

Letter Report

Employment of Felons by UW System

February 2006



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Janice Mueller
State Auditor

February 28, 2006

Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

At your request, we have completed a review of the number of University of Wisconsin (UW) System employees convicted of felonies, as part of a comprehensive evaluation of UW System personnel policies and practices approved by the Joint Legislative Audit Committee. That evaluation will be completed later this year.

Using Department of Corrections' felony data and UW System's payroll data, we identified 40 felons employed by UW System in September 2005 and under state supervision in November 2005. UW-Madison employed 27 of the 40 felons we identified, including 4 who are incarcerated.

Section 111.321, Wis. Stats., generally prohibits employment discrimination on the basis of arrest or conviction record, but under s. 111.335(1)(c), Wis. Stats., employment can be terminated when a conviction is substantially related to the circumstances of an individual's job. The decision to terminate is typically determined by an internal investigation. Because UW institutions were unaware of most of the 40 felons and could not provide complete information on how many internal investigations had been conducted, we have recommended that internal investigations be conducted to determine whether the convictions of any of the felons we identified are substantially job-related and any action is appropriate.

Terminating employment is often a lengthy process. In February 2006, the Board of Regents approved changes to expedite the termination of faculty who are convicted of serious criminal misconduct. We have recommended that it also clarify its termination process for academic staff and discuss the process for classified staff.

Finally, we found great variation in how UW institutions conduct background checks of candidates for employment. We have recommended that the Board of Regents promulgate uniform policies to identify the types of jobs for which background checks should be conducted.

We appreciate the courtesy and cooperation extended to us by UW System during the course of our review.

Sincerely,

Janice Mueller
State Auditor

JM/KW/ss

EMPLOYMENT OF FELONS BY UW SYSTEM

The University of Wisconsin (UW) System has approximately 42,000 employees, making it Wisconsin's largest employer. As a public institution and a responsible employer, it should seek to ensure a safe environment for faculty, staff, and students and that its employees do not damage its integrity, reputation, or the public trust. However, in so doing, it must not illegally discriminate against its employees.

Section 111.321, Wis. Stats., generally prohibits employment discrimination against any individual on the basis of arrest or conviction record. However, under s. 111.335(1)(c), Wis. Stats., an individual can be terminated from employment because of a conviction record if the conviction is substantially related to the circumstances of his or her job. Office of State Employment Relations guidelines state that to determine whether a felony conviction is related to a job, employers are to consider whether the conviction:

- compromises an employee's ability to retain the public's trust, have access to funds, or work with sensitive data, records, or property;
- arose out of an employment-related situation; or
- affects an employee's ability to perform his or her job in a safe and efficient manner.

Media reports in spring and summer 2005 focused attention on UW System's management of personnel issues, including its handling of three high-profile cases involving faculty members who had committed felonies while employed at UW-Madison. In response to requests from legislators and UW System's president, the Joint Legislative Audit Committee in October 2005 approved an audit of UW System personnel policies and practices, including a review of the number of UW System employees convicted of felonies. Our comprehensive report on other UW System personnel policies will be released later this year.

Section 939.60, Wis. Stats., defines a felony as a crime punishable by imprisonment in a state prison, even though some may serve their sentences in county jails. Statutes do not clearly indicate whether individuals are considered felons even after their sentences have been completed. Some consider felons to be those who have committed a felony at any time in their lives, regardless of whether they remain under supervision. Others consider felons to be those who have committed a felony and remain under supervision, which includes:

- being incarcerated in a state correctional institution;
- being on parole, which applies to individuals who have been released from a state correctional institution and are under supervision by a parole officer; and
- being on probation, which applies to individuals who were not sentenced to a state correctional institution but are under supervision by a probation officer.

Our analyses include only individuals who have been convicted of one or more felonies and remain under supervision because they have not yet completed their sentences, and lawmakers

and the courts have determined they may continue to pose a risk to others. In conducting this review, we compared the names and dates of birth of UW System employees on the September 2005 payroll to the Department of Corrections' (DOC's) list of individuals who were convicted of felonies and incarcerated in a state correctional institution or supervised by state probation or parole officers in November 2005. Some of the individuals included in our analyses are no longer employed by UW System. Others were on the payroll but not paid during the pay period we examined because they were, for example, crowd control officers at special events.

State and federal law enforcement authorities state that fingerprints are the most accurate method of determining whether an individual has been convicted of a felony, because a name or other personal information may falsely identify an individual as having a criminal conviction. Therefore, to verify the accuracy of our matching analysis, we:

- examined DOC's data for known aliases, changes in last names as a result of marriage or divorce, and common misspellings and abbreviations of names;
- searched the Consolidated Court Automation Programs (CCAP) for the employees identified from DOC's data, which allowed us to double-check information on the employees and their offenses;
- reviewed DOC parole and probation records to verify the supervision status and employment information of the employees we identified; and
- sent a certified letter to each employee we identified, with the exception of those known to have been incarcerated in 2005, asking them to contact us if they believed our information was incorrect.

We also determined the number of UW System employees who are registered sex offenders. An individual who lives, works, or attends school in Wisconsin must register with DOC as a sex offender if he or she has been convicted of a felony listed in s. 301.45(1d)(b), Wis. Stats., including first, second, or third degree sexual assault and first or second degree sexual assault of a child. Section 301.45(2), Wis. Stats., requires DOC to maintain a data base of registered sex offenders, who remain under limited state supervision for either 15 years or the remainder of their lives, depending on their offenses. Individuals on the registry must notify DOC of their current address and place of employment.

We took several steps to be reasonably assured that our analyses do not incorrectly include or exclude employees who were convicted of felonies and were subject to state supervision in November 2005. However, some felons may have been missed because criminal records from other jurisdictions were unavailable to us. For example, in most instances our analyses exclude UW System employees who:

- may have committed federal felonies and are under federal supervision;
- may have committed crimes in other states; and
- may be in county jails and are not on state probation or parole.

In addition to the matching analysis, we obtained the policies and procedures governing criminal background checks of employees and candidates for employment at each of the UW institutions, including all 13 four-year campuses, UW Colleges, UW Extension, and UW System Administration. We also attended meetings of the Board of Regent’s Committee Regarding Faculty and Academic Staff Disciplinary Process, which was formed in October 2005 to recommend ways to expedite investigations of employees convicted of serious criminal misconduct.

Employees with Felony Convictions

As shown in Table 1, 40 UW System employees had been convicted of felonies and were under state supervision in November 2005.

Table 1

UW System Employees Convicted of Felonies and Under State Supervision
As of November 2005

	Number of Employees
On Probation or Parole	35
Incarcerated	4
Under Limited Supervision ¹	1
Total	40

¹ One employee is a registered sex offender who committed a felony but is no longer incarcerated or on probation or parole.

As shown in Table 2, 32 of the 40 employees were classified staff. Two of the four academic staff were lecturers, and the other two were information technology staff. It should be noted that all three of the faculty members we identified were the subjects of extensive media reports in 2005. We did not identify any other faculty currently under state supervision for felony convictions.

Table 2

UW System Employees Convicted of Felonies, by Employment Category
As of November 2005

Employment Category	Number of Employees	Percentage of Total
Classified Staff		
Permanent	18	45.0%
Limited-Term	14	35.0
Subtotal	32	80.0
Academic Staff		
Academic Staff	4	10.0
Faculty	3	7.5
Student Employee ¹	1	2.5
Total	40	100.0%

¹ We included only those student employees who were funded at least in part by UW System. Neither student employees funded exclusively by federal, state, or private grants nor students not employed by UW System were included in our analysis.

As shown in Table 3, UW-Madison employed approximately two-thirds of the 40 employees, including all 3 faculty members and 2 of the 4 academic staff. No other institution employed more than four felons under state supervision.

Table 3

UW System Employees Convicted of Felonies, by Institution
As of November 2005

Institution	Number of Employees	Percentage of Total
Madison	27	67.5%
Milwaukee	4	10.0
Oshkosh	2	5.0
Stevens Point	2	5.0
Eau Claire	2	5.0
Extension	1	2.5
Green Bay	1	2.5
System Administration	1	2.5
Total	40	100.0%

As shown in Table 4, the 40 employees had a total of 54 felony convictions, including 9 convictions for violent felonies. Two employees were convicted of homicide in the 1970s and have been on parole since the early 1990s. Four employees were convicted of a total of five counts of sexual assault of a child. Two of the four were convicted in the 1990s, while the other two were convicted since 2004.

Table 4
Felonies Committed by UW System Employees¹
 As of November 2005

	Number of Convictions	Percentage of Total
Violent Felonies		
Sexual Assault of a Child	5	9.2%
Homicide	2	3.7
Robbery	1	1.9
Battery	1	1.9
Subtotal	9	16.7
Other Felonies		
Fraud and Forgery	9	16.7
Operating a Vehicle While Intoxicated	7	13.0
Theft	7	13.0
Drug Possession	6	10.9
Endangering Safety	3	5.6
Burglary	2	3.7
Bail Jumping	2	3.7
Child Abuse	2	3.7
Other ²	7	13.0
Total	54	100.0%

¹ Some employees were convicted of multiple felonies.

² Includes crimes such as false imprisonment and reckless injury.

Disciplinary Process and Criminal Background Checks

As shown in Table 5, 25 of the 40 employees were convicted before beginning employment by UW System, and 15 were convicted while employed by UW System.

Table 5

UW System Employment Status at the Time of Conviction

	Number of Employees	Percentage of Total
Convicted Before Employed	25	62.5%
Convicted While Employed	15	37.5
Total	40	100.0%

As noted, statutes allow UW System to terminate an individual's employment only if the circumstances of a felony conviction are substantially related to the employee's job. Statutes and administrative rules specify various processes for terminating employment in various employment categories, such as faculty, academic staff, and classified permanent staff. For example, administrative rules state that faculty and permanent academic staff (technically known as indefinite academic staff within UW System) may be dismissed only by the Board of Regents, for just cause, and after due notice and hearing. Faculty and permanent academic staff cannot be terminated from employment unless an internal investigation determines that the termination is justified. Internal investigations can be conducted based on convictions that occurred either before or after an employee was hired by UW System.

We did not attempt to determine whether any of the 54 convictions shown in Table 4 were related to the offending employees' jobs. We did attempt to determine the number of internal investigations conducted, but UW System Administration does not centrally maintain this information. Therefore, we asked each institution to provide information retained by its human resources department regarding all employees known to have been convicted of felonies, whether internal investigations of those employees had been conducted, and the outcomes of any investigations.

As shown in Table 6, UW institutions reported that 6 of the 15 employees we identified as having been convicted of felonies while employed by UW System were the subjects of internal investigations, but they could not provide us with information on the other 9. UW-Madison stated that it investigated six employees convicted of felonies in recent years and found that three of the employees' convictions were substantially related to their jobs. These three employees are the faculty members who were the subjects of extensive media coverage in 2005. In February 2006, the Board of Regents terminated the employment of one of these individuals, but the other two remain employed by UW-Madison while their termination decision appeals are considered. The remaining UW institutions indicated they were unaware of any employees

convicted of felonies who were the subjects of internal investigations. We have now provided UW System Administration with the names of all 40 employees we identified.

Table 6

Internal Investigations of Those Convicted While Employed by UW System

	Number of Employees
Internal Investigations Conducted	6
Unknown	9
Total	15

Recommendation

We recommend University of Wisconsin System Administration direct University of Wisconsin institutions to conduct internal investigations to determine whether the convictions of the felons we identified are substantially job-related and whether any action is appropriate.

Timeliness of Investigations

Concerns have been raised about the time needed to complete internal investigations and determine whether disciplinary action is required, which UW officials note can take months. For example, law enforcement agencies may prohibit an institution from contacting witnesses until a criminal prosecution is completed. In addition, the committees that UW institutions create to consider evidence against employees may be unable to complete their work in a timely manner if committee members are not available to meet.

The Board of Regents' Committee Regarding Faculty and Academic Staff Disciplinary Process met five times from November 2005 through January 2006 to improve the employment termination process for any faculty member who has committed a felony and engaged in behavior that clearly poses a substantial risk to others, seriously impairs public trust in UW and its ability to fulfill its missions, or seriously impairs the faculty member's ability to fulfill the duties of the position. Such actions are considered to be serious criminal misconduct. In February 2006, the committee recommended several changes to the Board of Regents, including:

- requiring faculty members to inform the institution when they are charged with or convicted of serious criminal misconduct;
- allowing chancellors to place faculty members on leave without pay until the process is completed; and
- establishing shorter time lines for the investigation and termination processes.

At its February 2006 meeting, the Board of Regents agreed to send its committee's recommendations to each of the faculty senate committees for their consideration. The faculty's review is required under UW System's shared governance structure and is expected to take approximately two months. After the Board of Regents receives the faculty senate committees' input, it will decide whether to change the process for terminating the employment of faculty who have engaged in serious criminal misconduct.

As of February 2006, the Board of Regents' committee expected parallel provisions to be established for permanent academic staff, but those provisions had not been developed. The process for terminating the employment of classified staff is governed by Office of State Employment Relations guidelines and collective bargaining agreements, and as of February 2006, the Board of Regents' committee had not established a plan for discussing this process.

Criminal Background Checks

A criminal background check is a commonly used method for determining whether an applicant for employment has a job-related criminal record. If a background check finds an arrest, charge, or conviction that is substantially job-related, s. 111.335(1)(b) and (c), Wis. Stats., allows an employer to refuse employment. Statutes and administrative rules require criminal background checks of all licensed primary and secondary educators, as well as candidates for law enforcement and caregiver positions, such as those who work in hospitals, nursing homes, and day care facilities. In addition, statutes require all employers of individuals in caregiver positions to perform background checks of their staffs every four years.

UW System Administration does not have a policy governing criminal background checks either of candidates for employment or of its current employees. All institutions conduct background checks of some candidates for employment, but we found great variation among them. For example:

- UW Colleges indicated it conducts background checks of all candidates for employment in food service, the business office, the bookstore, information technology, and maintenance.
- UW-Milwaukee's Division of Administrative Affairs, which includes accounting, payroll, and groundskeeping, indicated it conducts criminal background checks of all finalists for positions in the division.
- UW-Madison indicated it conducts background checks of all candidates for employment in its law enforcement and housing departments and of some candidates for jobs that involve fiduciary responsibilities.
- UW-Green Bay indicated it conducts background checks of all candidates for employment in law enforcement, child care, and positions with access to cash, keys, or sensitive materials.

Office of State Employment Relations guidelines state that an employer may conduct a background check of a candidate for employment if this is disclosed in the job announcement. Conducting background checks would increase administrative costs. The Wisconsin Department of Justice charges state agencies \$5 to conduct each background check, or \$15 if a fingerprint is used.

It may be prudent to conduct background checks for certain types of jobs in addition to those required by statutes, such as positions in which an employee may have access to financial information, cash, or personal information. Given the lack of written guidance in the use of background checks among UW institutions, we believe the Board of Regents should identify the types of positions for which it believes background checks should be conducted and promulgate applicable system-wide policies.

Recommendation

We recommend the University of Wisconsin Board of Regents:

- clarify the process and appropriate circumstances for terminating the employment of academic staff;*
- discuss the process and appropriate circumstances for terminating the employment of classified staff; and*
- determine the types of jobs for which background checks should be conducted and promulgate system-wide policies for conducting background checks of candidates for employment.*

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