University of Wisconsin-Stout Policy

Criminal Background Check Policy

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1.0 INTRODUCTION

The University of Wisconsin-Stout (UW-Stout) is committed to ensuring a safe campus environment for students, employees and visitors through the performance of criminal background checks. This policy provides guidelines for performing criminal background checks on current or prospective university employees, and volunteers. It also provides guidelines on the requirement of a criminal background check for vendors, contractors, and outside organizations. This policy went into effect on December 1, 2007 and was revised most recently in 2013.

A criminal background check is part of a general background review on potential employees and volunteers. Except as otherwise provided in this policy, a criminal background check must be performed on each new hire for a UW-Stout position. Criminal background check must be repeated every four years for those individuals holding a “position of trust” with access to vulnerable populations. Criminal background checks must be conducted as soon as possible on anyone holding a position of trust with access to vulnerable populations who has not had a background check performed in the last four years. Employees and volunteers in a position of trust with access to vulnerable populations are required to self-disclose certain criminal offenses. A criminal background check is not a substitute for contacting references and verifying credentials.

The authority, purpose, priorities and limitations associated with the criminal background checks are established in Regent Policy#20-19, Resolution 9276, adopted 12/8/06, and amended 12/7/12, as well as in law, including but not limited to:

- Wis. Stat. 111.335
- Chapter 48 Wisconsin State Statutes---Wisconsin Caregiver Law
- Wisconsin Act 350---Fiduciary Responsibilities
- Public Health Security and Bioterrorism Preparedness and Response Act of 2002
- Agricultural Protection Act of 2002

2.0 DEFINITION OF TERMS

2.1. Position of trust:

“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 require 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.

3.0 STATEMENT OF POLICY

3.1 A “new hire” in a faculty or academic staff position shall be defined as any prospective employee who is not currently a UW-Stout 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-Stout employees or employees of other UW System institutions who are moving to a position within UW-Stout, 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) or is in a position of trust or where the majority of the person’s duties will be performed within student residence halls.

3.2 In accordance with the procedures provided in Appendix B, UW-Stout will conduct criminal background checks for the following groups:

3.2.1 New hires for all positions, including unclassified, classified, and limited term (LTE) positions, volunteers, interns, and student employees who are hired in positions that require criminal background checks by State and Federal Law or that UW-Stout considers a position of trust.

3.2.2 All existing positions holding positions of trust with access to vulnerable populations (including volunteers) who have not had a background check completed within the past four years.

3.2.3 Existing 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.

3.3 Employees may not commence employment until a successful criminal background check has been completed. Criminal background checks may be completed before an offer of employment is made or may be made contingent on successful completion. Requests for exception to begin employment prior to the completion of the criminal background check may be granted in writing by the Chancellor or designee.
3.4 If an individual being considered for a position has a criminal conviction or pending charge that is “substantially” related to the job responsibilities that individual may not be employed in that position (see Appendix C for more details). If an offer has been extended or an exception granted, and a determination has been made that the criminal conviction record is substantially related to the job responsibilities, the offer will be rescinded and employment terminated.

3.5 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 Chancellor will designate an individual(s) in Human Resources responsible for all aspects of conducting criminal background checks and ensure that appropriate training is provided.

3.6 UW-Stout 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.

3.7 To the maximum extent feasible, vendors, and contractors whose employees, affiliates, or volunteers will have routine or unsupervised access to vulnerable populations in the course of performing 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.

3.8 Users and lessees of University lands and facilities who operate multi-day programs for minors, or programs for minors that involve an overnight stay, must provide a representation from the organization that its employees, affiliates, or volunteers have satisfied the criminal background check. They must use a vendor that includes a check of the vendor’s proprietary national criminal background check database in order to satisfy the requirement.

3.9 Employees holding a position of trust with access to vulnerable populations, as a condition of employment, are required to self-disclose criminal arrests, charges or convictions to human resources 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.

3.10 Criminal background checks will be performed on prospective volunteers when the volunteer position involves a position of trust, or when required by law to perform criminal background checks for specified volunteer positions. Criminal background checks will also be performed on current volunteers holding a position of trust with access to vulnerable populations who have not previously been subject to a criminal background check by the University and a criminal background check must be performed every four years on volunteers in a position of trust with access to vulnerable populations. Volunteers in a position of trust with access to vulnerable populations are required to report any criminal arrests, charges or convictions (excluding misdemeanor traffic offenses punishable only by fine) to the Human Resource office within twenty-four (24) hours or at the earliest possible opportunity.

3.11 Notwithstanding anything in this policy, UW-Stout will 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 healthcare services and treatment); 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 and storage facilities).

4.0 IMPLEMENTATION OF POLICY

Procedures for implementation of the Criminal Background Check Policy are as follows:

4.1 UW-Stout, and the hiring departments, will incorporate the steps described in Appendix A into its hiring process.
4.2 Criminal background checks will be performed by the Human Resources Office, or designated office where applicable, as described in Appendix B.

4.3 Once the criminal background check is completed, the university will make a hiring decision based on the procedures described in Appendix C.

4.4 Records gathered as a result of a criminal background check will be kept as described in Appendix D.

Appendix A Hiring Procedures
Appendix B Conducting Criminal Background Checks
Appendix C Determination of Employment Based on Background Check
Appendix D Maintenance of Records

If you have questions or comments, email parq@uwstout.edu

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Appendix A. Hiring Procedures

1.0 UW-Stout, and the hiring departments, will incorporate the following steps into its hiring process. This will apply to all vacancies listed in the policy statement.

1.1 Announcing a vacancy - All vacancy announcements (including ads) must contain the following statement:

**Employment will require a background check.**

The following language is optional and may be added to vacancy announcements and ads:

“In compliance with the Wisconsin Fair Employment Act, the University does not discriminate on the basis of arrest or conviction record. A pending criminal charge or conviction will not necessarily disqualify an applicant.”

1.2 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 Chancellor or designee in writing. Normally, only the applicant being offered the position will be checked. However, there may be circumstances where more than one applicant is checked.

1.3 Appointment letters – If an appointment is offered contingent on the successful completion of a criminal background check or an employee is permitted 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 background check. The appointment will be withdrawn or terminated if the results are unacceptable.”

1.4 Applicant Consent Form – Prior to conducting a criminal background check, the hiring department will give all final candidates 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 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.

1.5 Rehires – Instances may occur where an individual that has previously worked for UW-Stout or another UW System institution is rehired. If their absence from employment at UW-Stout or another UW System institution has been for one year or greater a criminal background check will be conducted. If the employment break was less than one year and no previous criminal background check was conducted, a background check will also be done.

1.6 Existing employees who have not had a background check and are in a position of trust with access to vulnerable populations – A background check will be done as soon as possible and then every 4 years thereafter.

1.7 Current employee or volunteer moving into any position of trust – A criminal background check must be conducted for any current employee or volunteer moving into any position of trust.
Appendix B. Conducting Criminal Background Checks

1.0 Criminal background checks will be performed by the Human Resources Office, or designated office where applicable, to include checks of records in all jurisdictions deemed prudent. The following process will be used:

1.1 The Human Resources Office, or appropriately designated office, will be responsible for all activities involved with the checks. This includes working with the review committee (Appendix C, 1.0) when necessary to make recommendations on results, determining the scope of the background check, conducting the background check and conveying any recommendations. 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.

1.2 For new hires, the Human Resources Office will be notified by the employing unit or department that a check needs to be conducted. Initially the hiring department will provide each candidate that comes to campus for an interview a consent form to fill out and return to the Human Resources Office. When a hiring decision has been made the department will provide the Human Resources Office a resume/vita/employment application. Human Resources will take the information and determine the scope of the check.

1.3 All costs associated with conducting the background check will be incurred by the hiring department.

1.4 UW-Stout 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.

2.0 The following are the standards for conducting the criminal background checks.

2.1 Criminal Background Checks. The University of Wisconsin Stout will use a state approved vendor to provide all criminal background checks. Candidates may be required to provide residency information to facilitate this process. A criminal background check on prospective hires, employees, and volunteers shall 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:

a. Social Security number trace - to authenticate applicant’s information and generate a list of addresses the applicant has lived at for the last seven (7) years; as part of the trace, the University may verify that the social security number is valid and appropriately assigned to the individual.

b. Criminal felony and misdemeanor check by county or 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

c. Sex Offender Registry – sex offender search by state.

d. 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.

2.2 Foreign Nationals Criminal Background Checks. Criminal background checks conducted on foreign nationals will be subject to the following provisions:

A U.S. criminal background check will be conducted on an applicant for employment, current employee, or volunteer who is a foreign national and subject to this policy. 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 for the time period during which the individual was a resident. Media searches are not considered a criminal background search.

3.0 Additional Checks. Additional criminal and non-criminal checks (e.g., motor vehicle, etc.) may be run when appropriate in relation to the position. Nothing in this policy shall be construed to prevent UW-Stout with a reasonable basis from obtaining, at any time, criminal background check information on any current employee or volunteer.
Appendix C. Determination of Employment Based on Background Check

1.0 Once the criminal background check is completed, the university will make a hiring decision. 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. The following individuals:

   Director of Human Resources/Affirmative Action Officer (or designee)
   Assistant Director of Human Resources (or designee)

   Appropriate Division Administrator (Chancellor, Provost, Vice Chancellor)

will determine if a relationship exists in consultation with UW System Legal Counsel as may be necessary.

The factors identified in 2.0 and 3.0 will be considered in order to determine whether there is substantial relationship between the pending charge or conviction and the position and whether the applicant should be hired.

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

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

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

   3.1. The nature and scope of position, including key access to residential facilities, key access to other facilities, access to cash, and access to vulnerable populations;
   3.2. The nature and scope of the position’s student, public or other interpersonal contact;
   3.3. The nature and scope of the position’s autonomy and discretionary authority;
   3.4. The amount and type of supervision received in the position or provided to subordinate staff;
   3.5. The sensitive nature of the data or records maintained or to which the position has access;
   3.6. The opportunity presented for the commission of additional offenses;
   3.7. 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 Director of Human Resources (or designee), in consultation with the appointing authority (the Division Administrators for unclassified positions and the Assistant Director of Human Resources (or designee) for classified positions) will make the final determination on whether to appoint or reject the candidate on the basis of a criminal background check. The HR Director or designee will be responsible for documenting the basis for the decision to appoint or to refuse to appoint a candidate based on a criminal background check.

4.0 Applicant Notification of Negative Results – If an applicant is not selected based on the criminal background check results, the results will be provided and the applicant will be allowed 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. The private background check vendor and the university will need to ensure compliance with the Federal Fair Credit Reporting Act (FCRA)*.
5.0 **Address Discrepancies** – The Federal Trade Commission (FTC) regulations (16 CFR 681.1-.2) require users of consumer reports to have a procedure in place to deal with any Notices of Address Discrepancies they may receive from a consumer reporting agency. Specifically, upon receipt of a Notice of Address Discrepancy, UW-Stout must be able to form a reasonable belief that the consumer report relates to the consumer about whom it has requested the report. The goal is to ensure that UW-Stout and the credit reporting agency are both referring to the same person, even if each have different addresses for such person on file. UW-Stout uses a third-party consumer reporting agency to conduct checks in connection with its Criminal Background Check Policy. These checks are initiated by the UW-Stout Human Resources Office. In the event that UW-Stout receives a Notice of Address Discrepancy from a consumer reporting agency related to a Criminal Background Check Policy check, the following procedure shall apply:

5.1 UW-Stout 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.

5.2 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 regulations require that UW-Stout report the information underlying the discrepancy to the consumer reporting agency that provided the Notice of Address Discrepancy if UW-Stout forms a reasonable belief that the consumer report relates to the consumer about whom it requested the report.

5.3 UW-Stout forms a reasonable belief that the consumer report relates to the consumer about whom it requested the report.

5.4 UW-Stout regularly furnishes information to the consumer reporting agency.

* The Federal Fair Credit Reporting Act (FCRA) defines a company that conducts criminal background checks for an employer to be a “consumer reporting agency,” or a CRA. An employer that acquires a criminal history report from a CRA has certain duties under the FCRA. At the outset, the employer must obtain an applicant’s written permission before obtaining a criminal history report from a CRA. In addition, before the employer can refuse to hire an applicant based on information in a criminal history report, an employer must provide the applicant with a copy of the report and an opportunity to dispute or explain information in the report that the applicant believes is inaccurate or incomplete. Finally, an employer must provide the applicant with an “adverse action notice” if it refuses to hire the applicant based on information provided in the criminal history report.
Appendix D. Maintenance of Records

1.0 Records gathered as a result of a criminal background check will be kept by the Human Resources Office in separate, sealed files segmented by the applicant/employee’s name. The files will be maintained separately for 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 the position
- Correspondence related to criminal background check

The records will be securely maintained for a period of 7 years after the date of hiring transaction and may be accessed only on a need-to-know basis or as required by applicable law.

2.0 Any questions related to the Criminal Background Checks Policy and/or procedures, including interpretation and resource locations, should be directed to the Human Resources Office.