



## CRIMINAL BACKGROUND CHECK POLICY

No: S-14.5

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**Initiator:** Vice Chancellor for Finance & Administrative Affairs

**Responsible Party:** Human Resources

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The Board of Regents Policy 20-19 requires that a criminal background check be performed on each new hire for a UW System position, and on current employees and volunteers holding a position of trust with access to vulnerable populations that have not previously been subject to a criminal background check, 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.

### 0. DEFINITIONS

0.1 Vulnerable Populations. Minors under the age of 18 that are not enrolled or accepted for enrollment at a UW institution, and medical patients.

0.2 Position of Trust. A paid or volunteer position with one or more of the following responsibilities:

0.2.a Access to vulnerable populations. Responsibilities require unsupervised or significant access to vulnerable populations in settings such as child care centers, summer camps for minors, precollege programs and health care facilities. This includes employees not working in the units but who have unsupervised access to the unit when the vulnerable population is present. It does not include faculty or instructors performing regular teaching, service and research unless those responsibilities include unsupervised access to vulnerable populations.

0.2.b Access to Property. Responsibilities require the use of master keys or key card access to offices, facilities and worksites other than the employee's own, including residential housing facilities.

0.2.c Fiduciary Duty. Principal responsibilities require handling, receiving or custody of money, checks or securities; accounting for supplies or other property; authorizing expenditures; approving, signing or countersigning checks, drafts, warrants, vouchers, orders or other documents for the paying over of money, securities, supplies or other property; and maintaining or auditing accounts of money, checks, securities, time records, supplies or other property.

0.2.d Executive Positions. Top level management positions throughout the institution, all of which are limited appointments, including such titles such as Chancellor, Provost, Vice Chancellor and Dean.

## 1. STATEMENT OF POLICY

- 1.1. It is the policy of the University of Wisconsin Board of Regents that all UW System institutions 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 all positions at UWM.
- 1.2 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 current employees and volunteers holding or seeking a position of trust with access to vulnerable populations. Except as otherwise provided in the UW System Criminal Background Check Policy, or in this policy, UWM shall conduct a criminal background check on current employees and volunteers holding a position of trust with access to vulnerable populations that have not previously been subject to a criminal background check.
- 1.3. For individuals that are not currently employees of a UW System institution, 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.
- 1.4 For individuals that hold a position of trust with access to vulnerable populations and those seeking to move to such positions of trust, criminal background checks must be completed every four years.
- 1.5. A 'new hire' shall be defined as any prospective employee that is not currently a UWM employee, UW-System Administration employee, an employee of another UW System institution subject to Section 2.1.a, or another State of Wisconsin agency employee subject to Section 2.1.a.
- 1.6. 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.
- 1.7 If an individual holding a position of trust with access to vulnerable populations, or seeking to move into such a position of trust through promotion or otherwise has a criminal conviction or pending charge that is substantially related to the job responsibilities, that individual may not be employed in that position.
- 1.8. 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 oversee all aspects of conducting criminal background checks. Appropriate training shall be provided.

- 1.9. 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. Prospective employees. This policy will apply to all new hires and rehires to all positions. This includes new hires to all faculty, academic staff, limited title, university staff positions (including project, fixed, limited term and temporary), graduate assistants 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. Current employees holding positions of trust with access to vulnerable populations and those seeking to move into such positions. This policy applies to all new hires and existing employees in all faculty, academic staff, limited title, university staff positions (including project, fixed, limited term and temporary), interns, volunteers, graduate assistants and student employees.
- 2.3 Vendors and Contractors. To the maximum extent possible, any agreement with a vendor or contractor whose employees, affiliates or volunteers will have routine or unsupervised access to vulnerable populations in the course of the contract, must represent to UWM in the agreement that these employees, affiliates or volunteers have satisfied a criminal background check by a criminal background check vendor that includes a check of the vendor's proprietary national criminal background check database.
- 2.4 Volunteers. A criminal background check must be conducted when required by law, or when a prospective volunteer will hold a position of trust with access to vulnerable populations, and thereafter every four years for so long as the volunteer holds a position of trust. Criminal background checks must also be conducted on current volunteers holding a position of trust with access to vulnerable populations that have not previously been subject to a criminal background check.
- 2.5 Facilities Users and Lessees. Facilities use agreements or leases with outside organizations that use or lease University lands and facilities to operate multi-day or overnight programs for minors must represent to UWM that their employees, affiliates or volunteers have satisfied a criminal background check by a criminal background check vendor that includes a check of the vendor's proprietary national criminal background check database.
- 2.6. Categories of University Jobs for which Criminal Background Checks are Required by State or Federal Law:
  - 2.6.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.

2.6.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.

2.6.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.”

2.6.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 1.3 and 1.5 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 1.3 and 1.5 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 university staff 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. CHECKS ON CURRENT EMPLOYEES**

- 4.1. Employee Consent Form: Prior to conducting a criminal background check, UWM will require employees and volunteers that hold a position of trust with access to vulnerable populations to sign a consent form, **Employee Consent Form** (Attachment X). The Consent Form must be filled out accurately and completely and submitted to the PREP in a sealed envelope directly by the employee. An employee’s failure to accurately and completely disclose his or her criminal conviction history may be grounds for removal from his or her position.

#### **5. SELF DISCLOSURE OF ARRESTS, CHARGES OR CONVICTIONS**

- 5.1 Employees or volunteers that hold positions of trust with access to vulnerable populations must report any criminal arrests, charges or convictions (excluding misdemeanor traffic offenses punishable only by fine) to the PREP for the school, college or division **within 24 hours** or at the earliest possible opportunity. Failure to make the required report may constitute a violation of this policy and result in disciplinary action up to and including dismissal.

#### **6. CONDUCTING CRIMINAL BACKGROUND CHECKS**

- 6.1. In each unit, the 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 on prospective hires, employees and volunteers must include a check of the Wisconsin Department of Justice Crime Information Bureau electronic database, and a check by a criminal background check vendor that includes the following: (i) Social Security Number Trace, (ii) Criminal Felony/Misdemeanor convictions and/or pending charges by county of residence in any US county in the last seven years, (iii) Sex Offender Registry by state and (iv) the vendor’s National Criminal Background Database.

- 6.2. For foreign nationals, a criminal history check will be conducted covering time in the United States. A criminal history check in the individual's prior country (ies) of residence will be conducted only if his or her country (ies) of residence provides criminal background information. Media searches are not considered a criminal background search.
- 6.3. Costs associated with the criminal background checks will be incurred by the hiring School, College, Division or Department.

## **7. MAKING DECISIONS REGARDING SUBSTANTIAL RELATIONSHIP**

- 7.1 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.
- 7.2. Prospective Employees. 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.
- 7.3. Current Employees and Volunteers. If the criminal background check does not reveal any records, the recipient of the criminal background check report informs the employee or volunteer that nothing has been found.
- 7.4. If the criminal background check reveals a pending criminal charge or a criminal conviction, and a negative decision on the selection or employment of the candidate or employee 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. For university staff positions, the review group shall include one permanent university staff member appointed in consultation with the University Staff Council. 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.
- 7.5. The Vice Chancellor of a division, or designee, shall be the decision-maker for all positions that are within the respective division, school/college, department 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.

- 7.6. 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.
- 7.7. 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. 5.5 and 5.6.
- 7.8. In reviewing the results of a criminal background check on an individual candidate or employee, 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 position and whether an applicant should be further considered for the position or an employee retained in his or her position:

7.8.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.

7.8.b. The Position. The duties, responsibilities and circumstances of the position applied for or held, 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;
- 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.

7.8.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 or take personnel action. 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 or take appropriate action regarding an employee or volunteer based on the criminal background check review.

## **8. CANDIDATE NOTIFICATION OF NEGATIVE RESULTS**

- 8.1. 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.
- 8.2. Additional time extensions may be provided to the candidate at the sole discretion of UWM.
- 8.3. 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.

## **9. EMPLOYEE NOTIFICATION OF NEGATIVE RESULTS**

- 9.1. If the results on an employee employed in a position of trust are negative, the appropriate Vice Chancellor, or designee, will provide the results to him or her. The employee or volunteer 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 at the sole discretion of UWM.
- 9.2. If the findings are upheld, the Vice Chancellor, or designee, will notify the individual of the employment action to be taken.

## **10. KEEPING RECORDS**

- 10.1. 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.
- 10.2. The Vice Chancellor, or designee (designated per Sec. 7.7), 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

- 10.3. 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.

## **11. OTHER CRIMINAL BACKGROUND CHECKS**

- 11.1. Nothing in this policy shall be construed to prevent UWM from obtaining criminal background check information on any current employee or volunteer at any time upon a reasonable basis.