

# UW Board of Regent Criminal Background Check Policy

## 20-19 UNIVERSITY OF WISCONSIN SYSTEM CRIMINAL BACKGROUND CHECK POLICY (Formerly 06-4)

Except as otherwise provided in this policy or under approved implementation plans of UW System institutions, it shall be the policy of the Board of Regents to require that a criminal background check be performed on each new hire for a UW System 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.

### Institutional Plans

Each UW System institution shall develop a plan for implementing this policy, and submit it for initial approval to the UW System Office of Human Resources not later than May 1, 2007. Institutional plans shall address the following:

#### 1. *Coverage of Employee Groups*

Unless otherwise required by law to perform background checks for specified positions, institutions may determine whether the following employee and non-employee groups will be included in their implementation plans: (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 this determination, institutions should consider the level of direct supervision and guidance provided to individuals in these categories and the nature of the duties of the job.

#### 2. *Use of In-House and/or Vendor Services for the Conduct of Criminal Background Checks*

In-house staff may be trained to use the Wisconsin Department of Justice, Crime Information Bureau (CIB) electronic database tool, and any other similar databases to conduct background checks on State of Wisconsin criminal records of prospective employees. Other states also offer electronic database searching of their criminal records. The time and cost associated with having to conduct multiple state searches might rule out the deployment of in-house staff for conducting comprehensive criminal background checks for all prospective employees.

Private vendors also offer background checking services to employers. University of Wisconsin institutions should consider the costs and benefits of purchasing such a vendor service. If a university retains a vendor to perform criminal background checks on prospective employees, university officials will have certain additional duties under the federal Fair Credit Reporting Act.

Institutions shall describe in their plans whether they will conduct criminal background checks in-house, through an outside vendor or through a combination of in-house and vendor conducted checks.

3. *Procedures for Application of the "Substantial Relationship" Test under the Wisconsin Fair Employment Act*

Each University of Wisconsin institution shall establish procedures for applying the substantial relationship test required under the Wisconsin Fair Employment Act to the information received about a prospective employee. The procedures should identify the institutional officials who will be consulted to apply the test to the facts and circumstances under review. The procedures should also describe how records gathered and documents prepared in furtherance of a criminal background check will be maintained confidentially and securely, separate from other personnel records. Moreover, the procedures should identify the officials who will serve as custodian of criminal background check record files.

When a prospective employee has a criminal record, university officials will have to apply the relevant legal standard and determine whether the facts and circumstances of the individual's conviction or pending arrest has a substantial relationship to the duties and responsibilities of the job. The Wisconsin Department of Workforce Development, Equal Rights Division, who has responsibility for enforcing the Wisconsin Fair Employment Act, has issued the following advice regarding the substantially related test:

"The law does not specifically define it. The "substantially related" test looks at the circumstances of an offense, where it happened, when, etc. – compared to the circumstances of a job – where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found. The legislature has determined that certain convictions are substantially related to employment in child and adult care giving programs regulated by the Department of Health and Family Services."

Therefore, some of the factors to consider when reviewing a prospective employee's particular situation might include:

- The nature and gravity of the criminal offense;
  - The time since the conviction and/or completion of the sentence;
  - The nature of the duties and responsibilities of the job; and
- The prospective employee's record of performance and behavior on other recent jobs.

In sum, if the circumstances of a prospective employee's conviction or pending arrest substantially relate to the duties and responsibilities of the particular job, the university employer may refuse to hire the applicant for that specific job.

4. *Positions of Trust*

UW System institutions currently conduct criminal background checks on candidates for certain positions of trust. These checks may be conducted on prospective hires who are not University of Wisconsin employees, as well as on individuals presently employed by the University of Wisconsin who are seeking to move to another position within the University through transfer, promotion or otherwise. Consistent with this policy and approved implementation plans, institutions may continue to perform criminal background checks on candidates, including current University of Wisconsin employees, for such positions.

## **Statutorily Mandated Background Checks**

**Notwithstanding anything in this policy or in the approved implementation plans of UW System institutions, institutions 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 will handle and work with hazardous agents or materials in campus labs, buildings or storage facilities).**

## **UW System Administration Review and Approval**

**No later than May 1, 2007, each UW System institution will submit its criminal background check implementation plan to the UW System Office of Human Resources for review and approval to ensure consistency of practice in the System. In the future, any subsequent changes to an institution's plan should be submitted to the same System office for review and approval.**

**History: Res. 9276 adopted 12/8/06.**