

UW-Madison Criminal Background Check Policy and Procedures

Purpose

To ensure the University of Wisconsin – Madison is a safe and secure environment for all students, employees and visitors.

Policy

UW-Madison will comply with the Board of Regent policy that UW institutions conduct a criminal background check on applicants for employment, certain current employees, and certain volunteers. In addition, UW-Madison will satisfy the criminal background check requirement for certain vendors/contractors, and certain users and lessees of university lands and facilities.

Effective Date

Created December 1, 2007

Amended effective December 2, 2013.

Procedures

- I. **Introduction** – The Board of Regents adopted a resolution on December 8, 2006 that requires the implementation of a UW System-wide criminal background check policy for new employees and current employees moving to positions of trust. On December 7, 2012, the Board of Regents amended the resolution to require criminal background checks be conducted on current employees and volunteers holding a “position of trust with access to vulnerable populations” as defined in section VII of this revised policy 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 also be subject to a criminal background check every four years, except that employees and volunteers with duties involving contact with minors in precollege camps (multi-day and overnight programs) shall be subject to a criminal background check every two years. Employees and volunteers with access to vulnerable populations or who have duties involving contact with minors in precollege camps shall be required to self-disclose certain criminal offenses. The UW System-wide policy also requires each institution to develop procedures for implementing the policy. This document comprises those procedures for UW-Madison.
- II. **Relationship to Existing Legal Mandates** – There are state and federal laws and regulations that require criminal background checks in certain circumstances. The UW System-wide criminal background check policy and these UW-Madison procedures do not replace these mandates. The most common mandates are listed below. There are other mandates that apply to a small number of very specific positions not listed here (e.g., police officers, nuclear reactor operators, commercial drivers).

- a. **Wisconsin Caregiver Law** – Wisconsin law requires criminal history background checks of persons responsible for the care, safety, and security of children and vulnerable adults. This mandate requires criminal background checks for licensed individuals, employees, prospective employees, and other specified persons affiliated with care giving entities or providers. Criminal convictions related to the harm of another human being are generally a bar from employment for positions within health care settings. Employers bound by this law need to not only check prospective employees but also check the criminal history of employees every four years. There is also an expectation that employees report any criminal activity when it occurs.
- b. **Select Agents** - The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and the Agricultural Protection Act of 2002 require entities to register with the U.S. Department of Health and Human Services (HHS) or Agriculture (USDA) 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 this “select agent” registration, these entities must have security measures in place including controlling access and **screening personnel, including current employees and students**, who are handling these select agents (i.e., security risk assessments must be done). These assessments require individuals handling the select agents be screened by the FBI to determine security risk, be approved by the Centers for Disease Control (CDC) and/or undergo a suitability assessment depending on the materials being accessed.
- c. **Fiduciary Responsibilities** – Wisconsin law requires that when any state position involving fiduciary responsibility is to be filled, the employer must conduct a criminal background check on the candidate before offering employment. This is defined by the state as positions where the **principal duties** (i.e., 50 percent or greater) are to:
 1. Handle, receipt for, or have custody of money, checks or securities, or account for supplies or other property; authorize (or make appropriations for) expenditures; approve, certify, sign or countersign checks, drafts, warrants, vouchers, orders or other documents providing for the paying over or delivery of money, securities, supplies or other property, or serve process; or
 2. Maintain or audit accounts of money, checks, securities, time records, supplies or other property, or take physical inventories of money, checks, securities, supplies or other property.
- d. **Criminal Justice Data Access** – Any employees, contractors or volunteers with access to FBI Criminal Justice Information (CJI) are subject to state and federal fingerprint-based record checks per the FBI Criminal Justice Information Services (CJIS) policy. This includes electronic access to the actual CJI records or working around these records in a secure facility (e.g., UW Police Department). The UW Police Department will work with the divisional HR representatives, as appropriate, to coordinate the fingerprint-based record checks for employees with this access.

III. UW Regent Policy Requirements for Hiring New Employees – UW-Madison divisions will incorporate the following steps into their hiring and selection process. This applies to all vacancies except when hires are made in student hourly, employee-in-training, and LTE appointments or when employees move from another UW campus or state agency, unless the vacancy involves a position of trust. If an individual is returning to the UW after less than a one-year absence, it is not required that a new check be done unless the employee is moving to a position of trust.

Note: the UW requirement to conduct criminal background checks does not apply to non-employee appointments such as Fellows and Postdoctoral Fellows unless required by law or is defined as a position of trust.

- a. **Announcing a Vacancy** – All vacancy announcements (including advertisements) should contain the statement **“Employment will require a criminal background check.”** This statement is included in the campus human resources systems (JEMS) for insertion in all position materials.
- b. **Offering a Position** – Divisions are expected to complete criminal background checks prior to making an offer of employment. If a check cannot be completed before an offer is made, the check must be completed before the individual begins employment unless an exception is granted by the appropriate dean or director. In any event, the criminal background check must be completed and a decision made no later than 60 days after the start of employment.

In most cases, only the finalist being offered the position will be checked. However, there may be circumstances where more than one applicant is checked (e.g., chancellor, dean, or provost search).

- c. **Appointment Letters** – If a check cannot be completed before an offer is made, the appointment letter must state that the offer will be withdrawn or the employment terminated if the individual’s criminal background check results are unacceptable. The following statement must be used in the appointment letter.

“This offer of employment is conditional pending the results of a criminal background check. If the results are unacceptable, the offer will be withdrawn or, if you have started employment, your employment will be terminated.”

However, under no circumstances can an individual start employment in a position of trust with access to vulnerable populations without a completed criminal background check.

- d. **Consent** – Prior to conducting a criminal background check, divisions are required to use the online consent process or have the employee sign a consent form (see attached). If the individual declines to provide the consent for the check, he/she can no longer be considered a candidate for the vacancy.

IV. Coverage of Volunteers – UW-Madison divisions shall perform criminal background checks on prospective volunteers when the volunteer position involved is a position of trust, or when required by law. In making this determination, consideration should be given to the

level of direct supervision and guidance provided to volunteers and the nature of the duties of the volunteer position. Criminal background checks must be conducted on current volunteers who have not previously been subject to a criminal background check by the University, and that hold a position of trust with access to vulnerable populations as defined in section VII of this policy. A criminal background check must be performed every four years on volunteers in a position of trust with access to vulnerable populations or every two years on volunteers who have contact with minors in a precollege camp.

- V. UW Regent Policy for Vendors/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 (minors or medical patients) 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 that includes a national criminal background check database. Divisions will need to identify those vendors/contractors who fall under this policy and subsequently work with Purchasing Services, Office of Legal Affairs, and the Office of Human Resources to ensure compliance.
- VI. 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 that includes a national criminal background check database. Divisions will need to identify those agreements or leases and subsequently work with Office of Legal Affairs and the Office of Human Resources to ensure compliance.
- VII. Positions 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 (more than de minimis part of their job responsibilities) to vulnerable populations, defined as minors and medical patients. For purposes of this policy, a minor is a person under the age of eighteen (18) who is not enrolled, accepted for enrollment or employed at a UW System institution. Examples of settings with vulnerable populations include child care centers, precollege camps for minors*, precollege or enrichment programs, and health care facilities. This category also includes employees who are not directly working in those 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.

Employees and volunteers holding a position of trust with access to vulnerable populations shall be subject to a criminal background check every four years, except that employees and volunteers with access to minors in a precollege camp shall be subject to a criminal background check every two years. Regardless of whether an individual has previously passed a criminal background check by the University, an individual who will hold a position of trust with access to vulnerable populations must pass a check that evaluates whether the individual is suitable for contact with vulnerable populations or minors. (e.g., a faculty member who has passed a background check that did not

evaluate suitability for access to children must pass an additional check prior to working/volunteering for a precollege camp.)

* For purposes of this policy precollege camp is defined as multi-day or overnight activity for minors (individuals under the age of 18), except for activities falling into any of the categories below.

1) An activity that primarily serves individuals who are enrolled or have been accepted for enrollment as students at UW-Madison (e.g. SOAR or Basecamp).

2) An activity in which minors are primarily supervised by a parent, relative, or other guardian (e.g., campus tours and exhibitions that are open to the public).

3) An activity for which minors are primarily supervised by non-University employees or volunteers (e.g., school or youth group field trips led by an outside organization).

4) UW-Madison run preschools and child care resources coordinated by the Office of Child Care and Family Resources, which conduct checks in compliance with state laws and regulations.

Note - Individuals who are not subject to 2-year checks under items 1-4 above may still be subject to 4-year checks if they have access to vulnerable populations and/or are subject to the Wisconsin Caregiver law.

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

c. Executive positions - Responsibilities involve top-level management functions throughout the campus including roles as Chancellor, Provost, Dean, Director, etc. Executive positions are defined as all limited appointments. This would include any movement from a limited appointment to a different limited appointment.

[See Attachment 1: Determining When a Criminal Background Check is Required]

Self Reporting Requirement - Employees and volunteers holding a position of trust with access to vulnerable populations, as defined in section VII of this policy, are required to report any criminal arrests, charges, or convictions (excluding misdemeanor traffic offenses punishable only by fine) to the appropriate Background Check Coordinator (BCC), within twenty-four (24) hours or at the earliest possible opportunity. Failure to make the required report constitutes a violation of this policy and may result in disciplinary action, up to and including dismissal. Divisions must provide notification of this requirement to employees covered by this provision.

VIII. Conducting Criminal Background Checks – Criminal background checks will be conducted and managed within the divisions. The following process and roles will be built into how criminal background checks are conducted and what actions are taken. For

purposes of this policy and these procedures, “conviction” includes pleas of guilty and no contest.

a. **Background Check Coordinator (BCC)** – Each division will identify at least one employee with experience in human resources as the division’s Background Check Coordinator (BCC). This individual will be responsible for all activities involved with the checks including determining the scope, conducting, making recommendations on results, and providing appropriate information to both employer and employee. A key component of this role involves keeping information confidential except on a need-to-know basis. Background Check Coordinators will be required to undergo initial and ongoing training. The Office of Human Resources and Office of Legal Affairs will be responsible for providing this training.

b. **Steps for Completing Check – The following process is required for performing a criminal background check.** All costs associated with conducting the check will be borne by the division.

1. **Securing Consent** - For those individuals with e-mail accounts, the consent process can be completed online using the university-contracted vendor without the need for a signed consent form. The BCC should send an e-mail to the applicant or volunteer informing him/her that the vendor will be contacting them to complete the consent form and start the criminal background check process. Alternatively, if electronic consent is not feasible or practical, the BCC may provide a hard-copy consent form to the applicant indicating that it needs to be completed and returned to the BCC along with a resume/vita/employment application if available.

[See Attachment 2: Notification to Candidate when using vendor electronic consent process.]

[See Attachment 3: Consent Form – when not using online consent process.]

Divisions may decide to obtain consent at the time of application depending on the type of recruitment. Typically, the check is conducted only on the person selected for the job or as a volunteer, however divisions may decide that they want to conduct a check on all finalists. The completed consent form(s) should always be sent from the finalist(s) to the BCC without involvement of the hiring manager. If the consent is secured via a hard-copy consent form, the BCC should enter it into the vendor’s system. Both processes will require the applicant to self-disclose whether he/she has ever been convicted of a crime or is currently facing criminal charges.

An applicant’s or volunteer’s failure to consent to a criminal background check or falsification of any related information is grounds for the rejection of the applicant or volunteer.

As of December 2, 2013, General Information Services (GIS) is the private vendor under contract to conduct criminal background checks.

2. **Conducting the Criminal Background Check** - The BCC will use the standard criminal background package setup in GIS for individuals that are being hired into the University. This GIS package includes:

- *Social security number validation and trace module*- This trace determines the scope of check by identifying all the places within the United States the individual has resided. If the social security number is not valid, the individual will have three (3) working days from the receipt of the notification of invalidity to challenge the findings and then seven (7) working days to resolve the matter with the Social Security Administration. If the matter is not resolved within the stated timeframe, the applicant or volunteer will become ineligible for the position.

[See Attachment 4: Social Security Adverse Action Template]

Individuals who have recently arrived in the U.S. on a non-immigrant visa (e.g., H-1, J, etc.) or who have recently received a change in their visa status that permits them to work may not yet have a social security number at the time of hire. In such instances, the BCC will perform the standard criminal background check in GIS (social security number will not be entered in these situations).

- *Criminal convictions by county of residence outside of Wisconsin* - GIS collects convictions and pending charges from all the U.S. counties where the individual has resided outside of Wisconsin (determined by credit trace).
- *Wisconsin Circuit Court Access* - GIS collects convictions and pending charges going back to the start of the record keeping system for the state of Wisconsin.
- *National Sex Offender Registry* - GIS identifies whether the individual has been placed on any state sex offender registries.
- *National criminal background check database* - GIS searches national criminal conviction database(s) to identify any convictions within all U.S. jurisdictions, including federal offenses. This includes Wisconsin's Department of Justice (DOJ) database going back to the start of the record.

Note – For periodic review requirement on current employees who have access to vulnerable population or are moving into a Position of Trust, there will be an expedited criminal background check that would run the national criminal background check database search for the last four (4) years only. Based on the results GIS will check any counties that are identified in that search. The check will also conduct the Wisconsin Court Access System, Wisconsin DOJ and the GIS national criminal/sex offender search for a four (4) year time period. This is done to eliminate some expenses of going back to records more than four (4) years.

3. **Foreign National Criminal Background Checks** – An appropriate U.S. criminal background check must be conducted on an applicant for employment, current employee, or volunteer who is a foreign national being considered for a position 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. A specific international capability will be setup within GIS for this check.

Note: The social security trace conducted by the vendor will not find places of residence outside of the U.S. The BCC should use all available information to determine whether the individual has lived in other countries. Appropriate sources of this information include a resume or curriculum vitae.

4. **Non-Criminal Records** - In the course of using various databases to complete the background check, the BCC may learn of actions that are irrelevant to the criminal background check. For example, the GIS reports may include arrests where the charges have been dropped. In another example, civil suits (e.g., divorce, financial) filed against the individual may appear in the returned records.

It is imperative that no consideration be given to these matters and they not be communicated by the BCC in any way.

An exception exists for tickets or fines for traffic, rule or municipal ordinance violations. These are not crimes, but can be considered if the offense is substantially related to the job e.g., a DUI ticket (first offense) for an applicant for a position that requires driving.

- IX. Making Determination Whether Criminal Record is Substantially Related to the Position** – *The existence of a conviction is not an automatic exclusion from employment.* Wisconsin's Fair Employment Act prohibits employers from discriminating against prospective or current employees based on pending criminal charges or convictions unless the "pending criminal charge" or "conviction record" is determined to be "substantially" related to the "circumstances of the particular job." Arrests (other than pending) or detention orders that do not result in convictions or pleas and expunged convictions cannot be considered.

If there concerns about the results of the CBC, the University has created a Criminal Background Check Review Panel, comprised of staff from the Office for Equity and Diversity, the Classified Human Resources office and the Academic Personnel Office, that will review all crimes and pending arrests to determine whether there is a substantial relationship. In reviewing the results of a criminal background check, the panel will 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 the applicant should be further considered for the position.

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

- The statutory elements of the offense (rather than the individual's account of the facts of the offense);
- The individual's age at the time of the offense(s);
- Number and type of offenses (felony, misdemeanor, traffic, other);
- Time elapsed since the last offense;
- The individual's probation or parole status;
- Whether the circumstances arose out of an employment situation; and
- Whether there is a pattern of offenses.

The Position. The duties, responsibilities and circumstances of the position, including but not limited to:

- 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 minors;
- The nature and scope of the position's student, minor, public or other interpersonal contact;
- The nature and scope of the position's autonomy and discretionary authority;
- The nature and scope of supervision, including supervision received in the position and/or provided to subordinate staff;
- The sensitive nature of the data or records maintained or to which the position has access;
- The opportunity presented for the commission of additional offenses; and
- The extent to which acceptable job performance requires the trust and confidence of the employer, the University or the public.

The Individual. The individual's record of performance and behavior on recent jobs at UW-Madison or elsewhere.

The criminal background check policy and procedures do not change the usual decision-making authority for hires, which varies by division and by type of employee. For example, nothing in this policy usurps or diminishes an academic department's existing authority in making faculty hiring decisions.

Once the criminal background check is completed, the BCC shall review the results and act as follows.

- If no criminal records are found, the BCC shall inform the person making the hiring decision that an offer may be made.
- If the check discloses a pending charge or conviction for a felony or misdemeanor, the unit BCC is required to consult with the Office of Human Resources through the online UW-Madison CBC system (<https://apps.ohr.wisc.edu/cbc/>) for the CBC Review Panel to make a

determination whether the criminal activity is substantially related to the functions of the position.

- If the panel concludes that there is no substantial relationship between the offense(s) and the position or there is a substantial relationship but there are mitigating factors that override the finding of a substantial relationship, the panel will inform the BCC. The BCC will then inform the person making the hiring decision that an offer may be made.
- If the panel concludes that there is a substantial relationship between the offenses and the position without adequate mitigating factors, the panel shall inform the BCC that an offer cannot be made. If the person has already begun in a position, the BCC should consult with OHR to determine next steps.

The BCC shall keep the background check results confidential except on a need-to-know basis.

- X. Notifying Individual who was Not Approved for Employment** – If a decision is tentatively made not to hire an applicant, to withdraw an offer or take action with an existing employee, or to reject a volunteer based upon the results of the background check, the BCC will be responsible for notifying the individual of the results of the check and the dispute and/or reconsideration process.

[See Attachment 6: Adverse Action Template]

- If the individual would like to dispute charges that appeared on their CBC they will:
 - Have three (3) working days to send a communication to the BCC explaining they would like to dispute a charge that appeared on their CBC.
 - Upon receiving communication from the applicant, the BCC will send the individual a communication outlining their next steps in the dispute process.
 - The individual will have seven (7) working days upon receiving the communication from the BCC to contact GIS directly and provide them with the documentation that they request to determine if the charges were accurately reported.
 - Once GIS has made a decision regarding the disputed charges, they will contact the BCC by e-mail to communicate their decision. If any charges were changed, the CBC will be updated in the GIS system to accurately reflect the individuals' criminal record.
 - If no changes are made by GIS, the decision made by the panel stands. If changes are made by GIS, the BCC will contact the panel and advise them of the changes, the panel will review the changed information and make a final decision.

[See Attachment 7: Disputing Criminal Charges on CBC Template]

- If the individual would like the panel to reconsider their decision to not approve their hire they will:
 - Have three (3) working days to send a communication to the BCC explaining they would like to request reconsideration the decision made by the panel.
 - Upon receiving communication from the applicant, the BCC will send the individual a communication outlining next steps in the reconsideration process.
 - The individual will have seven (7) working days upon the receipt of the communication from the BCC to provide the BCC with justification (and any additional documents requested) as to why they feel the charges aren't substantially related to the position.
 - At that time, the BCC will share these communications with the panel and they will reconsider their decision.
 - Once a final decision has been made, the panel will communicate it to the BCC. The BCC will notify the individual of the decision.

[See Attachment 8: Requesting Reconsideration of Panel's Decision Template]

These dispute and reconsideration processes were created to be in compliance with the Fair Credit Reporting Act (FCRA).

XI. Keeping Records – Records gathered as a result of a criminal background check will be kept by the BCC in files segmented by applicant, employee, or volunteer name. These records will include:

- The Consent Form;
- Information collected from the check;
- Analysis and decision if criminal activity substantially related to position; and
- Any correspondence related to the criminal background check.

Alternatively, these records may be maintained in a secure university or vendor on-line data base.

The records will be securely maintained for a **period of seven (7) years** after the position has been filled or action has been taken against an employee or volunteer. Records will be destroyed after seven years from the position being filled including the records of the applicant that was hired.

XII. Confidentiality – The BCC and the University will maintain the criminal background check records as confidential to the extent allowed by law. Although most records are obtained from public sources, the records may contain very sensitive information and BCCs are required to respect individuals' privacy by only sharing any information obtained on a strict need-to-know basis.

XIII. Division Procedures – This campus policy should not prevent divisions from implementing their own criminal background check procedures that are specific to their environment. However, the division practice must meet the requirements of the campus policy and be approved by the chancellor or designee before being implemented.

XIV. Other Criminal Background Checks - Nothing in this policy shall be construed to prevent UW-Madison, with a reasonable basis, from obtaining at any time criminal background check information on any current employee or volunteer. Such checks are unusual and **prior approval must** be obtained from either the Academic Personnel Office or the Classified Human Resources office.

Any questions related to this policy, including interpretations and resource locations, should be directed to the human resources representative within the college/school/division.

Attachments

Authority: Regent Policy #20-19, Resolution 9276, adopted 12/08/06, amended effective 12/07/2012