



CRIMINAL BACKGROUND CHECK POLICY

PURPOSE

To ensure that UW-Green Bay's mission is supported by qualified employees who foster a safe and secure environment for all members of the university community. This policy will also allow the University to take meaningful and reasonable actions to protect its funds, property and other assets.

POLICY

Except as otherwise provided in the UW System Criminal Background Check Policy or in this policy, UW-Green Bay shall conduct a criminal background check on each new hire filling a vacancy and certain temporary hires associated with a University position.

A 'new hire' in a faculty or academic staff position shall be defined as any prospective employee that is not currently a UW- Green Bay employee or an employee of another UW System institution. A 'new hire' in classified service shall be defined as any prospective employee that is not currently a UW System or other State of Wisconsin agency employee. In addition, any part-time or temporary employees working in a teaching or training capacity are subject to a criminal background check including, but not limited to: adjunct instructors, ad hoc program specialists, visiting faculty and visiting scholars. Exceptions to this policy include: Classified limited term employees (LTEs), academic hourly employees, student employees, interns, vendors and contractors and unpaid volunteers. The excluded positions will be subject to criminal conviction or similar background checks when required by state or federal law or when hired into position identified as risk or trust sensitive. Addendum 1 outlines job duties that are risk or trust sensitive. Hiring Authorities (Chancellor, Vice Chancellors and Human Resource Director) are responsible for determining which positions are at risk or trust sensitive.

Current employees who are moving to a position at UW-Green Bay, through transfer, promotion, or otherwise, will not be subject to a criminal background check unless such a check is otherwise required by law (e.g., the fiduciary responsibility law or caregiver law), the majority of the position's duties will be performed in residential facilities, or the position has been identified as at risk or trust sensitive.

Former UW-Green Bay employees who are employed by UW-Green Bay after an absence of more than a year will be subject to a criminal background check prior to employment.

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. Individuals may not commence employment until they have successfully completed a criminal background check, except under special circumstances.

If an individual being considered for a position has a criminal conviction or pending charge, the University will then apply the factors listed in Section 3 to determine if there is a substantial relationship between the offense and the job responsibilities. If a substantial relationship exists, the University may decide that individual should not be employed in the respective position. If an offer has already been extended or, due to the presence of special circumstances as described in the preceding bullet or otherwise, employment has commenced, the offer may be rescinded and the appointment terminated.



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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. The Director of Human Resources, or designee, is responsible for all aspects of conducting criminal background checks.

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.

PROCEDURES

1. **Hiring.** UW- Green Bay will incorporate the following steps into its hiring process.
 - a) **Announcing a Vacancy:** All vacancy announcements (including ads) should contain the following statement: **“Employment will require a criminal background check.”** The following language also may be added to vacancy announcements and ads: **“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 may be completed prior to 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 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 University will have the candidate sign a consent form or will obtain consent electronically through the vendor performing the check. This form will specifically ask a candidate to self-disclose if he or she has ever been convicted of a crime or is currently facing criminal charges. Individuals who decline to sign the consent form will no longer be considered a candidate for the vacancy. The candidate must 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 conducted by the Human Resources Office to include checks of records in all jurisdictions deemed prudent. The following process will be used:
 - a) Human Resources will identify at least one employee to perform criminal background checks. These individuals 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. All information will remain confidential except on a need-to-know basis or as required by the Public Records Act.



b) The employing unit or department is responsible for notifying Human Resources that a check needs to be conducted. Human Resources will conduct a social security trace by utilizing a criminal background check vendor on the applicant to determine the candidate's history of residency and the scope of the background check needed. All costs associated with conducting the background check will be incurred by the employing department.

c) **Options for Conducting Criminal Background Checks**

- **Use a Private, Commercial Background Check Vendor.** HireRight is a private vendor under contract with the University. The University can use this service to perform a variety of checks. The University is required to comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor. The standard package for out-of-state criminal background checks conducted through HireRight, Inc. shall include:
 - 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 US
 - Sex Offender Registry - sex offender search by state
- **Use In-House Human Resources Personnel.** Human Resources personnel may access publicly available criminal history records in other states to complete the background check. The University Public Safety Department may also assist in gathering criminal background check information as needed (e.g., FBI records).

The University may also choose to use a hybrid approach that involves performing a social security number trace and sex offender check through a vendor. If the result of the social security number trace is residence only in Wisconsin the University may complete the background check by using the DOJ and the Wisconsin Sex Offender Register check process.

d) A criminal background check will be conducted covering time in the United States if the period of time that the individual has been in the United States exceeds six months. A criminal history check in the individual's prior country(ies) of residence will be conducted only if their country(ies) of residence provide criminal background information. Media searches are not considered a criminal background check.

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

The University is required to comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor. Please see the Addendum 2 regarding important procedures to follow in the case of an address discrepancy.



3. **Making the Decision Regarding Substantial Relationship.** Once the criminal background check is completed, the University will 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, the University will 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, etc. The more similar the circumstances, the more likely a substantial" relationship exists.

Accordingly, if the check uncovers a pending criminal charge or a criminal conviction, the University's Chancellor (or designee), Provost and Vice Chancellor for Academic Affairs (or designee) or the University's Vice Chancellor for Business and Finance (or designee), as appropriate, will consult with Human Resources, the University's Legal Counsel and the University's Director of Public Safety to determine whether the criminal activity is substantially related to the functions of the position. The Chancellor or designee shall be the decision maker for all positions within the Chancellor's area. The Provost and Vice Chancellor for Academic Affairs or designee shall be the decision-maker for all faculty positions, as well as all academic staff positions or other positions that are within divisions, departments or other administrative structures that ultimately report to the Provost. The Vice Chancellor for Business and Finance or designee shall be the decision-maker for all classified positions, as well as academic staff positions or other positions that are within divisions, departments or other administrative structures that ultimately report to the Vice Chancellor. On behalf of the Chancellor, Provost or the Vice Chancellor for Business and Finance, Human Resources may consult with other offices and individuals, inside and outside of the University, as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality.

In reviewing the results of a criminal history background check on an individual applicant, the University will review each applicant 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 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:

- a. The statutory elements of the offense (rather than the individual's account of the facts of the offense);
- b. The individual's age at the time of the offense(s);
- 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;



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- 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.

Using these and other appropriate factors, the Chancellor, Provost and Vice Chancellor for Academic Affairs or Vice Chancellor for Business and Finance (or their respective designees) in consultation with Human Resources, Legal Counsel and Public Safety, will make the final determination on whether to appoint or reject the candidate on the basis of a criminal background check. Human Resources will be responsible for documenting the basis for the decision to appoint or to refuse to appoint a candidate based on the criminal background check review.

4. **Candidate Notification of Negative Results.** If a candidate is not selected based on the criminal background check results, the results will be provided and the candidate will be given a three (3) working day time period to refute the information. Additional time extensions may be provided to the candidate at the sole discretion of the University. If a private, commercial background check vendor is used, the University and the vendor will ensure compliance with the federal FCRA.
5. **Record Keeping.** Records gathered as a result of a criminal background check will be kept by Human Resources in a locked cabinet. The files will be maintained separately from an applicant/employee's general personnel records. These records should include:
 - Consent Form
 - Information collected from the check
 - Analysis and decision whether criminal activity (if any) was substantially related to position
 - Correspondence related to criminal background check

The records will be securely maintained for a period of seven (7) years after the position has been filled, and may be accessed only on a need-to-know basis or as required by applicable law.

6. **Other Background Checks/Evaluations.** As noted previously, other types of background checks and/or evaluations may be utilized due to the nature of particular 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, physical agility assessments and credit checks.

The University may choose to conduct background checks for all vacancies in all types of employment without exception, in accordance with this policy. Any questions related to this policy, including interpretations and resource locations, should be directed to the University's Human Resources Office.

Authority: Regent Policy #20-19, Resolution 9276, adopted 12/08/06.



ADDENDUM 1

JOB DUTIES/POSITIONS IDENTIFIED AS RISK OR TRUST SENSITIVE

- Positions in a teaching and/or training capacity
- Camp counselors or those who travel with students or teams
- Cash handling with access to safes, cash deposits, or authorization for refunds
- Handle, receipt for, or have custody of cash, 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
- Positions that 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
- Positions that set up checking or credit card accounts, make payments to vendors, sign procurement contracts, or global access to electronic files
- Significant inventory control responsibilities, including the receipt and release of inventory
- Positions that have unsupervised access to University, employee, or student property, including positions located in the University's residence halls with access to the rooms of students
- Positions that set up, have access to or maintain central personnel records/information, create personnel appointments, process payroll payments, or global access to electronic files
- Positions that set up, have access to or maintain academic records/information of any kind.
- Positions that set up, have access to or maintain medical or health care records/information of any kind.
- Master or submaster key holders who may have access to equipment, vehicles, central warehouses, and equipment storage
- All public safety related duties.
- Positions that set up or maintain the University's server, university-wide databases, or campus-level application-specific software editing and modifying
- Other functions for which, upon consultation between Human Resources, Legal Counsel, and the Hiring Authority, a criminal conviction records investigation is determined to be required.



ADDENDUM 2

PROCEDURES FOR RESPONDING TO NOTICES OF ADDRESS DISCREPANCIES RECEIVED FROM CONSUMER REPORTING AGENCIES

The Federal Trade Commission (FTC) issued a new regulation (16 CFR 681.1) which requires users of consumer reports to have a procedure in place to deal with any Notices of Address Discrepancies it may receive from a consumer reporting agency. Specifically, upon receipt of a Notice of Address Discrepancy, UW-Green Bay must be able to form a reasonable belief that the consumer report relates to the consumer about whom it has requested the report. Essentially, the goal of the regulation is to ensure that UW-Green Bay and the credit reporting agency are both referring to the same person, even if they each have different addresses for such person on file. UW-Green Bay uses third-party consumer reporting agencies to conduct checks in connection with its Criminal Background Check Policy. These checks are typically run by the UW-Green Bay Human Resources Department or a third-party consumer reporting agency. In the event that UW-Green Bay receives a Notice of Address Discrepancy from a consumer reporting agency related to a Criminal Background Check Policy check, the follow procedure shall apply:

1. Human Resources will compare the information in the consumer report provided by the consumer reporting agency with its own records or records from third-party sources in order to verify that the consumer report relates to the consumer about whom it has requested the report.
2. In the event that Human Resources is unable to verify that the consumer report relates to the consumer about whom it has requested the report based on such documentation, it shall verify the information provided by the consumer reporting agency directly with the individual who is the subject of the consumer report.

In addition to the above, the new regulation requires that UW-Green Bay report the information underlying the discrepancy to the consumer reporting agency that provided the Notice of Address Discrepancy if (1) UW-Green Bay forms a reasonable belief that the consumer report relates to the consumer about whom it requested the report and (ii) UW-Green Bay regularly furnishes information to the consumer reporting agency. UW-Green Bay currently supplies information to the following agencies: HireRight. This reporting should be completed as part of the information UW-Green Bay regularly furnishes to the above-mentioned reporting agencies for the reporting period in which UW-Green Bay confirms that the consumer report relates to the customer about whom it requested the report.