

☞ **05hr\_JC-Au\_Misc\_pt13j**



☞ Details: Proposed Audit: Personnel Policies and Practices, University of Wisconsin System

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee on Audit...

## COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

## INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING EMPLOYEE DISCIPLINARY PROCESS

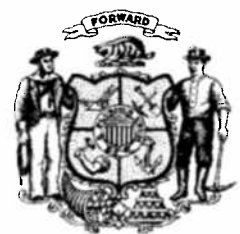
November 3, 2005  
3:00 p.m.  
Van Hise Hall  
19<sup>th</sup> Floor Conference Room  
1220 Linden Drive  
Madison, Wisconsin

- ~~1.~~ Introduction of Members
- ~~2.~~ Statement of Committee Purpose
- ~~3.~~ Explanation of Existing Laws, Regulations, and Practices  
Relating to Employee Discipline
- ~~4.~~ Consideration of Possible Changes to Existing Laws,  
Regulations and Practices
5. Consideration of Next Steps, Including Dates for Future  
Meetings
6. Adjournment

*Next Jan, 11<sup>th</sup> @ 1:00 ?*



# WISCONSIN STATE LEGISLATURE



(1)

Members

11/2/05

Pat Brady

PAR (L)

Judith H. Trumbly

David Walsh (L)

Walter Dickey

Brent Smith (L)

Dave Marquee?

Mike Spector (L)

(Chair)

Scott ? - LAB

(2)

D.W - Bad facts, misunderstanding of law -  
- egregious situations → lost credibility  
- 2 rea

1) assure public - good standards of funds & safety

2) good process to educate & possibly make changes  
- delicate balance - due process of prop. rights against bal. against safety

- hope committee will make suggestions for changes

(3)

Pat Brady

3 big components

1) 14th Amendment - due process rights

2) State Law - <sup>const base state</sup> arrest & conviction records

3) UW's policies & Adm. Code, each <sup>Institution</sup> campus policies & procedures - UWS 4

→ based on University - National norm - AAUP

? Why appeal process takes place before termination?

? Why can't a Chancellor initiate complaint?

Why amt of time given to object to a particular investigator

+ U.S.D. → maybe make a rule that if accused of felony must inform chancellor

→ fair & speedy resolution process

PAR - What is the Boards role in pro

↳ Regs are precluded in earlier phase of process  
bc they ~~will~~ ultimately will make final  
decision to terminate

AFT guy - No prohibition for UW to start its process 134  
conviction

↳ Pat Brady - can be diff.

Walter Dickey - 2 issues

① w/ w/o pay

② Process/efficiency

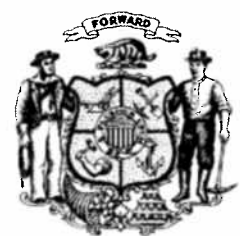
- connection of behavior to UW reputation  
legitimacy

Pat Brady - Discussion - arrest/conviction records

D.W. Are there currently any grounds to suspend w/o pay  
↳ None

M.S. ? legislation that would allow greater sharing of info that  
will not infringe upon the rights of the defendant

JP - Preber Leary - could then suspend w/o pay pending  
outcome



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING EMPLOYEE DISCIPLINARY PROCESS

Minutes of the Meeting

November 3, 2005

3:00 p.m.

Van Hise Hall

19<sup>th</sup> Floor Conference Room

1220 Linden Drive

Madison, Wisconsin

Committee Members Present: Regent Michael Spector, Chair, Regent Peggy Rosenzweig, Regent Brent Smith, General Counsel Pat Brady, Professor Walter Dickey, Chancellor David Markee, Regent President David Walsh

Committee Members Unable to Attend: None

The meeting began with introduction of the Committee members, including their particular qualifications for serving on this committee. Professor of Law Walter Dickey indicated that he had served as Chair of the UW-Madison Committee on Faculty Rights and Responsibilities, had served as investigator in a recent felony matter and had advised on others. He also had headed the State Department of Corrections.

Regent Smith, an attorney, noted that employment law is part of his practice. Regent Rosenzweig, who had served as a state senator and member of the Joint Committee on Finance, brought to the Committee her perspective as a former legislator. Chancellor Markee, of UW-Platteville, brought his experience in making decisions on employee discipline. General Counsel Brady brought 25 years of experience in handling UW employment issues. Regent Spector, an attorney, brought his experience in the area of K-12 disciplinary matters.

Noting that the Committee is very aware of the importance of the matters before it and of the urgency of identifying ways to make needed reforms in the process, Regent Spector called on Regent President Walsh to comment on the Committee's charge.

President Walsh noted that some egregious situations, which were not the norm, had occurred and that the university had lost credibility because of its process for dealing with them and the fact that this process is not well understood. The purposes of the committee are to:

- (1) Assure the public of good stewardship of funding and the safety of employees and students; and

- (2) Conduct an examination of the disciplinary process that will educate the public and everyone involved, maintaining a delicate balance between the need to safeguard employee rights and the need to assure campus safety and good stewardship.

The Committee is charged with making recommendations to the Board of Regents which, in turn, will engage the shared governance process, as appropriate. The Committee is to seek as much input as possible in its deliberations, through an open and transparent process.

General Counsel Brady then provided an overview of existing laws, regulations and practices related to employee discipline, noting that it is a complex system of balancing interests and involves several layers of law and policy. These include:

- 1) Fourteenth Amendment rights of due process for employees;
- 2) State law prohibiting discrimination based on a conviction record, unless it can be shown that the conviction is related to the position in question;
- 3) UW System policies set forth in the Administrative Code;
- 4) Institutional policies and procedures based on the Administrative Rules.

Noting that the Board has authority over faculty, academic staff and limited appointees, Ms. Brady distributed a summary of UWS 4, the Administrative Code chapter dealing with procedures for dismissal of faculty. There is a similar, but somewhat less protective, process for academic staff. Procedures for classified staff are governed by collective bargaining agreements and the Office of State Employment Relations. She pointed that, while classified staff can engage in an appeal process after termination, the appeal process for faculty and academic staff takes place before termination, during which time they remain on the payroll. This procedure was derived from principles established by the American Association of University Professors as part of the effort to protect academic freedom.

Ms. Brady then turned to the particulars of UWS 4, which provides that a tenured faculty member may be dismissed only by the Board of Regents, and only for just cause, and only after due notice and hearing.

The bringing of charges is initiated when a chancellor receives a complaint. An investigation follows, after which the chancellor must offer to discuss the matter with the faculty member before deciding whether to file charges. If the chancellor decides to go forward, the faculty member must be provided with a statement of the charges.

Regent Spector asked if a chancellor can initiate a complaint, and Ms. Brady replied that the rules are ambiguous on that point. The rules could be changed to clarify that matter.

In response to a question by Regent Rosenzweig, Ms. Brady indicated that the requirement for just cause is statutory and that the administrative rules are an elaboration of that requirement. Because faculty have primary responsibility in this area, they must be consulted about any changes.

Noting that each institution provides a standing faculty committee charged with hearing faculty dismissal cases, Ms. Brady indicated that a faculty member under charges can request a



hearing within 20 days of the notice of the statement of charges and that the hearing must be held within 20 days after the request, except that the time limit may be enlarged by mutual consent of the parties or by the committee. She pointed out that the process often is extended at this point because of the difficulty of bringing together a large committee to conduct the hearing.

Professor Dickey added that, if the chancellor at UW-Madison receives a complaint, the provost appoints an investigator to gather facts. The Committee on Faculty Rights and Responsibilities (CFRR) advises the provost on whether to proceed with charges and what discipline to seek. While that step is taken fairly quickly, the subject then has 10 days to object to the investigation. He felt that this is an area that could be streamlined. Noting that the CFRR has six to eight members, he agreed that scheduling is a problem.

With regard to initiating an investigation, he indicated that there is the question as to how a matter comes to the university's attention. One possibility might be to require that conviction of a felony be reported to the department chair. He pointed out that current policies place the chancellor in a judicial role to that he or she could not also be in the position of initiating a complaint. Ms. Brady added that, while UWS 4 provides for the chancellor to initiate an investigation, UW-Madison and UW-Milwaukee have delegated that role to the provost.

In response to a question by Regent Smith, Ms. Brady indicated that dismissal proceedings are rare and it is even rarer for a crime to be involved.

Regent Rosenzweig asked if a timeline for conclusion of a case can be required, and Ms. Brady replied in the affirmative, adding however that scheduling and other issues can cause conclusion of matters to be extended, as can the advent of summer when faculty are not on campus.

Ms. Brady then outlined the elements of due process to be provided to a faculty member under UWS 4, noting that hearings can be lengthy and involved. The hearing committee then prepares a report to the chancellor. Within 20 days of receiving the report, the chancellor must review it and afford the faculty member an opportunity to discuss it. Within 20 days after that, the chancellor must prepare a recommendation for the Board of Regents. If his/her decision differs substantially from that of the faculty committee, he first must consult with the committee and provide opportunity for a written response from the committee before forwarding a recommendation to the Board.

Regent Spector asked if the faculty committee, as well as the university and the faculty member, are represented by counsel; and Ms. Brady replied in the affirmative.

In response to a further question by Regent Spector, Ms. Brady indicated that, while UWS 4 provides that the hearing committee is not bound by common law or statutory rules of evidence, involvement of lawyers generally means that there will be motions made that will have to be ruled on, often after conferring with counsel.

Turning to the UWS 4 section on review by the Board of Regents, Ms. Brady noted that the Board's review is on the record and that a new hearing is not afforded. If the Board decides

to take action different than what is recommended by the chancellor or the faculty committee, it must consult with either the chancellor or committee, as appropriate, before taking final action.

In response to a question by Regent Smith, Ms. Brady indicated that Board review ordinarily occurs only in dismissal cases. If there is no intent of dismissal, any review of other discipline by the Board would be discretionary.

Regent Spector asked if the timeframe for a dismissal proceeding is about three to six months, to which Ms. Brady replied that conclusion of the proceeding could take a year or more, although it could be done in as little as three months if the process were moved forward as rapidly as possible. During this time, the employee usually is not relieved of his/her duties; but even if that occurred, pay would continue until the process concludes, as required by Administrative Rules.

In response to a question by Regent Rosenzweig, Ms. Brady explained that, in the hierarchy of rules, the statutes would come first, followed by the Administrative Rules, and then by the institutional policies and procedures. If there were a disharmony among them, the higher would prevail.

Regent Spector asked if there were any comments or questions from those in the audience.

Russ Witesel, Senior Staff Attorney for the Legislative Council, suggested that, rather than adjusting the overall disciplinary process, there might be an expedited process for extraordinary cases. The Board could specify what would constitute extraordinary cases and maintain the more deliberative process for other cases.

Pam Matthews, assistant to Representative Jeskewitz, agreed, noting the legislative view that the crimes recently reported in the press are unconscionable and that those who committed them should not be teaching our students.

Professor Richard Schauer, of the American Federation of Teachers, said that it is important to bear in mind that faculty serving on dismissal committees also have full time jobs doing teaching, research and service. He pointed out that it is not necessary to wait for completion of a criminal investigation in order to begin the campus investigative process. He also commented that some local faculty policies and procedures are in need of revision.

Ms. Brady cautioned that, while a campus investigation can be initiated while a criminal investigation is proceeding, practical situations often intrude. Law enforcement officers do not want campuses to do anything that might interfere with their investigations and they may take evidence that the campus investigation would require.

Professor Dickey agreed, adding that it would be extremely difficult to move forward before completion of a criminal action. In that regard, he pointed out that a campus investigator must interview the subject, who would not agree to be interviewed if what was said could be used in a criminal case. He identified the following four issues to be addressed:

- 1) What should be the pay status of the person charged in the dismissal proceeding
- 2) What should be done to improve the efficiency of the disciplinary process
- 3) What behavior gives rise to the dismissal process. In that regard, he noted that, if it were decided that commission of a felony would initiate the process, there would be the incentive to plead guilty to misdemeanors instead.
- 4) Lack of clarity about the connection of behaviors to university responsibilities. While the connection with public safety is clear, he thought another connection should be undermining the legitimacy of the university so that it is inhibited from performing its mission.

Noting that these areas all present challenges, he pointed out that the rules as drafted did not contemplate the commission of crimes.

In that regard, Ms. Brady noted that statutory prohibition of discrimination on the basis of a criminal conviction, in the absence of a nexus to the person's position.

Regent Rosenzweig inquired about the prevalence of such statutes nationally, to which Professor Dickey replied that about half of the states have them.

Ms. Brady then passed out a number of hypothetical case studies of faculty members charged with felonies, which were discussed by the Committee.

With regard to the question of suspension without pay, Professor Dickey noted that currently there are no grounds for that to occur; and Regent President Walsh pointed out that this situation is a problem in the public eye. He asked if an employee had ever been dismissed before a criminal trial, to which Professor Dickey and Ms. Brady replied in the negative. In that regard, Professor Dickey noted that there are problems in obtaining evidence until the criminal process has run its course.

Regent Walsh asked if a dismissal case could go forward on the basis of clear and convincing evidence if the criminal case is ongoing.

In response to a question by Regent Spector about use of preponderance of evidence, rather than clear and convincing evidence, Ms. Brady indicated that the standard of clear and convincing evidence is specified in the Administrative Code and in institutional faculty policies and procedures.

In response to a question by Regent President Walsh, Professor Dickey felt that clear and convincing evidence or preponderance of evidence could be found but that the nexus to university responsibilities could be difficult. In that regard, he felt that undermining the university's ability to perform its mission could be a basis for dismissal.

Regent Spector noted that words used in that regard would need to be precise in order to protect speech. He asked if there could be legislation requiring greater sharing of facts between the criminal justice system and the university.

Ms. Brady thought that might be difficult because of variation among individual cases. While there currently is cooperation with law enforcement authorities, it is highly case specific.

Regent Spector pointed out that the public sees a lack of legitimacy in waiting 10 or 12 months to discipline someone who has committed an egregious crime.

Ms. Brady suggested addressing the matter of suspension without pay, and Professor Dickey that there could be a preliminary hearing on suspension without pay pending final resolution of the matter. He added that suspension, even with pay, is a serious consequence for someone seeking tenure.

Regent Smith asked for more information on alternative language in statutes barring discrimination on the basis of criminal conviction, and Mr. Whitesel said that such information could be obtained.

Brian Tanner, of United Council of UW Students, inquired about protections for students; and Ms. Brady replied that students, as well as others, are able to file complaints. Mr. Tanner felt that students might hesitate to do that for fear of faculty retaliation.

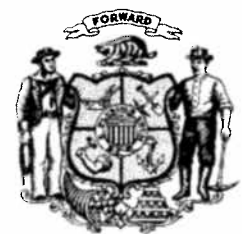
Noting that, in the area of sexual harassment, every university has an office to advise student on going forward with complaints, Ms. Brady added that it is difficult to get students to come forward in disciplinary matters. Often, their goal is simply to earn their degrees and move on.

Kevin Kniffin, of the American Federation of Teachers, commented that many states have collective bargaining for faculty and that collective bargaining procedures may work better in disciplinary situations.

Upon conclusion of the discussion, it was agreed that minutes would be circulated and that the Committee would meet again on November 11th, following the Board of Regents meeting.



# WISCONSIN STATE LEGISLATURE



Summary of UWS 4 Procedures for Dismissal of Faculty

A faculty member having tenure may be dismissed only by the Board of Regents, and only for just cause, and only after due notice and hearing, s. 36.13, Wisconsin Statutes; UWS 4.01.

- invoking this process is very rare

(1) Bringing Charges (UWS 4.02)

a. Whenever the chancellor receives a complaint which s/he deems substantial, and which, if true, might lead to dismissal:

1. Chancellor shall, within a reasonable time, initiate an investigation, and;

2. Before deciding whether to file charges, offer to discuss the matter informally with the faculty member.

b. A faculty member must be provided with a statement of the charges, served personally or by certified mail, and a statement of the appeals procedures available.

(2) Hearing (UWS 4.03-4.04)

a. The faculty of each institution must provide a standing committee charged with hearing faculty dismissal cases.

b. A faculty member under charges must request a hearing before the standing faculty committee within 20 days of notice of the statement of charges and a hearing shall be held not later than 20 days after the request, except that the time limit may be enlarged by the mutual consent of the parties or by the committee.

(3) Due Process (UWS 4.05-4.06)

Principal elements of due process required to be afforded the faculty member whose dismissal is sought include:

a. Service of written notice of hearing on the charges at least 10 days prior to hearing;

b. A right to the names of witnesses and access to documentary evidence;

c. A right to be heard in his/her defense;

d. A right to counsel or other representation;

- e. A right to confront and cross-examine adverse witnesses;
- f. A verbatim record of the hearing;
- g. Written findings of fact and decision based on the record;
- h. The burden of proving just cause is on the administration or its representatives;
- i. The hearing committee is not bound by common law or statutory rules of evidence, but shall exclude immaterial, irrelevant or repetitious evidence and must give effect to recognized legal privileges.

(4) Recommendations and Board Review

- a. Faculty hearing committee (UWS 4.07)
  - 1. After hearing, the faculty hearing committee forwards the record and its report, findings and recommendations to the chancellor.
  - 2. Within 20 days of receipt of the committee's information, the chancellor must review it and afford the faculty member an opportunity to discuss it.
  - 3. Within 20 days of the discussion with the faculty member, the chancellor must prepare a recommendation for the Board of Regents, unless his/her decision differs substantially from that of the faculty committee. In that situation, the chancellor must promptly consult the faculty hearing committee and provide the committee with a reasonable opportunity for a written response before forwarding his/her recommendation to the Board.
- b. Board review (UWS 4.08)
  - 1. If the chancellor recommends dismissal, the Board must review the record and provide an opportunity for filing exceptions to the recommendations and for oral argument.
  - 2. If the Board decides to take action different from that recommended by the chancellor or faculty hearing committee, it must consult with either the chancellor or the committee, as appropriate, before taking final action.

(5) Suspension from duties (UWS 4.09)

- a. Pending the final decision on dismissal, the faculty member shall not normally be relieved of duties.
- b. If, after consultation with appropriate faculty committees, the chancellor finds that substantial harm to the institution may result if the faculty member is continued in his/her position, he/she may be removed immediately, but his/her salary shall continue until the Board makes its decision as to dismissal.



## CASE STUDIES: FACULTY MEMBERS CHARGED WITH FELONY

### *Case #1*

UW-Prairie Chancellor Learned Smith has been informed by his administrative assistant of a report in the local newspaper that Professor Fred Faculty member was recently arrested by the Prairie City police and charged with several counts of possession of child pornography, a class I felony under Wisconsin law. According to the newspaper account, Professor Faculty member was arrested at his home near the university campus, and is free on signature bond, pending further proceedings. Professor Faculty member is quoted in the news story as vehemently denying his guilt.

Professor Faculty member is a tenured faculty member in the History Department, and has been an exemplary teacher and researcher for over 30 years. There is no record of any previous disciplinary action against him, and no one has filed a formal complaint with the chancellor regarding the allegations described in the newspaper story, or for any other reason.

Chancellor Smith is concerned about the situation, but he is aware of the due process protections for tenured professors, and of the Wisconsin statute prohibiting employment discrimination on the basis of arrest record. He is considering how to proceed, when the campus police chief comes to tell him that the FBI has appeared with a properly executed search warrant, and has seized Professor Faculty member's university computer. The FBI will not reveal the reason for its action.

### *Case #2*

The Prairie City police visit Chancellor Smith to advise him that Trudy Teacher has been convicted in another state of misappropriation of funds from a charitable foundation with which she was a volunteer while teaching at a junior college there. This crime is a felony in the other jurisdiction. Ms. Teacher entered a plea of "no contest," and agreed to make restitution to the charity. She is on probation in the other state for a period of two years, but the terms of her probation allow her to continue her career as a tenure-track faculty member at UW-Prairie.

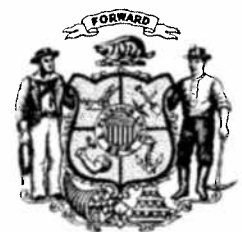
Ms. Teacher does not yet have tenure, and is in the middle of her second contract year at UW-Prairie. She is considered to have a promising academic career in the field of finance and is a popular teacher. The campus was unaware of her legal problems when she was hired. As in the case of Professor Faculty member, there have been no complaints about her conduct at UW-Prairie.

*Case #3*

Chancellor Smith has received a complaint from Sherry Student against Professor Perry Proff, alleging that Professor Proff sexually assaulted her, and asking that he be dismissed from the university. Ms. Student is a graduate student in the Department of Music. Professor Proff is a tenured faculty member in the Biology Department. Ms. Student has also filed a complaint with the Prairie City police against Professor Proff. Chancellor Smith began an investigation of Ms. Student's complaint, appointing a member of the Law School faculty to look into her allegations. The police, however, have now requested that the University stay its proceedings until they complete their own work on Ms. Student's complaint.



# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE SUZANNE JESKEWITZ

FROM: Mary Matthias, Senior Staff Attorney

RE: Impact of UW Faculty Self Governance Rights on the Authority of the UW to Enact Faculty Personnel Policies

DATE: October 3, 2005

This memorandum responds to your request for a discussion of whether “shared governance,” also referred to as “faculty self governance,” prevents the University of Wisconsin (UW) Board of Regents from being able to enact employment-related policy decisions. In light of your concerns regarding the University’s response to felony convictions of several faculty members, the memorandum also outlines legislation that would require an investigation and decision in every instance of a faculty felony conviction.

As discussed below, the UW faculty’s statutory right to self governance does not prohibit the Board of Regents from enacting or changing faculty personnel policies, but it does require the Board of Regents to grant the faculty an opportunity to participate in the development or modification of those policies. Faculty shared governance rights do not impact the Legislature’s ability to mandate faculty personnel policies by statute.

The statutory right of faculty shared governance is set forth in 36.09 (4), Stats., as follows:

**36.09 (4) FACULTY.** The faculty of each institution, subject to the responsibilities and powers of the board, the president and the chancellor of such institution, shall be vested with responsibility for the immediate governance of such institution *and shall actively participate in institutional policy development. As such, the faculty shall have the primary responsibility for academic and educational activities and faculty personnel matters.* The faculty of each institution shall have the right to determine their own faculty organizational structure and to select representatives to participate in institutional governance. [Emphasis added.]

The language that is relevant to your question is the requirement that faculty “shall actively participate in institutional policy development.” Although the statute does not delineate the precise degree and nature of the faculty’s participation rights, and this issue has not been litigated, it appears that at a minimum, it requires the Board of Regents to grant the faculty an opportunity to either provide its recommendations for policies or its commentary on proposed policies.

It is important to note that the statute does not give the faculty veto authority over any proposed UW policies, including faculty personnel policies. The faculty does not have to approve a policy in order for it to be implemented by the Board of Regents. The statute does not require the faculty’s approval, only their “active participation.”

Section UWS 2.02, Wis. Adm. Code, the administrative rule promulgated by the Board of Regents that implements faculty self governance, recognizes that the Board of Regents has the ultimate authority to set policy:

**UWS 2.02 Delegation.** Rules and procedures developed pursuant to chs. UWS 3, 4, 5, 6, and 8 by the faculty of each institution shall be forwarded by the chancellor to the president and by the president to the board for its approval prior to their taking effect. Such policies and procedures, *unless disapproved or altered by the regents*, shall be in force and effect as rules of the regents. [Emphasis added.]

The rule authorizes the faculty of each institution to develop rules and procedures pertaining to the following topics, within certain parameters established in administrative rule by the Board of Regents: faculty appointments, procedures for dismissal of faculty, layoff and termination of faculty for reasons of financial emergency, complaints concerning faculty conduct and faculty grievances. The rules and procedures developed by the faculty are forwarded to the Board of Regents, which has authority to approve, disapprove, or alter those recommendations.

Although the UW’s administrative rules provide for procedures for dismissal of faculty for cause, which may include a felony conviction depending on the circumstances of a particular case, there is no clear requirement in the rules or the statutes that an investigation or dismissal procedures be initiated in the case of a felony conviction. The pertinent rule provision provides as follows:

**UWS 4.02 Responsibility for charges.** (1) Whenever the chancellor of an institution within the university of Wisconsin system against a faculty member which he/she deems substantial and which, if true, might lead to dismissal under s. UWS 4.01, the chancellor shall within a reasonable time initiate an investigation and shall, prior to reaching a decision on filing charges, offer to discuss the matter informally with the faculty member. A faculty member may be dismissed only after receipt of a written statement of specific charges from the chancellor as the chief administrative officer of the institution and, if a hearing is requested by the faculty member, in accordance with the provisions of this chapter. If the faculty member does not request a hearing, action shall proceed along normal administrative lines but the provisions of ss. UWS 4.02, 4.09, and 4.10 shall still apply.

Under the rule, dismissal procedures, which include an investigation of the charges against a faculty member, are required only when all three of the following happen: (1) a chancellor receives a complaint against a faculty member; (2) the chancellor deems the complaint to be substantial; and (3) the chancellor determines that if the complaint is true, it might lead to a dismissal. The rule does not automatically require a complaint to be filed, or an investigation to be conducted, in the case of a felony conviction of a faculty member.

Legislation could be developed to require the UW to conduct an investigation and issue a formal decision in every instance of a faculty felony conviction. The purpose of the investigation would be to determine whether the conduct of the faculty member constitutes just cause for dismissal. The legislation could ensure that the UW act promptly by specifying that the investigation must be initiated within a certain number of days of the conviction and the initial ruling must be issued within a certain time frame.

A review of Wisconsin fair employment law indicates that although the law grants an employer authority to fire an employee for reasons related to a felony conviction under certain circumstances, there is, in general, no requirement that an employer do so. Requiring the UW to conduct an investigation and issue a decision in a timely fashion in the case of every faculty felony conviction may be a reasonable middle ground between requiring the automatic termination of every faculty member convicted of a felony (which poses serious constitutional concerns) and the current law which does not require any action by the University in the case of faculty felony convictions.

The legislation under discussion could also address the standards used to determine whether a faculty member convicted of a felony should be retained. This could be accomplished by amending the statutes governing the impact of arrest and conviction records on employment, within constitutional constraints, to specify that certain felony convictions are grounds for termination of UW faculty.

Please contact me at 266-0932 if you have questions or would like more information on this topic.

MM:jal



# Draft

## *Expedited Process Components/Concerns Related to Possible UW Administrative Rule*

1. Due Process Considerations
  - Opportunity to be heard
  - Opportunity to confront witnesses
  - Right to representation
  - Right to fair/impartial determination
2. Balance of Interests
  - Public
  - Institution/System
  - Faculty
  - Staff
  - Students
3. Process
  - Initiation
    - Who can start process?
    - What standards apply?
    - What checks/balances?
  - Investigation
    - By whom?
    - Report to whom?
  - Timelines
    - Guidelines
    - Mutually agreed upon delays/extensions
  - Recommendations: Sequence and Review
    - To Regents from investigation/institution?
    - Range of sanctions
    - Standards for sanctions (tied to specific sanction?)
    - Appeal rights
  - Other Considerations





BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF  
DISCIPLINARY PROCESS

Minutes of the Meeting

November 11, 2005  
1:30 p.m.  
Van Hise Hall, Room 1511  
1220 Linden Drive  
Madison, Wisconsin

Committee Members Present: Regent Michael Spector, Chair, General Counsel Pat Brady, Professor Walter Dickey, Chancellor David Markee, Regent Peggy Rosenzweig, and Regent Brent Smith

Committee Members Unable to Attend: None

Upon motion by General Counsel Brady, seconded by Professor Dickey, the minutes of the November 3, 2005 meeting were approved.

A paper was distributed on alternatives for improving the disciplinary process, formulated by Regent Spector and Ms. Brady following discussion at the November 3<sup>rd</sup> meeting.

Professor Dickey noted the suggestion made at the last meeting that there be an expedited process for egregious situations that would be separate from the regular disciplinary process, which would continue to be used for other matters.

With regard to initiation of the process, the paper pointed out that beginning the disciplinary process where criminal conduct may be in issue can be difficult since the administration may not learn of the alleged misconduct in the ordinary course of business. Possible responses could include requiring that a faculty or academic staff member charged with or convicted of a crime report that fact to his/her department chair or supervisor who in turn would convey it to the provost or chancellor.

Ms. Brady expressed support for having an obligation to report, and Regent Rosenzweig agreed, noting that the requirement would only apply to serious crimes.

Regent Spector asked if there was any discomfort with a reporting requirement, and none was expressed by Committee members.

Professor Richard Schauer, of the American Federation of Teachers, disagreed with the proposed requirement because he felt that it would require self-incrimination by affected faculty/academic staff.

Professor Ray Spoto, of the Association of UW Professionals, said that he would agree with such a requirement if it were confined to crimes that would cause danger in the workplace.

With regard to what should be reported, Regent Smith felt the list should be specific, so that employee discretion would not be involved.

Chancellor Markee felt the list should include such crimes as sex offenses and others involving safety and security on campus, but should not include all felonies.

Ms. Brady noted that a definition confined to danger to the campus community would not include other behaviors that threaten the credibility of the university, and Chancellor Markee suggested that those could follow the regular, rather than the expedited, process.

Regent Rosenzweig added that the requirement should include crimes that are a danger to the broader community, as well as the campus.

For inclusion in the expedited process, Professor Dickey suggested the following types of crimes:

- Those that would pose a danger to others
- Those that would impugn the honesty and trustworthiness of the offender and his/her fitness to be a faculty member
- Those that would injure the legitimacy of the university.

Chancellor Markee commented that those involving honesty and trustworthiness could follow the regular process if they would not endanger others.

Professor Dickey noted that a person charged with murder may or may not be a danger to others. Even if not, the expedited process would be justified because public trust would be damaged by having someone charged with murder on staff.

Professor Mark Evenson, of UW-Platteville, cautioned that a criterion of undermining the legitimacy of the university could be a slippery slope.

Professor Dickey added that care would need to be taken to protect freedom of speech and academic freedom.

Regent Spector indicated that the reporting requirement should include any crime that threatened a student or colleague, such as assault.

Professor Schauer commented that a person engaged in felonious behavior would be unlikely to comply with a reporting requirement.

Regent Spector asked if the requirement should apply to being charged with a crime or should apply only if the charge resulted in a conviction.

Professor Spoto said that he would favor conviction, since a person could be found innocent of a charge.

Ms. Brady noted that a charge and conviction often are separated by a considerable period of time.

Regent Spector thought that the list might differ for charges and convictions; for example, it would be necessary to report a charge of murder, but only a conviction for a crime like shoplifting.

Professor Dickey thought that a list of specific offenses, such as murder, sexual assault, armed robbery, and sex offenses involving children might be needed, although it would be important to have some discretion. The process would have to be fair, so that a person would not be dismissed based only on being charged with a crime.

Regent Rosenzweig said that the expedited process would only apply to serious crimes involving a threat to the community and reputation of the university.

Regent Spector said that for the next meeting a list would be prepared of crimes that would have to be reported.

The alternatives paper identified another issue involved in initiation of the disciplinary process as whether the chancellor or provost should have sole authority to begin an investigation or whether there should be some level of consultation with governance groups and whether it is preferable to have the chancellor or the provost responsible for the decision to commence an investigation.

Professor Dickey expressed a preference for consultation with a governance group if the consultation could take place within three days.

Ms. Brady noted that UW-Madison rules call for the provost to commence an investigation, since the chancellor is the decision maker in the disciplinary process. She asked if the provost should have that role at all institutions.

Chancellor Markee felt that the provost should be charged with commencing investigations, and Regent Spector concurred.

In response to a question by Regent Rosenzweig, Professor Dickey said that two of the three recent cases at UW-Madison would fit the definitions being discussed for crimes that would warrant the expedited process. The one that involved stalking would not.

Ms. Brady noted that eliminating the need to wait for a complaint to be filed before beginning an investigation would require administrative rule making.

Russ Whitesel, Senior Staff Attorney for the Legislative Council, added that it could be a separate rule, rather than an amendment to existing rules.

Professor Evenson asked if there would be faculty participation in any rule changes, and Regent Spector replied in the affirmative.

Returning to the alternatives paper, Regent Spector indicated that one option would be to suspend a person accused of certain offenses without pay.

Professor Dickey expressed support for suspension without pay in the case of a person charged with a serious offense if there is substantial likelihood that the person committed the crime.

In response to a question by Regent Rosenzweig, Professor Dickey explained that one would reach that conclusion by investigating and gathering facts, after which a decision would be made as to whether the standard is met. In that process, the investigator would examine the criminal complaint and police reports; and the person accused would have an opportunity to be heard.

Regent Spector added that the accused person could be represented by counsel.

Mr. Whitesel asked if decisions on suspension without pay would go to the Board of Regents, and Regent Spector replied in the negative.

Mr. Whitesel asked if the reporting requirement would apply to crimes committed in the past, and Regent Spector responded that application of the rule would be prospective.

Professor Spoto commented that if the person were found to be innocent, he or she would have to be reinstated with back pay.

Professor Schauer remarked that back pay would not be adequate, since the person also have incurred attorney fees and other expenses. He felt that denial of pay would be unfair and would impair the ability of the accused to mount a defense.

Mr. Whitesel asked what would happen if the upcoming Legislative Audit Bureau audit turned up serious crimes that had been committed in the past; and Regent Spector said that he did not think the expedited process would be used for past crimes.

The Committee then considered a time frame for an expedited process.

Professor Dickey felt that three days should be allowed for the provost to consult with faculty about beginning an investigation. He suggested shortening the current 10 days that UW-Madison allows for the accused to object to an investigation to two working days.

Professor Schauer noted that at UW-Whitewater there is no opportunity to object and that, at UW-Milwaukee, the Committee on Faculty Rights and responsibilities appoints the investigator and conducts the hearing.

With regard to conducting an investigation, Regent Spector suggested two weeks for an in-state investigation and three weeks if an out-of-state investigation is involved.

After completion of the investigation, Professor Dickey suggested a time frame of five working days for the chancellor to engage in consultation and decide whether to seek dismissal or other discipline.

Regent Spector suggested 14 days for the faculty committee to conduct a hearing and render a decision. The chancellor would have three working days to forward his decision to the Board of Regents.

In response to a question by Chancellor Markee, Regent Spector indicated that a decision on suspension without pay could be made after completion of the investigation.

Mr. Whitesel felt that a suspension also could be immediate.

Mary Matthias, Senior Staff Attorney for the Legislative Council, added that another option would be for the decision on suspension to take place after the hearing.

Mr. Whitesel asked if the person would have access to the campus following suspension, and Regent Spector replied that the person probably would not, particularly in the case of suspension without pay.

Regent Spector indicated that the issue of when to suspend without pay would remain before the Committee.

After the Board of Regents receives the Chancellor's recommendation, Regent Spector recommended a time frame of ten days for the Board to act. The total time frame for the expedited process would be 60 days.

The Committee then turned to the question identified in the alternatives paper of just cause, defined in terms of the nexus between the alleged misconduct and its impact on a staff member's ability to carry out his or her duties or on the workplace more broadly.

Professor Dickey commented that the standard is vague and needs attention but that the nexus matter is not an issue in the types of serious crimes being considered for the expedited

process. He felt that further definition of the nexus would be worthwhile but could not be accomplished by the December deadline for the Committee's report.

Mr. Whitesel added that the statute barring discrimination on the basis criminal conviction would not affect the serious cases being discussed by the Committee because the statute exempts those crimes substantially related to the work environment.

Regent Spector inquired as to the Committee's view about moving ahead with a dismissal before criminal conviction.

Professor Dickey thought that could occur in rare cases, if the faculty committee concluded that the accused did commit the crime. Mr. Whitesel recommended that the faculty committee make that conclusion a finding in its report.

Mr. Whitesel asked if the expedited process could result in discipline less than dismissal, and Professor Dickey replied in the affirmative.

After conclusion of the discussion, it was decided that the committee would meet next on Tuesday, November 29, 2005, at 2:00 p.m.





## 2. Proposed Classification of Criminal Code Felonies

### COLOR CODES

ENTRIES IN GREEN REFLECT  
UPWARD CLASS ADJUSTMENT  
AFTER APPLICATION OF M.R. CONVERTER.

ENTRIES IN BLUE REFLECT  
NEW CRIMES RECOMMENDED  
FOR ENACTMENT BY THE  
LEGISLATURE OR EXISTING  
CRIMES FOR WHICH  
SIGNIFICANT AMENDMENTS  
ARE PROPOSED.

ENTRIES IN RED REFLECT  
DOWNWARD CLASS ADJUSTMENT  
AFTER APPLICATION OF M.R.  
CONVERTER.

ENTRIES IN BLACK REFLECT  
THE NATURAL PLACEMENT  
OF CRIMES IN A-I SYSTEM  
AFTER APPLICATION OF THE  
M.R. CONVERTER.

**NOTE:** Each entry in green and red is accompanied by a parenthetical which indicates “from \_\_\_\_.” Red and green entries mean that an adjustment has been made either upward (green) or downward (red) from the felony class where a crime would naturally be placed by application of the M.R. converter. The “from” indicates where natural placement would be in the new Class A-I system.

### CLASS A FELONIES (LIFE)

1 <sup>st</sup> Degree Intentional Homicide	940.01(1)(a) & (b)
Partial-Birth Abortion	940.16(2)
Absconding after being adjudicated delinquent for a Class A felony <sup>43</sup>	946.50(1)
Treason	946.01(1)

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<sup>43</sup> This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing. See discussion of juvenile absconding at p. 67.

**CLASS B (40 MAX PRISON; 20 E.S.)**

Absconding after being adjudicated delinquent for a Class B felony <sup>44</sup>	946.50(2)
Conspiracy to commit a crime for which the penalty is life imprisonment (from C)	939.31
Attempt to commit a crime for which the penalty is life imprisonment (from C)	939.32(1)(a)
1 <sup>st</sup> Degree Reckless Homicide (from C)	940.02(1) and (1m)
2 <sup>nd</sup> Deg. Intentional Homicide (from C)	940.05(1) & (2g)
1 <sup>st</sup> Degree Sexual Assault (from C)	940.225(1)
1 <sup>st</sup> Deg. Sex Assault of a Child (from C) <sup>45</sup>	948.02(1)
Repeated Sexual Assault of Same Child (from C) <sup>46</sup>	948.025
Kidnapping (Aggravated) (from A)	940.31(2)(a)
Hostage Taking (Aggravated) (from A)	940.305(1)

**CLASS C (25 MAX PRISON; 15 E.S.)**

1 <sup>st</sup> Deg. Reckless Homicide (“Len Bias” Law)	940.02(2)
Mayhem	940.21
Abuse of Vulnerable Adult (intentional or reckless maltreatment resulting in death)	940.285(2)(b)1g
Abuse & Neglect of Patients & Residents (intentional or reckless abuse or neglect resulting in death of “vulnerable” person)	940.295(3)(b)1g
Hostage Taking (Unaggravated)	940.305(2)
Kidnapping (Unaggravated)	940.31(1) & (2)(b)
Arson of buildings	943.02
Carjacking	943.23(1g)
Armed Robbery	943.32(2)
Absconding after being adjudicated delinquent for a Class C felony <sup>47</sup>	946.50(3)

<sup>44</sup> This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing. See discussion of juvenile absconding at p. 67.

<sup>45</sup> This crime has a 5-year enhancer if the defendant is a person responsible for the welfare of the child. The Committee recommends that this enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a B felony and confinement for up to 40 years followed by extended supervision for up to 20 years is sufficient to deal with circumstances where the aggravator is present.

<sup>46</sup> This crime should be a Class B felony only if the proof demonstrates that the repeated assaults all constituted violations of the First Degree Sexual Assault of a Child statute.

This crime has a 5-year enhancer if defendant is a person responsible for the welfare of the child. The Committee recommends that the enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a B felony and confinement for up to 40 years followed by extended supervision for up to 20 years is sufficient to deal with circumstances where the aggravator is present.

<sup>47</sup> This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing. See discussion of juvenile absconding at p. 67.

**CLASS C (25 MAX PRISON; 15 E.S.) (continued)**

Repeated Sexual Assault of Same Child <sup>48</sup>	948.025
Abduction of Another's Child by Force or Threat of Force	948.30(2)
2 <sup>nd</sup> Degree Sexual Assault (from D)	940.225(2)
2 <sup>nd</sup> Deg. Sex Assault of Child (from D) <sup>49</sup>	948.02(2)
Incest with a Child (from D)	948.06
Tampering with Household Products (causing death) (from A)	941.327(2)(b)4
Homicide by Intoxicated Use of Vehicle (Repeater with 1 or more Prior OWI- type convictions) – NEW CRIME <sup>50</sup>	940.09

**CLASS D (15 MAX PRISON; 10 E.S.)**

Absconding after being adjudicated delinquent for a Class D felony <sup>51</sup>	946.50(4)
Child Enticement	948.07
Soliciting a Child for Prostitution	948.08
2 <sup>nd</sup> Degree Reckless Homicide (from F)	940.06
Homicide by Intoxicated Use of Firearm (from H)	940.09(1g)
1 <sup>st</sup> Degree Reckless Injury (from F)	940.23(1)(a) & (b)
Child Neglect Resulting in Death (from F)	948.21(1)

<sup>48</sup> This crime should be a Class C felony if the evidence shows three or more violations of the Sexual Assault of a Child statute committed against the same victim within a specified period of time but fails to demonstrate that at least three of the repeated assaults all constituted violations of the First Degree Sexual Assault of a Child statute.

This statute has a 5-year enhancer if the defendant is a person responsible for the welfare of the child. The Committee recommends that this enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a B felony under and confinement for up to 40 years followed by extended supervision for up to 20 years is sufficient to deal with circumstances where the aggravator is present.

<sup>49</sup> This statute has a 5-year enhancer if the defendant is a person responsible for the welfare of the child. The Committee recommends that this enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a C felony and confinement for up to 25 years followed by extended supervision for up to 15 years is sufficient to deal with circumstances where the aggravator is present.

<sup>50</sup> See discussion of homicide crimes at p. 43 for a description of this offense.

This statute has a penalty doubler if there was a minor passenger in vehicle at the time of the offense. The Committee recommends that this penalty doubler be recast as a statutory sentencing aggravator. The underlying offense is classified as a C felony and confinement for up to 25 years followed by extended supervision for up to 15 years is sufficient to deal with circumstances where the aggravator is present.

<sup>51</sup> This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing. See discussion of juvenile absconding at p. 67.

**CLASS D (15 MAX PRISON; 10 E.S.) (continued)**

Contributing to Delinquency of a Child (if death is a consequence (from F)	948.40(4)(a)
Homicide by Intoxicated Use of Vehicle (No Prior OWI-Type Record) (from C) <sup>52</sup>	940.09(1)
Abuse of Vulnerable Adult (negligent maltreatment resulting in death)	940.285(2)(b)1g <sup>53</sup>
Abuse & Neglect of Patients & Residents (negligent abuse or neglect resulting in death of "vulnerable" person)	940.295(3)(b)1g <sup>54</sup>

**CLASS E (10 MAX PRISON; 5 E.S.)**

Absconding after being adjudicated delinquent for a Class E felony <sup>55</sup>	946.50(5)
Abortion	940.04(2) <sup>56</sup>
Fleeing an Officer Causing Death (from H)	346.04(3) & 346.17(3)(d) <sup>57</sup>
Abuse & Neglect of Patients & Residents (intentional, reckless or negligent abuse or neglect causing great bodily harm to a vulnerable person) (from F)	940.295(3)(b)1m
Robbery (Unarmed) (from F)	943.32(1)
Contributing to Death: Obstructing Emergency or Rescue Personnel (from F)	941.37(4)
Engaging in Racketeering Activity (from F)	946.84(1)
Physical Abuse of a Child (intentionally causing great bodily harm) (from F)	948.03(2)(a)
Abduction of Another's Child (from F)	948.30(1)

<sup>52</sup> See discussion of homicide crimes at p. 43 for a description of this offense.

This statute has a penalty doubler if there was a minor passenger in vehicle at the time of the offense. The Committee recommends that this penalty doubler be recast as a statutory sentencing aggravator. The underlying offense is classified as a D felony and confinement for up to 15 years followed by extended supervision for up to 10 years is sufficient to deal with circumstances where the aggravator is present.

<sup>53</sup> This crime is listed as "new" because it breaks out negligent maltreatment resulting in death and classifies it at a lower level than intentional or reckless maltreatment resulting in death.

<sup>54</sup> This crime is listed as "new" because it breaks out negligent abuse or neglect resulting in death and classifies it at a lower level than intentional or reckless abuse or neglect resulting in death.

<sup>55</sup> This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing. See discussion of juvenile absconding at p. 67.

<sup>56</sup> Sec. 940.04(2) is part of the pre-Roe v. Wade abortion statute. The text of the abortion crimes codified in Wis. Stat. sec. 940.04 dates back to the 1956 revision of the Criminal Code. When the legislature instituted a classification system for Criminal Code felonies and misdemeanors in 1977, it did not classify the crimes in sec. 940.04. 1997 Wisconsin Act 283 charges the Criminal Penalties Study Committee with classifying all felonies. Thus these crimes are now recommended for classification. However, the Committee recommends that the legislature independently study whether sec. 940.04 should be repealed given the fact that post-Roe v. Wade abortion statutes now exist at secs. 940.13 and 940.15.

<sup>57</sup> See discussion of Fleeing an Officer at p. 56.

**CLASS E (10 MAX PRISON; 5 E.S.) (continued)**

Aggravated Burglary (from C)	943.10(2)
Continuing Criminal Enterprise (from D)	946.85(1)
Aggravated Battery	NEW <sup>58</sup>
Aggravated Battery to Unborn Child	NEW <sup>59</sup>

**CLASS F (7.5 MAX PRISON; 5 E.S.)**

Solicitation: Crime for which Penalty is Life Imprisonment	939.30(2)
Mutilating a Corpse	940.11(1)
Endangering Safety: Discharge Firearm from Vehicle	941.20(3)(a)
Sexual Exploitation by Therapist	940.22(2)
Abuse of Vulnerable Adults (intentional, reckless or negligent maltreatment causing great bodily harm)	940.285(2)(b)1m
Abuse & Neglect of Patients & Residents (intentional abuse or neglect causing great bodily harm)	940.295(3)(b)1r
Modifying Firearm to Make It a Machine Gun	941.26(1m) & (2)(b)
Possession of Explosives	941.31(1)
Administering Dangerous/Stupefying Drug to Facilitate Crime	941.32
Tampering with Household Products (causing great bodily harm)	941.327(2)(b)3
Burglary (Unaggravated)	943.10(1)
Loan Sharking	943.28
Unlawful Receipt of Payments to Obtain Loan for Another (<\$2500)	943.62(4)(c)
Computer Crimes (risk of death or great bodily harm to another)	943.70(2)(b)4
Computer Crimes (risk of death or great bodily harm)	943.70(3)(b)4
Incest	944.06
Pandering (if compensated from earnings of prostitute)	944.33(2)
Sabotage	946.02(1)
Sedition	946.03(1)
Assaults by Prisoners	946.43
Public Officer or Employee Assisting or Permitting Escape	946.44(1g)

<sup>58</sup> The proposed version of Aggravated Battery is similar to that codified in Wis. Stat. sec. 940.19(5). The proposed statute would read as follows: "Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another is guilty of a Class E felony." See discussion of the general battery statutes at p. 48.

<sup>59</sup> The proposed version of Aggravated Battery to Unborn Child is similar to that codified in 940.195(2). The proposed statute would read as follows: "Whoever causes great bodily harm to an unborn child by an act done with intent to cause great bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class E felony." See discussion of the general battery statutes at p. 48.

**CLASS F (7.5 MAX PRISON; 5 E.S.) (continued)**

Bringing Firearm into Prison or Jail; Transferring Firearm to Prisoner	946.44(1m)
Failure to Prevent Sexual Assault of a Child	948.02(3)
Physical Abuse of a Child (intentionally causing bodily by conduct which creates high probability of great bodily harm)	948.03(2)(c)
Failure to Prevent Great Bodily Harm to a Child	948.03(4)(a)
Causing Mental Harm to a Child	948.04
Sexual Exploitation of a Child	948.05(1), (1m) & (2) <sup>60</sup>
Causing a Child under 13 to View or Listen to Sexual Activity	948.055(2)(a)
Child Sex Offender Working with Children	948.13(2)
Interference with Custody of Child with Intent to Deprive Custody Rights; Concealing Child	948.31(1)(b) & (3)
Fleeing an Officer Causing Great Bodily Harm (from I)	346.04(3) & 346.17(3)(c) <sup>61</sup>
2 <sup>nd</sup> Degree Reckless Injury (from H)	940.23(2)(a) & (b)
Injury by Intoxicated Use of Vehicle (from H) <sup>62</sup>	940.25
1 <sup>st</sup> Deg. Reck. Endang. Safety (from H)	941.30(1)
Absconding after being adjudicated delinquent for a Class F felony	NEW <sup>63</sup>

**CLASS G (5 MAX PRISON; 5 E.S.)**

Homicide:Neg. Use of Weapon (from H)	940.08(1) & (2)
Homicide:Neg. Use of Vehicle (from I)	940.10(1) & (2)
Hiding a Corpse (from H)	940.11(2)
3 <sup>rd</sup> Degree Sexual Assault (from H)	940.225(3)
Abuse of Vulnerable Adult (intentional maltreatment under circumstances likely to cause great bodily harm) (from H)	940.285(2)(b)1r
Abuse & Neglect of Patients & Residents (intentional abuse under circumstances that are likely to cause great bodily harm) (from H)	940.295(3)(b)1r
Stalking (aggravated) <sup>64</sup> (from H)	940.32(2m) & (3m)

<sup>60</sup> The classification of the crimes codified in sec. 948.05 includes amendments to that statute enacted in 1999 Wisconsin Act 3.

<sup>61</sup> See discussion of Fleeing an Officer at p. 56.

<sup>62</sup> This statute has a penalty doubler if there was a minor passenger in vehicle at the time of the offense. The Committee recommends that this penalty doubler be recast as a statutory sentencing aggravator. The underlying offense is classified as a F felony and confinement for up to 7.5 years followed by extended supervision for up to 5 is sufficient to deal with circumstances where the aggravator is present.

<sup>63</sup> This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing. See discussion of juvenile absconding at p. 67.

**CLASS G (5 MAX PRISON; 5 E.S.) (continued)**

Felony Intimidation of a Witness (from H)	940.43
Felony Intimidation of a Victim (from H)	940.45
Possession of Firearm by Felon (from I)	941.29
2 <sup>nd</sup> Deg. Reck. Endang. Safety (from I)	941.30(2)
Endangering Safety: Firing into Vehicle/Bldg (from I)	941.20(2)
Theft from Person (from H) <sup>65</sup>	943.20(3)(d)2
Physical Abuse of Child (recklessly causing great bodily harm) (from H)	948.03(3)(a)
Child abandonment (from H)	948.20
Discharge of Firearm in a School Zone (from A misd.)	948.605(3)(a)
Homicide: Neg.Control of Vicious Animal (from F)	940.07
Theft (> \$10,000)	NEW <sup>66</sup>
Receiving Stolen Property (> \$10,000)	NEW <sup>67</sup>
Fraudulent Use of Financial Transaction Card (> \$10,000)	NEW <sup>68</sup>
Retail Theft (> \$10,000)	NEW <sup>69</sup>
Receiving Stolen Property from a Child (> \$5000)	NEW <sup>70</sup>

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<sup>64</sup> The crime of stalking is aggravated if the defendant intentionally gains access to certain records in order to facilitate the violation or if defendant has a prior stalking or harassment conviction.

<sup>65</sup> Extracted from Wis. Stat. sec. 943.20(3)(d) but remove value requirement.

<sup>66</sup> The ordinary crime of Theft (Wis. Stat. sec. 943.20) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property stolen. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

<sup>67</sup> The crime of Receiving Stolen Property (Wis. Stat. sec. 943.34) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property involved. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

<sup>68</sup> The crime of Fraudulent Use of a Financial Transaction Card (penalty in Wis. Stat. sec. 943.41(8)(c)) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the money, goods, services or property illegally obtained. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

<sup>69</sup> The crime of Retail Theft (Wis. Stat. sec. 943.50) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property involved. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

<sup>70</sup> The crime of Receiving Stolen Property from a Child (Wis. Stat. sec. 948.62) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property involved. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law. The value cutoffs are lower than those used in the Receiving Stolen Property statute (Wis. Stat. sec. 943.34) and other companion statutes like theft and retail theft to take into account the fact that the stolen property is received from a child.

The Committee recommends retaining the \$500 value codified in Wis. Stat. sec. 948.62(2)(a). It constitutes part of the prima facie proof that the property received from a child was stolen and that the person receiving the property knew it was stolen.





BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM  
COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY  
PROCESS

**Notice of Public Meeting**

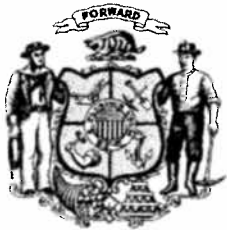
November 29, 2005  
1:00 p.m.  
Van Hise Hall, Room 1511  
1220 Linden Drive  
Madison, Wisconsin

A G E N D A

1. Approval of the minutes of the November 11, 2005 meeting of the Committee
2. Consideration of possible changes regarding faculty/academic staff disciplinary process
3. Discussion of next steps
4. Adjournment



# WISCONSIN STATE LEGISLATURE



11/29/05

Draft Proposal

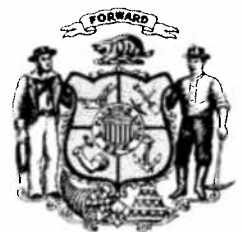
JWS 4.02(3) - change? to allow for additional definition of "just cause"?  
↳ No - just leave it....

JWS 4.09(2)

4.11(2) <sup>Walter</sup> Spoke to Russ .. suggested 2 tiers  
1) per se dismissal - limit # of felonies  
2) have to find engaged behavior & nexus



# WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF  
DISCIPLINARY PROCESS

Minutes of the Meeting

November 29, 2005

1:30 p.m.

Van Hise Hall, Room 1511

Madison, Wisconsin

Committee members present: Regent Michael Spector, Chair; General Counsel Pat Brady, Professor Walter Dickey, Chancellor David Markee, Regent Peggy Rosenzweig, and Regent Brent Smith

Committee members unable to attend: None

The minutes of the November 11, 2005 meeting of the Committee were approved as distributed upon motion Ms. Brady, seconded by Professor Dickey.

Ms. Brady distributed draft amendments to Chapter UWS 4, Wisconsin Administrative Code that she had prepared to reflect possible changes to procedures for dismissal of faculty, as discussed at the November 11<sup>th</sup> meeting.

The draft language would provide that a faculty member who is charged with or convicted of certain serious crimes may be suspended without pay after providing the faculty member with an opportunity to be heard regarding the matter. The language would also provide a reporting requirement and an expedited dismissal process for a faculty member charged with or convicted of those same crimes as identified in the following statutes: Ch. 940 (crimes against life and bodily security), s. 943.02 (arson), s.943.10 (burglary), s. 943.22 (1)(g) (taking a vehicle by force), and s. 943.32 (robbery).

In response to a question by Regent Spector, Ms. Brady indicated that the expedited process would follow the same steps required for other dismissal proceedings, but with expedited time lines.

The Committee then reviewed each section of the proposed amendments. With regard to the definition of “just cause” for dismissal, the question was raised as to whether conviction of the crime should be required in order to constitute “just cause”.

Pointing out that criminal charges sometimes are resolved without conviction, Professor Dickey suggested that the focus should be on the behavior rather than on conviction and that the standard should be an adequate level of confidence that the person had actually committed the crime. The person could be suspended without pay until that level of confidence was reached, at which time dismissal proceedings could take place. Certain crimes would be considered to warrant dismissal per se, without the need to show a nexus to just cause.

Regent Smith added that either conviction or the university’s own process could be used to meet the just cause standard.

Mary Matthias, Senior Staff Attorney for the Legislative Counsel, suggested that the statute could be amended to provide that a faculty member could be dismissed for conviction of those crimes without providing further process.

Turning to proposed amendments to UWS 4.09, concerning suspension from duties, Regent Spector asked if the reference in paragraph (1) to committees is plural in existing language, and Ms. Brady indicated that she would find out if that is the case.

With regard to the new language proposed in paragraph (2), Professor Richard Schauer, of the American Federation of Teachers, commented that a process requiring two hearings, one on suspension without pay and one for dismissal, would render the term “expedited” meaningless.

David Nack, Vice President of United Faculty and Staff, felt that “substantial likelihood” would set the standard for suspension too low. He commented a person should be considered innocent until proven guilty.

Regent Spector noted that, under the proposed language, the provost would make the decision on suspension without pay and that suspension would not trigger a property interest at the level that termination would.

Regent Smith added that there would not be a hearing prior to the suspension.

Regent Rosenzweig inquired about the meaning of the term “showing”, and Professor Dickey suggested that the words “upon a showing” be replaced with the words “if the provost finds”.

Regent Spector explained that the term “substantial likelihood” means that there is independent factual evidence beyond the charge itself that the person committed the crime. Professor Dickey added that, in criminal law, prosecutors use the standard of

substantial likelihood in deciding whether to proceed. He added that such a standard would benefit the faculty member.

Assistant Professor Nack commented that persons being suspended would have their livelihoods taken away without proof that they committed criminal acts.

Professor Schauer asked if the person under investigation would have the opportunity for discovery. Commenting that the standard for suspension without pay should be high, he noted that persons suspended would be deprived of resources needed for their defense.

In reviewing proposed s.4.09(b)(2), Regent Rosenzweig asked what would constitute the opportunity to be heard, and Professor Dickey indicated that, under current rules, the faculty member and his or her counsel have an interview with the provost.

Chancellor Markee suggested that the right to be represented by counsel be stated in the language of the paragraph, and Regent Spector agreed with adding such language.

Regent Smith asked if a time frame should be specified for holding the interview and Chancellor Markee suggested three working days. There was agreement with that suggestion.

With regard to proposed s.4.09(c) Assistant Professor Michael Childers, UW-Extension, commented that due process is important because charges can be found to be false. Suspension without pay deprives a person of his or her livelihood, as well as the ability to mount a defense. He felt that suspension without pay before a criminal conviction would be unfair.

Professor Dickey indicated that, in matters in which he had been involved, the persons being investigated did not speak and so could not incriminate themselves. Instead, counsel spoke on their behalf.

Regent Rosenzweig noted that the crimes that prompted this review were serious and that continuing to pay those who committed them was difficult to defend. She asked what happens when such crimes are committed by employees in the private sector, and Professor Dickey replied that the perpetrators would be fired. Regent Rosenzweig noted that the university's process is more thorough and balanced than would likely be provided by other employers.

Assistant Professor Nack noted that action in the private sector would depend on whether there was a collective bargaining agreement and, if so, what the agreement provided.

In response to a question by Assistant Professor Nack, Professor Dickey explained that, in the criminal process, persons accused of crimes are incarcerated

pending trial based on the standard of probable cause, which is a lower standard than one of substantial likelihood.

Ms. Brady added that an accused person also would be suspended without pay if he or she could not report for work.

There were no comments on proposed s.4.09(d).

The Committee then turned to proposed s.4.11. With regard to paragraph (2), Criminal Misconduct, Professor Dickey related a conversation with Russ Whitesel, Senior Staff Attorney for the Legislative Council. While one possibility would be to enumerate all offenses that would permit suspension without pay and dismissal without nexus to just cause, Mr. Whitesel suggested a two-tier approach. The first tier would enumerate crimes that would warrant suspension without pay and dismissal per se. Crimes in the second tier also would permit suspension without pay and dismissal, but nexus to just cause would have to be found. Mr. Whitesel felt that, without the second tier, too many crimes would end up being placed in the first tier.

Regent Smith asked if crimes in the second tier would need to be enumerated, and Professor Dickey replied in the negative.

Commenting on the listing of crimes in paragraph (2), Pam Matthews, Assistant to Representative Sue Jeskewitz, commented that crimes against children should be included and that parents would be horrified if their children were being instructed by a sex offender.

Regent Rosenzweig agreed that some crimes against children should be placed in the per se category.

Ms. Brady thought it best to place the most egregious crimes in the per se category and to use the regular dismissal process for all others.

Ms. Matthias suggested using felony classifications instead of listing the crimes themselves. If that were done, Professor Dickey said that he would want to include Class A and B felonies, but that there also are serious crimes in classes C and D.

Ms. Matthias suggested that the second tier could be used for crimes that threaten harm to the university.

Regent Spector asked that both proposals be written in draft form for further consideration.

Professor Dickey explained that the crime of stalking would not warrant per se dismissal but that such behavior could warrant suspension without pay for public safety reasons. He also noted that domestic battery rarely is a felony offense.



Regent Spector said that he would prefer to use enumeration of crimes rather than felony classifications.

In response to a question by Ms. Brady, Professor Dickey said that behavior that poses risk to the welfare and safety of others in the community could be included in the second tier if it were not so egregious as to warrant inclusion in the first tier.

Turning to paragraph (3), Reporting Responsibility, Regent Spector inquired as to the penalty for not reporting a crime as required; and Professor Dickey replied that a person could be disciplined for failure to report. Ms. Brady added that the requirement would place the burden on those charged with or convicted of a crime to come forward and report that fact.

With regard to other aspects of the proposed amendments, Chancellor Markee suggested that working days be used throughout in establishing time lines, and there was agreement with that suggestion.

Regent Rosenzweig asked if the full Board should hear dismissal cases brought through the expedited process, rather than having them delegated to a committee. Ms. Brady explained that, under current procedure, the full Board must vote on dismissal actions and that the President of the Board may, but is not required to, refer such cases to the Personnel Matters Review Committee.

With regard to the process going forward, Regent Spector noted that the Committee had been asked to make final recommendations to the Board at the December meeting. Given that there was more work to be done, he intended to make a progress report and note that work is continuing. There was agreement by the Committee with that approach.

In response to a question by Regent Rosenzweig regarding the process for amending administrative rules, Ms. Brady indicated that, after obtaining input from governance groups, proposed amendments would go to the Board of Regents and then to the Legislative Council for review. The Board then would conduct a hearing, after which the proposed rules would be returned to the Legislature. Ms. Matthias added that the proposed amendments would be referred to the appropriate Senate and Assembly committees which could decide to conduct hearings. The committees then would work with the Board to obtain any modifications.

Noting that the Joint Audit Committee expected a report in December, Ms. Mathews suggested that the Chair communicate with the Joint Audit Committee regarding the status of this matter.

She also suggested employing the emergency rule process so that the rules could be put into effect without delay.

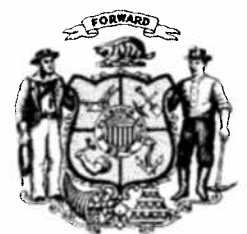
Professor Schauer noted that Chapter 36 defines personnel policy as a primary responsibility of faculty and commented that faculty may not agree with the proposed amendments.

It was decided that the secretary would communicate with committee members to find another meeting date in December, if possible.

The discussion concluded and the meeting was adjourned at 3:15 p.m.



# WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY  
PROCESS

**Notice of Public Meeting**

December 15, 2005  
10:00 a.m.  
Pyle Center, Room 220  
702 Langdon Street  
Madison, Wisconsin

A G E N D A

1. Approval of the minutes of the November 29, 2005 meeting of the Committee
2. Consideration of possible changes regarding faculty/academic staff disciplinary process
3. Discussion of next steps
4. Adjournment