

Letter Report

**Employment of Felons by
the Wisconsin Technical
College System**

June 2006



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Janice Mueller
State Auditor

June 22, 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 Wisconsin Technical College System (WTCS) employees convicted of felonies. It is part of a comprehensive evaluation of WTCS personnel policies and practices approved by the Joint Legislative Audit Committee, which will be completed later this year.

Using Department of Corrections felony data and WTCS payroll data from March 2006, we identified 15 WTCS employees who were felons under state supervision.

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 circumstance of an individual's job. The decision to terminate is typically determined by an internal investigation. Because technical colleges were unaware of some of the felons, we have recommended that they conduct internal investigations to determine whether any of the convictions we identified are substantially job-related and whether any job action is appropriate.

We found that 8 of the 16 technical colleges had not developed policies or procedures for dealing with such situations, including policies related to terminating the employment of individuals when appropriate. We include a recommendation that technical college district boards establish policies and procedures for employee discipline and termination.

Finally, we found variation in how technical colleges conduct background checks of candidates for employment. We have recommended that the WTCS Board identify the types of jobs for which background checks should be conducted and require the technical college district boards to promulgate applicable policies.

We appreciate the courtesy and cooperation of the 16 technical colleges and WTCS Board staff in completing this review.

Sincerely,

Handwritten signature of Janice Mueller.

Janice Mueller
State Auditor

JM/PS/ss

EMPLOYMENT OF FELONS BY THE WISCONSIN TECHNICAL COLLEGE SYSTEM

The Wisconsin Technical College System (WTCS) provides a variety of educational and training programs at 16 technical colleges throughout the state and has approximately 13,000 employees. The WTCS Board is a state agency and has several responsibilities, including setting statewide uniform tuition and fee rates, administering state and federal aid, developing statewide policies and standards for financial reporting by the 16 technical college districts, and approving qualifications for the districts' educational personnel and courses of study. Each technical college is considered a local unit of government, which employs its own staff and is directly governed by its own nine-member board.

As public institutions and responsible employers, technical colleges should seek to ensure a safe environment for faculty, staff, and students and that their employees do not damage their integrity, reputation, or public trust. However, in so doing, the colleges must not illegally discriminate against their 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, state agencies 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.

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 felonies at any time in their lives, regardless of whether they remain under supervision. Others consider felons to be those who have committed felonies 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 but are under supervision by a parole officer; and
- being on probation, which applies to individuals who were not sentenced to state correctional institutions 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 WTCS employees on the March 2006 payroll, which includes WTCS Board staff and employees of the 16 technical colleges, 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 March 2006.

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 name 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; and
- sent a certified letter to each employee we identified, with the exception of those known to have been incarcerated in 2006, asking them to contact us if they believed our information was incorrect.

We also determined the number of WTCS 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 sex offense 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. In addition, a court may require an individual to register with DOC if it determines that his or her crime was sexually motivated, per s. 301.45(1g)(dt), Wis. Stats. 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 address, place of employment, and of any changes to either.

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 March 2006. 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 WTCS employees who:

- may have committed federal felonies and be 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 policies and procedures governing criminal background checks of employees and candidates for employment by WTCS, including the 16 colleges and WTCS Board staff.

Employees with Felony Convictions

As shown in Table 1, 15 WTCS employees had been convicted of felonies and were under state supervision in March 2006.

Table 1

WTCS Employees Convicted of Felonies and Under State Supervision
As of March 2006

	Number of Employees
On Probation or Parole	6
Incarcerated ¹	1
Under Limited Supervision ²	8
Total	15

¹ One technical college employed an incarcerated individual who participated in a work release program.

² Eight employees are registered sex offenders who were convicted of felonies but are no longer incarcerated or on probation or parole.

As shown in Table 2, 13 of the 15 employees were support staff, which includes employees who have clerical, maintenance, or academic support job duties. The remaining two felons were faculty members.

Table 2

WTCS Employees Convicted of Felonies, by Employment Category
As of March 2006

Employment Category	Number of Employees	Percentage of Total
Support Staff ¹	13	86.7%
Faculty	2	13.3
Total	15	100.0%

¹ Includes employees who have clerical, maintenance, or academic support job duties.

Technical colleges employed all 15 felons. We found no felons employed by the WTCS Board. As shown in Table 3, Madison Area Technical College employed 4 of the 15 felons.

Table 3

WTCS Employees Convicted of Felonies, by College
As of March 2006

College	Number of Employees	Percentage of Total
Madison Area	4	26.6%
Milwaukee Area	3	20.0
Northcentral	2	13.3
Waukesha County	2	13.3
Chippewa Valley	1	6.7
Moraine Park	1	6.7
Nicolet Area	1	6.7
Wisconsin Indianhead	1	6.7
Total	15	100.0%

As shown in Table 4, the 15 employees had a total of 16 felony convictions, including 9 convictions for violent felonies. Eight employees were convicted of sexual assault, including 5 who were convicted of sexual assault of a child.

Table 4

Felonies Committed by WTCS Employees¹
As of March 2006

	Number of Convictions	Percentage of Total
Violent Felonies		
Sexual Assault of a Child	5	30.9%
Sexual Assault	3	18.8
Robbery	1	6.3
Subtotal	9	56.0
Other Felonies		
Theft	2	12.5
Child Abuse	1	6.3
Drug Possession	1	6.3
Fraud and Forgery	1	6.3
Interfering with Custody Order	1	6.3
Reckless Injury	1	6.3
Total	16	100.0%

¹ One employee was convicted of two felonies.

Disciplinary Process and Criminal Background Checks

As shown in Table 5, 9 of the 15 employees were convicted before beginning employment by WTCS, and 6 were convicted while employed by WTCS.

Table 5

WTCS Employment Status at the Time of Conviction

	Number of Employees	Percentage of Total
Convicted Before Employed	9	60.0%
Convicted While Employed	6	40.0
Total	15	100.0%

As noted, statutes allow technical colleges to terminate an individual's employment only if the circumstances of a felony conviction are substantially related to the employee's job. The collective bargaining agreements for represented employees typically specify that an employee may be dismissed by a technical college district only for just cause, and after due notice and hearing. The employment of represented employees cannot be terminated unless an internal investigation determines that the termination is justified. Internal investigations can be conducted based on convictions that occurred before or after an employee was hired by a technical college.

We did not attempt to determine whether any of the 16 convictions listed in Table 4 were related to the offending employee's job. However, we did attempt to determine the number of internal investigations conducted. We asked each college to provide information retained by its human resources department regarding the employees we identified as having been convicted of felonies, including whether internal investigations of those employees had been conducted and the outcomes of the investigations.

Of the six employees we identified as having been convicted of felonies while employed by technical colleges, only two were the subjects of internal investigations. Madison Area Technical College stated that it has investigated two of its employees convicted of felonies and found that their convictions were not substantially related to their jobs. Three other colleges employed the four remaining individuals who were convicted of felonies while employed, and they indicated that internal investigations had not been conducted.

We also found that 8 of the 16 technical colleges did not have written policies specifying the process for disciplining or terminating employees, including those employees not represented by unions. TCS 6.06(2), Wis. Adm. Code, requires technical college district boards to establish procedures for personnel actions. Without clearly defined policies, technical colleges cannot ensure consistency in decisions about whether to take disciplinary action, nor can they determine the appropriate timing and severity of disciplinary actions by supervisors or human resources staff.

Recommendation

We recommend that the board of each technical college:

- direct its staff to conduct internal investigations to determine whether the felony convictions we identified are substantially job-related and whether any job action is appropriate; and*
- develop written policies that identify the circumstances under which employees will be terminated from employment for just cause and the process that will be followed in doing so.*

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 code require criminal

background checks of all licensed primary and secondary educators, as well as candidates for 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.

The WTCS Board has not established a systemwide policy governing criminal background checks of either candidates for employment or its current employees. All technical colleges conduct background checks of some candidates for employment, but we found variation among them. For example:

- Gateway Technical College indicated it conducts background checks of all final candidates for employment.
- Lakeshore Technical College indicated it conducts background checks of all candidates for employment in its maintenance and payroll departments and for executive positions, including its president.
- Moraine Park Technical College indicated it conducts background checks of all finalists for only president and vice-president positions.

Office of State Employment Relations guidelines indicate that state agencies may conduct background checks of candidates for state employment if this is disclosed in the job announcement. Technical college districts may wish to consider providing similar notices in their job announcements.

Conducting background checks would increase administrative costs. The Wisconsin Department of Justice charges governmental agencies \$5 to conduct each background check, or \$15 if a fingerprint is used. However, it may be prudent to conduct background checks for certain types of jobs in addition to those required by statute, 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 the 16 technical colleges, we believe the WTCS Board should identify the types of positions for which it believes background checks should be conducted and require the technical college district boards to promulgate applicable policies.

Recommendation

We recommend the Wisconsin Technical College System Board determine the types of jobs for which criminal background checks should be conducted and require each technical college district board to promulgate policies for conducting background checks of candidates for employment.

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