University of Wisconsin Colleges and University of Wisconsin-Extension
Criminal Background Check Policy

Purpose

To provide a safe and secure environment for the employees, students, partners and clients of UW Colleges and UW-Extension.

Policy Statement

Except as otherwise provided in the University of Wisconsin System Criminal Background Check Policy or in this policy, UW Colleges and UW-Extension shall conduct a criminal background check on each new hire for a University position. Criminal background checks shall be conducted on candidates recommended for hire, either prior to the extension of an offer of employment, or as part of an offer of employment that is made contingent upon a successful criminal background check. A criminal background check shall also be conducted on current employees and volunteers holding a “position of trust with access to vulnerable populations”, as defined below, who have not previously been subject to such a criminal background check by the University. Employees and volunteers holding a position of trust with access to vulnerable populations shall be subject to a criminal background check every four years, and shall be required to self-disclose certain criminal offenses.

Definitions

- **New Hire**: A ‘new hire’ shall be defined as any prospective employee that is not currently a UW Colleges or UW-Extension employee. Current UW Colleges and UW-Extension employees who are moving to a different position within UWC or UWEX will not be subject to a criminal background check unless such a check is otherwise required by this policy (e.g., movement to a position of trust), by law (e.g., the fiduciary responsibility law or caregiver law), or the majority of the position’s duties will be performed within residential facilities. If a former UW Colleges or UW Extension employee is being rehired after an absence of one year or less the Director of Human Resources will determine whether a criminal background check must be completed.

- **Position of Trust**: A “position of trust” is defined as a paid or volunteer position with one or more of the following responsibilities:
  
  a. Access to vulnerable populations – Responsibilities require unsupervised or significant access to vulnerable populations, defined as minors, medical patients and other populations as identified by the institution. For purposes of this policy, a minor is a person under the age of eighteen (18) who is not enrolled or accepted for enrollment at a UW System institution. Examples of settings with vulnerable populations include child care centers, summer camps for minors, precollege or enrichment programs, and health care facilities. This category also includes employees who are not directly working in these units but have unsupervised access to the unit when the vulnerable population is present. This category does not include faculty or instructional academic staff performing regular teaching, service, and research responsibilities unless these responsibilities include unsupervised or significant access to vulnerable populations.

  b. Property access – Responsibilities require the use of master keys/card access and pertains to employees with key access to offices, facilities, or worksites other than their own worksite, including UW residential housing facilities.

  c. Financial/fiduciary duty – Responsibilities require handling, receiving, or having custody of money, checks or securities, or accounting for supplies or other property; authorizing (or making
appropriations for expenditures; approving, certifying, signing or countersigning checks, drafts, warrants, vouchers, orders or other documents providing for the paying over or delivery of money, securities, supplies or other property, or service of process; maintaining or auditing accounts of money, checks, securities, time records, supplies, or other property, or taking physical inventories of money, checks, securities, supplies, or other property.

d. Executive positions – Responsibilities involve top-level management functions throughout the institution including roles as Chancellor, Provost, and Dean. Executive positions are defined as all limited appointments and include any movement from a limited appointment to a different limited appointment, including within the same institution.

Coverage of Employee Groups, Prospective Hires and Employees

Criminal background checks must be conducted on prospective hires who are not University of Wisconsin employees, and on employees currently not in a position of trust who are seeking to move to a position of trust within the University through promotion or otherwise. Criminal background checks must be conducted on current employees holding a position of trust with access to vulnerable populations, as defined above, who have not previously been subject to a criminal background check by the institution. A criminal background check must be conducted every four years for employees in positions of trust with access to vulnerable populations.

Unless otherwise required by this policy or by law, the University of Wisconsin Colleges and University of Wisconsin-Extension generally will not conduct criminal background checks for the following employee and non-employee categories: (1) temporary or limited term employees, (2) positions to be filled by a vendor or contractor, (3) hourly student employees, (4) interns, and (5) unpaid volunteers. In making a determination to the contrary, the level of direct supervision and guidance provided to the employee or volunteer and the nature of the duties of the position shall be considered.

Coverage of In-House Vendors and/or Vendor Services for Contractors

To the maximum extent feasible, 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 include a representation from the vendor or contractor stating that these employees, affiliates, or volunteers have satisfied a criminal background check conducted by a criminal background check vendor selected by the contractor that includes a check of the vendor’s proprietary national criminal background check database.

Coverage of Volunteers

UW Colleges and UW-Extension shall conduct criminal background checks for prospective volunteers when the volunteer position involved is a position of trust, or when required by law to perform criminal background checks for specified volunteer positions. In all other cases the institution should consider the level of direct supervision and guidance provided to volunteers and the nature of the duties of the volunteer position to determine whether a criminal background check is appropriate.

Upon implementation of this policy criminal background checks must be conducted on current volunteers holding a position of trust with access to vulnerable populations, as defined above in this policy, who have not previously been subject to a criminal background check by the institution. A criminal background check must be conducted every four years for volunteers in a position of trust with access to vulnerable populations.
Coverage of Certain Users and Lessees of University Lands and Facilities

Facilities use agreements or leases with outside organizations that use or lease University lands and facilities to operate multi-day programs for minors, or programs for minors that involve an overnight stay, must include a representation from the organization that its employees, affiliates, or volunteers have satisfied a criminal background check conducted by a criminal background check vendor selected by the organization that includes a check of the vendor’s proprietary national criminal background check database.

Conducting Criminal Background Checks

Finalists for employment must complete and sign a criminal background check authorization form. An applicant’s failure to consent to a criminal background check or falsification of any related information is grounds for the rejection of the applicant. Similar procedures must be implemented for current employees, volunteers and prospective volunteers who are subject to criminal background checks.

A 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 provided by a criminal background check vendor that includes the following components:

- Social Security Number Trace – Authenticates applicant’s information and generates a list of addresses the applicant has lived at for the last seven years; as part of the trace, the University may verify that the social security number is valid and appropriately assigned to the applicant.
- Criminal Felony/Misdemeanor by County of Residence – superior and municipal court records in any county in the U.S.
- Sex Offender Registry – sex offender search by state.
- National Criminal Background Database – search of the vendor’s proprietary national criminal background check database.

University officials will have certain additional duties under the federal Fair Credit Reporting Act when retaining a vendor to perform criminal background checks.

The required criminal background check for current employees and volunteers holding a position of trust with access to vulnerable populations who have not been previously subject to a criminal background check by the University also shall include a criminal background check using a vendor’s proprietary national criminal background check database, as shall the required background check that recurs every four years for employees and volunteers holding such positions.

Additional criminal and non-criminal checks (e.g., motor vehicle, etc.) may be run when appropriate in relation to the position.

UW Colleges and UW-Extension must conduct an appropriate U.S. criminal background check on an applicant for employment, current employee, or volunteer who is a foreign national and subject to this policy. A criminal background check in the individual’s prior country(ies) of residence will be also conducted if his/her country(ies) of residence provides a criminal background check for the time period during which the individual was a resident. A media search is not considered an appropriate criminal background check and, therefore, institutions are not required to conduct media searches.
Application of the "Substantial Relationship" Test under the Wisconsin Fair Employment Act

Wisconsin law prohibits an employer from discriminating against an applicant or employee on the basis of arrest or conviction record unless the pending criminal charge or conviction substantially relates to the circumstances of the position. Applicants with a criminal history will not automatically be disqualified from employment, and a current employee’s criminal history will not result in automatic disciplinary action or dismissal. If a criminal background check reveals a pending criminal charge or criminal conviction, the institution must engage in an individual analysis to determine whether a substantial relationship exists between the pending charge or criminal conviction and the functions of the position.

If a substantial relationship exists, UW Colleges or UW-Extension may decide that individual should not be employed in the position. If a contingent offer has already been extended or employment has commenced, the offer should be rescinded and the appointment terminated.

Information collected in connection with the background check will be treated confidentially to the extent permitted by the Wisconsin Public Records Act and other applicable laws. An individual or individuals in Human Resources will be designated as responsible for all aspects of managing criminal background checks. Appropriate training shall be provided, with the completion of the training documented. The individual(s) responsible for maintaining records will be required to sign a confidentiality agreement.

Self-Disclosure of Arrests, Charges, or Convictions

Employees or volunteers who hold positions of trust with access to vulnerable populations, as defined in this policy, must report any criminal arrests, charges, or convictions (excluding misdemeanor traffic offenses punishable only by fine) to the institutional office of human resources within twenty-four (24) hours or at the earliest possible opportunity. Failure to make the required report may constitute a violation of this policy and may result in disciplinary action, up to and including dismissal.

Statutorily Mandated Background Checks

Notwithstanding anything in this policy, UW Colleges and UW-Extension shall continue to perform criminal background checks for certain, specified positions in the form and manner required by state or federal law. Laws mandating criminal background checks for certain positions include: the Wisconsin Caregiver law (covering prospective caregivers for vulnerable populations such as minors, as well as those licensed by the state to provide direct health care services and treatment to clients); the Wisconsin Fiduciary law (covering positions that involve accounting, auditing, financial management, accounts receivable, accounts payable, procurement, retail operations, tax and fee collections, payroll, and handling of cash and checks); and the federal Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and the Agricultural Protection Act of 2002 (covering employees who handle and work with hazardous agents or materials in campus labs, buildings or storage facilities).

Other Criminal Background Checks

Nothing in this policy shall be construed to prevent UW Colleges or UW-Extension from conducting a criminal background check on any current employee or volunteer at any time, given a reasonable basis on which to do so.

Related Regents Policy Documents and Applicable Laws
Regent Policy Document 20-19
Wis. Stat. § 111.335
Procedures:

1. Hiring.
   UW Colleges and UW-Extension incorporate the following steps into the hiring process.
   a. **Announcing a Vacancy** – All vacancy announcements should contain the following statement: “Employment will require a criminal background check.” A brief newspaper advertisement that directs candidates to a web site that contains the statement, “Employment will require a criminal background check,” meets this requirement.

   The following language may also be added to vacancy announcements: "A pending criminal charge or conviction will not necessarily disqualify an applicant. In compliance with the Wisconsin Fair Employment Act, the University does not discriminate on the basis of arrest or conviction record.”

   b. **Offering a Position** – Criminal background checks should be completed prior to making an offer of employment. If a check is not completed before an offer is made, the offer must be made “contingent on the results of the background check” and the check must be completed prior to commencement of employment, except in special cases approved by the Director of Human Resources or designee. In most cases, only the applicant being offered the position will be checked. However, there may be circumstances where more than one applicant is checked.

   c. **Appointment Letters** – If an appointment is offered contingent on the successful completion of a criminal background check, or an employee is permitted, upon approval of the Director of Human Resources or designee, to commence employment pending completion of a check, the appointment letter must state 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”.

   d. **Consent Form** – Prior to conducting a criminal background check, the candidate must sign a consent form. The form will specifically ask a candidate to self-disclose past convictions or any currently pending criminal charges. An individual who declines to sign the consent form shall 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. A candidate shall submit the consent form directly to Human Resources where it will be maintained in confidence to the extent permitted by the Wisconsin Public Records Act and other applicable laws.

2. Conducting Criminal Background Checks.
   Criminal background checks will be managed by the Human Resources Office to include checks of records in all jurisdictions deemed prudent. The following process will be used:
   a. The Human Resources Director will identify at least one employee to manage the criminal background check policy and practices. This individual will be responsible for all activities involved with the checks including determining the scope, conducting checks, referring checks to outside vendors, and making recommendations on results. A key component of this role involves keeping information confidential except on a need-to-know basis or as required by
the Public Records Act. A breach of confidentiality, or the inappropriate use of criminal background check information, may constitute a work rule violation and may be grounds for disciplinary action.

b. The employing unit or department is responsible for notifying Human Resources that a check needs to be conducted. The employing unit or department is responsible for ensuring that candidates or designated division or campus representative submit the completed consent form directly to the Office of Human Resources.

3. Making the Decision Regarding Substantial Relationship.

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, the University needs to review the circumstances of an offense, where it happened, when, etc. compared to the circumstances of a job - where is the job typically done, when, how, etc. The more similar the circumstances, the more likely a “substantial” relationship exists.

The provost or designee shall be the final decision-maker for all faculty positions, as well as all academic staff positions or other positions that are within the UW Colleges campuses, and UW-Extension divisions, departments or other administrative structures that ultimately report to the provost. The vice chancellor for administration or designee shall be the decision-maker for all other positions, that are within UW Colleges campuses and UW-Extension divisions, departments or other administrative structures that ultimately report to the vice chancellor. For UW Colleges and UW-Extension this decision-making authority is delegated to the Director of Human Resources as the designee of the Provost and of the Vice Chancellor. If a background check uncovers a pending criminal charge or a criminal conviction, Human Resources will consult with UW System legal counsel or other offices and individuals as appropriate to determine whether the criminal activity is substantially related to the functions of the position.

In assessing the results of criminal background checks, Human Resources will review each candidate on a case-by-case basis in order to determine whether there is a substantial relationship between a conviction or pending charge and the position and whether the applicant should be further considered for the position. Factors to be considered include (but are not limited to) the following:

**The Offense.**

The nature, severity and intentionality of the offense(s) including but not limited to:

a. The statutory elements of the offense;
b. The individual’s age at the time of the offense;
c. Number and type of offenses (felony, misdemeanor, traffic, other);
d. Time elapsed since the last offense;
e. The individual’s probation or parole status;
f. Whether the circumstances arose out of an employment situation; and
g. Whether there is a pattern of offenses.
The Position.
The duties, responsibilities and circumstances of the position applied for, including but not limited to:

a. 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, including minor children;
b. The nature and scope of the position’s student, public or other interpersonal contact;
c. The nature and scope of the position’s autonomy and discretionary authority;
d. The amount and type of supervision received in the position or provided to subordinate staff;
e. The sensitive nature of the data or records maintained or to which the position has access;
f. The opportunity presented for the commission of additional offenses; and
g. The extent to which acceptable job performance requires the trust and confidence of the employer, the University or the public.

Following a consideration and analysis of these and other appropriate factors, and following appropriate consultation with other offices or individuals, Human Resources will make the final determination on whether to approve the appointment or to remove the candidate from consideration on the basis of the results of the criminal background check. Human Resources will be responsible for documenting the basis for the decision to allow or not allow appointment of a candidate based on the criminal background check review.

4. Candidate Notification of Negative Results.
If a candidate is removed from consideration based on the criminal background check results, the results will be provided to the candidate and the candidate will be given a three working day period to refute the information. Additional time extensions may be provided to the candidate at the sole discretion of the Director of Human Resources or designee. If a private, commercial background check vendor is used, the UW Colleges and UW-Extension and the vendor will ensure compliance with the federal Fair Credit Reporting Act.

5. Keeping Records.
Records gathered or created as a result of the criminal background check process will be kept by the Director of Human Resources in separate, sealed files segmented by the candidate/employee’s name. The files will be maintained separately from a candidate or employee’s general personnel records. These records should include:

- Disclosure and Consent Form
- Information collected from the criminal background check
- Analysis and decision whether criminal activity (if any) was substantially related to position
- Correspondence related to criminal background check

If a candidate is denied employment on the basis of the results of a criminal background check, 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. In the case of a hired candidate, the criminal background check records should be maintained for the duration of the candidate’s employment with the institution.

6. Other Background Checks/Evaluations.
As noted previously, other types of background checks and/or evaluations may be conducted due to the nature of specific 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 UW Colleges and UW-Extension from conducting position specific checks (criminal and non-criminal) on an as-needed basis.

Any questions related to this policy should be directed to the institutional Human Resources Office.

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