

Wisconsin Human Resources Handbook

Chapter 246

Securing Applicant Background Checks

Sec. 246.010	Introduction	Sec. 246.070	Background Check Resources
Sec. 246.020	Statutory and Rule Authority	Sec. 246.080	Reporting Requirements
Sec. 246.030	Definitions	Sec. 246.090	Administrative Information
Sec. 246.040	Pending Charge and Conviction Record	Attachment #1	Confidentiality Agreement
Sec. 246.050	Agency Policy Guidelines	Attachment #2	FCRA Forms and Rights Sheet
Sec. 246.060	Agency Procedure Guidelines		

Sec. 246.010 Introduction

Agencies have a responsibility to comply with the provisions of Wisconsin's Fair Employment Act throughout the hiring process, including the use of an applicant's criminal history. The Act places limitations on an employer's use of an applicant's or employee's pending charge or conviction record when making an adverse employment decision. Agencies have a responsibility to the public to ensure that programs are carried out in a legal, effective, safe, and humane manner.

Sec. 246.020 Statutory and Rule Authority

1. "Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual . . ." s. 111.335(1)(a), Wis. Stats.
2. "Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity." s. 111.335(1)(b), Wis. Stats.
3. "Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:
 1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or
 2. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer." s. 111.335(1)(c), Wis. Stats.
4. "In addition to provisions stated elsewhere in the law or rules, the administrator may refuse to examine or certify an applicant, or may remove an applicant from a certification:
 - (3) Who has been convicted of any felony, misdemeanor or other offense the circumstances of which

substantially relate to the circumstances of the particular job or licensed activity. In considering such conviction records, the administrator shall take into account such factors as age at the time of the offense, rehabilitation, and seriousness and nature of the violation in relation to the duties and responsibilities of the position.” s. ER-MRS 6.10, Wis. Adm. Code.

5. “When any position to be filled involves fiduciary responsibility, the appointing authority shall conduct a criminal history background check before offering employment to an applicant for the position. If otherwise permitted by law, the appointing authority may require the appointee to furnish bond or other security, and shall notify the administrator of the amount and other details thereof. Any surety company authorized to do business in this state shall be a sufficient security on any such bond.” s. 230.17(3), Wis. Stats.
6. “Notwithstanding ss. 111.321, 111.322, and 111.335, the department of transportation, with the assistance of the department of justice, shall conduct a background investigation of any person who has been selected to fill a position within the division of the department of transportation responsible for issuing operator’s licenses and identification cards. [T]he department shall require, as a precondition to allowing access to any information system in which is stored information maintained by the division of the department responsible for issuing operator’s licenses and identification cards, that any person to whom access is granted submit to a background investigation...[T]he department shall require the employer, including any state agency, of any person to whom the information will be made available to conduct the background investigation in a manner described by the department” s.110.09, Wis. Stats.

Sec. 246.030 Definitions

The following are definitions of terms used in this Chapter.

1. **Arrest Record:** “[I]ncludes, but is not limited to, information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.” s. 111.32(1), Wis. Stats.
2. **Caregiver:** “A person who is, or expected to be, an employee or contractor of an entity, who is or is expected to be under the control of an entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.” Wisconsin’s Caregiver Law, Chapters 48 and 50, Wis. Stats.
3. **Certification:** The process used to refer qualified individuals from the employment register to the next step of the selection process according to the certification rules established for the type of position.
4. **Conviction Record:** “[I]ncludes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority.” s. 111.32(3), Wis. Stats.
5. **Criminal Background Check:** Collection and review of an individual’s pending charges or conviction record substantially related to the position. Under no circumstances will information related to an arrest be used in making an employment decision.
6. **Criminal Charge:** A criminal complaint, information, or indictment filed in a state, federal, tribal or international court of law.
7. **Fair Credit Reporting Act (FCRA):** A federal law (codified at 15 U.S.C. § 1681 et seq.) that regulates the collection, dissemination, and use of consumer credit information. Along with the Fair Debt Collection Practices Act, it forms the base of consumer credit rights in the United States.

8. **Fiduciary Responsibility:** Positions where, under the Fiduciary Responsibility Law (s. 230.17(3), Wis. Stats.), the duties involve the following:
 - a. Handle, receipt for, or have custody of money, 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; or
 - b. 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.

Note: This definition is also used in the State Procurement Operational Questionnaire for blanket employee bonds, also known as employee dishonesty bonds, issued by the Department of Administration.

9. **Law Enforcement Officer:** Any person employed by the federal or state government, or any political subdivision of the state, including counties, cities, villages and towns, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.
10. **New Hire:** Any prospective employee that is not currently a state employee, including former employees with reinstatement eligibility. Former employees with restoration rights are **not** considered a new hire upon restoration.
11. **Substantial Relationship:** Information having a considerable connection to or association with the duties and responsibilities of the position.

Sec. 246.040 Pending Charge and Conviction Records

1. While the Wisconsin Fair Employment Act prohibits employment discrimination because of an arrest or conviction record, agencies may base an employment decision upon pending criminal charge and/or a conviction record during the hiring process **if** the circumstances of the offense “substantially relate” to the duties, responsibilities and circumstances of the job or if the position is one for which the law prohibits the appointment of an individual with certain convictions.
2. Pending charge and conviction record information may be requested and required of an applicant at any time during the selection process prior to an offer of employment. However, the determination to conduct background checks will be made **prior** to posting a job announcement which will state that a background check is required.
3. Interviewers may not ask any arrest, pending charge or conviction record-related questions. If candidates volunteer arrest, pending charge or conviction record information during the interview, interviewers should respond that all hiring decisions are made in accordance with the law. Interviewers should avoid discussing the candidate’s arrest, pending charge or conviction record.
4. A person may not be discriminated against based on a pending charge and/or conviction record unless there is a substantial relationship between the circumstances of the pending charge and/or conviction and the duties and responsibilities of the position. The purpose of the “substantial relationship test” is to assess “whether the tendencies and inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed.” See **County of Milwaukee v. LIRC**. 139 Wis. 2d 805, 824, 407 N.W.2d 908 (1987). In making a determination as to whether or not a substantial relationship exists, the following factors will be taken into consideration. (Note: Based on the specific position, there may be additional factors that should be taken into consideration.)

a. The Position

- 1) The nature and scope of the position's public, inmate, patient, or client contact.
- 2) The nature and scope of the position's discretionary authority and degree of independence in judgment relating to decisions or actions which affect the public, patients, inmates, or clients.
- 3) The extent to which acceptable job performance requires public, inmate, patient, or client trust and confidence.
- 4) The amount and type of supervision received in the position.
- 5) The amount and type of supervision provided by the position to subordinate staff, if any.
- 6) The sensitive nature of the data or records maintained.
- 7) Whether the position includes fiduciary responsibilities.
- 8) Whether the position is one for which the Legislature has determined certain offenses to be a bar to employment (such as caregivers).
- 9) The nature and scope of the position, including key access to residential facilities, key access to other facilities, access to firearms, access to cash, access to operator's licenses and identification cards or the information systems in which they are stored, or access to vulnerable populations, including minor children.

b. The Offense

- 1) Whether intent is an element of the offense.
- 2) Whether the elements of the offense are substantially related to the job duties.
- 3) Whether the circumstances of the pending charge or conviction arose out of an employment situation.
- 4) Whether the offense is one that under Federal or State law is a bar to employment for the specific job.
- 5) The statutory elements of the offense

5. If an individual being considered for a position has a criminal conviction or pending charge that is substantially related to the new job responsibilities, it is not employment discrimination to refuse to employ the individual because of pending criminal charge or conviction record (s. 111.335(1)(b) and (c), Wis. Stats.). If an offer has already been extended or employment has commenced due to the presence of special circumstances as described in section. 246.050, number 4, Criminal Background Checks, of this handbook chapter, the offer should be rescinded or the appointment terminated (s. 111.335(1)(b), Wis. Stats.).

Sec. 246.050 Agency Policy Guidelines

Agencies are required to develop a policy on conducting background checks. This chapter will set forth guidelines agencies should follow to aid in creating or modifying their policies on conducting background checks as set forth in s. 111.335(1)(a), (b), and (c) and s. 230.27(3), Wis. Stats.; and s. ER-MRS 6.10, Wis. Adm. Code.

The types of background checks include criminal history (in-state and out-of-state), civil records, sex offenders registries, driving history, professional license and credential history/status, and credit reports. Due to the confidential nature of background checks, only a limited number of staff in the agency should be authorized to conduct the background checks or review the results.

Beginning July 1, 2011, agencies are required to identify in their background check policy any positions where a background check will be conducted.

Only those checks that are directly related to the duties and requirements of the position should be included in the background check. (See section 246.040 of this handbook chapter.) Background checks should be required for every permanent and every new hire (including contractors, limited term employees [LTE], project appointments, interns, intergovernmental exchanges) when any one of the following conditions apply:

- ◆ When employment depends on the bondability of the individual. (See s. 111.335(1)(a), Wis. Stats.)
- ◆ If the law prohibits the appointment of an individual with a criminal conviction record to a specific classification (e.g., the position requires the employee to possess and use a firearm). (See s. 941.29, Wis. Stats.)
- ◆ If the position is one in which the applicant's potential pending charges or conviction record could substantially relate to the circumstances of the particular job or licensed activity. (See s. 111.335(1)(b) and (c), Wis. Stats., and section 246.070 of this handbook chapter.)
- ◆ If the position involves fiduciary responsibility. (See s. 230.17(3), Wis. Stats.)
- ◆ If the position involves access to operator's licenses and identification cards or the information systems in which they are stored. (See s.110.09, Wis. Stats.)
- ◆ If the position is responsible for the care, safety and security of children and adults. (WI Caregiver Law)
- ◆ If the position is identified in the approved agency background check policy.

Note: Any credit checks to be conducted on any classification that does not fall under fiduciary responsibility requirements must be pre-approved by OSER even if it is already included in the agency's approved background check policy.

The following points must be included in any agency background check policy: (Note: further information on recommended procedures follows in section 246.060 of this handbook chapter.)

1. **New Hire Meets Criteria:** Except as otherwise provided in this policy, prior to an offer being made, a criminal background check will be conducted on each new hire that meets one or more of the criteria in the bulleted points above and in section 246.040 of this handbook chapter. Background checks may be conducted on new hires that do not meet one of the above criteria if provisions for such checks are included in the agency's approved background check policy. See the definition of "new hire" in section 246.030(10) of this handbook chapter. For background checks on current employees, see section 246.060(3) of this handbook chapter.
2. **Prior Determination:** The determination to conduct background checks will be made **prior** to posting a job announcement, consistent with the approved agency policy and the provisions of this handbook chapter. The determination will include identification of (1) when the background checks will be requested; (2) who will initiate the checks; (3) what checks will be needed; (4) who will conduct the checks; (5) who will be the authority that reviews the information and makes a decision (someone qualified to determine if there are any pending charges or convictions that substantially relate to the job); and (6) the procedures for handling and maintaining the records.
3. **Determination Criteria:** When determining whether the results of a background check are substantially job related, the criteria set forth in section 246.040 of this handbook chapter should be followed as they relate to job and the offense.
4. **Criminal Background Checks:** Criminal background checks will 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 contingent upon a review of the criminal background check results. Individuals should not begin employment before a successful criminal background check is completed, except under special circumstances (e.g., the agency needs to have individuals begin employment in order to participate in scheduled training) as determined by the employing agency-approved background check policy. Agency policy should address criteria for processing background checks if an applicant has worked or resided out-of-state. See section 246.060(2) (In-House and Out-of-State Checks) of this handbook chapter for further information.
5. **Confidentiality:** 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. Each policy will designate the individuals responsible for all aspects of conducting criminal background checks. Authorized individuals must complete a confidentiality agreement. (See Attachment #1.)

6. **Training:** Persons authorized to collect or review the background check information will be trained or have the appropriate background and experience. This training or experience will include review of the policies and procedures set forth in this handbook chapter and the agency background check policy, along with any other laws (e.g., Caregiver Law, etc.) that are pertinent to the agency. Documentation of completion should be provided to those who have taken the training. In addition, a notation indicating the receipt of training should be maintained with the list of individuals in the agency approved to conduct or review the background checks.
7. **Documentation:** Documentation will include all background search efforts, such as phone calls, letters, record search results, etc. A record of all background search efforts and results will be documented and retained. See section 246.060(7-8) of this handbook chapter for further details.
8. **No Discrimination:** Agencies must comply with the Wisconsin Fair Employment Act and other applicable laws to ensure individuals are not discriminated against because of arrest, pending charge or conviction records.
9. **Scope of Positions Approved for Background Checks:** Agencies may conduct background checks according to sections 246.050 and 246.060 of this handbook chapter.
10. **Inappropriate Use of Background Check Information:** Guidelines should be established for addressing inappropriate use of background check information (e.g., inappropriate use may constitute a work rule violation and may be grounds for appropriate disciplinary action). (See Attachment #1 for the Confidentiality Agreement.)
11. **Current Employees:** Current employees may be subject to periodic background checks as established in the applicable background check policy and laws. In addition, current employees may be required to undergo a background check when moving to a different position or work unit. Where periodic checks of current employees are required by law, these requirements must be identified within the agency's background check policy.

If an agency receives information from a creditable source regarding a pending charge or conviction of a current employee, a background check may be conducted.

Sec. 246.060 Agency Procedure Guidelines

Agencies that conduct background checks must develop procedures to be incorporated into their hiring process that include the following:

1. **Hiring:**
 - a. **Notification to Human Resources of Needed Check**—The employing unit or department is responsible for notifying Human Resources that a background check is required in order to include appropriate notification information in all recruitment/announcement materials.
 - b. **Announcing a Vacancy**—All vacancy announcements in Wisc.Jobs for positions requiring a background check must contain the following (or similar) statement: **“Employment will require a background check.”**
 - c. **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 as approved by the appointing authority or designee. 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.

- d. 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 appointing authority or designee, to commence employment pending completion of a check, the appointment letter must contain the following (or similar) statement: **“This appointment is conditional pending the results of a background check.”**
2. Conducting Background Checks: Background checks will include checks of records in all jurisdictions deemed prudent. The following process should be followed.
 - a. Confidentiality Agreement—Individual(s) who conduct background checks or view the results must sign a Confidentiality Agreement (see Attachment #1) and take part in the training required under section. 246.050(6) of this handbook chapter.
 - b. Identify Who will Check—The background check policy will identify the appropriate employee(s) to perform criminal background checks and the scope of their responsibilities. Background check results should be reviewed by someone qualified to determine if there are any pending charges or convictions that substantially relate to the job. 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. Authorized individuals must complete a Confidentiality Agreement. See section 246.080 of this handbook chapter for reporting requirements.
 - c. In-house Check—If the final candidate has lived only in Wisconsin and has no employment history outside the state, the agency 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 applicable on-line databases. In the alternative, a private, commercial vendor may be used to conduct the background checks. A hybrid approach may be used that involves performing a social security number trace and sex offender check through a vendor. If the result of the social security number trace shows Wisconsin residence only, the background check may be completed by using the DOJ and the Wisconsin Sex Offender Registry check process.

Certain positions referenced in s.110.09, Wis. Stats.—Background checks are required for certain positions in the division of the Department of Transportation (DOT) responsible for issuing operator’s licenses and identification cards. The DOT, with the assistance of the Department of Justice (DOJ), shall conduct the background investigations which may include requirements for fingerprinting or other technologies approved by law enforcement agencies. The DOJ shall submit any such fingerprints to the Federal Bureau of Investigation for identity verification and criminal arrests and convictions. Additionally, prior to granting personal access to any information system which stores information maintained by the division, the DOT shall require the employer, including any state agency, to conduct a background check in a manner described by the DOT. This may include requirements for fingerprinting and action as described above.

- d. Out-of-state Check—If the final candidate has an out-of-state employment history or has lived outside the state, an out-of-state check must be conducted when required by law. Background checks may be conducted at the agency’s discretion when not required by law as approved in their background check policy. In-house checks can be conducted by utilizing information the candidate has provided (resumé/vitae, reference check information, past employment information, etc.) and accessing available criminal records in other states. In the alternative, a private, commercial background-check vendor may be used. The agency is required to comply with the federal FCRA if using a private vendor.

The standard package for out-of-state criminal background checks through a vendor should include:

- 1) Social Security Number Trace—Authenticates applicant’s information and generates a list of addresses where the applicant has lived for the last seven years.

- 2) Criminal Felony/Misdemeanor by county of residence—superior and municipal court records in any county in the United States.
- 3) Sex Offender Registry—sex offender search by state.

Additional criminal and non-criminal checks (e.g., motor vehicle) may be run when appropriate for a specific position.

3. **Current and Restoring Employees:** For those positions that have been identified as warranting a background check, checks will be conducted on current or restoring employees upon promotion, transfer, demotion, reinstatement, restoration, or for options exercised in lieu of layoff. A background check is not warranted if the employee is transferring within the same employing unit to a position with identical duties and responsibilities. Upon survey reallocation, no background check will be required if the position duties remain the same. Background checks should be conducted and results communicated to the transferring employee prior to him/her giving notice that he/she is leaving the current position. If the background check uncovers a pending criminal charge or a criminal conviction, section 246.060(5), second paragraph, applies. If a background check is performed on an existing permanent classified employee who is a member of an affirmative action (AA) target group and an adverse action is pending, the affirmative action officer should be consulted.
4. **Contractors, LTEs, Project Appointments, Interns, Intergovernmental Exchanges:** Candidates applying for or being utilized in these positions will have a background check conducted where it is otherwise required by law or approved institutional/agency policy. If a background check is required on a contractor, the contractor's agency may conduct the background check as long as the same qualifications are being checked as would be checked on a permanent employee and results shared with the employing agency. Absent a background check being conducted by the contractor agency, the employer must conduct the background check. Any position in a job category with job duties covered by the Wisconsin Caregiver Law, Fiduciary Responsibility Law, or a similar law requiring a background check does require a background check.

<p>Note: If there is an existing contract for personal services, this policy must be applied at the time of renewal of the contract.</p>

5. **Making the Decision Regarding Substantial Relationship:** Once the background check is completed, a decision needs to be made based on the results. For instance, to comply with the Wisconsin Fair Employment Act, the agency will need to determine if the “pending criminal charge” or “conviction record” is “substantially related to the circumstances of the particular job.” The needed review includes the circumstances of the offense (where it happened, when, etc.) compared to the circumstances of the job (where is the job typically done, when, etc.). The more similar the circumstances, the more likely a “substantial” relationship exists.

Accordingly, if the check uncovers a pending criminal charge or a criminal conviction, the reviewer will consult with Human Resources, legal counsel, and affirmative action officer (if it meets AA criteria described in section 246.060(3) of this handbook chapter) to determine whether the criminal activity is substantially related to the functions of the position. Each applicant or current employee will be reviewed on a case-by-case basis and the information in section 246.040 considered in order to determine whether there is a substantial relationship between the pending charge or conviction and the position, and whether the applicant or current employee should be further considered for the position.

Using these and other appropriate factors, the reviewer, in consultation with Human Resources, legal counsel and affirmative action (if it meets AA criteria in section 246.060(3) of this handbook chapter), will make the final determination on whether to appoint or reject the candidate on the basis of a criminal check.

6. **Candidate Notification of Negative Credit Check Results:** If a private, commercial background check vendor is used, the State and the vendor must ensure compliance with the federal FCRA which includes a requirement to notify the applicant if the information obtained from a credit report is the reason for not being

selected for a position. Details regarding this requirement can be found in Section 615 of the FCRA at <http://www.ftc.gov/os/statutes/fcra.htm#613>.

7. Maintenance of Records: Records gathered as a result of a criminal background check will be securely maintained (not in the official personnel file) and accessed only on a need-to-know basis or as required by applicable law. These records should include: (a) information collected from the background check; (b) analysis and decision whether criminal activity (if any) was substantially related to positions; and (c) correspondence related to the background check. If an open records request is made, the agency's legal counsel should be consulted to determine what information is covered by the State's open record law.
8. Records Disposition: Sec. 893.53, Wis. Stats., provides a six (6) year limitation for actions for injury to character or other rights. The Wisconsin Supreme Court held that this was the appropriate statute of limitation for Federal 1983 lawsuits which could be commenced by an applicant as a result of adverse action taken because of a background check. **Hemberger v. Bitzer**, 216 Wis. 2d 509 (1998). Therefore, the destruction of the records should not occur prior to 6 ½ years from the hiring transaction for which the background check was used.
9. 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. The nature of certain positions could warrant the conduct of non-criminal background checks such as drug analyses, psychological evaluations, and credit checks. Nothing in this policy precludes agencies from conducting position-specific checks (criminal and non-criminal) on an as-needed basis, however, such positions must be identified in the agency policy as approved by OSER.

Sec. 246.070 Background Check Resources

1. Criminal History: The Wisconsin DOJ, Crime Investigation Bureau, will provide criminal background information upon receipt of a completed request form and fee. The form can be obtained at <http://www.doj.state.wi.us/dles/cib/>.

Criminal background information may be obtained from other states in which an individual has lived. To find out what information is available, how to obtain the information, and the cost for this service, go to <http://www.doj.state.wi.us/dles/cib/sclist.asp> and access the state in which the person has lived. Information may vary from state to state.

Note: The DOJ website may show that pending charge and conviction records are not available by name, however, more information may follow that indicates the information is available "By Fingerprint." Agencies may contact local law enforcement agencies for information on availability of fingerprinting services.

2. Criminal and Civil Records: The Wisconsin Consolidated Court Automation Program (CCAP) provides certain criminal and civil record information contained in circuit court records. CCAP can be found at <http://wcca.wicourts.gov>. Please note that the coverage of CCAP data varies from county to county, as indicated in the Agreement on the site.
3. Registered Sex Offenders: The Wisconsin Sex Offender Registry provides certain information relating to sex offenses for registered offenders and may include information on out-of-state convictions. The Sex Offender Registry can be found at <http://offender.doc.state.wi.us/public>. Agencies are advised to check the Registry if an applicant has a known sex offense or if a sex offense would be substantially related to the job duties of the position being filled. The Registry should be used only to cross-check other sources of criminal history, not as a primary source of criminal history information. Please note that some of the information provided in the Registry is self-reported by the offender. Agencies should notify the Registry of any information on the web site believed to be inaccurate or incomplete by calling 877-234-0085 or sending an email to docsafetips@doc.state.wi.us.

4. Driving History: A copy of an applicant's driving history may be obtained by submitting a completed form and fee to the Wisconsin Department of Transportation, Division of Motor Vehicles. The form can be found at <http://www.dot.wisconsin.gov/drivers/records.htm>.
5. Professional License and Credential History and Status: Verify the status of an applicant's Wisconsin license through the Wisconsin Department of Regulation and Licensing at <http://drl.wi.gov/drl/drllookup/LicenseLookupServlet>. Verify the status of professional educator licenses through the Department of Public Instruction at <http://dpi.wi.gov/tepd/tm-license.html>.
6. Credit Report: Prior to obtaining a consumer credit report on a specific individual, the hiring agency must certify to the credit reporting agency that the employer: (1) has provided a clear and conspicuous disclosure to the person who is the subject of the report; (2) has received written permission from the individual to obtain the report; (3) will not use the information in violation of any applicable federal or state equal employment opportunity law or regulation; and (4) will abide by the requirements of the FCRA if any adverse action is taken wholly or partially as a result of the report. Contact a credit bureau, e.g., Equifax, Experian, Trans Union, etc., to perform a credit check.
Equifax (<http://equifax.com>)
Experian (<http://experian.com>)
Trans Union (<http://truecredit.com>)
7. Resources: The Department of Workforce Development publishes a fact sheet that includes useful information on what an employer may do under the Wisconsin Fair Employment Act. (<http://dwd.wisconsin.gov/dwd/publications/erd/pdf/ERD-7609-P.pdf>)

Sec. 246.080 Reporting Information

Agencies are required to develop a policy on conducting background checks. (See section 246.050 of this handbook chapter.) Agencies must submit a copy of their final Background Check Policy to the OSER DMRS Administrator for review and approval prior to implementation. Any time there are changes to these policies, an updated copy of the policy should be sent to OSER.

When the agency central office Background Check Policy has been approved by OSER, the agency may be delegated authority to review the individual institution/campus policies for adherence to the OSER-approved agency central office policy without having those individual institution/campus policies forwarded to OSER for approval. For example, a certain institution may require a background check on every position at the institution because the position(s) would have access to a vulnerable population. Under these circumstances, the agency central Human Resources office, with delegated authority from OSER, could approve the institution's policy as long as it is in line with the OSER approved agency policy.

Upon request, all agencies are required to provide a list to the OSER DMRS Administrator that includes the names of individuals authorized to conduct and review background checks, the training/experience records of those individuals, and the vendors the agency is using to perform the background checks.

Sec. 246.090 Administrative Information

This chapter was published in August 1981 as Chapter 120 of the *Wisconsin Personnel Manual*. It was revised in March 2004 to reflect current procedures and renumbered to Chapter 246 of the *Wisconsin Human Resources Handbook*.

The chapter was updated in August 2005 to add additional explanation under the definition section for arrest record, conviction record, and law enforcement officer. Also, the updated chapter included additional information for agencies on topics that should be included in their criminal background check policies. Lastly, the chapter was updated to correct an error in section 246.040(4)(d)(2). In the previous version, it stated that "No person convicted

or found guilty by reason of mental disease or defect . . .” It was corrected to say “No person convicted or found *not* guilty by reason of mental disease or defect . . .”

In June 2006, the chapter was updated to include the following information:

- Reference to s. 230.17 (3), Wis. Stats.
- Definition of fiduciary responsibility.
- The requirement for agencies to develop a policy on background checks and the information that should be included in the policy (section 246.050 of this handbook chapter).
- Guidance on who should conduct background checks and review information obtained through the background check.
- Information on the Wisconsin Caregiver Law.
- Guidance on what information should be shared with applicants regarding the results of the background check.
- Information on the Wisconsin Sex Offender Registry.
- Confidentiality Agreement for employees involved in background checks.
- Sample Applicant Consent form.

In November 2007, the chapter was renamed from Securing Applicant Arrest and Conviction Information to Securing Applicant Background Checks and updated to provide the following information:

- Further delineation of required policies and recommended procedures for agencies to incorporate into their individual policies.
- Reporting requirements.
- List of classifications approved for a background check.
- Sample FCRA consent form and applicant rights sheet.
- Remove the Sample Applicant Consent form.
- Stipulate records retention for background checks should be at least 6 ½ years.

In May 2008, clarifying language was added as a note in Sec. 246.050 that any credit checks to be conducted on any classification that does not fall under fiduciary responsibility requirements must be pre-approved by OSER even if the classification is already included in the agency’s approved background check policy.

Also, Attachment #2—List of Certified Titles was modified to segregate approved classifications into the following categories: Fiduciary; Caregiver; Law Enforcement, Security & Public Safety; and Military Affairs.

In July 2008, statutory reference added to Sec 246.020(6) and additions to Attachment #2 and chapter sections where appropriate regarding the requirement for background checks of persons in positions within the division of the Department of Transportation responsible for issuing operator’s licenses and identification cards, as well as persons with access to information systems containing information maintained by the division.

The classification Payroll & Benefits Officer was added to Attachment #2 in January 2009.

In December 2009, Attachment #2, the “List of Certified Titles,” was amended to include information about the new “[Background Check Approved Classifications](#)” spreadsheet which HR staff should consult prior to conducting background checks.

In July 2011, the chapter was modified to discontinue use of the above-mentioned “Background Check Approved Classifications” spreadsheet. Agencies are no longer required to send requests to OSER for review and approval to conduct background checks on individual positions. In compliance with state background check policies, agencies are responsible to review and approve the conduct of background checks on any positions which are not covered in this handbook chapter and identify them within that agency’s approved background check policy. Modifications were made to section 246.050 to reflect this policy. The list of certified titles was removed from this chapter. With

this change, OSER will no longer maintain or post an enterprise spreadsheet which listing all classifications for which individual agencies had been approved to conduct background checks.

**CONFIDENTIALITY AGREEMENT
(FOR EMPLOYEES WITH ACCESS TO INFORMATION ON
BACKGROUND CHECKS)**

Name _____

Classification/Job Title _____

Department or Agency _____

Division _____

Bureau _____

I understand that in the course of conducting a criminal background check, I may have access to information including, but not limited to, the results obtained from the criminal background check.

I understand that the information listed above, as well as other information to which I have access, is special or confidential information that could either improve or injure the prospects or chances of persons in the recruitment process. I agree to keep this information confidential and not to copy the materials, discuss them with anyone not specifically authorized by the Human Resources Specialist, Manager, or Representative, or allow any unauthorized person access to them. Failure to keep the information confidential may constitute insubordination and/or may result in a violation of a work rule both of which could lead to discipline up to and including termination.

By signing below, I acknowledge that failure to adhere to the requirements set forth in this statement would be a violation both to the public trust and as a condition of my continued employment with the State of Wisconsin.

Signature

Date

Sample 1 - FCRA Authorization Form

CONSENT TO PROCUREMENT OF CONSUMER CREDIT REPORT

I understand that, as a condition of my consideration for employment with COMPANY, or as a condition of my continued employment with COMPANY, COMPANY may obtain a consumer report that includes, but is not limited to, my creditworthiness or similar characteristics, employment and education verifications, social security verification, criminal and civil history, personal interviews, DMV records, any other public records and any other information bearing on my credit standing, credit capacity, character, general reputation, personal characteristics and trustworthiness.

I hereby authorize and consent to the State of Wisconsin's procurement of such a report. I understand that, pursuant to the federal Fair Credit Reporting Act, the State of Wisconsin will provide me with a copy of any such report if the information contained in such report is, in any way, to be used in making a decision regarding my fitness for employment with the State. I further understand that such report will be made available to me prior to any such decision being made, along with the name and address of the reporting agency that produced the report.

Signature of Applicant or Employee Date

Printed Name of Applicant or Employee

(Please print) Other names used: _____

Address: _____

City/State/Zip: _____

Date of Birth: _____

Social Security #: _____

SAMPLE 2 – FCRA Authorization Form

Authorization to Obtain a Consumer Credit Report and Release of Information for Employment Purposes

Pursuant to the federal Fair Credit Reporting Act, I hereby authorize [Company Name] and its designated agents and representatives to conduct a comprehensive review of my background through a consumer report and/or an investigative consumer report to be generated for employment, promotion, reassignment or retention as an employee. I understand the scope of the consumer report/investigative consumer report may include, but is not limited to, the following areas: verification of Social Security number; current and previous residences; employment history, including all personnel files; education; references; credit history and reports; criminal history, including records from any criminal justice agency in any or all federal, state or county jurisdictions; birth records; motor vehicle records, including traffic citations and registration; and any other public records.

I, _____, authorize the complete release of these records or data pertaining to me which an individual, company, firm, corporation or public agency may have. I understand that I must provide my date of birth to adequately complete said screening and acknowledge that my date of birth will not affect any hiring decisions. I hereby authorize and request any present or former employer, school, police department, financial institution or other persons having personal knowledge of me to furnish [Company Name] or its designated agents with any and all information in their possession regarding me in connection with an application of employment. I am authorizing that a photocopy of this authorization be accepted with the same authority as the original.

I hereby release [Company Name] and its agents, officials, representatives or assigned agencies, including officers, employees or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may at anytime result to me, my heirs, family or associates because of compliance with this authorization and request to release. You may contact me as indicated below. I understand that a copy of this authorization may be given at any time, provided I do so in writing.

I understand that, pursuant to the federal Fair Credit Reporting Act, if any adverse action is to be taken based upon the consumer report, a copy of the report and a summary of the consumer's right will be provided to me.

Please Print Clearly

1. Name (Full) _____
2. Maiden Last Name _____
3. Print All Former Names Used (A) _____,
(B) _____
4. Social Security Number ____ - ____ - _____
5. Sex ____
6. Race _____
7. Date of Birth ____ - ____ - _____
8. Telephone Number _____
9. Current Street Address _____

10. City _____, State _____ Zip _____

11. Driver's License Number _____ State Issued _____

12. Name on Driver's License _____

13. May we contact your employers? _____

14. May we contact your supervisors? _____

15. Prior residence, past seven (7) years

i. _____

ii. From _____ To _____

iii. _____

iv. From _____ To _____

v. _____

vi. From _____ To _____

16. Have you ever been convicted of or pled guilty or "no contest" to a criminal charge?

17. Yes _____ No _____

18. Are you currently awaiting trial, sentencing or disposition of a criminal charge?

19. Yes _____ No _____

20. Have you even been a defendant in a civil action for intentional tort(s)? (Intentional torts include, but are not limited to, battery, assault, false imprisonment, defamation, fraud, conversion)? Yes _____ No _____

If you answered Yes to Numbers 17, 18 or 19, provide the Case Numbers, Date of Action, Disposition, Place of Occurrence and Current Status Below:

Please explain. If more space is needed, add supplemental sheets.

By signing below, you are certifying that the above information is true and correct.

Signature _____

Date _____

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment—or to take another adverse action against you—must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identify theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need—usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer.

Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.

- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation , Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051