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## DVR Criminal Background Check Policy

Wisconsin law protects workers from workplace discrimination because of an arrest or conviction record under certain circumstances. However, it is not employment discrimination under the law not to hire someone when their arrest or conviction is substantially related to the employment.

DVR provides services to individuals with disabilities, including youth, students, and vulnerable adults. For this reason, criminal background checks are required for all service provider personnel or contractors who work with DVR consumers or who work with DVR consumer information, including individuals serving as the main contact for any service agreement and individuals who perform a service provider's reporting or billing related to its service provider agreement. DVR may not allow individuals with substantially related arrests or convictions to work with DVR consumers or consumer-related information.

Prior to working with DVR consumers or consumer-related information, service providers shall obtain a criminal history search from the records maintained by the Wisconsin Department of Justice for all service provider personnel or contractors who work with DVR consumers or DVR consumer information, including individuals who perform reporting or billing. Guidance on how to review whether an arrest or conviction is "substantially related" to a position within the requirements of Wisconsin's Fair Employment Law is provided at [Arrest and Conviction Record](#) page. It is the responsibility of the service provider to conduct this criminal history search and come to a determination as to whether an arrest or conviction is substantially related to the employee's job duties.

DVR may request additional information from a service provider in order to determine if an arrest or conviction is substantially related to providing services to DVR consumers or working with DVR consumer information.

The below list provides some examples of offenses which may be considered substantially related to the positions of service providers, their personnel, and contractors who provide services to DVR consumers or work with DVR consumer information.

### Crimes related to loss of life

- Wis. Stat. § 940.01 - First-degree Intentional Homicide
- Wis. Stat. § 940.02 - First-degree Reckless Homicide
- Wis. Stat. § 940.03 - Felony Murder
- Wis. Stat. § 940.05 - Second-degree Intentional Homicide
- Wis. Stat. § 940.06 - Second-degree Reckless Homicide
- Wis. Stat. § 940.07 - Homicide resulting from negligent control of vicious animal

- Wis. Stat. § 940.08 - Homicide by negligent handling of dangerous weapon, explosives, or fire
- Wis. Stat. § 940.09 - Homicide by intoxicated use of vehicle or firearm
- Wis. Stat. § 940.10 - Homicide by negligent operation of vehicle
- Wis. Stat. § 940.12 - Assisting Suicide

### **Crimes related to physical harm to others**

- Wis. Stat. § 940.19 (2), (3), (4), (5), (6) - Battery; substantial battery; aggravated battery
- Wis. Stat. § 940.195 - Battery to an unborn child; substantial battery to an unborn child; aggravated battery to an unborn child
- Wis. Stat. § 940.20 - Battery: special circumstances
- Wis. Stat. § 940.201 - Battery or threat to witnesses
- Wis. Stat. § 940.203 - Battery or threat to an officer of the court or law enforcement officer
- Wis. Stat. § 940.205 - Battery or threat to Department of Revenue Employee
- Wis. Stat. § 940.207 - Battery or threat to Department of Safety and Professional Services or Department of Workforce Development employee
- Wis. Stat. § 940.208 - Battery to certain employees of counties, cities, villages, or towns
- Wis. Stat. § 940.21 - Mayhem
- Wis. Stat. § 940.23 - Reckless injury
- Wis. Stat. § 940.235 - Strangulation and suffocation
- Wis. Stat. § 940.24 - Injury by negligent handling of dangerous weapon, explosives or fire
- Wis. Stat. § 940.25 - Injury by intoxicated use of a vehicle
- Wis. Stat. § 940.285 - Abuse of individuals at risk
- Wis. Stat. § 940.29 - Abuse of residents of penal facilities
- Wis. Stat. § 940.291 – Law enforcement officer; failure to render aid
- Wis. Stat. § 940.295 - Abuse and neglect of patients and residents
- Wis. Stat. § 940.30 - False imprisonment
- Wis. Stat. § 940.302 - Human trafficking
- Wis. Stat. § 940.305 - Taking hostages
- Wis. Stat. § 940.31 – Kidnapping
- Wis. Stat. § 940.315 – Global positioning devices
- Wis. Stat. § 940.32 – Stalking
- Wis. Stat. § 940.34 – Duty to aid victim or report crime

### **Crimes related to sexual harm of others**

- Wis. Stat. § 940.22 - Sexual exploitation by therapist; duty to report
- Wis. Stat. § 940.225 - Sexual assault

### **Crimes against children**

- Wis. Stat. § 948.02 - Sexual assault of a child
- Wis. Stat. § 948.025 - Engaging in repeated acts of sexual assault of the same child
- Wis. Stat. § 948.03 - Physical abuse of a child
- Wis. Stat. § 948.04 - Causing mental harm to a child
- Wis. Stat. § 948.05 - Sexual exploitation of a child
- Wis. Stat. § 948.051 - Trafficking of a child
- Wis. Stat. § 948.055 - Causing a child to view or listen to sexual activity
- Wis. Stat. § 948.06 - Incest with a child
- Wis. Stat. § 948.07 - Child enticement
- Wis. Stat. § 948.075 - Use of a computer to facilitate a child sex crime
- Wis. Stat. § 948.08 - Soliciting a child for prostitution
- Wis. Stat. § 948.085 - Sexual assault of a child placed in substitute care
- Wis. Stat. § 948.09 - Sexual intercourse with a child age 16 or older
- Wis. Stat. § 948.093 – Underage sexual activity
- Wis. Stat. § 948.095 - Sexual assault of a child by a school staff person or a person who works or volunteers with children
- Wis. Stat. § 948.11 - Exposing a child to harmful material or harmful description or narrations
- Wis. Stat. § 948.12 - Possession of child pornography
- Wis. Stat. § 948.13 - Child sex offender working with children
- Wis. Stat. § 948.14 - Registered sex offender and photographing minors
- Wis. Stat. § 948.20 - Abandonment of a child
- Wis. Stat. § 948.21 - Neglecting a child
- Wis. Stat. § 948.215 – Chronic neglect; repeated acts of neglect
- Wis. Stat. § 948.23 - Concealing or not reporting death of a child; not reporting disappearance of a child
- Wis. Stat. § 948.24 – Unauthorized placement for adoption
- Wis. Stat. § 948.25 – Unauthorized interstate placements of children
- Wis. Stat. § 948.30 - Abduction of another's child; constructive custody
- Wis. Stat. § 948.50 – Strip search by school employee
- Wis. Stat. § 948.51 - Hazing

- Wis. Stat. § 948.53 - Child unattended in childcare vehicle

In addition, DVR has determined that in cases where service provider personnel or contractors may be assisting consumers with financial related matters and have access to consumers' personally identifiable information, the following types of conviction records are substantially related to the positions that provide services to DVR consumers or work with DVR consumer information:

### **Crimes against property**

- Wis. Stat. § 943 .02 - Arson of buildings; damage of property by explosives
- Wis. Stat. § 943 .10 - Burglary
- Wis. Stat. § 943.20 - Theft
- Wis. Stat. § 943.201 - Unauthorized use of an individual's personal identifying information or documents
- Wis. Stat. § 943.203 - Unauthorized use of an entity's identifying information or documents.
- Wis. Stat. § 943.32 - Robbery
- Wis. Stat. § 943.38 - Forgery
- Wis. Stat. § 943.395 - Fraudulent insurance and employee benefit program claims
- Wis. Stat. § 943.41 - Financial transaction card crimes
- Wis. Stat. § 943 .81 - Theft from a financial institution
- Wis. Stat. § 943.82 - Fraud against a financial institution
- Wis. Stat. § 943.83 - Loan fraud
- Wis. Stat. § 943.85 - Bribery involving a financial institution
- Wis. Stat. § 943.86 - Extortion against a financial institution
- Wis. Stat. § 943 .87 - Robbery of a financial institution
- Wis. Stat. § 943.88 - Organizer of financial crimes
- Wis. Stat. § 943.89 - Mail fraud
- Wis. Stat. § 943.895 – Money laundering
- Wis. Stat. § 943.90 - Wire fraud against a financial institution
- Wis. Stat. § 946.91 Medical Assistance Fraud
- Wis. Stat. § 946.93 Public Assistance Fraud

If the service provider knows or has reason to know that any of its personnel or contractors requiring background checks are not residents of Wisconsin, or if at any time within the last five (5) years preceding the date of the search any of its personnel or contractors have not been residents of Wisconsin, then the service provider shall make a good faith effort to obtain from any state or other United States jurisdiction in which those persons are residents, or were residents within the last five (5) years of the date of the required search, a criminal history search substantially similar to the search conducted by the Wisconsin Department of Justice. Service providers are responsible for completing and paying for all background checks.

Service providers shall also review the Wisconsin Sex Offender Registry to ensure that staff and subcontractors who provide services to DVR consumers or work with DVR consumer information are not on the Sex Offender Registry.

After completing the required criminal background check and checking the Wisconsin Sex Offender Registry, service providers must complete and sign a Certification of Criminal Background Check Form electronically.

If the service provider finds that any of its personnel and/or contractors have been arrested or convicted of a crime that is substantially related to their work with DVR consumers or DVR consumer information, then the service provider must notify DVR of the results if they want the individual to work with DVR consumers or DVR consumer information, so DVR can determine whether mitigating circumstances exist which would allow the individual to work with DVR consumers or consumer information. When providing notification, the service provider shall email the DVR Contract Specialist.

If a service provider requests a mitigation plan, the following steps will be taken:

1. The Service Provider must submit a proposed mitigation plan to the WDA Director and DVR Contract Specialist describing how the service provider will monitor the personnel's or contractor's performance and assure the safety of DVR consumers.
2. The mitigation plan will be reviewed by DVR. Notification of a decision will be provided in writing to the service provider. A mitigation plan may be approved, amended, or denied as necessary to ensure the safety of DVR consumers.
3. If the mitigation plan is approved by DVR, the plan must be signed by the Service Provider, the WDA Director, and the DVR Contract Specialist. A copy of the mitigation plan signed by all parties will be sent to the Service Provider and kept on file by DVR.
4. The WDA Director will follow up with the Service Provider and the approved mitigation plan to monitor the plan and to assure the safety of DVR consumers.

In addition, when new personnel and/or subcontractors are retained to provide services, service providers must complete the required criminal background check and check the Wisconsin Sex Offender Registry prior to allowing the individual to work with DVR consumers or consumer information.

Service providers should require their employees and subcontractors to inform them of any arrest or conviction within 48 hours of the arrest or conviction. Service providers must notify DVR if they know or have reason to believe that their staff or subcontractors are the subject of an investigation that may lead to a conviction that is substantially related to the provision of services to DVR consumers. Such notification shall take place within two (2) business days from the time that the service provider becomes aware of the pending investigation.

Additionally, if the service provider discovers any new arrests or convictions during the term of a pending service agreement, or discovers that an individual requiring a background check was added to the Wisconsin Sex Offender Registry, the service provider must notify the DVR Contract Specialist within two (2) business days from the time that the service provider becomes aware of the new arrest, conviction, or placement on the Wisconsin Sex Offender Registry.

Service providers must keep all criminal background checks on file for three (3) years. DVR reserves the right to request copies of criminal background checks for service providers, as well as all staff and subcontractors covered by a service agreement, at any time.