



## CRIMINAL BACKGROUND CHECK POLICY

No: SAAP 7-4

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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. Any subsequent changes to the *Criminal Background Check Policy* must be submitted to the UW System Office of Human Resources for review and approval prior to implementation.

### 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, or as part of an offer of employment that is 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 individual's division or their 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, criminal background checks must be completed every four years.
- 1.5. 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.
- 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, employment has commenced, the offer should be rescinded and the appointment terminated.
- 1.7 If an individual holding a position of trust, 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. 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 continuing employees and not new hires for the purpose of this policy.
- 2.2. Current employees holding positions of trust 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. Criminal background checks must also be conducted on current volunteers holding a position of trust who have not previously been subject to a criminal background check. Criminal background checks will be repeated every four years for volunteers in positions of trust with access to vulnerable populations.
- 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.

## **3. HIRING**

- 3.1. Position Announcement: All position vacancy announcements should contain a statement alerting applicants that criminal background checks are required to obtain employment with UWM.
- 3.2. 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. The following statement may be used in the appointment letter. *"This appointment is conditional pending the results of a criminal background check (if applicable include "and sexual harassment check"). The appointment will be withdrawn if the results are unacceptable"*.

- 3.3. The Applicant will certify their personal information in the Criminal Background System. Individuals who fail or refuse to complete the form in a timely manner will no longer be considered a candidate for the position. 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.

#### **4. CHECKS ON CURRENT EMPLOYEES**

- 4.1. The Human Resources Department or HR Business Partner shall initiate any re-verification check necessary under this policy. An employee's failure to accurately and completely disclose his or her criminal conviction history may result in ineligibility for pay increases and discipline up to and including termination.

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

- 5.1 Employees and volunteers who hold positions of trust must report any criminal arrests, charges or convictions (excluding misdemeanor traffic offenses punishable only by fine) to Human Resources **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. 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 the individual's information and generates a list of addresses the individual 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 individual.
  - Criminal Felony/Misdemeanor by County of Residence – superior and municipal court records search in any county in the U.S. in which the individual has resided in the last seven years.
  - Sex Offender Registry – sex offender search by state.
  - National Criminal Background Database – search of the vendor's proprietary national criminal background check database.

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

- 6.2. For foreign nationals or citizens who have lived outside the US, a criminal history check will be conducted covering time in the United States. Additionally, a criminal history check in the individual's prior country(ies) of residence will also be conducted if his or her country(ies) of residence provides criminal background information for the time period during which the individual was a resident. 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 make a hiring, transfer, or retention decision based on the information gathered. Wisconsin law prohibits employers from discriminating against prospective or current employees based on past or pending arrests or convictions unless the pending criminal charge or conviction substantially relates to the "circumstances of the particular job. Applicants and current employees with a criminal history will not be automatically disqualified from employment or automatically subject to disciplinary action or dismissal. UWM will engage in an individual analysis to determine whether a substantial relationship exists between the pending charge or criminal conviction and the functions of the UWM position.
- 7.2. If the criminal background check reveals a pending criminal charge or a criminal conviction, and a negative decision on hiring, transfer, or continued employment is contemplated on the basis of the finding, the Vice Chancellor for the position's division, or their designee, will consult with the review group described below to determine whether the criminal activity is substantially related to the functions of the position. The campus review group shall include, the Director of Legal Affairs, the Associate Vice Chancellor for Human Resources, and the Chief of Police, or their designees. The review group will review the vacancy announcement, position description and criminal history to determine if a nexus between the position and offenses exists. The review group shall make a recommendation to the Vice Chancellor or their designee, and that individual's decision shall be final.
- 7.3. The Vice Chancellor or their designee (such as a Dean or other Division Head) 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 decision-maker may consult with other offices and individuals, inside and outside of the University (including the Human Resources Department), as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality.
- 7.4. In reviewing the results of a criminal background check on an individual candidate or employee, the review group described above 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:

7.4.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.

7.4.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.

7.4.c. Using these and other appropriate factors, the Vice Chancellor or designee for the position (such as the Dean or other Division Head), in consultation with the appropriate review group, will make the final determination on whether to appoint or reject the candidate or take personnel action. The decision-maker, 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. NOTIFICATION OF NEGATIVE RESULTS**

8.1. If a candidate is not selected based on the criminal background check results, or if a current employee will be subject to discipline or termination on the basis of criminal background, the appropriate Vice Chancellor/Dean/Division Head, or designee, will provide the results to the individual. The individual 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 negative decision stands after the period described above, the Vice Chancellor/Dean/Division Head, or designee, will notify the individual of this final outcome. This notification process will be followed regardless of the manner in which the background check was conducted.

## **9. KEEPING RECORDS**

9.1. Criminal background records shall remain confidential with access limited to the Human Resources Office and any party consulted pursuant to this policy.

9.2. 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.

9.3. The chairs of the University Committee, the Academic Staff Committee, and the University Staff Committee will each receive an annual report summarizing criminal background check activity for their respective employee category. This report shall describe the total number of background checks performed during the previous year and the total number of individuals who were refused or removed from positions as a result of such checks. This report shall not provide any identifying information related to such individuals.

## **10. OTHER CRIMINAL BACKGROUND CHECKS**

10.1. 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.

10.2. Notwithstanding anything in this policy, UWM 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).