

GOV 6.7 University of Wisconsin Oshkosh Criminal Background Check Policy

Approved: Provost's Administrative Staff March 12, 2013
Approved publication with resolution: Faculty Senate February 26, 2013
Approved: Senate of Academic Staff February 7, 2013
Approved: Chancellor March 23, 2013

This policy is in accordance with University of Wisconsin Regent Policy Document 20-19, University of Wisconsin System Criminal Background Check Policy.

Statement of Policy

The University of Wisconsin Oshkosh is committed to providing a high quality, safe and secure environment for its workforce, partners, students and clients. This policy describes the Board of Regents' expectations of the University of Wisconsin Oshkosh in performing criminal background checks on applicants for employment, current employees, and volunteers.

Except as otherwise provided in this policy, a criminal background check shall be performed on each new hire for a UW Oshkosh 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.

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, Vice Chancellor 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 l(a) of this policy, who have not previously been subject to a criminal background check by the University. A criminal background check must be performed 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 Oshkosh will 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 Oshkosh will 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 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 contractor that includes a check of the vendor's proprietary national criminal background check database.

4. Coverage of Volunteers

UW Oshkosh 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 Oshkosh 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 l(a) of this policy, who have not previously been subject to a criminal background check by the University. A criminal background check must be performed every four years on volunteers in a position of trust with access to vulnerable populations.

5. 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 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.

6. Conducting Criminal Background Checks

Finalists for employment or the finalist selected to fill a position 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 be implemented for current employees, volunteers and prospective volunteers who are subject to criminal background checks.

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.

An appropriate 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 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 and, therefore, institutions are not required to conduct media searches.

7. 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 employment, and a UW Oshkosh 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 Oshkosh 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.

The final determination to appoint or reject an individual on the basis of a criminal record review will be made by the Director of Human Resources (or designee), the Equity and Affirmative Action Director, the appropriate Vice Chancellor (or designee) as appointing authority for the division, and in the case of faculty a tenured faculty member appointed by the Faculty Senate and in the case of academic staff an academic staff employee appointed by the Senate of Academic Staff.

8. Self-Disclosure of Arrests, Charges, or Convictions

Employees who hold positions of trust with access to vulnerable populations, as defined in paragraph 1(a) of this policy, must report any criminal arrests, charges, or convictions (excluding misdemeanor traffic offenses punishable only by fine) 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. Volunteers who hold a position of trust with access to vulnerable populations are subject to the same obligation.

9. Statutorily Mandated Background Checks

Notwithstanding anything in this policy, UW Oshkosh 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).

10. Other Criminal Background Checks

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

UW Oshkosh Faculty Senate Resolution on Gov 6.7

Whereas the UWO Faculty Senate strongly believes in the protection of its employees and all those with whom the university serves or comes into contact;

Whereas shared governance is the foundation for an effective and stable university community;

Whereas GOV 6.7 was mandated by the state without any substantive discussion, input, or feedback from any of the governance bodies at UWO;

Whereas the Faculty Senate acknowledges the ability of the state to implement such policies without following established local rules and procedures;

Whereas the UWO Faculty Senate also has significant concerns about the policy and its negative impact on the due process rights of employees under this policy, including the following:

- The background checks are mandated for many more employees than are currently affected. Where will the money come from for these checks? Who will bear the burden of this unfunded mandate?
- In section #1, Position of Trust, the definition includes those whose “responsibilities include unsupervised or significant access to vulnerable populations.” Who is not included in these very broad definitions? Who will determine who is included?
- In section #1, Property Access, what are “offices, facilities, or worksites other than [an employee’s] own worksite?” Anyone who has a key to a shared conference room or laboratory-- or a chair who has keys to another faculty office--could have access to the spaces defined here. Again, who would be excluded from this category, and who makes that determination?
- In section # 8, Self-Disclosure of Arrests, Charges, or Convictions, employees are required to disclose any arrests or charges before any judicial proceedings have taken place and are threatened with penalties up to dismissal if they do not disclose this information. How can faculty and staff be assured that their due-process rights are protected in the context of this vague and intimidating language?

Whereas, these significant questions remain unanswered and shared governance traditions have been ignored;

Be it resolved that the Faculty Senate accepts the publication of GOV 6.7 “University of Wisconsin Oshkosh Criminal Background Check Policy” in the faculty and academic staff handbook, but it does not formally approve it.

Be it further resolved that the following language be included in the faculty and academic staff handbook just before the language of the Gov 6.7 policy: “The Faculty Senate appreciates and endorses the need for a policy protecting the University community; however, it harbors serious reservations with regards to the undermining of personal rights and due process that this policy outlines. The Faculty Senate accepts this policy for publication in the Handbook; however, it does so without affirmative support.”

Implementation of this policy should proceed with in typical parameters of shared governance.