

Criminal Background Check Policy

No: S-14.5

Date: March 10, 2008

Authority: Board of Regents Policy 20-19

The Board of Regents Policy 20-19 requires that a criminal background check be performed on each new hire for a UW System position except as otherwise provided in this policy. This UWM policy describes how the BOR policy is implemented at UWM. The purpose of this policy is 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 prospective employees for a University position. Except as otherwise provided in the UW System Criminal Background Check Policy, or in this policy, UW-Milwaukee (UWM) shall conduct a criminal background check on prospective employees for positions at UWM.
- 1.2. Criminal background checks should be completed before an offer of employment is made. In exceptional situations, 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 unless an exception is granted by the Vice Chancellor of the division or designee. In any case, a criminal background check should be completed and a decision made within 60 days of the start of employment.
- 1.3. A 'new hire' in a faculty or academic staff position shall be defined as any prospective employee that is not currently a UW-System Administration employee or an employee of another UW System institution subject to Section 2.1.a. A 'new hire' in classified service shall be defined as any prospective employee that is not currently a UW System or other State of Wisconsin agency employee subject to Section 2.1.a.
- 1.4. If an individual being considered for a position has a criminal conviction or pending charge that is substantially related to the 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circumstances as described in the preceding paragraph or otherwise, employment has commenced, the offer should be rescinded and the appointment terminated.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 and reinstatements to all positions except as provided in Section 2.2. 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 UW-Milwaukee employees who return to their positions after a break in service of one year 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 exemptions are requested with justification.
 - 2.2.b. The list of such positions and the justifications must be approved by the Vice Chancellor 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. The approved list must be on file at the Department of Human Resources.
 - 2.2.d. No employee in a student residence hall can be exempt from the criminal background check regardless of employee classification.
 - 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.
- 2.3. Categories of University Jobs for which Criminal Background Checks are Required by State or Federal Law:
 - 2.3.a. *Day Care Workers and Other Caregiver Employees*
University of Wisconsin institutions that employ caregivers in day care centers must comply with the Wisconsin Caregiver Law and conduct criminal background checks on all prospective day care employees. Pursuant to Chapter 48 of the Wisconsin Statutes, the Wisconsin Department of Health and Family Services established a process that university employers must use to check the criminal backgrounds of all prospective day care employees. Moreover, University of Wisconsin institutions that employ caregivers in other university facilities or service units that provide direct care or treatment services to clients

and that are required by law to be licensed, certified by, or registered with a State of Wisconsin regulatory agency, must comply with the Wisconsin Caregiver Law and conduct criminal background checks on all prospective caregiver employees.

2.3.b. *Law Enforcement and Security Workers*

University of Wisconsin institutions are required to conduct criminal background checks of prospective police, security, and protective service employees, as is standard practice in the law enforcement field. All prospective university law enforcement employees are fingerprinted and undergo an extensive FBI background screening prior to their employment.

2.3.c. *Positions with Access to Funds or with Fiduciary Responsibilities*

Wisconsin Act 350, enacted April 18, 2006, amended Chapter 230 of the Wisconsin Statutes and requires public university employers to conduct criminal background checks of applicants for positions that involve “fiduciary responsibility” and duties “which include access to funds administered” by the university. In its May 4, 2005 fiscal estimate narrative, Office of State Employment Relations (OSER) indicated that “positions that could be covered ... include those in the following functional areas: accounting, auditing, financial management, accounts receivable, accounts payable, procurement, retail operations, tax and fee collections, payroll and handling of cash and checks.”

2.3.d. *Positions with Access to Hazardous Agents or Materials*

University of Wisconsin institutions will conduct criminal background checks on prospective employees who will handle and work with hazardous agents or materials in campus labs, buildings or storage facilities, pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and the Agricultural Protection Act of 2002. These federal laws require entities to register with either the U.S. Departments of Health and Human Services or Agriculture if they “possess, use or handle biological agents or toxins that could pose a severe threat to public health and safety; to animal or plant health; or animal or plant products.” As part of the requisite registration, these entities must conduct “security risk assessments,” which include the fingerprinting and FBI screening of individuals who will handle the select agents. The federal Hazardous Materials Transportation Security Plan (49 CFR 172.800) requires a background check for individuals who are involved in the shipment of hazardous materials.

3. HIRING

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

3.2. Timing of Check: Criminal background checks 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 as provided in Sections 1.2 and 1.3 of this policy.

- 3.3. Contingent Appointments: If an appointment is offered contingent on the successful completion of a criminal background check, the appointment letter must state that the appointment will be withdrawn or terminated if the individual's criminal background check results are unacceptable (Section 1.2 and 1.3 apply). 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 if the results are unacceptable".
- 3.4. Applicant Consent Form: Prior to conducting a criminal background check, UWM will have the final candidate or each of the finalists, as applicable, sign a consent form, **Applicant Consent Form** (Attachment 1). The Consent Form must be filled out accurately and completely and submitted to the Personnel Representative (PREP) in a sealed envelope directly by the candidate. Individuals who fail or refuse to complete the form in a timely manner will no longer be considered a candidate for the vacancy. An applicant's failure to accurately and completely disclose his or her criminal conviction history may be grounds for removal from further consideration for a position. 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 each unit, the Personnel Representative (PREP) shall be authorized to submit the request for the Criminal Background Check (CBC) according to the **UWM Criminal Background Check Procedures** (Attachment 2) for all positions within the unit. The criminal background check should include the following: (i) Social Security Number Trace, (ii) Criminal Felony/Misdemeanor convictions and/or pending charges by county of residence, and (iii) Sex Offender Registry.
- 4.2. For international applicants, a criminal history check will be conducted covering time in the United States if the period of time that the individual has been in the United States exceeds six months. A criminal history check in the individual's prior country(ies) of residence will be conducted only if their country(ies) of residence provide criminal background information. Media searches are not considered a criminal background search.
- 4.3. 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, 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. For academic staff positions, at least one of the review group members shall be an indefinite status academic staff member appointed in consultation with the Academic Staff Committee. For faculty positions, the review group shall include one tenured faculty member appointed in consultation with the University Committee. 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 Vice Chancellor of a division, or designee, shall be the decision-maker for all positions that are within the respective division, school/college, departments or other administrative structures that ultimately report to the Vice Chancellor. In this process, the 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 (felony/misdemeanor, traffic for positions requiring an acceptable driving record, other);
 - 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 three (3) working days to challenge the findings and then a five (5) working day period to successfully resolve it.

- 6.2. Additional time extensions may be provided to the candidate at the sole discretion of UWM.
- 6.3. If the findings are upheld, the Vice Chancellor, or designee, will notify the individual of the non-selection. Although the federal Fair Credit Reporting Act (FCRA) requires this notification process if an outside vendor is used to conduct the checks, this notification process will be followed even if an outside vendor is not used.

7. KEEPING RECORDS

- 7.1. Records gathered as a result of a criminal background check will be kept by Human Resources in separate, secure files segmented by the candidate/employee's name. The files will be maintained separately from a candidate/employee's general personnel records. Records related to student employees will be maintained by the hiring department in separate, secure files.
- 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. Appropriate training will be provided. These records should include:
 - i. Consent Form
 - ii. Information collected from the check
 - iii. Analysis and decision if criminal activity substantially related to position
 - iv. Correspondence related to criminal background check
- 7.3. The records will be securely maintained for a period of seven years after the position has been filled, and may be accessed only on a need-to-know basis or as required by applicable law.

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. 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.
3. When the appointing authority has selected a candidate for receiving an offer of employment, the PREP shall forward the candidate's consent form to the UWM Police Department to the attention of the Chief of Police.
4. UWM PD will first conduct a social security trace to determine the addresses at which the candidate lived in the past seven years.
5. 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
6. 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 – Authenticates 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 checks will be run when required by law.
 - c. The University is required to comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor.
7. 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.
 8. 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.
 9. If the intended recipient of the report is not clearly identified, the UWM PD staff shall forward the report to the Director of Human Resources.
 10. If the report is clear, the Vice Chancellor, or designee, shall inform the appointing authority that the offer of employment can be processed.
 11. 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. 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 three (3) working days to challenge the findings and then a five (5) working day period to successfully resolve it. Additional time extensions may be provided to the candidate at the sole discretion of UWM. If the findings are upheld, the Vice Chancellor, or designee, will notify the individual of the non-selection. Although the federal Fair Credit Reporting Act (FCRA) requires this notification process if an outside vendor is used to conduct the checks, this notification process will be followed even if an outside vendor is not used.
 12. 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.
 13. 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.
 14. The records retention requirements of the provisions in the **UW-Milwaukee Criminal Background Check Policy** shall be followed.
 15. The Vice Chancellor, or designee, for each division shall generate an annual report and provide it to the Department of Human Resources. From these, the HR department will generate a campus report. 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 report will be shared with campus groups such as the University Committee and Academic Staff Committee.