UWM Faculty Senate Resolution on Proposed UWS Policy Statement on Establishing and Implementing Criminal Background Check Policies and Practices

Rationale

After considerable review of the proposed UWS Policy Statement on Establishing and Implementing Criminal Background Check Policies and Practices (August 2, 2006) document during this past four months and after a committee of the whole discussion, by the University of Wisconsin Milwaukee Faculty Senate, the University Committee (hereafter, UC) has concluded that the August 2, 2006 version does not provide compelling reasons to justify performing criminal background checks on new faculty hires. Furthermore, the policy statement is still lacking adequate procedural clarity and does not offer an adequate means to protect UW campuses from hiring faculty who have previous and future criminal backgrounds that are “substantially related to the role and functions of a faculty member.

The cost associated with conducting criminal background checks has to be viewed in light of the potential number of job candidates who would be deemed unfit to serve as professors. While some UWS campuses conduct criminal background checks of candidates for employment, it is safe to say that the vast majority of UWS employees have not undergone criminal background checks prior to being employed by UWS.

In February 2006, the State of Wisconsin’s Legislative Audit Bureau announced the results of its review of the number of UW System employees convicted of felonies. A total of 40 UWS employees were found to have felony convictions and were under state supervision. These 40 UWS employees represent less than 0.13% of the total number of full-time equivalent UWS employees.

Of these 40 UWS employees, three were faculty. Three faculty out of a total of 6,531 UW System faculty represent less than 0.046%. It is important to note that all three faculty had been convicted while employed by UWS and none had felony convictions prior to being employed by UWS.

What makes these data even more telling is that the vast majority of UWS employees were hired without a criminal background checks. Given the incredibly small number of UWS employees with any form of felony background, one has to ask if the problem warrants the time and expense associated with conducting criminal background checks on professorial job candidates.

If the efficacy of performing criminal background checks on new faculty hires was to be established, the present policy would need additional attention to improve its procedural clarity. For example, the present policy lacks specificity insofar as the types, degrees and timeframe of the criminal acts that could be used to deny employment. At issue is, what types of criminal convictions would be “substantially related to” the job of being a
professor? Would it make a difference if the crime had been committed six months ago, or thirty years ago? Would it make a difference if the person had been convicted of the crime in another state whose laws regarding criminal conduct varied from Wisconsin’s?

If criminal background checks were conducted on all new faculty hires, guidelines and criteria would have to be specified. If these criteria were left to the discretion of each campus; to an individual; or to a group of individuals, there could easily be large variations in “denial to employ” decisions. Such variations would most certainly indicate unfair hiring practices within the UWS.

If the efficacy of conducting criminal background checks on proposed faculty hires were established, we also would need to identify a means of conducting such checks on potential faculty hires who do not presently reside in the United States. It would difficult to argue that faculty residing outside the United States present less of a threat than those who reside within the United States.

It is with these reservations that we ask the Board of Regents and its “several faculties” to: (1) investigate the efficacy of promulgating new policies and procedures governing the implementation of criminal background checks for all new UW faculty. (2) if criminal background checks are found to be warranted, faculty would be involved in the formative stages of developing such policies and procedures.

Presented to the UW Milwaukee Faculty Senate by the UW Milwaukee University Committee on 19, October 2006.

UWM University Committee

Scott Emmons
Jack Johnson, Chair
Janet Lilly
Stephen Meyer
John Ndon
Mark Schwartz
Whereas, the UWS Board of Regents is considering adopting a policy entitled “Establishing and Implementing Criminal Background Check Policies and Practices” (see attached draft policy - August 2, 2006) which states:

With possible discretionary exceptions noted on the following paragraph, pursuant to this UW System policy statement, University of Wisconsin employers will conduct criminal background checks of prospective employees for all university jobs. Criminal background checks shall be conducted on all candidates recommended for hire, either prior to the university’s extension of an offer of employment, or as part of an offer of employment that is made contingent upon a successful criminal background check outcome (page 3).

Whereas, the UW Milwaukee faculty are fully committed to the rights and responsibilities accorded by Wisconsin Statutes, Chapter 36, including UWS and UW Milwaukee Policies and Procedures, wherein faculty are expected to have primary purview over faculty personnel matters; and,

Whereas, the UW Milwaukee faculty view the proposed UWS criminal background check policy as a personnel matter and therefore under the purview of faculty; and

Whereas the UW Faculty have indicated concerns regarding this proposed policy and procedures: 1) efficacy and cost-benefit of conducting criminal background checks on all new faculty hires; 2) ability to be implemented in such a fashion as to guarantee section 111.335, of the Wisconsin Statutes (denial of employment if and only if the circumstances of the conviction substantially relate to the particular job); and 3) capacity to conduct criminal background checks on proposed faculty hires who do not presently reside in the United States.

Therefore, be it resolved that pursuant to Chap. 36.13(3) and (5), the UW Milwaukee faculty fully supports the “board and its several faculties” working jointly to examine the efficacy of conducting criminal background checks on all new UW faculty and if deemed necessary to work jointly to promulgate new policies and procedures governing the implementation of criminal background checks for all new UW faculty; and

Be it finally resolved that the UW Milwaukee Faculty Senate send this resolution regarding UWS Policy Statement on Establishing and Implementing Criminal Background Check Policies and Practices (August 2, 2006) to the Board of Regents, UWS President Kevin Reilly, and all UWS Faculty Senate leaders.