The University Committee moves adoption of the proposed attached campus policy.

Rationale

Under the directive of University of Wisconsin System Board of Regents each UWS campus has been charged with the responsibility of creating a campus policy for the implementation of criminal background checks.

Attached is the proposed UW Milwaukee campus policy and procedures for the implementation of the UWS criminal background check policy. The document has been reviewed by the Provost’s office, UW Milwaukee legal affairs, and faculty and academic staff representatives.

University Committee has reviewed the document and is presenting to the UWM Faculty Senate for their consideration/endorsement.

UWM University Committee

John Johnson, Chair
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UW-MILWAUKEE CRIMINAL BACKGROUND CHECK
POLICY AND PROCEDURES

PURPOSE
To provide a safer campus environment for students, employees and visitors.

1. STATEMENT OF POLICY
1.1. It is the policy of the University of Wisconsin Board of Regents that all UW System campuses have a comprehensive policy of conducting criminal background checks on new hires for a University position. Except otherwise provided in the UW System Criminal Background Check Policy or in this policy, UW-Milwaukee (UWM) shall conduct a criminal background check on each new hire for a position at UWM. (Regent Resolution 9276).

1.2. A “new hire” shall be defined as any prospective employee that is not currently a UWM employee or an employee of another UW System institution. Current UWM employees or employees of other UW System institutions who are moving to a position within UWM, through transfer, promotion, or otherwise, will not be subject to a criminal background check unless such a check is otherwise required by law (e.g., the fiduciary responsibility law or caregiver law).

1.3. Criminal background checks ideally should be completed before an offer of employment is made. In the alternative, offers of employment may be made contingent upon a successful criminal background check. Individuals may not commence employment until they have successfully completed a criminal background check, except under special circumstances.

1.4. If an individual being considered for a position has a criminal conviction (including a “no contest” plea) or pending charge that is “substantially” related to the new job responsibilities, that individual may not be employed in that position. If an offer has already been extended or, due to the presence of special circumstances as described in the preceding paragraph or otherwise, employment has commenced, the offer should be rescinded and the appointment terminated.

1.5. Information collected in connection with the background check will be treated confidentially to the extent permitted by the Wisconsin Public Records Law and other applicable laws. An individual or individuals in the UWM Police Department will be designated as responsible for all aspects of conducting criminal background checks. Appropriate training shall be provided.

1.6. The University will comply with the Wisconsin Fair Employment Act and other applicable laws to ensure individuals are not discriminated against because of arrest or conviction records.

2. POSITIONS COVERED BY THIS POLICY
2.1. This policy will apply to all new hires as defined in section 1.2 above and permissive reinstatements to all positions. This includes new hires to all faculty, academic staff, limited title, classified staff positions (including project and limited term), and student employees.

2.1.a. Current employees who return to their positions after a break in service of two years or less are considered as continuing employees and not as new hires for the purpose of this policy.

2.2. While the UW System Criminal Background Check Policy allows for institutional-level exceptions for temporary employees, hourly student employees, interns, unpaid volunteers, and positions filled by a vendor or contractor, exceptions at UWM shall only be made under these conditions:

2.2.a. Each school/college/division must develop a list of positions for which exceptions are requested with justification.

2.2.b. The list of such positions and the justifications must be approved by the Vice Chancellor or above for each division. The Vice Chancellors/Chancellor shall consult with each other to ensure that the standards for exemptions are applied uniformly.

2.2.c. No student residence hall employee can be exempted from the criminal background check regardless of employee classification.

2.2.d. The approved list must be on file at the Department of Human Resources.
2.2.e. No position, even if it is staffed with temporary/short term employees, student employees, interns or unpaid volunteers, shall be exempt from the criminal background check policy if the employee in the position will have access to personnel and student records, or if the law requires a background check for the position.

3. **HIRING**

3.1. **Position Announcement**: All electronic position vacancy announcements should contain the following statement: “Employment will require a criminal background check.”

3.2. **Timing of Check**: Criminal background checks ideally should be completed before making an offer of employment. If a check is not completed before an offer is made, the check must be completed prior to commencement of employment, except in special cases approved by the Vice Chancellor of the division, or designee.

3.3. **Contingent Appointments**: If an appointment is offered contingent on the successful completion of a criminal background check or an employee is permitted upon approval by the Vice Chancellor of the division to commence employment pending completion of a check, the appointment letter must state that the appointment will be withdrawn or terminated if the individual’s criminal background check results are unacceptable. The following statement may be used in the appointment letter:

“This appointment is conditional pending the results of a criminal background check. The appointment will be withdrawn or terminated if the results are unacceptable”.

3.4. **Applicant Consent Form**: Prior to conducting a criminal background check, the UWM will have the final candidate or each of the finalists, as applicable, sign a consent form, Applicant Consent Form (Appendix I). The Consent Form must be filled out accurately and completely and submitted to the Personnel Representative (PREP) directly by the candidate in a sealed envelope. Individuals who fail or refuse to complete the form or who provide false or misleading information may no longer be considered a candidate for the vacancy. For a permanent classified position, this may or may not result in removal and/or decertification from an exam register and the potential for the recruiting unit to obtain an additional candidate’s name.

4. **CONDUCTING CRIMINAL BACKGROUND CHECKS**

4.1. In all units, the PREP shall be authorized to submit the request for the Criminal Background Check (CBC) according to the UWM Criminal Background Check Process (Appendix II) employed by the campus for all positions within the unit. The criminal background check should minimally include the following: (i) Social Security Number Trace, (ii) Criminal Felony/Misdemeanor by county of residence, and (iii) Sex Offender Registry. Additional checks may be run when appropriate in relation to the position as determined by the Vice Chancellor of the division or designee.

4.2. The costs associated with the criminal background checks will be incurred by the hiring School, College, Division or Department.

5. **MAKING DECISIONS REGARDING SUBSTANTIAL RELATIONSHIP**

Once the criminal background check is completed, UWM will need to make a decision based on the information gathered. Wisconsin’s Fair Employment Act states that employers cannot discriminate against prospective or current employees based on past or pending arrests or convictions. There are exceptions to this requirement if a “pending criminal charge” or “conviction record” is determined to be “substantially” related to the “circumstances of the particular job.” To determine if there is a relationship, UWM needs to review the circumstances of an offense compared to the circumstances of a job. The more similar the circumstances, the more likely a “substantial” relationship exists.

5.1. If the criminal background check does not reveal any records, the recipient of the criminal background check report informs the appointing authority that the offer letter can be processed.

5.2. If the criminal background check reveals a pending criminal charge or a criminal conviction (including “no contest” pleas), and a negative decision on the selection of the candidate is contemplated on the basis
of the finding, the Vice Chancellor, or designee, for the division will consult with a review group of at least three individuals to determine whether the criminal activity is substantially related to the functions of the position. Each Vice Chancellor shall designate the review group for his/her division which shall consist of a UWM legal counsel and two others. The underlying principle is that the review group collectively has broad knowledge of positions in the division and legal issues related to determining if a substantial relationship exists.

5.3. The Provost or designee shall be the decision-maker for all faculty positions, as well as all academic staff positions or other positions that are within divisions, departments or other administrative structures that ultimately report to the Provost. For faculty positions, the review group consulted by the Provost, or designee, shall include two tenured faculty members appointed in consultation with the University Committee. Similarly, the Vice Chancellors for Finance and Administrative Affairs, Student Affairs, University Relations and Communications, Development, Partnership and Innovation, or designees shall be the decision-makers for all classified, academic staff positions and other positions that are within the respective divisions, departments or other administrative structures that ultimately report to the Vice Chancellor. In this process, the Provost/Vice Chancellor, or designee, may consult with other offices and individuals, inside and outside of the University (including the UWM Police Department), as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality.

5.4. For student hourly employees, graduate assistants and temporary employees, the Vice Chancellor of the division may delegate the review of the criminal background check results and the determination of substantial relationship to the Dean of the school/college or equivalent position. If a negative decision is contemplated, the Dean, or equivalent, shall consult with the review group established by the Vice Chancellor for the division in the application of the substantial relationship test.

5.5. The Vice Chancellor’s office in each division shall maintain a current list of designees for making decisions for various positions in the division in accordance with Secs. 5.3 and 5.4.

5.6. In reviewing the results of a criminal background check on an individual candidate, the CBC Review Group will review each individual on a case-by-case basis and consider the following factors in order to determine whether there is a substantial relationship between the pending charge or conviction and the employment position and whether the individual should be further considered for the position:

5.6.a. The Offense. The nature, severity and intentionality of the offense(s) including but not limited to:
   i. The statutory elements of the offense (rather than the individual’s account of the facts of the offense);
   ii. The individual’s age at the time of the offense(s);
   iii. Number and type of offenses (criminal felony/misdemeanor);
   iv. Time elapsed since the last offense;
   v. The individual’s probation or parole status;
   vi. Whether the circumstances arose out of an employment situation;
   vii. Whether there is a pattern of offenses.

5.6.b. The Position. The duties, responsibilities and circumstances of the position applied for, including but not limited to:
   i. The nature and scope of the position, including key access to residential facilities, key access to other facilities, access to cash, and access to vulnerable populations such as minor children;
   ii. The nature and scope of the position’s student, public or other interpersonal contact;
   iii. The nature and scope of the position’s autonomy and discretionary authority;
iv. The amount and type of supervision received in the position or provided to subordinate staff;
v. The sensitive nature of the data or records maintained or to which the position has access;
vi. The opportunity presented for the commission of additional offenses; and
vii. The extent to which acceptable job performance requires the trust and confidence of the employer, the University or the public.

5.6.c. Using these and other appropriate factors, the Vice Chancellor (or designee) in consultation with the appropriate review group (and the Dean of school/college for positions in academic units), will make the final determination on whether to appoint or reject the candidate on the basis of a criminal background check. The appropriate Vice Chancellor, or designee, will be responsible for documenting the basis for the decision to appoint or to refuse to appoint a candidate based on the criminal background check review.

6. CANDIDATE NOTIFICATION OF NEGATIVE RESULTS

6.1. If a candidate is not selected based on the criminal background check results, the appropriate Vice Chancellor, or designee, will provide the results to the candidate. The candidate will be given a five (5) working day period to refute the information.

6.2. Additional time extensions may be provided to the candidate at the sole discretion of UWM.

6.3. If a private, commercial background check vendor is used, UWM and the vendor will need to ensure compliance with the federal Fair Credit Reporting Act.

7. KEEPING RECORDS

7.1. Records gathered as a result of a criminal background check will be kept by Human Resources in separate, sealed files segmented by the candidate/employee’s name. The files will be maintained separately from an candidate/employee’s general personnel records.

7.2. The Vice Chancellor, or designee (designated per Sec. 5.5), of each division is responsible for gathering all the relevant records and sending them confidentially to Human Resources. These records should include:

   i. Consent Form
   ii. Information collected from the check
   iii. Analysis and decision whether criminal activity (if any) was substantially related to the position
   iv. Correspondence related to criminal background check

7.3. The records will be securely maintained for a period of six years after the position has been filled, and may be accessed only on a need-to-know basis or as required by applicable law.

8. OTHER BACKGROUND CHECKS/EVALUATIONS

8.1. As noted previously, other types of background checks and/or evaluations may be utilized due to the nature of particular positions. Examples include checks required under Wisconsin's Caregiver Law (Wisconsin Statutes, Chapters 48 and 50) and Fiduciary Responsibility Law (Wisconsin Statutes, Section 230.17(3)). Additionally, the nature of certain positions could involve the need to conduct non-criminal background checks such as drug analyses, psychological evaluations, and credit checks. Nothing in this policy precludes UWM from conducting position specific checks (criminal and non-criminal) on an as-needed basis.

8.2. Any questions related to this policy, including interpretations and resource locations, should be directed to the UWM Department of Human Resources.
APPENDIX I

APPLICANT CONSENT FORM

NOTE: THE APPLICANT SELF-REPORT FORM IS STILL BEING FINALIZED. THE UC IS RECOMMENDING THE USE OF THE ATTACHED FORMAT FROM THE UNIV OF MINNESOTA.
Replace current Att I draft with following form from Minnesota (inserting appropriate names/addresses, inserting “criminal” before felony & misdemeanor, minor edits as needed to fit UWM/BOR policies)

DISCLOSURE STATEMENT

As part of the final approval process of an appointment, the University conducts reference and background checking. The University also requires you to disclose, in writing, all relevant facts and information needed for a full and fair understanding of any of the following:

- Professional misconduct or sanctions (e.g., disbarment by a federal agency; any form of professional discipline or license restriction or surrender; an admission or determination that you have committed research misconduct)

- Any harassment or discrimination you were found to have committed by any court, adjudicative body, or administrative body, including but not limited to any findings of harassment or discrimination made by present or former employers

- Any felony or misdemeanor for which you were convicted or pleaded no contest

Engagement in any such conduct may not, in and of itself, disqualify you from an appointment at the University; however, failure to disclose such information, or any misrepresentation made in connection with the disclosure, would be grounds to revoke an offer of appointment or terminate subsequent employment. Information is kept strictly confidential and is available only on a need-to-know basis. This information will not be shared with the Hiring Department.

_____ I have nothing to disclose.

_____ I have the following information to disclose (please provide explanation as appropriate and attach additional sheets if necessary):

________________________________________________________

________________________________________________________

________________________________________________________

________________________________________________________

________________________________________________________

Print name

Signature ___________________________ Date _______________________

Please return completed form by mail or fax:

Insert appropriate information at end of form.
APPENDIX II

UWM Criminal Background Check Procedures

UWM Criminal Background Check Policy requires that such checks be done for new hires. This document outlines the procedures that will be used at UWM in conducting such checks. In addition to the process described here, other types of background checks and/or evaluations may be utilized due to the nature of particular positions. Examples include checks required under Wisconsin's Caregiver Law (Wisconsin Statutes, Chapters 48 and 50) and Fiduciary Responsibility Law (Wisconsin Statutes, Section 230.17(3)). This could include the need to conduct non-criminal background checks such as drug analyses, psychological evaluations, and credit checks.

The following procedures will be used for conducting criminal background checks:

1. The Personnel Representative (PREP) for the division, or designee, will provide the candidate for whom an offer of employment is considered the following:
   a. The Candidate Consent Form to be completed and submitted by the candidate. The PREP shall complete the information requested on the first page of the Form before giving the Form to the candidate.
   b. A sealable envelope (clearly marked “Confidential” on both sides) with the following information on the envelope:
      i. Name of the candidate,
      ii. UWM recruitment number and Position title (from Form A)
      iii. Name of Department/School/College/Division
      iv. Name and campus address of the PREP

2. The candidate will complete the Form, seal the form along with any additional sheets in the envelope provided, and give the envelope to the PREP, or designee, directly. The PREP shall do all that is necessary to ensure that this happens without undue discomfort to the candidate.

3. To minimize potential delays in the recruitment process, the PREP, or designee, may obtain the Candidate Consent Form from all finalists for the position at interview time. A check will only be conducted on applicant(s) receiving an offer of employment.

4. When the appointing authority has selected a candidate for receiving an offer of employment, the PREP shall forward the sealed envelope with the candidate’s consent form to the UWM Police Department to the attention of the Chief of Police.

5. UWM PD will first conduct a social security trace to determine the addresses at which the candidate lived in the past seven years.

6. If all addresses in the past seven years are in Wisconsin, or in one of the other states for which the county court records are directly accessible to the UWM PD staff, the UWM PD staff will do the criminal background check using these records. Checks conducted by the UWM PD in each state shall include:
   a. Social Security Number Trace
   b. Criminal Felony/Misdemeanor Records
   c. Sex Offender Registry

7. If any of the addresses in the past seven years is in a state whose county court records are not directly accessible to the UWM PD staff, the UWM PD shall initiate a criminal background check using the vendor which is currently under contract with the University.
   a. The standard package for out-of-state criminal background checks conducted through the vendor shall include:
      i. Social Security Number Trace – Authenticares applicant’s information and generates a list of addresses the applicant has lived at for the last seven years
      ii. Criminal Felony/Misdemeanor by county of residence – superior and municipal court records in any county in the US
      iii. Sex Offender Registry - sex offender search by state
b. Additional criminal and non-criminal checks (e.g. motor vehicle, etc.) may be run when appropriate in relation to the position
c. The University is required to comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor.

8. The UWM PD staff shall write a report based on the information from the records. The report shall list convictions and pending charges in separate sections arranged in a chronological order starting with the most recent record.

9. The UWM PD staff shall forward the report to the Vice Chancellor of the division or designee as identified in the first page of the Candidate Consent Form.

10. If the recipient of the report is not clearly identified, the UWM PD staff shall forward the report to the Director of Human Resources.

11. If the report is clear, the Vice Chancellor, or designee, shall inform the appointing authority that the offer of employment can be processed.

12. If the report contains records of conviction or pending charges, the process outlined in the section on Making Decisions in the UW-Milwaukee Criminal Background Check Policy shall be followed.

13. If the candidate is not selected based on the criminal background check results, the appropriate Vice Chancellor, or designee, will provide the results to the candidate. The candidate will be given a five (5) working day time period to refute the information.

14. In the absence of a satisfactory response from the candidate within the five working day period, the Vice Chancellor, or designee, shall inform the appointing authority in the hiring department/school/college of the negative decision so that other candidates or options can be pursued.

15. The Vice Chancellor, or designee (as defined in Sec 5.5 of the Policy), shall gather all required documents as specified in the UW-Milwaukee Criminal Background Check Policy and send them confidentially to the Department of Human Resources for storage.

16. The records retention requirements of the provisions in the UW-Milwaukee Criminal Background Check Policy shall be followed.

17. The Vice Chancellor for each division shall generate an annual report and provide it to the Department of Human Resources. The report shall include the number of background checks conducted, the number of negative decisions made on the basis of criminal background check results, and the costs associated with conducting criminal background checks, in aggregate and sorted by employment category (i.e. faculty, academic staff, classified staff, student employees, etc). The Department of Human Resources should post this report on a publicly accessible website.