

University of Wisconsin-La Crosse

Employee Criminal Background Check Policy

Effective December 1, 2007
Revised 9/12/2008 & 1/16/2009

Purpose: To provide a safer campus environment for students, employees and visitors.

Policy: Except as otherwise provided in the UW System Criminal Background Check Policy or in this policy, University of Wisconsin-La Crosse (UW-La Crosse) shall conduct a criminal background check on each new hire for a UW- La Crosse position.

- A 'new hire' in a faculty or academic staff position shall be defined as any prospective employee that is not currently a UW- La Crosse 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. Current UW-La Crosse employees or employees of other UW System institutions who are moving to a position within UW-La Crosse, 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 within residential facilities, or it is the practice of UW- La Crosse to conduct criminal background checks on current UW-La Crosse and UW System employees who are candidates for certain positions of trust. The Office of State Employment Relations (OSER) must approve a classified position being designated as a 'position of trust.' See Addendum 1.
- 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.
- Criminal background checks conducted on foreign nationals (aliens) will be subject to the following provisions: 1) A criminal history 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; 2) 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 search.
- If an individual being considered for a position has a criminal conviction or pending charge, UW-La Crosse should then apply the factors listed in Section 3, below, to determine if there is a substantial relationship between the offense and the new job responsibilities. If a substantial relationship exists, UW-La Crosse may decide that individual should not be employed in that 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 should be rescinded and the appointment terminated.
- Former UW-L employees who are employed by UW-L after an absence of more than a year will be subject to a criminal background check prior to employment.
- 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. An individual or

individuals in Human Resources will be designated as responsible for all aspects of conducting criminal background checks. Appropriate training shall be provided. The individual(s) responsible for maintaining records will be asked to sign a confidentiality agreement.

- UW-La Crosse 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.
- The University may choose to conduct background checks for all vacancies in all types of employment without exception, in accordance with this policy. Exempt positions are those filled by a vendor or contractor; hourly student employees; interns; and unpaid volunteers. Any position in an exception job category with job duties covered by the Wisconsin Caregiver Law, Fiduciary Responsibility Law, or a similar law requiring a criminal background check or that UW-La Crosse considers a position of trust would require a background check.

Procedures:

1. **Hiring.** UW-La Crosse incorporates the following steps into its hiring process. This applies to ***all vacancies*** except positions filled by a vendor or contractor; hourly student employees; interns; and unpaid volunteers. These excepted positions with job duties covered by the Wisconsin Caregiver Law, Fiduciary Responsibility Law, or a similar law requiring a criminal background check or that the UW-La Crosse considers a position of trust or when the majority of the position's duties will be performed within residential facilities would require a background check.
 - a. **Announcing a Vacancy** – All vacancy announcements (including advertisements) will contain the following statement: **“Employment will require a criminal background check.”** Advertisements that point (pointer ads) an individual to UW-La Crosse website for complete advertising text must have the above statement.
 - b. The following language will be added to the UW-L vacancy page announcements, electronic postings, and all full ads: **“Employment will require a criminal background check. A pending criminal charge or conviction will not necessarily disqualify an applicant. In compliance with the Wisconsin Fair Employment Act, UW-La Crosse does not discriminate on the basis of arrest or conviction record.”**
 - c. **Offering a Position:**

Unclassified Staff (Faculty, Limited, Instructional Academic Staff and Non-Instructional Academic Staff)

Criminal background checks may be completed prior to making an offer of employment.

- Dean/division officer will notify Human Resources (HR) when a verbal employment offer, contingent upon criminal background check, has been verbally accepted.
- Dean/division officer will provide HR with the name, address, phone number, e-mail address of prospective employee.
- HR will provide prospective employee with necessary paper work for consent for criminal background check, along with time line for returning information to HR.
- HR will initiate and complete the criminal background check.
- Dean/division officer will complete and route pink sheet for signature.

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.

The criminal background check must be completed prior to commencement of employment. Exceptions require the pre-approval of the director of Human Resources or designee.

Classified and LTE Staff:

Criminal background checks may be completed prior to making an offer of employment. 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.

The criminal background check must be completed prior to commencement of employment. Exceptions require the pre-approval of the director of Human Resources or designee.

- A verbal offer will include the information that **employment is contingent upon a successful criminal background check.**
 - .After a verbal offer has been accepted the supervisor will notify HR of acceptance and will provide the prospective employee's name, address, phone number and e-mail address of perspective employee.
 - HR will provide prospective employee with necessary paper work for consent for criminal background check, along with time line for returning information to HR.
 - HR will initiate and complete the criminal background check along with any other approval processes (i.e. AA/EEO approval for underutilized positions).
 - HR will notify Supervisor of approval/denial
 - HR will route pink sheet for signature and complete the hiring process.
- d. **Consent Form** – Prior to conducting a criminal background check, UW-La Crosse Human Resources will have the candidate sign a consent form. 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. A candidate will submit the consent form directly to UW- La Crosse Human Resources where it will be maintained in confidence to the extent permitted by the Wisconsin Public Records Act and other applicable laws.
- e. **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 will be used in the appointment letter in these situations.

“This appointment is conditional pending the results of a criminal background check. The appointment will be withdrawn or terminated if the results are unacceptable”.

2. Conducting Criminal Background Checks. Criminal background checks will be performed by Human Resources, 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. 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.

- b. The dean/division officer (unclassified recruitment) or supervisor (classified recruitment) are responsible for notifying Human Resources that a criminal background 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 and determine the scope of the check. All costs associated with conducting the background check will be paid by a central fund.
- c. If a final candidate has lived only in Wisconsin and has no employment history outside of the state, Human Resources may conduct the check in-house by using the Wisconsin Department of Justice (DOJ) State of Wisconsin Criminal Background Check process and the Wisconsin Sex Offender Registry, as well as any other similar on-line databases. In the alternative, the UW- La Crosse may use a private, commercial background check vendor to conduct these checks. The UW- La Crosse 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 UW- La Crosse may complete the background check by using the DOJ and the Wisconsin Sex Offender Register check process.
- d. Out-of-state checks must be done if the final candidate has an employment history outside of Wisconsin or has lived outside the state. Human Resources can conduct these checks in-house by utilizing information the candidate has provided (resume/vita, reference check information, past employment information, consent form, etc.) and accessing available criminal records in other states. In the alternative, the UW- La Crosse may use a private, commercial background check vendor like HireRight, Inc. which is currently under contract with the University.
- e. Criminal background checks conducted on foreign nationals (aliens) will be subject to the following provisions: 1) A criminal history 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; 2) 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 search.

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

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

UW-La Crosse is required to comply with the federal Fair Credit Reporting Act ("FCRA") if it uses a private vendor. Please see 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 UW-La Crosse 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 UW-La Crosse 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 circumstances are, the more likely a "substantial" relationship exists.

Accordingly, if Human Resources' check uncovers a pending criminal charge or a criminal conviction, the UW-La Crosse's chancellor (or designee), provost (or designee) or the UW-La Crosse's vice chancellor for administration and finance (or designee), as appropriate, will consult with Human Resources, UW System Legal Counsel, and the UW-La Crosse's affirmative action officer, to determine whether the criminal activity is substantially related to the functions of the position.

On behalf of the chancellor, provost or the vice chancellor for administration and finance, Human Resources may consult with other offices and individuals, inside and outside of UW-La Crosse (including the UW-La Crosse police department, UW System Legal), as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality.

UW-La Crosse's **Chancellor** or designee shall be the decision-maker for all positions directly reporting to the Chancellor.

UW-La Crosse's **Provost/Vice Chancellor for Academic Affairs** or designee shall be the decision-maker for all faculty positions, as well as all academic staff, classified, or other positions that are within divisions, departments or other administrative structures that report to the provost. Provost may serve as the decision-maker for positions that do not directly report to the Chancellor, but report to direct reports of the chancellor, if delegated by the Chancellor.

UW-La Crosse's **Vice Chancellor for Administration and Finance** or designee shall be the decision-maker for all academic staff, classified or other positions that are within divisions, departments or other administrative structures that report to the vice chancellor.

In **reviewing the results of a criminal history background check** on an individual applicant, UW-La Crosse 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:

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

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

- 1) 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;
- 2) The nature and scope of the position's student, public or other interpersonal contact;
- 3) The nature and scope of the position's autonomy and discretionary authority;
- 4) The amount and type of supervision received in the position or provided to subordinate staff;
- 5) The sensitive nature of the data or records maintained or to which the position has access;
- 6) The opportunity presented for the commission of additional offenses; and
- 7) The extent to which acceptable job performance requires the trust and confidence of the employer, UW- La Crosse or the public.

Using these and other appropriate factors, the chancellor, provost or the vice chancellor for administration 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 by Human Resources 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 Human Resources. If a private, commercial background check vendor is used, UW-La Crosse (Human Resources) 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:

- a. Consent Form—completed by potential employee and returned to Human Resources
- b. Information collected from the check
- c. Analysis and decision whether criminal activity (if any) was substantially related to position
- d. 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. The records will be destroyed in the eighth year after the hiring decision has been made.

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) as well as positions which require a battery of pre-employment examinations such as drug analyses, psychological evaluations, and credit checks (eg. law enforcement positions). Nothing in this policy precludes UW- La Crosse from conducting position specific checks (criminal and non-criminal) on an as-needed basis. Criminal background checks noted in this section will not be completed by Human Resources, unless expressly requested to do so.

Any questions related to this policy, including interpretations and resource locations, should be directed to the UW-La Crosse's Human Resources Office, 144 Graff Main Hall, 608 785-8013.

7. Effective Date of this policy shall be upon approval of the policy by UW System Human Resources and UW System Legal; December 1, 2007.

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

NOTE: UW-L Policy revised 1/1/2009 in compliance with UWSA Memo regarding OSER's requested changes (Jason Beier, September 5, 2008). The UW-L policy was also changed so that verbal offers can be made to classified candidates prior to the Criminal Background Check being conducted, so it is parallel with the unclassified policy and practice. J Wilson 1/1/2009 Provisions of the Red Flag act (Appendix B) is language approved by UWSA (Jason Beier, Tomas Stafford, finalized January 2009).

ADDENDUM 1
FACTORS TO CONSIDER IN POSITION OF TRUST DETERMINATION

- 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

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-L 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-L 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-L 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-L Human Resources Department or a third-party consumer reporting agency. In the event that UW-L 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) UW-L 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-L report the information underlying the discrepancy to the consumer reporting agency that provided the Notice of Address Discrepancy if (1) UW-L forms a reasonable belief that the consumer report relates to the consumer about whom it requested the report and (ii) UW-L regularly furnishes information to the consumer reporting agency. UW-L currently supplies information to HireRight. Address discrepancies should be reported to HireRight as part of the information UW-L regularly furnishes to HireRight for the reporting period in which UW-L confirms that the consumer report relates to the customer about whom it requested the report.

SOURCE: UWS Legal Counsel, January 2009