

UW-La Crosse Criminal Background Check Policy

Effective: March 1, 2013

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

Policy Statement

Except as otherwise provided in this policy, a criminal background check shall be performed on each new hire for a UW-La Crosse 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. of this policy who have not been previously subject to such a criminal background check by the University within the last four (4) years. 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

"Position of trust" is defined as a paid or volunteer position with one or more of the following responsibilities:

1. 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.
2. 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-La Crosse residential housing facilities.
3. 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.

4. 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.

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. of this policy, who have not previously been subject to a criminal background check by the University. UW-La Crosse 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-La Crosse may determine whether a criminal background check must be conducted on individual prospective hires within the following employee groups: (1) temporary or limited term employees; (2) hourly student employees; and (3) interns. In making this determination, UW-La Crosse will consider the level of direct supervision and guidance provided to employees in these categories and the nature of the duties of the job.

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.

Coverage of Volunteers

UW-La Crosse 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-La Crosse may determine whether a criminal background check should be conducted on prospective volunteers. In making this determination, the level of direct supervision and guidance provided to volunteers and the nature of the duties of the volunteer position will be considered.

Criminal background checks must be conducted on current volunteers holding a position of trust with access to vulnerable populations, as defined in paragraph 1. of this policy, who have not previously been subject to a criminal background check by the University. It is UW-La Crosse 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.

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 outside organization that its employees, affiliates, or volunteers have satisfied a criminal background check conducted by a criminal background check vendor selected by the outside organization that includes a check of the vendor's proprietary national criminal background check database.

Conducting Criminal Background Checks

Selected candidate for hire must complete and sign a criminal background check authorization form. An applicant or volunteer's failure to consent to a criminal background check or falsification of any related information is grounds for the withdrawal of the employment offer or volunteer opportunity. Similarly, current employees who refuse to consent to a criminal background check or falsification of any related information is grounds for disciplinary action, up to and including termination.

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-La Crosse 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 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.

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 record 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-La Crosse employment, and a UW-La Crosse 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-La Crosse 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.

Self-Disclosure of Arrests, Charges, or Convictions

UW-La Crosse requires employees who hold positions of trust with access to vulnerable populations, as defined in paragraph 1. 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.

Statutorily Mandated Background Checks

Notwithstanding anything in this policy, UW-La Crosse 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).

Other Criminal Background Checks

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

Procedures:

1. Hiring. UW-La Crosse 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 must be completed prior to commencement of employment. All offers of employment are 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 will state that the employment offer 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.”

- c) **Consent Form** – Prior to conducting a criminal background check, the University will secure the candidate’s consent in electronic or paper 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.

2. Conducting Criminal Background Checks. Criminal background checks will be managed by the Human Resources Office to include checks of records in all jurisdictions deemed prudent, ensuring confidentiality. 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.

UW-La Crosse must conduct an appropriate U.S. criminal background check on an applicant for employment, current employee, or volunteer, including foreign nationals. For foreign nationals, 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-La Crosse is not required to conduct media searches.

- a) The employing unit or department is responsible for notifying Human Resources that a conditional offer of employment has been extended and therefore, a background check needs to be conducted. Human Resources will contact the candidate to complete the 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.
- b) A criminal background check on prospective hires, employees and volunteers must 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. Results of criminal and non-criminal background checks run by departments other than Human Resources must be provided to Human Resources.

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 Human Resources Department 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. Human Resources may consult with the hiring department, University police, legal counsel, and other applicable offices regarding the background check results as appropriate to determine whether a substantial relationship exists while maintaining strict confidentiality.

In reviewing the results of a criminal 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:

- 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.

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 UW-La Crosse. UW-La Crosse and the criminal background check vendor will need to ensure compliance with the federal Fair Credit Reporting Act.

5. Keeping Records.

Records gathered as a result of a criminal background check will be confidentially maintained by Human Resources separate from the applicant/employee's general personnel record. 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.