the types of conduct involved, APAS felt there were reasonable concerns, given the potential for harm to those on our campus. APAS determined that the current process does help ensure a safe campus environment.

In considering whether the University's process inhibits access to higher education, APAS found that the questions are too broad and ask applicants to disclose information that does not need to be factored into decisions in order to protect campus safety. The current questions are framed in a way that could unnecessarily inhibit access, while our campus safety needs would be satisfied with a narrower scope of inquiry.

The APAS Committee determined that the University should continue to ask questions regarding criminal and disciplinary history in the undergraduate admissions process. However, the committee recommends revising the questions to more narrowly target the types of cases the University needs to be aware of in order to assess risk. APAS also determined that the University could do more to communicate to applicants how the information provided will be considered, with the goal of enhancing understanding among prospective applicants. With its recommendations on revisions to the questions and the information provided to prospective applicants, APAS feels it is adjusting the balance between access and safety to more appropriately reflect the University's needs.

ALTERNATIVES

The Senate could choose not to accept the recommendations. However, the current questions and process would remain in place and the University would lose the opportunity to target specific conduct and provide more clarity to applicants.

RISKS

There are no known risks to the University to accepting this recommendation.

FINANCIAL IMPLICATIONS

There are likely minimal financial implications associated with the recommendation put forward by the APAS Committee.



Undergraduate Admissions Procedures Related To Criminal Background

2017-2018 Committee

Philip Evers (Chair)
Tahirah Akbar-Williams (Faculty)
Michael Ambrose (Faculty)
Kate Carter (Undergraduate)
William Cohen (Ex-Officio Provost's Rep)
Linda Coleman (Faculty)
Adrian Cornelius (Ex-Officio University Registrar)
Jacob Fishbein (Undergraduate)
Jeffrey Franke (Ex-Officio Graduate School Rep)
Susan Hendricks (Faculty)
Agisilaos Iliadis (Faculty)
Anjali Kalaria (Undergraduate)
Lisa Kiely (Ex-Officio Undergraduate Studies Rep)

Byung-Eun Kim (Faculty)
Maria Cristina Layana (Graduate Student)
Marilee Lindemann (Faculty)
Celina McDonald (Faculty)
Britt Reynolds (Ex-Officio Rep for Director of Undergraduate Admissions)
Michael Sparrow (Exempt Staff)
David Straney (Faculty)
Elizabeth Warner (Faculty)

Date of Submission

August 2018

BACKGROUND

In February 2017, the Senate Executive Committee (SEC) discussed issues related to the questions in the University's undergraduate admissions process on criminal and disciplinary history. Concerns were raised that asking such questions could disproportionately discourage students with arrest records from applying to the University. The SEC considered whether there might be unintended consequences to asking such questions, and determined that further review was needed. The SEC voted to charge the Senate Academic Procedures & Standards (APAS) Committee with considering the implications of asking applicants to disclose criminal history in the admissions process and with making recommendations if appropriate (Appendix 4).

CURRENT PRACTICE

The current University of Maryland (UMD) undergraduate admissions application is hosted by a third-party application through the Coalition for Student Success. The application asks a series of questions regarding an applicant's criminal and disciplinary background. The application text and questions in the Judicial Information portion of the undergraduate application can be seen in Appendix 1. The text preceding the application explains that the questions are asked as part of an effort to provide a safe campus and learning environment, and that an affirmative response to the questions does not automatically result in a denial of admission. The application asks whether the applicant: has had disciplinary action initiated against them at any institution attended; has ever been charged with, pleaded guilty to, or been found guilty of any criminal offense for which charges have not been expunged; has criminal charges pending against them; or has ever received formal disciplinary action or a dishonorable discharge from any branch of the military. If the applicant responds affirmatively to any of these questions, they are asked to provide detailed information on the situation and its resolution.

The Office of Undergraduate Admissions and the Office of Student Conduct (OSC) have a process in place for considering disciplinary history. In most cases, this process is an opportunity to ensure

access to education for students with criminal backgrounds who are forthcoming and eager to move on from their past experiences. Many applicants will call the OSC with questions, and OSC staff are able to calm their fears about the process. Successful applicants with the most severe incidents in their backgrounds will typically follow up with the OSC and provide clear information and documentation on how they have changed their lives since the incident in question. UMD has had many instances of students with criminal convictions or past incarcerations who have become successful and meritorious students at the University, and typically has very low numbers of students who are denied admission after review by the OSC.

When an application is submitted, Undergraduate Admissions initiates a review for academic eligibility. This review is completed without consideration of responses on the Judicial Information portion of the application. A preliminary determination is made as to whether the applicant would be academically eligible for admission; if so, Undergraduate Admissions assesses whether the Judicial Information responses need to be reviewed. If the applicant has responded affirmatively to any of the criminal or disciplinary history questions, Undergraduate Admissions asks the OSC to review the information provided and make a recommendation on whether the applicant should be cleared for enrollment from a conduct perspective.

In its clearance process, the OSC seeks to fully understand the relevant circumstances associated with the affirmative response and whether the related conduct could be severe enough to threaten the safety of the campus community. The OSC typically asks the applicant to respond to a series of questions about the nature of the incident or conduct; how the incident impacted them, their community, and their family or support system; and how they learned from the incident, as well as information about their conduct since the incident. The OSC is typically not concerned with minor violations that would not threaten the safety of members of the campus community; the OSC understands that many students have made mistakes in the past that would not impact their success at the University. For these types of violations, the OSC typically moves forward with a recommendation to clear the applicant for admission without an exhaustive review.

While most cases involve minor violations, some cases involve conduct that is severe and has the potential to harm members of the community or the safety of the community at large. In cases where the type of conduct described could pose a higher risk to the University community, or in cases where the conduct described would typically lead to a sanction of suspension or expulsion if the conduct occurred at the University, the OSC may ask additional questions or offer the applicant the opportunity to have an interview to discuss the incident further before the OSC makes a final recommendation to Undergraduate Admissions. Applicants may be asked to provide supporting documentation such as charging documents or court records to the OSC to facilitate the review process.

The OSC's review looks for patterns of behavior that could harm the campus community. While most applicants with judicial history are forthcoming with information and sincerely trying to move on from a prior incident, some applicants may display a pattern of egregious conduct that would pose a risk to the UMD community. When applicants disclose serious offenses, such as violent behavior, drug distribution, or a history of sexual violence, a careful review needs to be conducted. The review looks for patterns of behavior or conduct with significant harm associated that could negatively impact the health and safety of the campus community, if they were to happen at the University. Repeated incidents of the same or similar violent conduct, or patterns of sexual misconduct, may be cause for concern. In all cases, the applicant is given opportunities to provide more information and explain the circumstances surrounding the incident as well as how they have learned or grown as a result of the incident.

After review, the OSC will make a recommendation to Undergraduate Admissions, which then makes a final determination on whether to admit an applicant based on a holistic review of the applicant's qualifications. The final determination is then communicated to the applicant.

Undergraduate Admissions and the OSC see the review process as an opportunity to connect applicants with resources once they become students. Applicants who go through the conduct clearance process are often given information about campus resources they could access if they were to enroll. Specifically, the Office of Student Conduct ensures that students who indicate that they have had a history of substance abuse or mental health concerns are aware of resources in the Health Center or Counseling Center, and encourages them to make use of services on campus once they join the University. Enhancing information available to applicants through this process is a useful tool in ensuring student success.

COMMITTEE WORK

The Academic Procedures & Standards (APAS) Committee began reviewing its charge immediately upon receiving it in spring 2017. APAS consulted with representatives from the Office of Undergraduate Admissions, the Office of Student Conduct, and the Office of General Counsel throughout its review. APAS reviewed the current application questions, considered proposed questions from the Coalition for Student Success, gathered information on practices at Big 10 and other peer institutions, and reviewed research related to the impact criminal history can have on the ability to access educational and social opportunities.

Relevant Data

APAS learned that a very small number of applicants to the University give an affirmative response to any of the questions in the Judicial Information section of the application; typically, less than 1% of applicants answer yes to one or more of the questions. For academically eligible applicants, it is very rare for students to be denied admission after review of the Judicial Information responses and any additional information collected by the OSC. The vast majority of responses reviewed by the OSC involve minor violations or are cases of students who apply to re-enroll after they were dismissed from UMD or from another institution for conduct-related issues. In cases where the OSC does not make a positive recommendation, it is often the case that the applicant either did not respond to the OSC's request for additional information or is currently serving a suspension or expulsion from UMD or another institution. There have also been cases in the past where issues related to harassment, stalking, or other behavior have caused concern because the other party in the incident is a current student at the University.

In 2017-2018, as of August 2018, there were 142 undergraduate admissions cases reviewed by the Office of Student Conduct. 83 were cleared (i.e., given a positive recommendation by OSC), 14 were not cleared, and 6 are pending. 39 applicants did not respond to requests for further information. Of those not cleared, many were cases where an incident occurred very recently or a student was on active suspension from a previous institution, and most involved transfer applications rather than new freshmen applications. The types of conduct involved in the cases that were not cleared included theft of over \$10,000, drug distribution, severe hazing, assault, sexual assault, and domestic violence or intimate partner violence.

During its review, APAS also sought data on whether UMD's questions or process have a negative impact on prospective applicants. APAS found it was limited in its capacity to assess this question,

in part because it did not have data to guide its consideration. The University does not have access to statistics or data from the vendor who provides the application, and the data collected by the University is limited to data regarding applicants who submit the completed application. As a result, APAS could not assess how many applicants respond affirmatively to the Judicial Information questions but choose not to submit the application.

The University proactively works with potential applicants, high school counselors, and parents to explain the Judicial Information questions and the review process before students apply. Undergraduate Admissions relies on high school counselors across the state to help communicate with prospective applicants that responding affirmatively to the Judicial Information questions will not automatically disqualify students from being admitted. In the past few years, Undergraduate Admissions has not received inquiries or questions from applicants, their families, or counselors regarding these questions on the application, and thus has no indication that the process is causing difficulty or concern for applicants.

Peer Institutions

APAS reviewed the processes at Big 10 and other peer institutions, with the assistance of existing Big Ten Academic Alliance networks. Information was provided to the committee for nine institutions. Of those who responded to the request for information, six institutions have a process that aligns with the process at the University of Maryland, where they ask criminal and/or disciplinary history questions on the application and have developed a process for reviewing responses to those questions. As at UMD, peer institutions typically ask these questions in the interest of maintaining a safe learning environment, and review the responses with the health and safety of the campus community in mind. The types of questions asked vary slightly among these six peers; some institutions ask focused questions about criminal convictions or specific types of criminal history such as history of sexual misconduct charges, where others ask broader questions that cover any charges the applicant has ever had against them. Most institutions ask questions regarding past academic or non-academic disciplinary action in educational environments, as well. In most cases, the responses to the questions are reviewed either by a committee or by staff members who have training or expertise relevant to campus safety.

In its review of peer institutions, the APAS Committee found that two peer institutions do not ask criminal and/or disciplinary history questions, and one asks such questions after an admissions decision has been communicated, as a requirement prior to enrollment.

Scholarly Research

In its efforts to understand the problem underlying its charge, APAS reviewed available research related to undergraduate admissions and criminal records to consider whether there is evidence that shows that prospective applicants are discouraged by these types of questions. Limited research exists about this topic. A 2009 [survey](#) of higher education practices in this area conducted by the American Association of Collegiate Registrars and Admissions Officers in collaboration with the Center for Community Alternatives indicated that a majority of institutions collect some information regarding criminal backgrounds, and self-disclosure through applications is the most common source of information. [Further research](#) by the Center for Community Alternatives on criminal background questions in the State University of New York (SUNY) system found a “felony attrition rate” in the SUNY System, where two out of every three applicants who responded affirmatively to a question on criminal background on the application did not submit the application. The study estimated that a large percentage of applicants are effectively denied admission because

they do not complete the application process and therefore cannot be considered. The APAS Committee did not feel this study represented a strong correlation, and was concerned that there is a lack of evidence in this area.

Legal Framework

In addition to reviewing peer institutions practices and recent research, the APAS Committee considered the legal framework on this issue in the State of Maryland. While APAS was considering this charge, the Maryland General Assembly introduced and approved legislation related to criminal history in the undergraduate admissions process ([HB0694/SB0543](#), Maryland Fair Access to Education Act of 2017). The legislation's purpose was to limit the use of criminal history information in the admissions process so that a student's criminal history does not automatically or unreasonably restrict a student's admission. With passage of this legislation, the General Assembly intended to promote the admission of students with criminal records, including formerly incarcerated students, to provide them with the opportunity to obtain the knowledge and skills needed to contribute to the State's economy. The legislation was approved in April 2017, vetoed by the Governor in May 2017, and the veto was overridden by the General Assembly in January 2018. Institutions that create and manage their own application are not allowed to include criminal history questions on the application. Institutions that use a third-party application may include criminal history questions, but should include information on their website that clarifies that criminal history does not disqualify applicants from admission.

The current process at the University of Maryland fulfills the requirements above. The University uses a third-party application hosted by the Coalition for Student Success, which can include criminal history questions. However, information about criminal history does not automatically or unreasonably restrict admission, and the application includes language that clarifies that "an affirmative response to any of these questions will not result in an automatic denial of admission or enrollment. All relevant circumstances will be considered" (see Appendix 1 for more information).

Financial Implications of Options for Action

As the APAS Committee considered the issues and concerns raised by the SEC, it considered four concrete options for action and the associated financial implications, risks, and consequences of each. An abbreviated summary of the options and financial implications explained below can be found in Appendix 2.

First option: Continue using the same questions on the application and process for reviewing responses.

The APAS Committee determined that recommending no changes to the questions or the process would have no financial implications or changes in liability or risk to the University. However, a recommendation that aligns with this option would also do nothing to address the concern raised by the SEC, and the perception that having a criminal background may prevent a student from being admitted to the University would persist. This perception could be discouraging to some applicants, particularly those from underrepresented groups that are disproportionately impacted by the criminal justice system.

Second option: Remove all Judicial Information questions from the application entirely.

The APAS Committee determined that a recommendation to remove all Judicial Information questions from the application would cause the University to assume a great deal of liability and risk, in that it would be choosing to not take actions that could allow it to be aware of potential safety threats as new members join the campus community.

There would be no direct financial implications, though there likely would be significant indirect financial implications to such a recommendation. The APAS Committee felt that if the Senate voted to stop asking questions about criminal background in the admissions process, the University would likely feel a need to find other mechanisms to ensure awareness of any potential threats to campus safety, to mitigate the increase in liability and risk. The University may need to design new structures to do so, which would necessitate significant financial resources in order to create new processes, create office(s) and/or staff to manage those processes, and develop training and data management plans. The APAS Committee felt that the indirect financial implications of this option could be similar to the implications of the third option below, depending on the steps the University decides to take to conduct risk assessments in other ways. Given the size and decentralized nature of the institution, additional costs would likely be incurred due to the fact that no one mechanism can reach all students in the way that the admissions process currently does, and multiple mechanisms may need to be created; for instance, the University might create a process for all students applying for University housing, but that process would only reach a subset of students and would not allow the University to be aware of threats to the greater campus community.

Third option: Continue asking questions on criminal and disciplinary history, but revise the process to ask the questions at a later point during the admissions process.

The APAS Committee determined that there would be significant financial and logistical implications associated with a recommendation that the questions be asked at a different point in the admissions process rather than on the application, as described below. In addition, the APAS Committee felt that a recommendation to change when the questions are asked in the admissions process would likely have no positive impact on the perceived problem. APAS felt such a process would likely have the same deterrent effect on students as including the questions on the application, as it does not address the perception by the applicant that they may be unreasonably barred from the University as a result of their disciplinary history; changing when in the process the questions are asked does nothing to reduce the perception that the responses will be judged unfairly. This secondary process may have additional negative consequences, in terms of an increase in discouragement and negative feeling towards UMD, especially if students face the threat that admissions decisions may be revoked after they have been granted.

The APAS Committee considered the impact that asking such questions after the application could have on the admissions timeline, which is already very tight each year. Undergraduate admissions applications can be submitted by a priority deadline of November 1st or by the regular deadline of January 20th. The last round of admissions decisions for students who apply by the regular deadline are released by April 1st, and admitted students must be given at least 30 days after their admission to confirm their enrollment. In addition, May 1st is the mandated national candidate reply date that all institutions utilize. If a new stage of information collection and review is required, the admissions process leaves very little time for review, with likely only one month for many applicants. If the new process requires UMD to move its enrollment deadline past May 1st, the University would be at a significant disadvantage and would lose enrollments to other institutions. The APAS Committee suggested the University might lose many more students due to this secondary review process, regardless of whether they would answer affirmatively to the questions or not, because it introduces additional time and uncertainty at a stage where students are required to make final decisions on

where to attend college. After considering this option, the APAS Committee felt it would not be feasible to ask any such questions after admission but before enrollment.

APAS also considered whether the questions could be asked after admissions and enrollment, but found that a post-application admissions process would be difficult to develop and manage. There is currently no post-application process where all applicants or admitted students provide information for review, so a process would need to be created to collect the information. In order to have as little impact as possible on the admissions, enrollment, orientation, and registration timelines, it is likely that a review of this information would need to be conducted much more quickly than it currently occurs, so the University would need to provide resources to create an office and/or hire staff to conduct this review. Training plans would need to be developed to enable staff the review the responses, evaluate risks, and determine next steps. Data integrity plans would need to be implemented to ensure the responses remain securely held by the University. Each of these would require significant financial resources.

Fourth option: Continue asking questions on criminal and disciplinary history, but revise the questions to more narrowly target specific conduct and take additional steps to communicate with applicants about the process.

The APAS Committee determined that there would likely be minimal direct financial implications of a recommendation to revise the questions on the application but leave the process largely intact. Some additional resources may be needed, in order to revise the questions and the text on the application, and to enable Undergraduate Admissions, the OSC, and others to engage in additional communication with prospective applicants to reassure them about the process and explain that the answers to these questions will be evaluated separately from their academic qualifications for admission.

APAS Committee Determination

The APAS Committee felt it was presented with competing compelling concerns regarding access to education and campus safety, and it sought to find a balance that is appropriate for our campus community. APAS agrees that there is a perception that these questions pose a barrier to entry. APAS also acknowledges that the University needs to consider the safety of the campus community as of paramount importance. In developing its recommendations, APAS sought to develop an outcome that ensures campus safety without deterring students with criminal backgrounds from pursuing higher education opportunities.

In considering campus safety, APAS found that this process is one key tool in understanding potential risks and safety concerns when new members join our community. The University's review process focuses on conduct that could negatively impact or harm University faculty, staff, or students. It allows the University to assess conduct or patterns of behavior that may pose a risk to the University community, and enables us to be aware of serious risks by focusing on conduct that is severe in nature. In reviewing the types of conduct involved, APAS felt there were reasonable concerns, given the potential for harm to those on our campus. APAS determined that the current process does help ensure a safe campus environment.

In the past few years, the University has focused on addressing types of conduct on campus that pose a significant threat to the health and safety of the campus community. For instance, the University has begun many efforts at preventing and addressing sexual misconduct on campus, with the recent revisions of the sexual misconduct policies and procedures and the implementation

of the recommendations of the Joint President/Senate Sexual Assault Prevention Task Force (see Senate Document [#16-17-11](#), [#15-16-30](#), [#14-15-27](#), [#14-15-26](#), and [#14-15-16](#) for more information on recent Senate action on these issues). The University has also recently begun developing strategies to address and prevent threatening and intimidating conduct motivated by bias against a protected status, in part through the implementation of the recent recommendations of the Joint President/Senate Inclusion & Respect Task Force (see Senate Document [#17-18-03](#) for more information). Reviewing disciplinary history prior to admission is a tool that can help the University be aware of potential risks in both of these areas, and it can help support these and other ongoing efforts to prevent and address conduct that impacts the safety of UMD's students, faculty, and staff.

While APAS agrees that there is a perception that questions on the application could pose a barrier to entry to higher education, there is no strong correlation to show that UMD's questions or process have a negative impact on prospective applicants. APAS found one study that shows a potential problem with the questions on the SUNY application, but there has not been enough research to convey that a significant problem exists. If there were a depth of data demonstrating a clear problem, research may justify removing the questions entirely, but the APAS Committee did not find enough evidence to support that course of action.

As it considered whether the University's process inhibits access to higher education, the APAS Committee reviewed the current admissions questions and the text preceding the questions carefully. The committee found that the questions are too broad, in that they ask applicants to disclose information that does not need to be factored into decisions on conduct clearances in order to protect campus safety. The current questions require an applicant to disclose disciplinary action that has been "initiated against" them, which includes actions that were dropped or dismissed, as well as criminal charges that did not result in a conviction. With the current questions, arrest records would need to be disclosed. The committee determined that the way the questions are framed could unnecessarily inhibit access, while our campus safety needs would be satisfied with a narrower scope of inquiry. APAS agreed that revised questions that focus on criminal charges and disciplinary action that was taken against an applicant would be more narrowly tailored to the information the University needs for risk assessment purposes.

APAS also determined that the University could do more to communicate to applicants how the information provided will be considered, with the goal of enhancing understanding among prospective applicants. UMD's review process clearly separates review for academic eligibility and review of the Judicial Information responses, but that may not be apparent to applicants when they are responding to the questions. APAS suggests that applicants may be more likely to complete the application if they understand how the information provided will be reviewed, and if it is made clear that a positive response to the questions does not disqualify an applicant from admission.

APAS developed revised questions and proposed revisions to the application text for consideration. APAS also developed recommendations related to data collection and tracking, so that future efforts to address this question can be informed by data to the extent possible, as well as on ensuring that students who are admitted after a conduct clearance have access to services on campus that could be useful to them.

With its recommendations on revisions to the questions and the information provided to prospective applicants, APAS feels it is adjusting the balance between access and safety to more appropriately reflect the University's needs. APAS hopes that these recommendations will relieve concerns among applicants and ease the perception that the questions create a barrier to access to higher

education. If these recommendations were to be rejected, the University would revert to continuing its current practice with the same questions and procedures for providing information to applicants that APAS found to be problematic.

After due consideration, the APAS Committee voted to approve its recommendations on March 5, 2018. The Senate reviewed the APAS Committee's report and recommendations on April 4, 2018, and moved to recommit the charge to the committee, asking it to provide more information on the financial implications of the options considered by the committee. The APAS Committee discussed financial implications in detail in late spring 2018. Information was added to its report and the committee was in consensus that its revised report and its recommendations should be sent to the SEC and Senate for further consideration.

RECOMMENDATIONS

The APAS Committee recommends that the University should continue to ask Judicial Information questions on its undergraduate admissions application. The APAS Committee recommends that the current questions be revised to ask the following questions:

Have you ever been convicted of a crime?

Do you have criminal charges pending against you?

Have you ever had disciplinary action (academic or non-academic) taken against you at any educational institutions you have attended?

Have you ever had disciplinary action taken against you by any branch of the military?

Do you have a restraining order pending against you?

The questions should continue to be answered with a yes or no answer, and if an applicant answers yes to any of the questions, they should continue to be asked to provide a detailed description on the situation and its resolution.

The APAS Committee also recommends that the text that precedes the questions on the application be revised to more strongly indicate the University's commitment to ensuring educational opportunities for those who may have a criminal background and to more clearly articulate the process for reviewing the responses to the questions on the application. The committee suggests the following text should be considered by the Office of Undergraduate Admissions as a replacement for the current text:

The University is committed to providing equal educational opportunities. The University also strives to ensure a safe campus and learning environment. Therefore, while the University asks questions about disciplinary and criminal history, a positive answer to these questions does not automatically disqualify an applicant for admission.

In the admission process, applications are reviewed for academic eligibility without consideration of whether the applicant answered yes to any of these questions. After an applicant is determined to be academically eligible, a separate review of disciplinary history is conducted prior to a final determination on admission. All relevant circumstances will be considered. The University reserves the right to request further information from the applicant to verify the information disclosed. In addition, applicants who are admitted may be required, as a condition of participation in certain programs, to complete a criminal history consent form, and agree to a criminal background check.

When answering the questions below, please note that you are not required to report information related to minor traffic violations or records that have been expunged.

Please note: You are required to update the Office of Undergraduate Admissions at ApplyMaryland@umd.edu (please use the subject line “Disciplinary Update”) should a situation take place that would cause your answer to one of the below questions to change. This includes, but is not limited to, any criminal convictions or disciplinary actions taken against you after the time of application submission through the start of classes of your first semester at the University.

The APAS Committee recommends that the Office of Undergraduate Admissions and the Office of Student Conduct should consider how data regarding criminal background responses should be collected and kept.

The APAS Committee recommends that the Office of Undergraduate Admissions and the Office of Student Conduct should consider strategies for ensuring that students are given appropriate information on the University services and resources available to them after they enroll.

The University Senate recommends that this issue be reconsidered in five (5) years as the national landscape around criminal justice evolves and more information and data on the questions’ effects becomes available.

APPENDICES

- Appendix 1 — 2017-2018 Application Text and Questions on Judicial Information
- Appendix 2 — Financial Implications of Options Considered by the APAS Committee
- Appendix 3 — FAQs on the APAS Committee’s Recommendations
- Appendix 4 — Charge from the Senate Executive Committee

Judicial Information

The University of Maryland strives to provide a safe campus and learning environment. The University thus asks questions about an applicant's criminal history. An affirmative response to any of these questions will not result in an automatic denial of admission or enrollment. All relevant circumstances will be considered. The University reserves the right to request further information from the applicant to verify the information disclosed. In addition, applicants who are admitted may be required, as a condition of participation in certain programs, to complete a criminal history consent form, and agree to a criminal background check.

Please note: You are required to update the Office of Undergraduate Admissions at ApplyMaryland@umd.edu (please use the subject line "Disciplinary Update") should a situation take place that would cause your answer to one of the below questions to change. This includes, but is not limited to, any criminal convictions or disciplinary actions taken against you after the time of application submission through the start of classes of your first semester at the University.

*Has disciplinary action been initiated against you at any of the institutions attended, including the University of Maryland?

Yes

No

*Have you ever been charged with, pleaded guilty to, or been found guilty of any criminal offense, other than a minor traffic violation, for which charges have not been expunged?

Yes

No

*Do you currently have criminal charges pending against you, excluding minor traffic violations?

Yes

No

*Have you ever received formal disciplinary action or a dishonorable discharge from any branch of the military?

Yes

No

*If you have answered yes to any of the questions above, please include a detailed statement describing the situation and its resolution.

Financial Implications of Options Considered by the APAS Committee

Option 1: Continue using the same questions on the application and process for reviewing responses.

- No direct financial implications.
- However, the perception that having a criminal background may prevent a student from being admitted to the University would persist.

Option 2: Remove all Judicial Information questions from the application entirely.

- No direct financial implications. However:
 - The University would assume more liability/risk for not asking questions, in that it is not doing all it could do to be aware of potential safety threats as new members join the campus community.
 - If the Senate voted to stop asking questions about criminal background in the admissions application, the University would likely feel compelled to find other mechanisms to assess any potential risks to the campus community, to mitigate the increase in liability. Significant financial resources would be needed, in order to: create a process for gathering information and create an office and/or hire staff to conduct a review outside of the admissions office. Additional resources may be expended if such systems were created in multiple places (for example, one process for housing, another process for a specific academic program).

Option 3: Continue asking questions on criminal and disciplinary history, but revise the process to ask the questions at a later point during the admissions process.

- Significant financial resources needed, in order to:
 - create a process for gathering the information, since there is no post-application process where all applicants/admitted students provide information for review
 - create an office and/or hire staff to conduct this review, since it will likely need to be completed on a quicker timeline in order to have as little impact as possible on the admissions/enrollment/orientation timelines
 - develop a data integrity process
- This could negatively impact the admissions timeline – all admissions decisions are released by April 1st and admitted students have to confirm enrollment by May 1st. If this stage has to come after the decision is released but before the enrollment confirmation date, that leaves very little time for review. If it does not come before May 1st, students would lose the option to go to another institution after the secondary review at UMD.
- The University would need to determine if it would revoke admission from any students who would pose a threat given their criminal history, or what would be done with the information after an admissions decision was made.
- This would also likely have the same deterrent effect on students as having the questions on the application – students would have no more reassurance that the review would be fair and would not unreasonably bar them from coming to

the University. They would also be aware that if this review happens or concludes after the traditional May 1st enrollment deadline, the student would no longer have the opportunity to go elsewhere if they did not want to participate in the process. This may have additional negative consequences, in terms of discouragement and general negative feeling towards UMD.

Option 4: Continue asking questions on criminal and disciplinary history, but revise the questions to more narrowly target specific conduct and take additional steps to communicate with applicants about the process.

- No direct financial implications. Some resources in terms of time and effort may be needed, in order to: revise the questions and the text on the application, and to enable additional communication with prospective applicants to reassure them about the process.

FAQs on the APAS Committee's Recommendations

Question: How many applicants does this affect?

Answer: Typically, less than 1% of applicants answer yes to one or more of these questions. Last year, there were 142 cases forwarded to the Office of Student Conduct for review from the undergraduate admissions application questions and only 14 cases were given a negative recommendation from the OSC. It is very rare for these applicants to be denied admission if they are academically eligible. The vast majority of cases reviewed by the OSC involve minor violations that are resolved without extensive review.

Question: Do Peer Institutions ask similar questions on applications?

Answer: Yes, many peer institutions do ask similar questions. APAS reviewed the processes and questions at Big 10 and other peer institutions, with the assistance of existing Big Ten Academic Alliance networks. Information was provided to the committee for nine institutions. Of those who responded to the request for information, six institutions have a process that aligns with the process at the University of Maryland, where they ask criminal and/or disciplinary history questions in the application. Two institutions do not ask such questions, and one asks questions after an admissions decision has been communicated, as a requirement prior to enrollment.

Question: Is there research that indicates this is a problem?

Answer: Scholarly research in this area is limited, but generally shows that a majority of institutions collect some information regarding criminal backgrounds through applications. There is one study of the impact of the questions on applicants in the State University of New York system. It estimates that a large percentage of applicants are in effect denied admission because they do not complete the application process and therefore cannot be considered. The study indicated that two out of every three applicants who responded affirmatively to a question on criminal background did not submit the application. However, the study did not consider or address other reasons why those applicants did not submit the application; it presumes they declined to submit because of the criminal background questions, when there could be any number of other reasons they declined to submit the application. The APAS Committee did not feel this study represented a strong correlation, and was concerned that there is a lack of evidence in this area.

Question: What relevant state legislation is there?

Answer: The Maryland General Assembly introduced and approved legislation related to criminal history in the undergraduate admissions process last year, in order to promote the admission of students with criminal records to provide them with the opportunity to obtain the knowledge and skills needed to contribute to the State's economy. The legislation was approved in April 2017, vetoed by the Governor in May 2017, and the veto was overridden by the General Assembly in January 2018.

The legislation's purpose was to limit the use of criminal history information in the admissions process so that a student's criminal history does not automatically or

unreasonably restrict a student's admission. The legislation does not prohibit universities that use third-party applications from asking questions on criminal background. UMD's process fulfills the requirements of the legislation and the intent behind it; we do not use criminal background as a primary factor in determining eligibility, and our process ensures that each applicant is reviewed for academic eligibility first and is given an opportunity to provide information to explain the incident to be considered in the review process. We also take steps to make it clear to applicants that affirmative responses to these questions do not automatically disqualify them from admission.

Question: Why did you change the questions the way you did?

Answer: The APAS Committee felt it was presented with competing compelling concerns regarding access to education and campus safety, and it sought to find a balance that is appropriate for our campus community. APAS felt the questions on the application were too broad, in that they ask applicants to disclose information that does not need to be factored into decisions on conduct clearances in order to protect campus safety. They would require an applicant to disclose nearly anything that had ever happened to them, by requiring them to disclose charges and arrests as opposed to only convictions and pending actions. APAS agreed that this could disadvantage applicants who had been wrongfully charged or whose charges had been dismissed. APAS narrowed some of the questions to focus on decisions that had been confirmed, by focusing on convictions.

Question: Why is there a question about restraining orders?

Answer: When the committee was comparing its questions to those suggested by the Coalition for Student Success, this was one of the few questions that the Coalition suggested asking that UMD was not currently asking. It is asked by some peer institutions. With our current questions, the OSC would only find out about a restraining order if the applicant self-disclosed a criminal record that involved a restraining order, even though peace orders and restraining orders are viewable public records in Maryland. APAS felt that restraining orders are very pertinent to the types of issues the University should be aware of, because they can show whether the individual has a history of violent behavior or if there's a current pending concern about potential violence. Restraining orders may also be used in cases where a criminal conviction could be hard to reach, such as in sexual misconduct cases.

Question: Why didn't you narrow the questions further to specify felony convictions?

Answer: Typically, a felony indicates a higher level of severity than a misdemeanor. However, there are some criminal charges that are not felonies that this institution may still want to be informed about. For example, types of sexual misconduct (including sexual harassment, stalking, and domestic violence) can be misdemeanors rather than felonies depending on the jurisdiction and the facts of the case.

Question: What types of incidents are applicants rejected for?

Answer: The review process is meant to identify serious or significant conduct that has

the potential to harm members of the community or the safety of the community at large. When applicants disclose minor offenses, such as traffic violations or isolated drug or alcohol citations, those applicants are typically cleared for admission without extensive review.

When applicants disclose serious offenses, such as violent behavior, drug distribution, or a history of sexual violence, the OSC assesses whether there is a pattern of behavior that could negatively impact the health and safety of others in the campus community, if the conduct were to be repeated here. Repeated incidents of the same or similar violent conduct, or patterns of sexual misconduct, may be cause for concern. In 2017-2018, the types of conduct involved in the cases that were not cleared included theft of over \$10,000, drug distribution, severe hazing, assault, sexual assault, and domestic violence or intimate partner violence.

In all cases, the applicant is given opportunities to provide more information and explain the circumstances surrounding the incident as well as how they have learned or grown as a result of the incident.

Question: Why can't we just move the questions to later in the process?

Answer: Moving the questions to after an admissions decision is made would be logistically difficult and likely would not address the underlying problem of deterring applicants with criminal backgrounds. APAS felt such a process would likely have the same deterrent effect on students as including the questions on the application, as it does not address the perception by the applicant that they may be unreasonably barred from the University as a result of their disciplinary history; changing when in the process the questions are asked does nothing to reduce the perception that the responses will be judged unfairly. This secondary process may have additional negative consequences, in terms of an increase in discouragement and negative feeling towards UMD, especially if students face the threat that admissions decisions may be revoked. An additional step that makes enrollment contingent on another layer of review would likely result in applicants with or without criminal backgrounds choosing to attend another institution or opting out of answering the questions.

This would also be logistically and financially difficult to organize and administer. There is no point in our current process after the application where we require students to provide information before they are allowed to enroll or register, so we would need to set up a process to collect and review criminal background information. It could also affect the timeline for offering admission and accepting admissions offers, since there would need to be time between the initial decision and enrollment for another layer of review to finalize the admissions offer. Right now, all admissions decisions are released by April 1st and admitted students have to confirm enrollment by May 1st.

Question: Why did you recommend something related to resources for incoming students?

Answer: The review process for these types of prior history can be an opportunity to connect applicants with resources once they become students. Applicants who go

through the conduct clearance process can be given information on campus resources they could access if they were to enroll, such as resources in the Heath Center or Counseling Center. The committee felt enhancing information available to applicants could be a useful tool in ensuring their success once they join the University community.



**University Senate
CHARGE**

Date:	March 10, 2017
To:	Philip Evers Chair, Academic Procedures & Standards
From:	Jordan A. Goodman Chair, University Senate 
Subject:	Undergraduate Admissions Procedures Related to Criminal Background
Senate Document #:	16-17-29
Deadline:	February 9, 2018

The Senate Executive Committee (SEC) requests that the Academic Procedures & Standards (APAS) Committee consider issues related to asking potential undergraduate applicants to report criminal history in the admissions process.

Specifically, we ask that you:

1. Review any questions related to criminal background on the University of Maryland undergraduate admissions application.
2. Review undergraduate admissions applications questions and related procedures at peer institutions and other Big 10 institutions to understand their processes for reporting of criminal background information during the admissions process.
3. Consult with a representative from the Undergraduate Admissions Office to understand the current admissions process.
4. Consult with a representative from the Office of Student Conduct to understand its role in evaluating applicants who report past criminal history.
5. Consider whether including a question related to criminal background could discourage prospective students from applying to the university.
6. Consider the potential impact of this type of question on applicants from underrepresented minority groups.
7. Consult with the University's Office of General Counsel on any proposed changes.

8. If appropriate, recommend whether the current admissions processes should be revised.

We ask that you submit your report and recommendations to the Senate Office no later than February 9, 2018. If you have any questions or need assistance, please contact Reka Montfort in the Senate Office at [301-405-5804](tel:301-405-5804) or reka@umd.edu.

JAG/rm