



Bringing You **Relevant** Professional
Development Training to Help You
Master Your Skills

Criminal Background Checks and Subsequent Arrest Reports from the DOJ:

Protocols for Conditional
Offers, Providing Due Process
to Candidates/Employees and
Staying Legal



ACHRO/EEO Annual Conference

October 2, 2026
10:15 a.m. – 11:30 a.m.

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Presented by:

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Practice Areas and Experience

Barbara J. Ginsberg has been representing school and community college districts, and public agencies in all aspects of labor and employment matters and education law for over thirty years. She is an expert in educational leadership, communication practices, and employee performance management, and regularly provides professional development training to administrators and aspiring leaders throughout the nation. She serves as chief negotiator for agencies in collective bargaining with certificated, classified, and police/safety units, and is experienced in both traditional and interest-based bargaining methods. Other areas of Ms. Ginsberg's practice include: workplace investigation (including allegations of harassment and discrimination), classified and certificated employee evaluation and discipline (merit and non-merit), statutory and negotiated leave issues, police and safety matters including POBOR issues, reductions in force, disability accommodation issues, student and employee privacy matters, search and seizure and other constitutional issues, policy/procedure review and development, hiring practices, employment contracts, general counsel and board governance matters, PERB, EEOC, DFEH, OCR, OAH, and personnel commission matters; and federal and state civil litigation.

Prior to joining AALRR in 2008, Ms. Ginsberg spent seven years as a legal advocate for public and private employee unions, including the Association of Orange County Deputy Sheriffs, Riverside Sheriffs Association, Orange County Firefighters Association, Santa Ana Firefighters, and the San Bernardino Public Employees Association; and eight years as an advocate for school and community college districts. She also served as Deputy City Attorney for the City of Victorville, and as a teacher in elementary, middle school, and high school settings.

Events & Speaking Engagements

Ms. Ginsberg is a popular and highly requested speaker and regularly provides training throughout the nation on a variety of subjects of interest to K-12 school districts, community colleges, universities, cities, counties, governing boards, management

INDUSTRIES

Educational & Public Agencies

EDUCATION

J.D., Thomas Jefferson School of Law

B.A., English

University of California, Irvine

United States Naval Academy

ADMISSIONS

1995, California

2024, Idaho

U.S. District Courts, Central and Southern Districts of California

U.S District and Bankruptcy Courts for the District of Idaho

PRACTICE AREAS

Contract Enforcement & Collective Bargaining

Education Law & Litigation

Advice & Counsel

Investigations

Labor & Employment Law

Disciplinary Matters

Discrimination & Harassment

Board Governance

Administrative Hearings & Arbitrations

Professional Development Training

Barbara J. Ginsberg

teams, administrators, police and safety personnel, supervisors, and staff. In addition to addressing subjects that impact the workplace, the educational setting, and collective bargaining, Ms. Ginsberg provides training on the FRISK model for preparing effective documentation regarding employee substandard performance or conduct; leadership and communication skills; conducting investigations in the educational and workplace environments; conflict resolution; Brown Act compliance, and state-mandated sexual harassment training. She regularly lectures at conferences for local, statewide, and national organizations such as AASPA, ACBO, ACCCA, ACSA, ACHRO, CAAASA, CABE, CALSA, CCLC, CCUPCA, CSBA, CSPCA, IASA, NSBA, and WACUBO. She is also a regular instructor at various personnel and administrator academies throughout the country, and a guest lecturer at several universities. She regularly mentors law students and young lawyers.

Upcoming conferences and speaking events include:

Leadership Series with Barbara Ginsberg – Statewide (virtual and/or in person) (September 2026 through April 2027)

- Communicating with Difficult People and Influencing Change
- Managing & Addressing Conflicts Between Employees in the Workplace
- Effective Evaluations and Evaluation Meetings
- Preparing, Delivering, and Monitoring Employee Improvement Plans
- Team Building Tips That Will Help You Transform Your Work Site
- From Supervisor to Leader: Responsibilities, Repairing Relationships, and Infusing the Practice of Civility in the Workplace
- Troubleshooting Leadership: How to Lead Notwithstanding Challenging People and How to Lead in Challenging Circumstances

Central Coast Professional Development Consortium Series (Virtual) (September 2026 through April 2027)

- Sexual Harassment & Abusive Conduct Prevention Training for Supervisors (September & April)
- Pregnancy in the Workplace: Fulfilling Your Legal Obligations Across the Three Trimesters of Pregnancy
- Preparing, Delivering & Monitoring Employee Improvement Plans
- Where Student Behaviors, Workplace Safety * Behavioral Plans Intersect: Staying Safe as an Employee
- Trauma-Informed Interviews and Investigation Techniques

FRISK® Documentation Model for K-12 LEAs & Private Schools (State/National)

FRISK® Documentation Model for Community College Districts (State/National)

FRISK® Documentation Model for Cities and Counties (State/National)

- Preparing Effective Documentation Regarding Employee Substandard Performance or Conduct
- Techniques for Effective Communication with Employees About the FRISK® Document & Influencing Employee Improvement
- Advanced FRISK®: Focus on Scenarios and Writing Techniques

Negotiations Series (virtual)

- Introduction to Bargaining
- Crafting and Responding to Proposals
- How to Deal with Conflict at the Table/Impasse
- Mastering the Art of Negotiation

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K-12 Education Law Conference – Sacramento – November 16, 2026

K-12 Education Law Conference – Cerritos – November 12, 2026

Shell Beach K-12 Conference – April 14-16, 2027

Topics to be announced in Winter 2026

Shell Beach Higher Education Conference – August 12-14, 2026

Topics to be announced in Winter 2026

Cultural Competence & Sensitivity Institute – Statewide (virtual)

101 Series

- Cultural Sensitivity in the Workplace
- Understanding and Managing Implicit Bias, Gaslighting, and Racelighting
- Managing & Addressing Conflicts Between Employees in the Workplace

102 Series

- Implementing Employment Practices that Support Cultural Competence
- Conducting Investigations/Addressing Complaints with a Culturally Sensitive Lens
- Best Practices for recruiting, Hiring, and retaining a Diverse Workforce

Additional Topics for Individual School Districts, Community College Districts, Charter Schools, Private Schools, Counties, and Cities

- Nurturing the CEO/Superintendent/President-Board Member Relationship
- County Board of Education and County Superintendent Roles and Responsibilities
- Criminal Background Checks and Subsequent Arrest Reports: Protocols for Conditional Offers, Providing Due Process to Candidates/Employees, and Staying Legal
- Managing Burnout and Helping Our Employees Manage Burnout
- Creating a Satisfying and Equitable Work Environment
- Exercising Gratitude in the Classroom and Workplace
- Building, Maintaining and Repairing Relationships of Trust in the Workplace
- Leading and Building School Culture
- How to Lead Notwithstanding Challenging People
- Keys to Leading & Building Your Team's Resilience During Challenging Times
- Techniques for Becoming a Stronger, More Effective Negotiator
- The Impact of Disrespectful or Unprofessional Behavior in the Workplace
- Secrets to Getting Stuff Done
- Infusing the Practice of Civility and Mutual Respect in the Workplace
- Professionalism and Excellence in the Workplace
- Accommodating Employee Disabilities
- Tips for Conducting Better Workplace Investigations
- Sexual Harassment and Abusive Conduct Prevention Training
- Identifying and Responding to Employee Use of Drugs and Alcohol
- Managing Employee Leaves of Absence
- Mandated Reporter Training Regarding Child Abuse and Neglect
- Understanding the Brown Act
- Good Language, Bad Language: Rules for Drafting Contract Language
- Repairing Relationships of Trust and Team Building Tips for Executive Assistants
- Best Practices for Hiring, Recruiting & Maintaining a Diverse Workforce
- Understanding Criminal Background Checks and Subsequent Arrest Reports
- Best Post-Pandemic Practices Re Accommodating E's & Managing Remote Work
- Best Practices/Strategies for Managing Investigation and/or Outside Investigators
- Best Practices/Strategies for Equitable Planning, Decision-Making, Communication

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- Skills A.I Will Never Replace: Being a High Potential Employee and Leader
- Thriving at Your Job
- The Leaders We Remember
- Preparing Effective Documentation to Address Below-Standard Performing Employees
- Protecting Yourself Against Toxic Behavior in the Workplace
- Restarting Yourself After the Holiday (or Any) Break
- Being Direct (but Not Rude), Responding to Disrespect, and Developing a Thick Skin
- The Importance of Time Management and Best Practices for Accomplishing It
- Closing Out the Academic Year
- Board Documents Accessibility, Best Practice for Agenda Changes & Just Cause and Remote Participation
- Tips for Working with People You Don't Necessarily Like
- Tips for Increasing Your Output at Work and Staying on Track
- Best Practices for Ending the Employment Relationship
- Managing Community Expectations at the School Site and Within the District

Community & Professional

- California Bar Association, Labor & Employment Law Section, Member
- Idaho Bar Association, Employment & Labor Law Section, Member and Government & Public Sector Lawyers Section Member
- National Council of School Attorneys, Member
- California Council of School Attorneys, Member
- Cerritos College Foundation, Past President and Member
- Pacific Symphony League Member, Volunteer and Back Stage Guide
- Idaho Steelheads Season Ticket Holder
- Hobbies: Rowing, Motorcycle Riding, Spreading Kindness

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Cerritos • East Bay • Fresno • Irvine • Marin • Pasadena • Riverside • Sacramento • San Diego • Westlake Village

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Agenda

- Legislative History
- Hiring Process
- Other Procedural Items Related to Criminal History Records
- Reading a Criminal History Report
- Coming Into Compliance

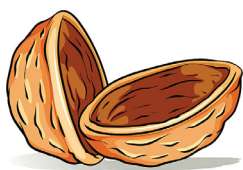
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LEGISLATIVE HISTORY

IN A NUTSHELL ...



- Criminal history often presents a barrier to employment, and may more disproportionately negatively impact people of color.
- Having a “blanket” policy that denies employment to individuals who have been arrested or convicted of crimes is prohibited.
- Pursuant to “Fair Chance Act” legislation,” employment decisions must be based upon **individualized assessments** of **job-related** qualifications and **business necessities**
- While there are certain convictions that will “automatically” disqualify an applicant and/or employee from employment in a higher education setting, community colleges have broad discretion to balance other prior convictions against evidence of rehabilitation and other mitigating factors
- Students seeking employment in non-instructional positions are not automatically disqualified for prior sex or drug offenses

- Hiring processes that adhere to conducting an individualized assessment of qualifications and business help:



Avoid misuse
of criminal
history
records

Achieve
equity in
the hiring
process

Federal Equal Employment Opportunity Laws

TITLE VII
of the Civil
Rights Act
of 1964

- Title VII Prohibits discrimination against protected groups in hiring, promotion, and other terms and conditions of employment
- If a neutral policy or practice (such as a blanket policy screening out anyone with a criminal history record) disproportionately and adversely affects a protected group it may violate Title VII due to disparate impact
- Thus, any decision to exclude a candidate/employee based on criminal history must be an “individualized” decision that is job-related for the position and consistent with business necessity
- The EEOC investigates alleged violations of Title VII

The GREEN Factors

To assess whether an employment decision based on a conviction record is **job-related** and **consistent with business necessity**, look at:

- The **nature and gravity of the offense** or conduct;
- The **time that has passed** since the offense or conduct and/or completion of the sentence; and
- The **nature of the job held or sought**

(We will discuss these factors more in a moment)



Individualized Assessment of Criminal Record History

- Must include an opportunity for applicants to **challenge the accuracy** of criminal history records
- Must include the opportunity to **produce mitigating information**, including evidence of rehabilitation



Potential Mitigating Factors to Consider



1. The **facts or circumstances** surrounding the offense or conduct
2. The **number of offenses** for which the individual was convicted
3. The applicants **age at the time of conviction or release** from incarceration
4. Evidence that the individual **performed the same type of work** post conviction, with the same or different employer, **with no known incidents of criminal conduct**
5. The **length and consistency of employment history** before and after the offense or conduct
6. **Rehabilitation efforts**, including education and training
7. **Employment or character references** and any other information regarding fitness for the particular position
8. Whether the individual is **bonded**

Arrests without convictions



- The EEOC and case law strongly disfavor consideration of arrest records (absent a conviction) in employment decisions, except when the College has independently verified the underlying conduct and the **conduct itself** renders the individual unfit for the position

California Equal Employment Opportunity Laws

FEHA
Govt. Code
§12940 *et seq*
and Ed Code
§ 87100

- CA's FEHA EEO laws protect against employment practices that have an "adverse impact" on groups protected from discrimination
- The **Fair Chance Act** was added to FEHA at Govt Code §12952
- Ed Code §87100 guarantees all persons an equal opportunity to compete for employment and requires the elimination of barriers to equal opportunity
- The Cal Civil Rights Department (formerly DFEH) investigates alleged violations of State EEO laws



The **Fair Chance Act** (Govt. Code §12952) ["Ban the Box"] prohibits employers from inquiring about an applicant's criminal history before making a conditional offer of employment. The purpose of the Fair Chance Act is to ensure that individuals with criminal histories are fairly considered for employment.

- Generally, a job applicant must not be asked (either verbally or in writing) to disclose any information concerning an arrest/detention that did not result in conviction, or any information concerning a referral to or participation in a diversion program, or a conviction that has been judicially dismissed or sealed (Labor Code §432.7) or expunged or pardoned
- However, since local education agencies are required by law (Ed Code §87405) to conduct a conviction history background check on applicants/employees, they may utilize criminal convictions "as a factor in determining any condition of employment." (See Labor Code §432.7(m).) But not for students hiring into non-instructional positions

Be sure to determine whether your local jurisdiction has its own ordinance similar to Ban the Box. If so, follow those additional requirements

A FAIR CHANCE
FOR ALL

REDUCE BARRIERS: BAN THE BOX

Examples:

- City of Los Angeles Fair Chance Initiative for Hiring: If you are considering denying a position to an applicant/employee within the city limits of Los Angeles, you must additionally include a full written assessment in your pre-adverse action notice to the applicant/employee, and a full written reassessment in any final withdrawal of a conditional offer after consideration of additional information provided by the applicant/employee. Also, all job postings must state that the employer will consider qualified candidates with criminal histories in a manner consistent with law and you must provide a copy of the city ordinance regarding these matters to each labor union/rep that has a CBA within the city
- City of San Francisco Fair Chance Ordinance: Must provide applicant/employee copy of ordinance before asking about criminal history and send copy of ordinance to all labor unions with CBAs applicable to employees within the city limits. Also, cannot consider infractions, convictions older than 7 years from date of sentencing, or conduct that has been decriminalized since sentencing

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HIRING
PROCESS

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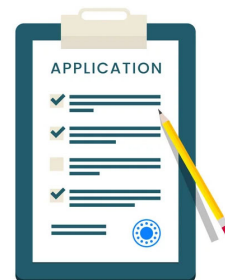
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Hiring Process

1. **Accept applications and Focus on Skills, Experience, and Likelihood of Success:** As a practice point, you should include a statement on your application that a conviction does not necessarily disqualify an applicant.

"The District will consider qualified applicants with a criminal history pursuant to the California Fair Chance Act. You do not need to disclose your criminal history or participate in a background check until a conditional job offer is made to you. After making a conditional offer and running a background check, if the District is concerned about a conviction that is directly related to the job, you will be given the chance to explain the circumstances surrounding the conviction, provide mitigating evidence, or challenge the accuracy of the background report."

Do not require self-disclosure of criminal history on application prior to a conditional offer being made



Hiring Process (continued)

2. Make a **conditional job offer** based on factors other than arrest and/or conviction history (Cal Civil Rights Department has sample at bit.ly/Fair-Chance-Act-Toolkit)
3. Conduct a criminal records history **background check**
 - Document receipt of the report by authorized Custodian of Records
4. **Exclude from consideration** any of the following criminal records history:
 - Arrests that do not result in convictions
 - Charges that have been dismissed, sealed, or expunged
 - Juvenile records
 - Certain marijuana convictions (e.g. non-felony convictions older than 2 years)



REVIEWING THE DOJ REPORT

- The DOJ report typically includes Criminal Offender Record Information ("CORI") from California and some other states.
- The record lists state convictions (not including juvenile records unless tried as an adult), certain arrests that are actively pending adjudication, and the sex offender registry status of the individual (Penal Code §11105(p).)
- The record does not usually include arrests that are no longer pending adjudication, certain convictions for solicitation/prostitution, arrests that were resolved through successful completion of diversion, arrests for which the person has been exonerated, or arrests for which the records have been sealed.



Hiring Process (continued)

5. Determine whether there are any **disqualifying convictions** per Ed Code §§87010, 87011, or 87406
 - Per Ed Code §§87405, 88022, and 87406, District must not hire or retain in employment (automatic disqualification) in an academic or classified position a person who has been **convicted** of a **controlled substance offense as defined in Education Code §87011**, or a **sex offense as defined in Education Code §87010** or a **sexual psychopath as defined in Education Code §87406**
 - But in certain circumstances under each of these statutes, the applicant/employee's employment will not be prohibited.

**Criminal
Record
Check**

Education Code §87010 (Sex Offenses)

- Per Ed Code §§87405 and 88022, District cannot employ or retain persons convicted of committing or attempting to commit an offense as defined in the following California statutes (or out-of-state offenses that would have been punishable under any of the following statutes):

Penal Code § 261.5
Penal Code § 266
Penal Code § 267
Penal Code § 285
Penal Code § 286
Penal Code § 287
Penal Code § 288
Penal Code § 647.6

Former Penal Code § 288a
Former Penal Code § 647a
Former Penal Code § 261(a)(2)
Former Penal Code § 261(a)(3)
Former Penal Code § 262(a)(1)
Former Penal Code § 262(a)(2)
Former Penal Code § 647(a)
Former Penal Code § 647(d)

· Former PC §647(5) or §311(2) if offense committed prior to 9/15/61
· PC §314 if offense committed on or after 9/15/61
· Former PC §311(1) committed on or after 9/7/55 and prior to 9/15/61
· Lewd and lascivious conduct under former W&I Code §702 if offense committed prior to 9/15/62
· Offenses in PC §286 or former PC §288a prior to amendments in 1975-1976

Education Code §87011 (Controlled Substance Offenses)

- Per Ed Code §§87405 and 88022, District cannot employ or retain persons convicted of committing an offense as defined in the following California statutes (or out-of-state offenses that would have been punishable under any of the following statutes):

Health & Safety Code §§ 11350-11355
Health & Safety Code § 11366
Health & Safety Code § 11368
Health & Safety Code §§ 11377-11382
Health & Safety Code § 11550

Former H & S Code §§ 11500-11503
Former H & S Code § 11557
Former H & S Code § 11715
Former H & S Code § 11721

Education Code §87406 (Sexual Psychopath)

- Per Ed Code §87406, District cannot employ or retain persons legally determined to be a sexual psychopath under:

Welfare & Institutions Code §§5500 *et seq.*

Or under similar provisions of law in any other state

When Conviction of Ed Code §87010 or §87011 Does Not Prohibit Employment

- Where the applicant/employee's conviction of a sex offense as defined in Education Code §87010 or controlled substance offense as defined in Education Code §87011 is reversed and the person is acquitted of the offense in a new trial; **or**
- Where the charges against an applicant/employee for sex offense as defined in Education Code §87010 or controlled substance offense as defined in Education Code §87011 are dismissed

THEN – employment thereafter is not prohibited per Ed Code §87405(a) (all employees) and §88022 (classified employees)



DISMISSED

WHAT ABOUT EXPUNGEMENT?

- Confusion arises when an applicant's conviction is expunged pursuant to Penal Code §1203.4
- Expungement means withdrawal of a guilty plea and having the disposition of the case changed from "convicted" to "dismissed."
- But Education Code §87009 provides that a "conviction" includes a guilty plea, a verdict of guilty, or a finding of guilt in a trial without "irrespective of a subsequent under section §1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty or setting aside the verdict of guilty, or dismissing the accusations or information."
- Check your local BPs and APs – sometimes your AP says you cannot deny/terminate employment if the conviction is "dismissed" per Penal Code § 1203.4



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When Conviction of Ed Code § 87406 Does Not Prohibit Employment

- Where the applicant/employee's determination as a sexual psychopath is reversed and the person is determined not to be a sexual psychopath in a new proceeding; **or**
- Where the proceeding to determine whether he/she is a sexual psychopath is dismissed

REVERSED

DISMISSED

THEN – employment thereafter is not prohibited per Ed Code § 87406 (all employees)

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WHAT ABOUT REHABILITATION?

- No automatic exclusion from employment if candidate/employee has obtained or applied for a **Certificate of Rehabilitation** (court declaration) or a **Pardon** (by the Governor) per Penal Code §4852.01, **and** probation has been terminated, **and** the criminal accusation/information against the employee/candidate has been dismissed per Penal Code §1203.4 (Ed Code §87405(b))



- These don't "erase" a conviction, but they may speak to the person's current state of honesty, moral character, and obedience of the law
- Check your BPs and APs

Penal Code § 4852.01 Rehabilitation and Pardon

- Persons convicted of felonies may file a petition for a certificate of rehabilitation and pardon, which is either granted or denied by the Court. If granted, the Governor may consider issuing a pardon
 - For felony sex offenses under Penal Code § 290, the petition is only available to persons whose charges were dismissed pursuant to Penal Code section 1203.4 and they have been granted probation, and they have not been incarcerated in a prison, jail, detention facility or elsewhere since the dismissal of the charges, and is not on probation for the commission of any other felony, and the petitioner can present satisfactory evidence of five years' residence in the state prior to filing plus an additional period of 2-5 years of rehabilitation (see Penal Code § 4852.03)
 - Persons convicted of Penal Code Section § 269(c), § 286, § 287(c), § 288, § 288.5, § 288.7, § 289(j) or former § 288a(c), or persons in military service cannot petition for a certificate of rehabilitation or pardon, although the Governor still has the right to pardon people convicted of these sections

OTHER REASONS YOU **MAY** EMPLOY/RETAIN A PERSON **DESPITE** THE CONVICTION OF A SEX OR CONTROLLED SUBSTANCE OFFENSE

Per Ed Code §87405(c) (all employees)

- Person has been rehabilitated for at least five year (§ 87405(c))
- Person has received a Certificate of Rehabilitation (from Court) or Pardon (from Governor) pursuant to Penal Code §4852.01
- Criminal accusation/information against the person has been dismissed and they have been released from all penalties/disabilities resulting from the offense per Penal Code §1203.4



OTHER REASONS YOU **MAY** EMPLOY/RETAIN A PERSON **DESPITE** THE CONVICTION OF A SEX OR CONTROLLED SUBSTANCE OFFENSE

Per Ed Code §88022) (classified employees)

- Conviction is reversed and person is acquitted of the offense in a new trial **or**
- Charges are dismissed **or**
- Person has received a Certificate of Rehabilitation (from Court) or Pardon (from Governor) pursuant to Penal Code §4852.01 **or**
- Applicant presents evidence and the Board determines from the evidence presented that the person has been rehabilitated for at least five (5) years (Board gets to determine the type and manner of presentation of evidence, and the Board's determination is final)



WHAT ABOUT STUDENTS?

- Notwithstanding any other provision of law to the contrary, the Board may employ any student enrolled in the District who is an ex-convict or who is on parole, other than a person determined to be a sexual psychopath, to perform noninstructional duties (Ed Code §87406.5)
- Such student worker are not considered to be part of the classified service

Student
Employment
Opportunities

Hiring Process (continued)

6. Perform an Individualized Assessment Using the **GREEN** factors

- Determine whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job ("job-related") when considering:
 - The **nature and gravity of the offense** or conduct; and
 - The **time that has passed** since the offense or conduct and/or completion of the sentence; and
 - The **nature of the job held or sought**
 - See also 2 CCR §11017.1 (c)(1)(B)



a. The Nature and Gravity of Offense or Conduct

- The District should consider the facts behind the conviction such as:
 - Whether the harm was to property or people;
 - The degree of the harm (e.g., amount of loss in theft);
 - The permanence of the harm;
 - The context in which the offense occurred;
 - Whether a disability contributed to the offense or conduct;
 - Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or other similar factors contributed to the offense or conduct; and
 - The age of the applicant when the conduct occurred.



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b. The Time That Has Passed Since Offense/Conduct

- The amount of time that has passed since the conduct underlying the conviction; and
- The amount of time that has passed since the applicant's release from incarceration.
- Consider only convictions recent enough to indicate significant risk.
 - The risk that someone who has been convicted of a crime will commit another offense decreases over time.
 - Consider the available evidence on recidivism rates before rejecting an applicant. (Serious crimes 5 and/or 7 years. Less serious crimes 2 or 3 years.)
- Lengthy continuous employment either before or after the offense is an indication that a person is less likely to re-offend. This is especially true if the applicant performed the same type of work as the job for which they have applied.



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b. The Time That Has Passed Since Offense/Conduct (cont.)

Rehabilitation

- Consider evidence of rehabilitation
 - People change over time. Some people with criminal convictions change their lives and become good citizens who can be good employees.
 - Applicants with relevant convictions recent enough to be of concern should not automatically be rejected. Instead, they should be given the opportunity to present evidence of rehabilitation that the employer should carefully consider before making a decision.
- Multiple convictions, particularly those from separate incidents, are a much stronger indication of risk that the person will repeat the conduct, especially when one or more of the convictions are relatively recent.

c. Nature of the Job Held or Sought

- Closely consider convictions that are relevant to the job in question
 - A person who has committed an illegal act in the past may be more likely than the average person to commit a similar act in the future, but they are no more likely to commit other offenses.
- Consider factors such as:
 - The essential functions and specific duties of the job (e.g. will the person be interacting with vulnerable populations?)
 - The circumstances under which the job is performed (e.g. under close/regular supervisor? In private locations or out in public view?)
 - Whether the context in which the conviction occurred is likely to arise in the workplace;
 - Whether the type or degree of harm that resulted from the conviction is likely to occur in the workplace; and
 - Whether the applicant/employee possesses a benefit, privilege, or right required for the performance of a job by a licensing regulatory or government agency or board is probative of the conviction not being directly and adversely related to the job.



Individualized Assessment – Write it Out

- To conduct the individualized assessment:
 1. List the specific duties and responsibilities of the job
 2. Describe the criminal conduct discovered and why the conduct is of concern with respect to this job (do not use infractions, arrests that did not lead to a conviction, convictions that have been sealed or expunged, juvenile adjudications, participation in diversion programs)
 3. List how long ago the criminal activity occurred and when the sentence was completed
 4. List work experience, job training, rehabilitation, community service, etc. since the date of the criminal activity
 5. Describe the **nexus** between the applicant's criminal history and the risks inherent in the job duties of the position (how conviction impairs fitness)



Hiring Process (continued)

7. **If revoking an offer**, do **all** of the following:
 - Issue a **preliminary notice** of revocation to the applicant identifying the disqualifying conviction and a **copy of the criminal history report** (Cal Civil Rights Dept has sample)
 - Invite the applicant to challenge the accuracy of the report and/or provide any mitigating information such as evidence of rehabilitation
 - Provide the applicant at least five (5) business days to respond as to whether they will provide corrected criminal history information and/or mitigating information, then another five (5) business days to actually provide the information (CCCCO recommends total of 14 business days)



Hiring Process (continued)

8. **Review the information** provided by the applicant and either decide to hire or issue a **final notice** reaffirming the revocation of the employment offer (Cal Civil Rights Dept has a sample)
- If issuing a final notice of revocation of the offer, the notice must document (1) whether there was determined to be an error in the criminal history report, (2) the mitigation evidence provided by the applicant and (3) the District's consideration of such evidence, (4) whether there is an internal procedure for reconsideration, and (5) describe the applicant's right to file a complaint with the Cal Civil Rights department
 - Note: Failure of the applicant to provide a timely response can justify final revocation of job offer



SUBSEQUENT ARREST NOTIFICATIONS

- The District should also request "subsequent arrest notifications" pursuant to Penal Code §11105.2, which is an ongoing service that notifies the District when one of its employees is later arrested/convicted for committing a crime.



SUBSEQUENT ARREST NOTIFICATIONS



- The District receives subsequent arrest and conviction notifications from the DOJ.
- Upon receiving notice that one of its current employees has been arrested and/or convicted of a crime, the District must respond appropriately.
- Upon an employee leaving the District's employment, the District must **immediately** notify the DOJ, which will then suspend notifying the District of this (now former) employee's subsequent arrests. (Pen. Code §11105.2.)
- If the District receives a notification for a former e'ee or unknown individual, then it must **immediately** return it to the DOJ to prevent District from unauthorized receipt and avoid potential cut off of subsequent notification services by the DOJ. (PC §11105.2(f).)



ARRESTED AND CHARGED WITH A SEX, NARCOTICS OR CONTROLLED SUBSTANCE OFFENSE

"MAY"

- Per Ed Code §87736 (academic) and §88123 (classified), If an employee is **charged** with a sex offense as defined in Ed Code §87010, a narcotics offense, as defined in Ed Code §87011, or offenses defined Health and Safety Code §§ 11357 to 11361, 11363, 11364, 11377 to 11382, insofar as they relate to any controlled substances except "marijuana, mescaline, peyote, or tetrahydrocannabinols," the Board **may** immediately place the employee upon compulsory leave until not more than ten days after the date court judgment is entered (may be extended)
- To remain in a paid status, the employee may furnish a bond. If no bond is furnished and the employee is unpaid during the period of leave, and the charges are dismissed or the employee is found not guilty/acquitted, the District will pay the employee backpay for the period of suspension, provided the employee returns to service

ARREST ON NON-SEX, NON-CONTROLLED SUBSTANCE OFFENSES, BUT NO CONVICTION YET...



- Arrest notification (i.e., no conviction)
 - An employer cannot refuse to hire/retain a person simply because they have been arrested. The fact that a person was arrested is not proof that they committed a crime.
 - There are situations when an employer can explore the person's conduct leading to the arrest and ask them to explain the circumstances. Then the employer may decide whether the conduct is a reason not to hire them or to make another employment decision (e.g. involuntary leave; temporary reassignment).

OTHER
PROCEDURAL
ITEMS RELATED TO
CRIMINAL HISTORY
RECORDS

RULES FOR BEING AN AUTHORIZED AGENCY

- Must apply to the DOJ to be an authorized agency (Pen. Code § 11105(b)(11))
- District must designate at least one Custodian of Records (“CR”) responsible for the security, storage, dissemination and destruction of all Criminal Offender Record Information (“CORI”) furnished to the District and shall serve as the primary contact for the DOJ for any related issues. (Penal Code § 11102.2(d).)
 - CR must be confirmed by the DOJ before serving as the CR (PC § 11102.2(b))
 - DOJ determines if person possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position and monitors the CR for subsequent arrest notifications
 - District must notify the DOJ **whenever there is a change** in the CR
 - The COR can correspond with the DOJ at appagencyquestions@DOJ.ca.gov



ACCESS TO & MAINTENANCE OF CRIMINAL RECORDS

- Information regarding employee criminal history is confidential and accessible only to the District’s CR.
- **Additional employees** who may have access to criminal offender record information must also be cleared through a DOJ background check and **must submit an Employee Statement** to the DOJ acknowledging understanding of the laws and regs pertaining to security of such records and penalties for violations
- CORI information must be stored in a **locked file separate from other files** and must be **destroyed upon a hiring determination**, such that the identity of the subject can no longer be reasonably ascertained. (Ed Code 45125(k) and 11 CCR §§ 700-708)

CONFIDENTIAL

Quick Summary Regarding Accessing & Viewing Criminal Record Information

- Anyone accessing the Applicant Agency Justice Connection (AAJC) is required to apply to be a Custodian of Records and must be confirmed by the DOJ prior to accessing the portal (this will also involve completing a background check)
- The Custodian of Records must also have an Employee Statement form on file with the DOJ prior to accessing the portal (Form BCIA 9006 is accessible by the COR on the AAJC homepage under the Resources widget; also attached at the end of the presentation)
- Anyone viewing the background check results and subsequent arrest notifications outside of the AAJC portal (e.g. printed or externally shared) are only required to sign the Employee Statement form and undergo a criminal background check with their agency prior to viewing such information



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ACCESS TO & MAINTENANCE OF CRIMINAL RECORDS

- CORI shall be used only for the purpose for which it is requested, and its contents shall not be disclosed or reproduced.
- Per Penal Code §11105(t) a copy of the CORI must be expeditiously provided to the subject applicant/employee. Agency keeps the original until employment decision is made and then destroys it
- CORI may be released on a need-to-know basis only to persons or agencies authorized by a court order, statute, or decisional law to receive such information.
- Furnishing of CORI to unauthorized individuals is punishable as a misdemeanor.



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MAINTENANCE AND DESTRUCTION OF BACKGROUND CHECK DOCUMENTATION

- Once the hiring determination has been made, the District cannot retain copies of the DOJ report, or other documentation indicating information from that report.
- The means of destroying the report must ensure that the subject of the background check can no longer be ascertained from the record.
- No shredding bucket! DIRECTLY TO THE SHREDDER! If destruction takes place outside the authorized agency, a person designated by the agency must witness the destruction.
- See also the FBI's CJIS Security Policy Version 6.0



USING A CONSUMER REPORTING AGENCY TO GENERATE A BACKGROUND CHECK REPORT

- Best practice is to rely on criminal background checks produced by the DOJ as commercial background checks may be inaccurate or incomplete. But, under federal law, if the District relies on a **private consumer reporting agency** to generate a local, state, or national criminal background check report, the applicant must receive notice and an opportunity to consent to the background check, a statement of the individual's rights under the law, a copy of the record, and an opportunity to challenge its accuracy. (15 U.S.C. §§ 1681 *et seq.* and Civ. Code §§ 1786 *et seq.*)
- Under California law, applicants must receive a copy of the record within three days of when the District receives it. Moreover, in California, these commercially produced reports cannot report convictions aged more than seven years from the date of the request as well as arrest records that did not result in a conviction unless there is a pending pronouncement of judgment in the case (Civil Code § 1786.16 and 1786.18)

READING A
CRIMINAL
HISTORY
REPORT

See also – attached explanatory statement

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STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
Bureau of Criminal Information and Analysis
P.O. Box 903417
Sacramento, CA 94203-4170

DATE: 12/22/2022

DISTRICT NAME
DISTRICT ADDRESS
CITY, STATE, ZIP

RE: DOJ INFORMATION FURNISHED PURSUANT TO AN APPLICANT
FINGERPRINT SUBMISSION

* This information is for OFFICIAL USE ONLY*
Unauthorized use is a criminal offense.

Based upon a fingerprint search of records contained in the Bureau of Criminal
Information and Analysis files, this response contains all
information meeting dissemination criteria pursuant to California law.

Our records indicate you have requested, or are statutorily mandated to receive,
subsequent arrest notification service from the Department of Justice. Therefore,
you will be advised of subsequent arrests for this individual. Pursuant to
Section 11105.2 of the California Penal Code, your agency is required to notify
the Department of Justice when it no longer has a legitimate interest in this
subject, (i.e., the applicant is no longer, or was never employed; his/her
license or certification is denied or revoked; or he/she is no longer eligible
to renew or re-instate the license or certificate).

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APP ORI: A01234 ORIGINATING AGENCY IDENTIFIER - THE AGENCY REQUESTING FINGERPRINTS
APP NAME: FIRST LAST NAME
APP TYPE: VOLUNTEER/VCA EMPLOYEE OR VOLUNTEER
APP TITLE: VOLUNTEER POSITION TITLE
APP SERVICE REQUESTED: CA/FBI/ WHETHER STATE AND/OR FEDERAL IS BEING REQUESTED
OCA: ORIGINATING CASE AGENCY - IF DESIRED THE AGENCY CAN ASSIGN # AT PRINTING
SID: A012345 STATE IDENTIFICATION NUMBER - ISSUED BY THE STATE
DOB: 03/24/1977 SSN: 0123 LAST 4 DIGITS OF APPLICANTS SOCIAL SECURITY NUMBER
CDL: D012345 CA DRIVERS LICENSE NUMBER
ATI: B333OUS33 AUTOMATED TRANSACTION NUMBER GENERATED AT LIVE SCAN LOCATION
DATE SUBMITTED: 12/21/2022
SCN #: U66P333002 STATE CONTROL NUMBER - CONFIRMATION # GENERATED BY DOJ

APP ADDRESS: APPLICANT'S HOME ADDRESS PROVIDED TO LIVE SCAN

* * * *

COURT:
20100422 CASCSTANISLAUS
001:1412478
23103.5 VC-PLEA TO 23103 IN LIEU OF TOC:N
DISPO:CONVICTED-PROBATION
CONV STATUS:MISDEMEANOR TOS:5
SEN: 036 MONTHS PROBATION, FINE

20220721 DISPO:CONVICTION RELIEF GRANTED PER 1203.425PC

END OF MESSAGE

If the applicant wishes to obtain a copy of his/her criminal history record, he/she should either contact the Department of Justice Record Review Office at (916) 227-3835 or access the required forms at www.ag.ca.gov/fingerprints/security.php.



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Arrest date

ARR/DET/CITE: 20170418
CNT: 001
32 PC-ACCESSORY

NAM:001 DOB:19910630
CASC SANTA CLARA
#01023456

Name of County

Booking or police file number, not a case number

CNT:002
484/488 PC-PETTY THEFT

CNT: 003
459/460 (B) PC-SECOND DEGREE BURGLARY

Court: 20170630
Nam: 001
CASC SANTA CLARA

Case number

CNT: 002
484/488 PC-PETTY THEFT
DISPO: DISMISSED/FOJ/PLEA TO OTHER CHARGE

The "DISPO" says dismissed so there is no conviction.

CNT:003
459/460 (B) PC-SECOND DEGREE BURGLARY
*DISPO: CONVICTED

Disposition. Look for "CONVICTED".



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CONV STATUS: FELONY
SEN: 003 YEARS PROBATION, 006 MONTHS JAIL, IMP SEN SS

ARR/DET/CITE: NAM: 001 DOB: 19910630
20140520 CAPD SAN JOSE
CNT:001 #654321AER321
23152(A) VC-DUI: ALCOHOL/DRUGS
CNT:002
11377(A) HS-POSSESS CONTROLLED SUBSTANCE

COURT: NAM:001
20140710 CASC SANTA CLARA
CNT:001 #CC123456
23152(A) VC-DUI: ALCOHOL/DRUGS
CNT: 002
23152(B)-VC DUI ALCOHOL/0.08 PERCENT

Court: NAM: 001 DOB:19910630
20140915 CASC SANTA CLARA
CNT: 001 #98765432
23152(A)-VC DUI: ALCOHOL/DRUGS
DISPO: DISMISSED/FOJ/MOTION OF PEOPLE

CNT: 002
23152 (B)-VC DUI ALCOHOL/0.08
*DISPO: CONVICTED
CONV STATUS: MISDEMEANOR
SEN: 003 YEARS PROBATION, 001 DAYS JAIL, FINE

"CONV STATUS" states whether it's a felony, misdemeanor or infraction.

Sentencing Information

aa/rr

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OUT OF STATE ARRESTS, CHARGES, AND CONVICTIONS



- Any offense convicted or charged in another state which, if convicted or charged in California would have been a prohibited offense may be considered when evaluating whether to clear a candidate or to retain an employee

aa/rr

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COMING INTO COMPLIANCE

COMING INTO COMPLIANCE



- Are there practices that need to be modified in your District in order to come into compliance?
- Have you retained information in files that needs to be removed and shredded?
- Who is your approved COR? And who is designated in your agency (i.e. has submitted an Employee Statement and been approved by the DOJ) to see criminal information documents?
- Check your Board Policies and Administrative Regulations – are they consistent with law?
- Do you have an HR checklist and ensure it is used every time.

CONCLUSION AND TAKEAWAYS

- Remember that a conviction and/or arrest and/or charge is not an automatic disqualification for employment, unless the conviction/arrest is for one of the specific Penal Code offenses enumerated in the Education Code, and even then, if rehabilitation is demonstrated, there is flexibility to hire
- Colleges have broad discretion now to determine who the most qualified applicant is and to hire that person; always balance campus safety and security concerns with the core mission of the community college system to ensure equity, diversity, and opportunity in College employment
- Ensure your personnel who have access to CORI are approved by the DOJ.
- Do not retain or share copies of the DOJ Reports.
- Contact Legal Counsel for assistance when conducting a *Green* factor analysis.



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Disclaimer

This AALRR is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.



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Question & Answer Session

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Thank You

For questions or comments, please contact:

{ Barbara Ginsberg
(562) 653-3847
BGinsberg@aalrr.com }

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Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

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SAMPLE FORMS

Fair Chance Act Sample Forms



This packet contains sample documents to assist employers in complying with the California Fair Chance Act. For more information about this law, which seeks to remove barriers to employment for individuals with criminal histories, visit civildights.ca.gov/fair-chance-act/.

Advertisement and Application / Compliance Statement >

This is a voluntary statement that employers can choose to add to job advertisements and applications regarding the Fair Chance Act.

Conditional Job Offer / Letter >

This sample letter can be used by an employer to make a conditional job offer and to notify the applicant that the employer intends to conduct a criminal background check.

Individual Assessment / Form >

After making an applicant a conditional job offer and conducting a criminal background check, this sample form can be used by an employer to conduct the necessary individualized assessment of an applicant's criminal history.

Preliminary Notice to Revoke Job Offer Because of Conviction History / Letter >

If an employer intends to revoke a job offer because of the applicant's background check, this sample letter can be used by an employer to meet its obligation to provide notice to the applicant.

Individual Reassessment / Form >

Once an employer notifies an applicant that it intends to revoke a job offer because of something in the applicant's background check, the employer must give the applicant at least 5 days to provide evidence of rehabilitation and mitigation and at least ten days to dispute the accuracy of the background check. This sample form can be used by an employer to conduct an individualized reassessment based on information provided by the applicant.

Final Notice to Revoke Job Offer Because of Conviction History / Letter >

If after considering any information provided by the applicant, the employer still intends to revoke the job offer, this sample letter can be used by an employer to meet its obligation to provide notice to the applicant of that decision.

ADVERTISEMENT AND APPLICATION COMPLIANCE STATEMENT



Below is a voluntary statement that employers can choose to add to job advertisements and applications regarding the Fair Chance Act:

[Employer] will consider qualified applicants with a criminal history pursuant to the California Fair Chance Act. You do not need to disclose your criminal history or participate in a background check until a conditional job offer is made to you. After making a conditional offer and running a background check, if [Employer] is concerned about conviction that is directly related to the job, you will be given the chance to explain the circumstances surrounding the conviction, provide mitigating or rehabilitative evidence, or challenge the accuracy of the background check report. Find out more about the Fair Chance Act by visiting calcivilrights.ca.gov/fair-chance-act/.

SAMPLE CONDITIONAL JOB OFFER LETTER



[DATE]

RE: Conditional Offer of Employment & Notice of Conviction Background Check

Dear [APPLICANT NAME]:

We are writing to make you a *conditional* offer of employment for the position of [INSERT POSITION]. Before this job offer becomes final, we will check your conviction history. The form attached to this letter asks for your permission to check your conviction history and provides more information about that background check.

After reviewing your conviction history report, we will either:

- a. Notify you that this conditional job offer has become final; or
- b. Notify you in writing that we intend to revoke (take back) this job offer because of your conviction history.

As required by California law, we will NOT consider any of the following information:

- Arrest not followed by conviction;
- Referral to or participation in a pretrial or posttrial diversion program; or
- Convictions that have been sealed, dismissed, expunged, or pardoned.

As required by the California Fair Chance Act, we will consider whether your conviction history is directly related to the duties of the job we have offered you. We will consider all of the following:

- The nature and seriousness of the offense
- The amount of time since the offense
- The nature of the job

We will notify you in writing if we plan to revoke (take back) this job offer after reviewing your conviction history. That decision will be *preliminary*, and you will have an opportunity to respond before it becomes final. We will identify conviction(s) that concern us, give you a copy of the background check report, and allow you at least 5 business days to respond with information about your rehabilitation or mitigating circumstances, or ten business days to respond with information showing the background check report is inaccurate.

We will review any information you timely submit and then decide whether to finalize or take back this conditional job offer. We will notify you of that decision in writing.

Sincerely,
[EMPLOYER]

Enclosure: Authorization for Background Check (as required by the U.S. Fair Credit Reporting Act and California Investigative Consumer Reporting Agencies Act)

Employer Name:	Applicant Name:
Position Applied For:	Date of Conditional Offer:
Date of Assessment:	Date of Criminal History Report:
Assessment Performed by:	

1. The specific duties and responsibilities of the job are:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
2. Description of the criminal conduct and why the conduct is of concern with respect to the position in question (conduct that can't be considered includes infractions or arrests that didn't lead to a conviction, convictions that have been sealed or expunged, adjudications in the juvenile justice system, or participation in a pre- or post-trial diversion program):
3. How long ago did the criminal activity occur:
4. Mitigating circumstances and/or rehabilitative activities since conviction, such as work experience, job training, community service, education, etc.:
 - a. _____
 - b. _____
 - c. _____
 - d. _____

CRD-ENG / Criminal History Assessment Form / August 2025

SAMPLE EMPLOYER NOTICE OF PRELIMINARY DECISION TO REVOKE JOB OFFER BECAUSE OF CONVICTION HISTORY



[DATE]

Re: Preliminary Decision to Revoke Job Offer Because of Conviction History

Dear [APPLICANT NAME]:

After reviewing the results of your background check, we have made a preliminary (non-final) decision to revoke (take back) our previous job offer for the position of [INSERT POSITION] because of the following conviction(s):

- [LIST CONVICTION(S) THAT LED TO DECISION TO REVOKE OFFER]
- _____
- _____

A copy of your conviction history report is attached to this letter. More information about our concerns is included in the "Individualized Assessment" below.

As prohibited by California law, we have NOT considered any of the following:

- Arrest(s) not followed by conviction;
- Participation in a pretrial or posttrial diversion program; or
- Convictions that have been sealed, dismissed, expunged, or pardoned.

Your Right to Respond:

You may respond to this letter before our decision to revoke the job offer becomes final. Within [INSERT NUMBER] business days* from when you first receive this notice, you may send us:

- Evidence of rehabilitation or mitigating circumstances
- Information challenging the accuracy of the conviction history listed above. If, within 5 business days, you notify us that you are challenging the accuracy of the attached conviction history report, you shall have another 5 business days to respond to this notice with evidence of inaccuracy.

Please send any additional information you would like us to consider to:

[INSERT NAME AND MAILING ADDRESS OR EMAIL ADDRESS]

Here are some examples of information you may send us:

- Evidence that you were not convicted of one or more of the offenses we listed above or that the conviction record is inaccurate (such as the number of convictions listed);
- Your age at the time of the incident that led to the conviction
- Circumstances surrounding the incident
- Your job history and the fact that you are looking for a job
- Participation in school, job training, counseling, community service, treatment, and/or rehabilitation programs
- Successfully following the rules of probation or parole

SAMPLE EMPLOYER NOTICE OF PRELIMINARY DECISION TO REVOKE JOB OFFER BECAUSE OF CONVICTION HISTORY



- Whether you are bonded under a federal, state, or local bonding program
- Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or similar factors contributed to the conviction
- If a disability contributed to the conviction, whether a reasonable accommodation could help address future incidents, and whether the disability still exists or has been treated

We are required to review the information you submit and make another individualized assessment of whether to hire you or revoke the job offer. *We will notify you in writing if we make a final decision to revoke the job offer.*

Our Individualized Assessment:

We have individually assessed whether your conviction history is directly related to the duties of the job we offered you. We considered the following:

1. The nature and seriousness of the conduct that led to your conviction(s), which we assessed as follows: [DESCRIBE WHY CONSIDERED SERIOUS]

2. How long ago the conduct occurred that led to your conviction, which was: [INSERT AMOUNT OF TIME PASSED] and how long ago you completed your sentence, which was: [INSERT AMOUNT OF TIME PASSED].
3. The specific duties and responsibilities of the position of [INSERT POSITION], which are: [LIST JOB DUTIES]

We believe your conviction record lessens your fitness/ability to perform the job duties because:

Sincerely,

[Employer contact person name]

[Employer company name]

[Employer address]

[Employer contact phone number]

Enclosure: Copy of conviction history report

* The applicant must be allowed at least 5 business days to respond.

SAMPLE CRIMINAL HISTORY INDIVIDUAL REASSESSMENT FORM



INFORMATION

Employer Name: _____ Applicant Name: _____
Position Applied For: _____ Date of Conditional Offer: _____
Date of Reassessment: _____ Date of Criminal History Report: _____
Assessment Performed by: _____

REASSESSMENT

1. Was there an error in the Criminal History Report? ☐ Yes ☐ No
If yes, describe the error:
2. Evidence of rehabilitation and mitigation (this evidence may include, but is not limited to, documents or other information demonstrating that the Applicant attended school, a religious institution, job training, or counseling, or is involved with the community. This evidence can include letters from people who know the Applicant, such as teachers, counselors, supervisors, clergy, and parole or probation officers):
 - a. _____
 - b. _____
 - c. _____
 - d. _____

BASED ON THE FACTORS ABOVE, WE ARE RESCINDING OUR OFFER OF EMPLOYMENT BECAUSE
(describe the link between the specific aspects of the Applicant's criminal history with risks inherent in the duties of the employment position):

SAMPLE EMPLOYER NOTICE OF FINAL DECISION TO REVOKE JOB OFFER BECAUSE OF CONVICTION HISTORY



[DATE]

Re: Final Decision to Revoke Job Offer Because of Conviction History

Dear [APPLICANT NAME]:

We are following up about our letter dated [DATE OF NOTICE] which notified you of our initial decision to revoke (take back) the conditional job offer:

(Please check one:)

- ☐ We did not receive a timely response from you after sending you that letter, and our decision to revoke the job offer is now final.
- ☐ We made a final decision to revoke the job offer after considering the information you submitted, which included: [LIST INFORMATION SUBMITTED]

After reviewing the information you submitted, we have determined that there ☐ was ☐ was not (check one) an error on your conviction history report. We have decided to revoke our job offer because of the following conviction(s):

- [LIST CONVICTION(S) THAT LED TO DECISION TO REVOKE OFFER]
- _____
- _____

Our Individualized Assessment:

We have individually assessed whether your conviction history is directly related to the duties of the job we offered you. We considered the following:

1. The nature and seriousness of the conduct that led to your conviction(s), which we assessed as follows: [DESCRIBE WHY CONSIDERED SERIOUS]

2. How long ago the conduct occurred that led to your conviction, which was: [INSERT AMOUNT OF TIME PASSED] and how long ago you completed your sentence, which was: [INSERT AMOUNT OF TIME PASSED].
3. The specific duties and responsibilities of the position of [INSERT POSITION], which are: [LIST JOB DUTIES]

SAMPLE EMPLOYER NOTICE OF FINAL DECISION TO REVOKE JOB OFFER BECAUSE OF CONVICTION HISTORY



We believe your conviction record lessens your fitness/ability to perform the job duties and have made a final decision to revoke the job offer because:

Request for Reconsideration:

(Please check one:)

- ☐ We do not offer any way to challenge this decision or request reconsideration.
- ☐ If you would like to challenge this decision or request reconsideration, you may:

[DESCRIBE INTERNAL PROCEDURE]

Your Right to File a Complaint:

If you believe your rights under the California Fair Chance Act have been violated during this job application process, you have the right to file a complaint with the Civil Rights Department (CRD). There are several ways to file a complaint:

- File a complaint online at the following link: ccrs.calcivilrights.ca.gov/s/
- Download a [criminal history intake form](#) and email it to contact.center@calcivilrights.ca.gov or mail it to 651 Bannon Street, Suite 200, Sacramento, CA 95811
- Visit a CRD office. Click the following link for office locations: calcivilrights.ca.gov/locations/

For more information, visit calcivilrights.ca.gov/complaintprocess/ or call (800) 884-1684.

Sincerely,

[Employer contact person name]

[Employer company name]

[Employer address]

[Employer contact phone number]

EMPLOYEE
STATEMENT
FORM



EMPLOYEE STATEMENT FORM CONDITIONS FOR RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION

To uphold the standards of security specified in the FBI's *CJIS Security Policy* for all personnel accessing or viewing criminal offender record information (CORI), controlled by state and federal statutes, please review and acknowledge the terms below. Misuse of CORI may violate constitutional rights of privacy, result in the suspension or loss of your employment, and prosecution for state and federal crimes. **Once acknowledged, this form shall be kept on file by the Custodian of Records and not returned to the California Department of Justice (DOJ).**

_____ I recognize that CORI and related data are sensitive and have the potential for great harm if misused.

_____ I acknowledge I will complete the basic security awareness training required within six months of initial assignment and annually thereafter.

_____ I acknowledge that access to CORI and related data is limited to the purpose(s) for which my agency is authorized to receive it for. (Penal Code section 11105, subdivision (s) & section 50.12 of Title 28 of the Code of Federal Regulations)

_____ I understand that in order to be given direct access to the web-based portal, Applicant Agency Justice Connection (AAJC), I must become a confirmed Custodian of Records with the DOJ. If confirmed, my login information to the portal shall not be shared with anyone.

_____ I understand that accessing the AAJC for an appropriate purpose and then disseminating the information received for another purpose constitutes misuse. (Penal Code sections 11142 & 11143)

_____ I understand that misuse of the AAJC may include but not be limited to: accessing it without authorization; exceeding authorized access; accessing it for an improper purpose; using or disseminating information without authorization, and may subject me to administrative and criminal penalties.

_____ I understand I am required to report any security events and weaknesses as quickly as possible to my agency's Custodian of Records.

_____ I further understand that the occurrence of misuse does not depend upon whether or not I receive compensation for the unauthorized activity.

I hereby acknowledge and understand the terms listed above and agree to uphold the standards of security when accessing or viewing criminal offender record information.

Signature: _____

Date: _____

Printed Name: _____

READING A DOJ REPORT

How to Read a California Department of Justice Criminal History Report (RAP Sheet)

“RAP” stands for Record of Arrests and Prosecutions. Once you receive your RAP sheet from the California Department of Justice, you are welcome to bring it to a free Speed Screening interview where the Record Clearance Project can outline the next steps in the expungement process for you.

A few things to note about RAP sheets:

- RAP sheets usually are twice as long as you might expect. That’s because they list all arrests and all convictions, meaning the same information gets listed twice.
- RAP sheets list all charges, not all convictions. Many charges are dropped.
- RAP sheets include every time people are fingerprinted, including when someone applies for a job where fingerprinting is required, like working at a school or working with the elderly.
- Most jail convictions can be dismissed. All AB 109 cases can be dismissed. Starting January 2018, many prison cases can be dismissed.

What is a RAP sheet?

In California, your RAP sheet is produced by the California Department of Justice (DOJ). Any time a person is arrested, the police send a copy of fingerprints to the DOJ. The fingerprint information is included in a RAP sheet.

A RAP sheet includes:

1. **Arrests and Detentions.** These are when someone is held as a suspect in a crime but not prosecuted.
2. **Convictions.** A conviction is a determination that someone is guilty of a crime. Convictions come after a plea or following trial.
3. **Dismissed charges** are not pursued in exchange for a plea or dismissed by a judge.
4. **Drug diversion or Deferred Entry of Judgment (DEJ)** is offered for some drug offenses. If a person successfully completes a diversion program, there is no conviction and it is as if the arrest never happened.
5. **Probation violations** are listed on a RAP sheet when someone violates the conditions of their probation.
6. Applications for **professional licenses** or jobs that require fingerprinting.

Parts of a RAP sheet

Each incident is identified by a **name** and a **date of birth**. These are listed and numbered at the top of the RAP sheet. Sometimes people have several names or dates of birth associated with them, either as a result of typographical errors or incorrect information given.

Dates on Department of Justice RAP sheets are written with the year first, then month then day. For example, 20170630 means June 30, 2017.

 ARR/DET/CITE: NAM:001 DOB:19910630
 20170418 CASC SANTA CLARA Name of County
 CNT: 001 #01023456 Booking or police file number,
 32 PC-ACCESSORY not a case number

 CNT:002
 484/488 PC-PETTY THEFT

 CNT: 003
 459/460 (B) PC-SECOND DEGREE BURGLARY

 Court: Nam: 001
 20170630 CASC SANTA CLARA

 CNT: 002 #CC171717 Case number
 484/488 PC-PETTY THEFT
 DISPO: DISMISSED/FOJ/PLEA TO OTHER CHARGE The "DISPO" says dismissed so there is no conviction.

 CNT:003
 459/460 (B) PC-SECOND DEGREE BURGLARY Disposition. Look for "CONVICTED".
 *DISPO: CONVICTED
 CONV STATUS: FELONY "CONV STATUS" states whether it's a felony, misdemeanor or infraction.
 SEN: 003 YEARS PROBATION, 006 MONTHS JAIL, IMP SEN SS

 ARR/DET/CITE: NAM: 001 DOB: 19910630
 20140520 CAPD SAN JOSE Sentencing Information
 CNT:001 #654321AER321
 23152(A) VC-DUI: ALCOHOL/DRUGS
 CNT:002
 11377(A) HS-POSSESS CONTROLLED SUBSTANCE

 COURT: NAM:001
 20140710 CASC SANTA CLARA
 CNT:001 #CC123456
 23152(A) VC-DUI: ALCOHOL/DRUGS
 CNT: 002
 23152(B)-VC DUI ALCOHOL/0.08 PERCENT

 Court: NAM: 001 DOB:19910630
 20140915 CASC SANTA CLARA
 CNT: 001 #98765432
 23152(A)-VC DUI: ALCOHOL/DRUGS
 DISPO: DISMISSED/FOJ/MOTION OF PEOPLE

 CNT: 002
 23152 (B)-VC DUI ALCOHOL/0.08
 *DISPO: CONVICTED
 CONV STATUS: MISDEMEANOR
 SEN: 003 YEARS PROBATION, 001 DAYS JAIL, FINE

Each **event** (arrest and court hearing information for each case) is separated by asterisks like this: * * * *

1. An event is organized by first listing the arrest or detention information.

Next is the county in which you were arrested. On the next line you will find a file number. This is not the CASE number for court; it usually is a booking, police or District Attorney file number.

Next comes a list of charges, also called “counts” (CNT). There is a section of the law listed and a code (group of laws) listed. The section is listed before the Code. For example, “484 PC” refers to section 484 of the California Penal Code.

Many encounters with law enforcement do not result in convictions. Often the DA will realize that he or she cannot prove that the person accused committed the offense(s) charged. In those cases, there are arrests or detentions only and no resulting convictions. It is difficult to remove arrests from a RAP sheet. However, the law limits who can see arrests that did not lead to convictions and what effect they have.

2. When the DA decides to proceed with a case, it goes to **court**. The portion of the RAP sheet after the arrest or detention information shows what happened in court. Each **action** (cycle) within a fingerprinting event is separated by dashes, like this: - - - -
Cycles do not necessarily involve fingerprinting, but are connected by law enforcement booking numbers or court case numbers.

You will see the letters “DISPO”; this shows what happened to each charge in court. Under “DISPO” if a person plead guilty or was found guilty at trial, you will see, the word “Convicted” after the count or charge. Usually the sentence is listed as well, showing jail or prison, probation, fines and fees.

Frequently, some of the charges are dropped, usually in exchange for a plea bargain. (A plea is an agreement where a person agrees to a lesser charge to avoid going to trial). If a charge is dismissed, the RAP sheet will note “DISMISSED” after “DISPO.”

Usually the RAP sheet will note the reason or section of the Penal Code that authorized its dismissal.

“FOJ” means “in furtherance of justice.” Notes referring to PC 1203.4, PC 1203.4a, and PC 1203.41 all mean the case was dismissed based on those laws. Similarly, if a felony was reduced, a note on the RAP sheet will show the law that permitted the reduction, often PC 17b.

What does it mean to have a case or conviction dismissed?

Convictions are dismissed by case number. Each county writes its case numbers differently. In Santa Clara County, a case number might look like CC1234567. Felonies in Santa Clara County often don’t have a letter, such as 123456.

One case may have several “counts” (“charges”). Once a case is dismissed, all counts are dismissed. For example, if one case has three felony counts, a person has one felony case. If it’s dismissed, then the felony is dismissed.

Dismissed convictions show up on RAP sheets. However, those who can see RAP sheets or find out about dismissed convictions are restricted. For example, Labor Code 432.7(a) provides that most California employers cannot ask about or consider dismissed convictions in making employment decisions.

What if my RAP sheet is wrong?

You can ask the Department of Justice to correct your RAP sheet. It helps to send them documents showing the error. Keep a copy yourself! The Department of Justice will check with the County where the conviction took place, and correct the record based on what it learns.

Key

AKA = Also Known As **CONV** = Conviction **COR** = Certificate of Rehabilitation

DEJ = Deferred Entry of Judgment **DISM** = Dismissed **FEL RED** = Felony Reduction

FTA = Failure to Appear

IMP SENT SUSP –A judge can hold off from either imposing or executing the punishment as long as the defendant fulfills the condition of the suspension.

MISD = Misdemeanor

NOLO CONTENDERE = When you plead “no contest”, you are not technically admitting guilt but are still allowing the court to determine your punishment.

OR = Released on Own Recognizance **P NC** = Plead No Contest **PROS-REJ** = Prosecution rejected

17b = felony is a wobbler, eligible for reduction to a misdemeanor by petition

Prop 47 = felony may be / must be reduced to a misdemeanor

Prop 64 = provides for retroactive relief for prior marijuana-related convictions per HS 11361.8(e)-(k).

When “PRISON” does not mean “PRISON”

Be aware that many entries for Santa Clara County convictions after October 2011 that list a “PRISON” sentence are in fact **realignment sentences** pursuant to Penal Code section 1170(h). AB 109 (the bill that re-designated many prior prison cases to be served in county jail) changed many former state prison cases into sentences to be served in county jail.

AB 109 / realignment convictions are ALL eligible to be dismissed. True prison cases (where the sentence was to state prison, such as San Quentin or Folsom) require a Certificate of Rehabilitation (COR). Ask for the Record Clearance Project’s fact sheet on CORs.