



## **UW-Whitewater Background Check Policy**

### **Scope**

This policy describes the Board of Regents' expectations of University of Wisconsin System institutions and the University of Wisconsin -Whitewater in performing criminal background checks on applicants for employment, current employees, and volunteers (REGENT POLICY DOCUMENT 20-19).

### **Policy Statement**

Except as otherwise provided in this policy, a criminal background check shall be performed on each new hire for a UW-Whitewater 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 in paragraph 1(a) of this 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 be subject to a criminal background check every four years, and shall be required to self-disclose certain criminal offenses.

### **Policy**

This policy addresses the following:

#### ***Position of Trust***

1. "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 requires unsupervised or significant access 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 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 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.

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 - Principal responsibilities (50% or more) 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.

## *2. Coverage of 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 in paragraph 1 (a) of this policy, who have not previously been subject to a criminal background check by the University. UW-Whitewater will perform a criminal background check every four years on employees in positions of trust with access to vulnerable populations.

Notwithstanding the preceding paragraph, unless otherwise required by law to perform background checks for specified positions or unless the position involved has been designated as a "position of trust," UW-Whitewater may determine whether a criminal background check must be conducted on prospective hires for the following employee groups: (1) temporary or limited term employees; (2) hourly student employees; and (3) interns. In making this determination, UW-Whitewater should consider the level of direct supervision and guidance provided to employees in these categories and the nature of the duties of the job.

### *3. Coverage of Rehires*

Criminal background checks must be conducted on rehires (including rehired annuitants), who have not been in active employment status with UWW for a period greater than 12 months. Any employee rehired after a break in service of less than one (1) year must disclose any arrests, charges or convictions, which occurred during the break in service. If the new position is considered a position of trust, a recheck every four years will be required as stated in this policy.

### *4. Coverage of Vendors and 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, 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. See Addendum 2 for standard contract verbiage.

### *5. Coverage of Volunteers*

UW-Whitewater shall perform criminal background checks on 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. Otherwise, UW-Whitewater may determine whether a criminal background check should be conducted on prospective volunteers. In making this determination, institutions should consider 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 holding a position of trust with access to vulnerable populations, as defined in paragraph 1 (a) of this policy, who have not previously been subject to a criminal background check by the University. It is UW-Whitewater policy to ensure that a criminal background check is performed every four years on volunteers in a position of trust with access to vulnerable populations.

### *6. Coverage of Certain Users and Lessees of University Land 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.

### *7. 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 apply to current employees, volunteers and prospective volunteers who are subject to criminal background checks.

A criminal background check on prospective hires, employees and volunteers will 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.

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

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

UW-Whitewater will 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 also be 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, UW-Whitewater is not required to conduct media services.

#### *8. 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 unless the pending criminal charge or conviction substantially relates to the circumstances of the position. Applicants with a criminal history will not be automatically disqualified from UW-Whitewater employment, and a UW-Whitewater employee's criminal history will not result in automatic disciplinary action or dismissal. If an applicant's or employee's criminal background check reveals a pending criminal charge or criminal conviction, UW-Whitewater 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.

## *9. Self-Disclosure of Arrests, Charges, or Convictions*

UW-Whitewater requires employees who hold positions of trust with access to vulnerable populations, as defined in paragraph I (a) of this policy, to report any criminal arrests, charges, or convictions (excluding misdemeanor traffic offenses punishable only by fine) to human resources, or to whomever the institution designates as the appropriate individual to receive a report, within twenty-four (24) hours or at the earliest possible opportunity. Failure to make the required report may constitute a violation and may result in disciplinary action, up to and including dismissal. The same procedures must be implemented for volunteers who hold a position of trust with access to vulnerable populations.

## *10. Statutorily Mandated Background Checks*

Notwithstanding anything in this policy, UW-Whitewater 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).

## *11. Other Criminal Background Checks*

Nothing in this policy shall be construed to prevent UW-Whitewater with a reasonable basis from obtaining, at any time, criminal background check information on any current employee or volunteer.

## **Sanctions and Appeals Process**

Failure to adhere to the provisions of this policy may result in appropriate disciplinary action as provided under existing procedures applicable to students, faculty, and staff, and/or civil or criminal prosecution up to and including termination.

## **Procedure**

1. **Hiring.** UW-Whitewater incorporates the following steps into its hiring process. This applies to all vacancies:

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. Individuals who decline to sign the consent form will no longer be considered a candidate for the vacancy. A candidate will 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 performed 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 manage criminal background checks. This individual(s) 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. Human Resources will obtain the completed consent form directly from the candidate. Any available resume/vita/employment application also should be provided to Human Resources. Human Resources will take the information, initiate a criminal background check through the Wisconsin Department of Justice, Crime Information Bureau electronic database and provide the necessary information to the appropriate vendor for completion of the

criminal background check. All costs associated with conducting the background check will be incurred within the Human Resources Department, and program revenue departments will be charged back.

University officials will have certain additional duties under the federal Fair Credit Reporting Act when retaining a vendor to perform criminal background checks. Please see Addendum 1 regarding important procedures to follow in the case of an address discrepancy.

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

UW institutions 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 county(ies) of residence will also be 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.

The standard package for criminal background checks conducted through a vendor shall include:

- 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.

The University is required to comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor. Please see Addendum 1 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 need to 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 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, etc. The more similar the circumstance, the more likely a "substantial" relationship exists.

Accordingly, if the check uncovers a pending criminal charge or a criminal conviction, the University's provost (or designee) or the University's assistant chancellor for business and finance (or designee), as appropriate, will consult with Human Resources, the University's legal counsel, and the University's affirmative action officer, to determine whether the criminal activity is substantially related to the functions of the position. The University's provost 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 University's assistant chancellor for business and finance or designee shall be the decision-maker for all university staff positions, as well as academic staff positions or other positions that are within divisions, departments or other administrative structures that ultimately report to the assistant chancellor. On behalf of the provost or the assistant chancellor for business and finance, Human Resources may consult with other offices and individuals, inside and outside of the University (including the University police department), 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;
- 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 provost or the assistant chancellor for business and finance (or their respective designees) in consultation with Human Resources, legal counsel and affirmative action 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 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 need to ensure compliance with the federal FCRA.

**5. Keeping Records.** Records gathered as a result of a criminal background check will be kept by Human Resources in separate, sealed files segmented by the applicant/employee's name. 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 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, and credit checks. Nothing in this policy precludes the University from conducting position specific checks (criminal and non-criminal) on an as-needed basis.

### **University Responsibilities**

Assistant Chancellor for Business and Finance

### **Department/Unit Responsibilities**

Human Resources

***Any questions related to this policy, including interpretations and resource locations, should be directed to the University's Human Resources Office.***

## **Addendum 1 - 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-Whitewater 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-Whitewater 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-Whitewater 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- River Falls Human Resources Department or a third-party consumer reporting agency.

In the event that UW-Whitewater receives a Notice of Address Discrepancy from a consumer reporting agency related to a Criminal Background Check Policy check, the following procedure shall apply:

1. UW-Whitewater 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-Whitewater report the information underlying the discrepancy to the consumer reporting agency that provided the Notice of Address Discrepancy if (i) UW-Whitewater forms a reasonable belief that the consumer report relates to the consumer about whom it requested the report and (ii) UW-Whitewater regularly furnishes information to the consumer reporting agency. UW-Whitewater currently supplies information to a criminal background check vendor. This reporting should be completed as part of the information UW-Whitewater regularly furnishes to a criminal background check vendor for the reporting period in which UW-Whitewater confirms that the consumer report relates to the customer about whom it requested the report.

## **Addendum 2 – STANDARD CONTRACT VERBIAGE FOR A CONTRACTED INDIVIDUAL OR CONTRACTOR**

When it is made known to a Purchasing Agent that an individual is being contracted to perform work where they are expected to have regular contact with children, the following clause will be added:

*This contract is contingent upon, prior to the commencement of services, the independent contractor passing a criminal background check performed by the Criminal Background Check Coordinator of the unit for which the individual will be engaging in activities or rendering services. This background check will evaluate whether the individual has any pending charges or convictions that are substantially related to the contracted-for activities or services, including but not limited to, those that would render the worker unsuitable for regular contact with children. Disqualifying convictions or charges include, but are not limited to, sexual offenses, violent offenses, and drug offenses. If, in the course of providing services to the UW-WHITEWATER, contractor (or its employee) observes an incident or threat of child abuse or neglect, or learns of an incident or threat of child abuse or neglect, and the contractor (or its employee) has reasonable cause to believe that child abuse or neglect has occurred or will occur, contractor must make a report of that abuse or neglect to law enforcement or to a county social service agency as provided in UW-WHITEWATER's Policy on Mandatory Reporting of Child Abuse and Neglect ("the Policy"). If the suspected child abuse or neglect involves an allegation against a UW-WHITEWATER employee or agent (e.g. student, volunteer, contractor, etc.), or the incident or threat of child abuse or neglect occurred on the UW-WHITEWATER campus or during a UW-WHITEWATER-sponsored, the contractor shall also report to the UW-WHITEWATER Police Department or UW-WHITEWATER's Office for Equity and Diversity.*

When it is made known to a Purchasing Agent that a contractor will be expected to have regular contact with children in the performance of a contract, the following clause will be added:

*This contract is contingent upon, (insert entity providing services) supplying workers who have passed a criminal background check that includes a national criminal background check database demonstrating the worker has no convictions or pending criminal charges that are substantially related to the contracted-for activities or services, including but not limited to, those that would render the worker unsuitable for regular contact with children. Disqualifying convictions or charges include, but are not limited to, sexual offenses, violent offenses, and drug offenses. If, in the course of providing services to the UW-WHITEWATER, contractor (or its employee) observes an incident or threat of child abuse or neglect, or learns of an incident or threat of child abuse or neglect, and the contractor (or its employee) has reasonable cause to believe that child abuse or neglect has occurred or will occur, contractor must make a report of that abuse or neglect to law enforcement or to a county social service agency as provided in UW-WHITEWATER's Policy on Mandatory Reporting of Child Abuse and Neglect ("the Policy"). If the suspected child abuse or neglect involves an allegation against a UW-WHITEWATER employee or agent (e.g. student, volunteer, contractor, etc.), or the incident or threat of child abuse or neglect occurred on the UW-WHITEWATER campus or during a UW-WHITEWATER-sponsored activity, the contractor shall also report to the UW-WHITEWATER Police Department or UW-WHITEWATER's Office for Equity and Diversity.*