



ADMINISTRATIVE PRACTICES MANUAL

PURPOSE:

The purposes of this policy are:

- To ensure that Dane County provides services in a safe environment;
- To ensure that Dane County complies with those laws and regulations which require Dane County to conduct criminal background checks on applicants as a condition of employment for certain positions; and
- To ensure that Dane County complies with those laws and regulations which prohibit discrimination against job applicants and current employees based upon arrest and conviction records which cannot be lawfully considered when making employment decisions.

DEFINITIONS

1. Arrest Record: Information indicating that an individual has been arrested, apprehended, taken into custody, detained, questioned, held for investigation, charged, or tried.
2. Conviction Record: Information indicating that, pursuant to any law enforcement or military authority, an individual has been:
 - Convicted of any felony, misdemeanor or other offense;
 - Less than honorably discharged
 - Fined;
 - Imprisoned;
 - Paroled;
 - Placed on probation;
 - Placed in a Deferred Prosecution Program or
 - Placed on extended supervision.
3. Criminal Charge: a criminal complaint, information or indictment filed in a state, federal, tribal or military court of law.
4. Criminal Conviction: A conviction punishable by a state, federal, military, tribal or local law enforcement or corrections agency.

DETERMINING WHETHER APPLICANTS FOR A PARTICULAR POSITION MUST UNDERGO A CRIMINAL BACKGROUND CHECK

Various State and Federal laws and regulations require employers to conduct criminal background checks under certain circumstances. Common mandates applicable to Dane County are listed below, as well as the policy reasons for Dane County to perform a criminal background check even when not required under a specific State or Federal law/regulation.

- 1. Positions of Trust / Fiduciary Responsibilities.** Dane County completes a criminal background check on applicants for any position that involves a position of trust and/or fiduciary responsibilities, such as:



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- The responsibility for, receiving, handling or having custody of money, checks or securities;
- Processing payroll;
- Accounting for supplies or other property;
- Authorizing or making appropriations for expenditures, making payment to vendors, signing procurement contracts;
- 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;
- Maintaining or auditing accounts of money, checks, securities, time records, supplies or other property;
- Taking physical inventories of money, checks, securities, supplies or other property;
- Setting up and/or having access to or maintaining personnel records;
- Having access to or use of master keys/card access to offices/worksites other than their own departmental worksite;
- Performs public safety related functions and/or is located in (or has job duties that require access to) the Dane County Courthouse; and/or
- The responsibility for top-level management functions, including Department heads and their deputies.

2. When the law prohibits the appointment of an individual with certain criminal backgrounds to the position. For example, under Wisconsin's Caregiver Law, Dane County completes a criminal background check on employees and applicants who are or will be responsible for the care, safety, and security of children and vulnerable adults. This includes licensed individuals, employees, prospective employees, and other specified persons affiliated with care-giving entities or providers. It is the policy of Dane County to check applicants' criminal histories before hire, and the criminal history of current employees at least every four (4) years. It is also the policy of Dane County to conduct criminal background checks of applicants who, if hired, will have unsupervised access to vulnerable populations due to their position with Dane County.

3. Special Circumstances. Certain Dane County departments, such as the Dane County Sheriff's Office (DCSO), Dane County Emergency Management, the Public Safety Communications Center of Dane County (911), the Dane County Regional Airport, and Public Health – Madison / Dane County (PHMDC) have developed their own policies regarding screening applicants and current personnel.

PROCEDURE

1. Notices on Job Postings: Employee Relations will be responsible for including the following notice in applicable job postings: "Dane County will complete a criminal background check on applicants who progress to a certain stage in the application process, and if an applicant has a criminal history, then Dane County will disqualify the applicant if the position's responsibilities are substantially related to the applicant's criminal history."



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2. Conducting a Criminal Background Check. Criminal background checks will be conducted and managed within the Department that the employee or applicant is or will be working. Each Department (or Division within the Department) will identify at least one professional employee to coordinate its criminal background checks, including determining the scope of the check, conducting the check, making recommendations on results, providing appropriate information to decision maker(s) and to applicants/employees, and protecting confidential information.

- a. **Securing Consent:** For those applicants/employees with email accounts, the consent process can be completed online. First, the hiring department will request applicants/employees to self-disclose convictions and whether he/se is currently facing criminal charges. Then, the department will provide a consent form to the applicant/employee, indicating that it must be completed and returned.
- b. **Conducting a Social Security Number Validation and Trace:** The hiring department will validate the applicant's social security number and identify the scope of the check by identifying all the places in the United States the applicant has resided/worked using the information in the applicant's/employee's Candidate Profile (e.g. resume, employment history, educational history, achievement history questionnaire, etc.).
- c. **Conducting a Wisconsin Criminal Background Check:** If the hiring department determines that the applicant/employee has only resided/worked in the State of Wisconsin, then the Department can conduct the check utilizing the Wisconsin Department of Justice, the Wisconsin Sex Offender Registry, and Consolidated Court Automation Programs (better known as "CCAP"). Links to these websites are as follows:

<http://www.doj.state.wi.us/dles/cib/crimback.asp>

<http://offender.doc.state.wi.us/public/>

<http://wcca.wicourts.gov/index.xsl>
- d. **Conducting an Out-of-State Criminal Background Check:** When out-of-state records need to be checked, the Department will develop a plan to do so.
- e. **Note:** Dane County recognizes that databases may include information that is irrelevant to the employment decision making process. For example, some data bases include information about arrests where the charges have been



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dismissed/dropped as well as information about civil cases such as divorces and financial suits. However, it is the policy of Dane County not to consider such information when making employment decisions.

- f. Note: Dane County often conducts records' checks unrelated to criminal background. For example, when a position requires a valid driver's license, Dane County may check with the Wisconsin Department of Transportation (DOT) to confirm that the applicant or employee has a valid driver's license. Similarly, when a position requires a professional license or credential (for example, a nursing license, proof of status as a Certified Nursing Assistant or "CNA," a law license, etc.), Dane County may check the applicant's or employee's status and history with the applicable licensing board.

3. Making the Determination Whether a Criminal Record is Substantially Related to the Position. Because everyone is presumed innocent until guilt is proven beyond a reasonable doubt, Dane County will not hold arrests that do not result in a conviction or a plea agreement against an employee or applicant. Furthermore, Dane County recognizes that the existence of a conviction is not always an automatic exclusion from employment. Therefore, it is the policy of Dane County to review each applicant's/employee's criminal background on an individual, case-by-case basis, using the following factors to determine whether there is a substantial relationship between the pending charge or conviction and the position.

- a. The *offense(s)* themselves, in particular, the nature and severity of the offense(s), including but not limited to:
 - The statutory elements of the offense(s) (including the requisite level of intent) and whether these elements are related to the position;
 - The amount of time which has elapsed since the last offense occurred;
 - The number of offense(s) and whether there is a pattern;
 - The type(s) of offense(s) (i.e. felony, misdemeanor, traffic, other);
 - Whether the offense(s) occurred on the job or otherwise arose out of an employment situation; and/or
 - Whether the State or Federal government has determined that the nature of the offense(s) must be or may be treated as a complete bar to employment in the position.
 - NOTE: Dane County will not use the individual's account of the facts and circumstances of the offense(s) to discount the nature, severity, and intentionality (or lack thereof) of the offense(s).
- b. The *position* itself, and in particular, the duties, responsibilities and circumstances of the position, including, but not limited to:



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- Whether the duties, responsibilities and circumstances of the position offers opportunities to commit new offenses;
 - The level and scope of the position's autonomy / discretionary authority and supervision by superiors;
 - The level and scope of the position's responsibility to supervise subordinate staff;
 - The level and nature of the position's contact with the general public;
 - The extent to which the job requires the trust and confidence of the general public and/or public officials;
 - The sensitivity of the data or records for which the position is responsible and/or to which the position has access.
- c. The *individual* himself/herself, and in particular, the individual's age at the time of the offense(s), his/her record of behavior in other circumstances, and performance in other recent jobs.

Once the criminal background check is complete, it is the policy of Dane County to review the results and act as follows:

1. If no criminal records are found, then the applicant progresses to the next stage of the application process. NOTE: Dane County may offer an appointment contingent upon the successful completion of a criminal background check; in these situations, the appointment letter will state that the appointment will be withdrawn or terminated if the results of the individual's criminal background check are unacceptable.
 2. If the criminal background check discloses a criminal history, BUT, using the criteria set forth above, there is NOT a substantial relationship between the offense(s) and the position, then the applicant progresses to the next stage of the application process.
 3. If the criminal background check discloses a criminal history, and, using the criteria set forth above, there is a substantial relationship between the offense(s) and the position, then the person making this determination should inform the applicant of the contents of the records check, inform the applicant that Dane County has determined that there is a substantial relationship between the offense(s) and the position and inform the applicant of the non-selection decision.
- 4. Recordkeeping.** Information gathered during a criminal background check will be shared on a "need to know" basis."