“HOW TO” USER’S GUIDE

The information analyzed in this document is intended to be comprehensive and is provided in two formats — a chart at the beginning and a textual summary at the end. The chart provides a quick but detailed analysis of state and local restrictions on criminal history inquiries and background checks. The information in the chart is abstracted to the point of allowing comparisons across jurisdictions, even when the exact text of the law is different. The summary gives a sense of the substantive details of the law but is not written to be comparable across jurisdictions. The two formats are best used together to get a more complete understanding of the legal restrictions and obligations placed on employers when using criminal history information for employment purposes typically as a prelude to reading the law itself.

We designed this chart to support two scenarios.

In the first scenario, you already have a policy on asking your applicants about their credit or getting credit reports, but you want to make sure that it complies with the law. In this scenario, we see you identifying the restrictions that need to be in your policy from the chart, based on the jurisdictions in which you operate, then identifying the part of your policy that handles each restriction.

In the second scenario, you don’t have a formal, written policy on the subject, and are trying to write one. In this scenario, we see you identifying the types of restrictions that need to be in your policy from the chart, based on the jurisdictions in which you operate. We then see you writing draft policy language for each restriction and checking that language against the underlying statutes using the links to the laws in our footnotes.

In either scenario, we recommend the following steps to get familiar with the information in this document.

- Use the following page to learn about the layout and the various components of the chart.
- Identify the jurisdiction(s) where you have employees or otherwise have an interest in knowing the laws about credit history inquiries and background checks. Keep those jurisdictions on the chart and delete all other information that will not be used. For example, if you have employees in California, Nevada, and Oregon, keep those jurisdictions and delete all other rows of information that will not be used.
- Familiarize yourself with the columns of information — the who, what, when, and processes of the laws. Refer to the legend at the bottom of the page to understand the provisions of the law. An “x” indicates that a provision applies. Also note that “public contractors” do not include all private employers — it usually means private businesses that accept contracts from that level of government, or its sublevels. It may be useful for you to pick a jurisdiction with lots of restrictions and read its law while reviewing the chart for the first time. This would introduce you to how the chart and the law correlate to each other.
- When you have an understanding of the types of restrictions, exemptions, etc., refer to the summary highlights for the key provisions of the law.
- Finally, go back to the chart and click on the referenced footnote for a complete reading of the law.

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### State and Local Restrictions on Criminal History Inquiries and Background Checks

<table>
<thead>
<tr>
<th>State or City</th>
<th>Who</th>
<th>When Prohibitions Apply</th>
<th>What Prohibitions Apply</th>
<th>Required Considerations</th>
<th>Required Process</th>
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#### Notes:
- States with multiple laws are listed multiple times.
- No state law identified; analysis provided for local jurisdiction only.
- States and city laws identified.
- Provides the specific aspects of the laws identified in the chart.

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**Footnotes:**
- Cal. Penal Code § 1000.4
- Cal. Labor Code § 432.7 (excludes some pending charges)
- Cal. Labor Code § 432.8 (relates to marijuana convictions at least 2 years prior to hiring)
- Richmond, CA: Ordinance 14-14, July 6, 2014
- San Francisco Ordinance File No. 131192
- Cal. Rev. Stat. § 5.3-1.106(w) (includes civil and military disobedience)
- CT Gen. Stat. § 56-78c.
- Hartford’s Non-Risk Policy (April 9, 2009)
- New Haven Ban-the-Box Ordinance (2007) (vendors must have a valid reason to adversely use conviction history)
- DC Act 20-022 (2014) (relates to arrests and criminal charges not resulting in a conviction)
- Jacksonville Pre-Offender Employment Review Standards (July 6, 2009)
- GA Code § 53-15-15(b)
- GA Code § 53-15-15(b)
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<tr>
<th>Jurisdiction</th>
<th>Limited application of rule</th>
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<th>Before the interview</th>
<th>Background check without interview</th>
<th>Before offer of employment</th>
<th>Making the decision</th>
<th>Juvenile history</th>
<th>Dismissed history</th>
<th>Sealed records</th>
<th>History resulted in diversion program</th>
<th>Arrests</th>
<th>Pending criminal charges</th>
<th>Infractions or other misdemeanors</th>
<th>Convictions</th>
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<th>Required Process</th>
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1. Government Code Section 412952
2. Cal. Penal Code § 1000.4
3. Cal. Labor Code § 432.7 (excludes some pending charges)
5. Cal. Labor Code § 432.8 (relates to marijuana convictions at least two years old)
6. Richmond, CA Code Chapter 2.65.040
7. San Francisco Police Code Section 4904
8. Los Angeles Municipal Code Chapter XVIII Article 9 Sec. 189.03
10. Cal. Rev. Stat., § 8-3-108.8 (includes civil and military disobedience)
11. CT Gen. Stat. Sec. 31-51
12. CT Gen. Stat. § 54-760
13. Hartford City Code Section 2-385 Criminal Record Check
14. New Haven Section 2-852 (vendors must have a valid reason to adversely use conviction history)

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D = Prohibition applies to use of information.
E = Applies to public contractors (not private employers).
F = Applies to private employers.
G = Background check permitted only if required by federal or state law.
H = Does not apply to positions involving public safety.
I = Does not apply when required or authorized by federal or state law.
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<th>Required Considerations</th>
<th>Required Process</th>
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15 DC Act 20-422 (2014) (relates to arrests and criminal charges not resulting in a conviction)
16 Jacksonville Ex-Offender Employment Review Standards (July 8, 2009)
17 GA Code § 42-8-63
18 GA Code § 35-3-34.6(b)
20 820 ILCS 75/15
21 Chicago Code § 2-160-054
22 IN Code § 35-38-9-10
23 502 KAR 30-060.1(2)(a)
24 Louisville Chapter 112.30 Prohibited Hiring Policies and Practices
26 Maine’s Human Rights Commission Pre-Employment Inquiry Guide
27 MD Crim. Proc. Art. 10-109
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<tr>
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<th>On the application before the interview</th>
<th>Background check without interview</th>
<th>Before offer of employment</th>
<th>Making the decision</th>
<th>Juvenile history</th>
<th>Dismissed history</th>
<th>Sealed records</th>
<th>History resulted in diversion program</th>
<th>Arrests</th>
<th>Pending criminal charges</th>
<th>Convictions</th>
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<sup>28</sup> MD Dept. of Labor’s Guidelines for Pre-Employment Inquiries  
<sup>29</sup> Baltimore City Code Article 11 Subtitle 15 Fair Criminal Record Screening Practice (15-2)  
<sup>30</sup> Montgomery County Code Chapter 27 Article XII Fair Criminal Record Screening Standards Sec., 27-72  
<sup>31</sup> Prince George County Code Subtitle 2 Admin Sec. 2-231.04 Fair Criminal Record Screening Standards  
<sup>32</sup> Mass. Gen. Laws Ch. 151B § 4.9 & 91/2  
<sup>33</sup> Mass. Gen. Laws Ch. 151B (Senate Bill 2371) relates only to arrests that did not result in a conviction and misdemeanor convictions more than three years old and expunged/sealed record (Effective Date: October 13, 2018)  
<sup>34</sup> Boston Municipal Code 4-7.3  
<sup>35</sup> Cambridge CORI Policy  
<sup>36</sup> Worcester Fair CORI Practices pg (23-26)  
<sup>37</sup> MI Comp. Laws § 37.2205a (relates to misdemeanor arrests, detentions, or dispositions where a conviction did not result)  
<sup>38</sup> Detroit Municipal Code §§ 13-1-11, 12, 13  
<sup>39</sup> MN Stat. § 364.021  
<sup>40</sup> City of Columbia Code Section 12-90 Criminal Records in Employment

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Before offer of employment: prohibited.

If the decision is out of date:

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- D = Prohibition applies to use of information.
- E = Applies to public contractors (not private employers).
- F = Applies to private employers.
- G = Background check permitted only if required by federal or state law.
- H = Does not apply to positions involving public safety.
- I = Does not apply when required or authorized by federal or state law.
- J = Does not apply to positions involving care to the young, elderly, or sick.
- K = Does not apply to fiduciary positions.
- L = Does not apply to other listed positions.

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**Notes:**
- **City of Kansas City, Missouri Ordinance No. 180034** (Effective Date: June 9, 2018)
- **New. Rev. Stat. 179B.270**
- **NY Exec. Law 15 § 296.16**
- **NY Cor. Law 23A § 752** (relates to persons previously convicted of one or more criminal offenses)
- **NYC Administrative Code Title 8 Ch. 1 Section 8-107(11) Arrest Record; employment**
- **Buffalo City Code § 154-27**
- **Rochester City Code § 63-14**
- **Ok. Statutes § 22-19 F**
- **Or. Rev. Stat. § 659A.360**
- **Or. Rev. Stat. § 659A.030** (relates to expunged juvenile records)
- **Portland Code Chapter 23.10.030**
- **Pa. Code §§ 9121, 9125** (relates to “summary offenses”)
- **Philadelphia Code Title 9 Section 9-3504**
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55 Pittsburgh City Code 181.12
56 RI Gen. Laws § 28-5-7(7)
57 TX Family Code § 58.03(i)
58 Austin Code Chapter § 4-15-4 Fair Chance Hiring Practices
59 UT Criminal Code § 77-40-108.2(2)
60 Sec. 1. 21 V.S.A §495
61 WAC § 162-12-140
63 Ordinance No.C-35564 (Effective Date June 14, 2018)
64 Wis. Stat. §§ 111.32, 111.335
65 Madison Dept. of Civil Rights Code § 39.03(8)(f)
Employer Use of Criminal History Records Highlights

These highlights provide a qualitative sense for what these laws are about. They are not a complete analysis. We have generally omitted any relevant exceptions. We have not analyzed situations where these laws might be pre-empted.

CALIFORNIA

- Employers must not use arrests and convictions that resulted in successful completion of a drug treatment program in the denial of employment, benefit, license, or certificate without the individual’s consent. Cal. Penal Code § 1000.4
- Employers must not use for employment purposes any record of arrest or detention that did not result in a conviction (does not apply to pending charges), or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed. Cal. Labor Code § 432.7
- Employers must not use convictions for marijuana possession if more than two years old for employment purposes. Cal. Labor Code § 432.8
- Employers with five or more employees cannot include on any application for employment, before making a conditional offer of employment to the applicant, any questions that seeks the disclosure of an applicant’s criminal history; inquire into or consider the conviction history of an applicant until after the applicant has received a conditional offer; and conduct a criminal background check in connection with any application for employment, to consider, distribute, or disseminate information on any of the following: a) arrest not followed by conviction (except where the applicant is out on bail or on his or her own recognizance pending trial); b) referral to or participation in a pretrial or posttrial diversion program; or c) convictions that have been sealed, expunged, or statutorily eradicated pursuant to law. Government Code 12952
- Before making an adverse employment decision (hiring, firing, placement) on the basis of criminal history, the law requires employers to consider the a) The nature and gravity of the offense or conduct; b) The time that has passed since the offense or conduct and/or completion of the sentence; and c) The nature of the job held or sought. Cal. Fair Employment and Housing Commission’s Cal. Code of Reg. Title 2, Section 1107.1
- The law requires employers to develop policies for use of criminal history in its hiring decisions that either (a) provides for conducting an individualized assessment of each applicant on whom it considers taking an adverse employment action or (b) that properly distinguish between applicants or employees who do and do not pose an unacceptable level of risk and that the convictions being used to disqualify have a direct and specific negative bearing on the person’s ability to perform duties related to the employment position. Cal. Fair Employment and Housing Commission’s Cal. Code of Reg. Title 2, Section 1107.1
- The employer must give an affected individual a notice of the disqualifying conviction and a reasonable opportunity to present evidence that the information was inaccurate. If the applicant establishes that the record was factually incorrect, then the record cannot be used in the employment decision. Cal. Fair Employment and Housing Commission’s Cal. Code of Reg. Title 2, Section 1107.1

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RICHMOND, CA

• Employer must remove any question regarding prior criminal convictions from printed and/or on-line employment application forms.
• Employers cannot make any inquiry into an applicant’s conviction history.
• If a criminal background investigation is required by State and/or Federal law for a position or the position is sensitive, the background screening will be conducted after the employer has determined that the applicant is otherwise qualified, and the employer has made a conditional offer of employment. The employer’s consideration of a conviction record will be limited to a substantially job-related conviction and must involve an employer’s individualized assessment, including time elapsed since the offense and any evidence of rehabilitation or other mitigating circumstances. If the employer makes an adverse hiring decision because of a substantially job-related conviction, the applicant must be provided with a written notice of rejection including how the conviction may be related to the job and given the opportunity to correct any inaccuracies in the conviction record information and to offer any other evidence of rehabilitation or other mitigating circumstances. Richmond, CA - Ordinance Chapter 2.65.040

SAN FRANCISCO, CA

• Employers may not inquire about, require disclosure of, or base an adverse action on an arrest not leading to conviction, participation in or completion of a diversion or a deferral of judgement program, a conviction that has been dismissed, expunged, voided, invalidate, or otherwise rendered inoperative, a conviction or any other determination or adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system, a conviction more than seven years old, the date of conviction being the date of sentencing, or infractions – until after the first live interview, or at the employer’s discretion, after a conditional offer of employment.
• Employers must conduct an individualized assessment when making an employment decision based on an applicant’s or employee’s conviction history, considering only directly-related convictions, the time elapsed since the conviction or unresolved arrest, and any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors.
• If an employer intends to base an adverse action on an item or items in the applicant’s or employee’s conviction history, the employer must provide the applicant or employee with a copy of the background check report, if any, and notify the applicant or employee of the prospective adverse action and the items forming the basis for the adverse action.
• The Employer must not require applicants or potential applicants for employment or employees to disclose on any employment application the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6) or inquire on any employment application about the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6).
• An Employer may ask on an employment application for an applicant, potential applicant or employee’s written consent for a Background Check so long as the application includes a clear and conspicuous statement that the Employer will not itself conduct or obtain from a third party the Background Check until either after the first live interview with the person or after a conditional offer of employment in accordance with subsection (c) of this San Francisco Police Code Section 4904 Procedures.
LOS ANGELES, CA

- Employers must not request criminal background information on a job application or before making a conditional offer of employment.
- Employers must follow specified notice requirements and provide the applicant a fair chance process.
- Employers are required to state in their job post that they will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of the ordinance.
- Before withdrawing an offer, the employer must conduct an Individualized Assessment, give the applicant a written notice, and hold the employment position open for at least five business days after the applicant receives the notification to provide the employer with additional information or documentation.
- Employers must post a notice informing applicants of the provision of the ordinance in a conspicuous place at every workplace, job site, or other locations in the city under the employer’s control visited by applicant. Los Angeles Municipal Code Chapter XVIII Article 9 Sec. 189.03

COLORADO

- Employers must not use sealed records pertaining to arrests or convictions for employment purposes. Colo. Rev. Stat. § 24-72-702.(1)(f)(I)
- Employers must not use any record of civil or military disobedience for employment purposes unless the matter resulted in a plea of guilty or a conviction. Colo. Rev. Stat. § 8-3-108.(m)

CONNECTICUT

- Employers must not require an employee or applicant to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased.
- An employment application form that contains any question concerning the criminal history of the applicant shall contain a notice, in clear and conspicuous language: (1) that the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased; (2) that criminal records subject to erasure are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolled, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon; and (3) that any person whose criminal records have been erased are deemed to have never been arrested and may so swear under oath. CT Gen. Stat. § 31-51i
- Whenever any person has been adjudicated a youthful offender and has subsequently been discharged from the supervision of the court, all police and court records pertaining to the youthful offender will be automatically erased when the person reaches twenty-one years of age, provided the person has not subsequently been convicted of a felony. CT Gen. Stat. § 54-76o

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HARTFORD

- It is not permissible for city vendors to make any inquiry about or to take any adverse action against any person on the basis of any arrest or criminal accusation made against such person, which is not then pending against that person and which did not result in a conviction.
- It is also unlawful discriminatory practice for a City agency or vendor to require any person to disclose or reveal any arrest or criminal accusation made against such person which is not then pending against that person and which did not result in a conviction.
- If adverse employment action is to be taken based on criminal history, the vendor must notify the applicant and provide the specific reasons for the action. The applicant is given seven days to respond. [Hartford’s Code Section 2-385 Criminal Record Check Standards for City of Hartford](https://www.backroundchecks.com/municipal_hartford_criminal_record_check.html)

NEW HAVEN

- The City and its vendors shall not inquire about an applicant’s conviction history until after it has been determined that the applicant is otherwise qualified for the position.
- Job applications shall not contain a “box” or inquiry regarding a job applicant’s prior convictions.
- After an applicant has been identified as otherwise qualified for the position, the City and its vendors may offer a conditional offer of employment to the applicant, pending a conviction history check. Prior to conducting any conviction history check on an applicant, the City and its vendors must provide standard written notification to the applicant advising: (a) that a conviction history check is going to take place, (b) that he or she will have the opportunity to rebut a decision by the City or vendor should it decide to retract the conditional offer of employment, and (c) what kinds of specific evidence the applicant can present during this rebuttal. [Sec. 2-852 Prohibition against unfair discrimination against persons previously convicted](https://www.backroundchecks.com/municipal_new_haven_criminal_record_check.html)

JACKSONVILLE, FL

- Hiring managers cannot inquire about or consider criminal background information in making a hiring decision.
- Hiring decisions must be based on the applicant’s qualifications to successfully perform the job duties and in accordance with all federal, state, and local laws and regulations. [Jacksonville Ex-Offender Employment Review Standards (July 9, 2009)](https://www.backroundchecks.com/municipal_jacksonville_criminal_record_check.html)

GEORGIA

- Employers must not use arrest records that have been discharged under the First Offender’s Law when making an employment decision regarding a prospective employee. [Ga. Code Ann. § 42-8-63](https://www.backroundchecks.com/municipal_georgia_criminal_record_check.html)
- Employers must not use records of arrests, charges, and sentences for crimes related to first offenders where the first offender has been exonerated and discharged without a verdict of guilty to disqualify individuals from employment, unless exceptions apply. [Ga. Code Ann. § 42-8-63.1](https://www.backroundchecks.com/municipal_georgia_criminal_record_check.html)
- In the event that an employment decision is made adverse to a person whose record was obtained, employers must inform applicants of all information pertinent to that decision. This disclosure must include information that a record was obtained from the Georgia Crime Information Center, the specific contents of the record, and the effect the record had upon the decision. [Ga. Code Ann. § 35-3-34.(b)](https://www.backroundchecks.com/municipal_georgia_criminal_record_check.html)
**HAWAII**

- Employers may inquire into and consider an employee or prospective employee’s conviction record of the most recent ten years (excluding period of incarceration) only after a conditional offer of employment is made, and only if that record bears a rational relationship to the job.
- If the employee or prospective employee claims that their period of incarceration was less than what is shown on their conviction record, an employer can provide the employee or prospective employee an opportunity to present documentary evidence of a date of release to establish that their incarceration period was shorter than the sentence. [Haw. Rev. Stat. § 378-2.5.(b)]

**ILLINOIS**

- Employers must not inquire about or into, consider, or require disclosure of the criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer or employment agency or, if there is not an interview, until after a conditional offer of employment is made to the applicant by the employer or employment agency. Exceptions apply. [820 ILCS 785/15]
- Employers, employment agencies, and labor organizations must not inquire into or use the fact of an arrest or criminal history record information ordered expunged, sealed, or impounded in making employment decisions, unless otherwise authorized by law. [820 ILCS 70/10]

**CHICAGO, IL**

- Employers may not inquire about or into, consider, or require disclosure of an applicant’s criminal record or criminal history until after the applicant has been determined qualified for the relevant position and notified that he has been selected for an interview. If there is no interview, the restriction applies until after a conditional offer of employment is extended to the applicant.
- If an employer makes a decision not to hire an applicant that is based, entirely or partially, on the applicant’s criminal record or history, the employer shall inform the applicant of this basis at the time he is informed of the decision. [City of Chicago Code Chapter 2-160-054]

**INDIANA**

- Employers must not make an adverse employment decision based on a sealed or expunged record. [IN Code § 35-38-9-10]

**KENTUCKY**

- Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision will not be released to the public without court order. This restriction shall not apply to juveniles who were tried as an adult. [502 KAR 30:060.1.(2)(a)]

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LOUISVILLE, KY

- City vendors are not permitted to inquire about an applicant’s conviction history until it has been determined that the applicant is otherwise qualified for the position.
- Applications must not include a “box” or inquiries about conviction history.
- Vendors must notify applicants who are being considered for employment that a criminal background check will be conducted and give the applicant an opportunity to disclose any criminal history they might have. Louisville Chapter 112.30 Prohibited Hiring Policies and Practices

LOUISIANA

- Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, or publicly owned water districts of the state, which records are the records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. La. Rev. Stat. § 44:3.A.(4)(a)

MAINE

- Employers may not inquire about the applicant’s arrest record.
- Employers may inquire about criminal convictions that are related to the job. Maine’s Human Rights Commission Pre-Employment Inquiry Guide

MARYLAND

- An employer must not require disclosure of expunged information about criminal charges in an application, interview, or other means of a person who applies for employment or admission. MD Crim. Proc. Art. 10-109
- A person need not refer to or give information concerning an expunged charge when answering a question concerning: (i) a criminal charge that did not result in a conviction; or (ii) a conviction that the Governor pardoned. Refusal by a person to disclose information about criminal charges that have been expunged may not be the sole reason for (i) an employer to discharge or refuse to hire the person; or (ii) a unit, official, or employee of the State or a political subdivision of the State to deny the person’s application. MD Crim. Proc. Art. 10-109
- Employers may inquire about convictions that bear a direct relationship to the job and have not been expunged or sealed by the courts. Consideration should be given to the nature, recentness and rehabilitation. MD Dept. of Labor’s Guidelines for Pre-Employment Inquiries
- Employers must not inquire about a candidate’s general arrest and conviction record. MD Dept. of Labor’s Guidelines for Pre-Employment Inquiries

Baltimore, MD

- An employer may not, at any time before extending a conditional offer of employment: (1) require an applicant to disclose or reveal whether he or she has a criminal record or otherwise has had criminal accusations brought against him or her; (2) conduct a criminal record check on the applicant; or (3) otherwise make any inquiry of the applicant or others about whether the

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applicant has a criminal record or otherwise has had criminal accusations brought against him or her. Baltimore City Code Article 11 Subtitle 15 Fair Criminal

Record Screening Practice (15-2)

MONTGOMERY COUNTY, MD

- Applicant means a person who is considered or who request to be considered for employment in the County by an employer or a current employee who requests to be considered for a promotion.
- An employer must not, at any time before the conclusion of a first interview require an applicant to disclose whether the applicant has an arrest record or conviction record, or otherwise has been accused of a crime; conduct a criminal record check on the applicant; or inquire of the applicant or others about whether the applicant has an arrest record or conviction record or otherwise has been accused of a crime.
- If an employer intends to rescind a conditional offer based on an applicant's or employee's arrest record or conviction record, before taking the adverse action the employer must provide the applicant or employee with a copy of any criminal record report; and notify the applicant of its intention to rescind the conditional offer and the items that are the basis for the adverse action; and delay rescinding the conditional offer for 7 days so the applicant can give the employer notice of inaccuracy of an item or items on which the intention to rescind the conditional offer is based. Montgomery County Code Chapter 27 Article XII Fair Criminal Record Screening Standards Sec. 27-72

PRINCE GEORGE COUNTY, MD

- An employer must not require an applicant or potential applicant to disclose on an employment application the existence or details of the applicant’s arrest record or conviction record.
- An employer must not, at any time until the conclusion of a first interview: (1) require the applicant to disclose whether the applicant has an arrest record or conviction record, or otherwise has been accused of a crime; (2) conduct a criminal record check on the applicant; or (3) inquire of the applicant or others about whether the applicant has an arrest or conviction record or otherwise has been accused of a crime.
- When making an employment decision based on an applicant’s or employee’s arrest record or conviction record, an employer must conduct an individualized assessment, considering only specific offenses that may demonstrate unfitness to perform the duties of the position sought by the applicant or held by the employee, the time elapsed since the specific offenses, and any evidence of inaccuracy in the record.
- If an employer intends to base an adverse action on an item or items in the applicant’s or employee’s arrest record or conviction record, before taking the adverse action the employer must: (1) provide the applicant or employee with a copy of any criminal record report; and (2) notify the applicant or employee of the prospective adverse action and the items that are the basis for the prospective adverse action. Prince George County Code Subtitle 2 Administration Sec. 2-231.04 Fair Criminal Record Screening Standards

MASSACHUSETTS

- Employers must not inquire about: an arrest, detention, or disposition regarding any violation of law in which no conviction resulted; first conviction misdemeanors involving drunkenness, simple assault, speeding, minor traffic violations (any moving violation other than reckless driving, driving to endanger, and motor vehicle homicide), affrays or disturbance of the peace; any

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State and Local Restrictions on Criminal History Inquiries and Background Checks

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- Employers cannot inquire into convictions for misdemeanors where the date of the conviction occurred three or more years. Senate Bill 2371 Effective Date is October 13, 2018
- Employers cannot ask from applicants a criminal record that has been sealed or expunged. Senate Bill 2371 Effective Date is October 13, 2018
- Employers must include a specified statement in all applications that are seeking criminal background information of the applicant. Senate Bill 2371 Effective Date is October 13, 2018

BOSTON, MA
- Applicant means any current or prospective employee, licensee, or volunteer and includes all person included in 803 CMR 2.03.
- A vendor must not conduct a CORI check on an applicant unless it is required by law or it has made a good faith determination that the relevant position is of such sensitivity that a CORI report is warranted.
- A CORI check must not be made until the vendor determines that an applicant is otherwise qualified for the position.
- CORI reports must consist solely of conviction and case-pending information.
- If an adverse action is to be taken, the vendor must notify the applicant of the potential adverse employment action, provide the applicant with a photocopy of the CORI report, inform the applicant of the specific parts of the CORI report that are of concern, providing an opportunity for the applicant to discuss the CORI report with the vendor, including an opportunity for the applicant to present information rebutting the accuracy and/or relevance of the CORI report, review any information and documentation received from the applicant, and document all steps taken. Boston Municipal Code 4-7.3

CAMBRIDGE, MA
- A CORI check must not be made until the vendor determines that an applicant is otherwise qualified for the position.
- CORI reports must consist solely of conviction and case-pending information.
- If an adverse action is to be taken, the vendor must notify the applicant of the potential adverse employment action immediately, provide the applicant with a photocopy of the CORI report and the CORI policy, inform the applicant of the specific parts of the CORI report that are of concern, providing an opportunity for the applicant to dispute the report and its relevance. Cambridge CORI Policy

WORCESTER, MA
- Applicant means any current or prospective employee, licensee, or volunteer and includes all person included in 803 C.M.R. 203.
- City vendors must not conduct a CORI check or make any inquiry into an applicant’s possible criminal history or include any such inquiry on any initial employment application form, until after an applicant’s credentials have been reviewed, it has determined that the applicant

Senate Bill 2371
Boston Municipal Code 4-7.3
Cambridge CORI Policy
is otherwise qualified for a position and a conditional offer of employment has been made.

- City vendors must not check an Otherwise Qualified applicant’s CORI unless a CORI check is mandated by law or it determines that the position in question is of such sensitivity that a CORI check is warranted.
- The City requires that any personnel responsible for reviewing CORI be trained on reading and interpreting a CORI report. Personnel must be required to attend CORI training and be knowledgeable about educational materials made available by the CHSB. Worcester Fair CORI Practices pg (23-26)

**MICHIGAN**

- An employer must not in connection with an application for employment or membership, or in connection with the terms, conditions, or privileges of employment or membership request, make, or maintain a record of information regarding a misdemeanor arrest, detention, or disposition where a conviction did not result. A person is not guilty of perjury or otherwise for giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold by this section. This section does not apply to information relative to a felony charge before conviction or dismissal. Mich. Comp. Laws § 37.2205a

**DETROIT, MI**

- City vendors must not inquire into or consider the criminal conviction of applicants until the applicant is being interviewed and/or otherwise qualified by the City. Detroit Municipal Code §§ 13-1-11, 12, 13

**MINNESOTA**

- Employers must not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant. MN Stat. § 364.021

**COLUMBIA, MO**

- Employers cannot inquire, question, or otherwise seek information on as to whether an individual has ever been arrested for, charged with, or convicted of any crime until after a conditional offer of employment is made. City of Columbia Code Section 12-90 Criminal Records in Employment

**Kansas City, MO**

- This applies to all employers in the City of Kansas City, MO who employ six or more people.
- Employers may not inquire for an applicant’s criminal history until after the interview.
- Employers may not base their employment decision on an applicant’s criminal history unless the employer both considers all available information, including the recency, frequency, and severity of the criminal history, and determines that the criminal history is related to the job and responsibilities of the position. City of Kansas City.
NEVADA

- Employers must not use the state sex offender registry for employment purposes. Nev. Rev. Stat. 179B.270

NEW JERSEY

- Employers must not require an applicant for employment to complete any employment application that makes any inquiries regarding an applicant’s criminal record during the initial employment application process.
- Employers must not make any oral or written inquiry regarding an applicant’s criminal record during the initial employment application process. If an applicant discloses any information regarding the applicant’s criminal record, by voluntary oral or written disclosure, during the initial employment application process, the employer may make inquiries regarding the applicant’s criminal record during the initial employment application process. NJ Stat. § 34.6B-14, NJ Stat. § 34.6B-15, NJ Stat. § 34:6B-16

NEW YORK

- Employers must not consider conviction information that does not bear a direct relationship to the job. Employers may consider whether the individual would create an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. In that consideration, employers must consider eight listed factors. NY Cor. Law 23A § 752
- Employers may not inquire about, or take any adverse action with respect to, any arrest or criminal accusations not currently pending, or any youthful or sealed convictions. N.Y. Exec. Law § 296(16).

BUFFALO

- Employers cannot make any inquiry regarding, or to require a person to disclose or reveal, any criminal conviction during the application process or before a first interview. If an employer does not conduct an interview, the employer must inform the applicant whether a criminal background check will be conducted before employment is to begin. Buffalo City Code § 154-27

NEW YORK CITY

- Employers must not deny employment or take adverse action because of one or more criminal convictions. NYC Admin. Code § 8-107.10(a)
- Employers must not deny employment to any applicant or take adverse action against any employee because of an arrest or criminal accusation. NYC Admin. Code § 8-107.11(a)
- Employers must not make any inquiry about an arrest or criminal accusation when the inquiry relates to an arrest or accusation that result in a favorable disposition, youthful offender adjudication, or dismissed or sealed records. NYC Admin. Code § 8-107.11(b)
- Employers must not declare, print, circulate, or cause to be declared, printed, or circulated any solicitation, A = Prohibition applies to inquiries to the applicant.
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D = Prohibition applies to use of information.
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K = Does not apply to fiduciary positions.
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M = Does not apply for licensed trades or professions.
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Missouri Ordinance No. 180034 (Effective Date: June 9, 2018)
advertising, or publication, which expresses any limitation or specification in employment based on a person’s arrest or criminal conviction.  NYC Admin. Code § 8-107.11-a(a)(1)

• Employers must not make any inquiry or statement about pending arrests or criminal conviction records until an offer of employment is made.  NYC Admin. Code § 8-107.11-a(a)(2)

• Employers cannot deny employment to any person or take adverse action against any employee by reason of such person or employee was convicted of one or more criminal offenses, or by reason of a finding of a lack of “good moral character” which is based on such person or employee having been convicted of one or more criminal offenses.  Such denial or adverse action is in violation of the provisions of article twenty-three-a of the correction law.  NYC §8-107.10(a)

• In the event that an employment decision is made adverse to a person whose record was obtained, employers must, before any adverse action is taken: (i) provide a written copy of the inquiry to the applicant; (ii) provide the applicant with an analysis of the applicant under Article 23 of the state’s correction law, including supporting documents; and (iii) allow the applicant a reasonable time to respond (not less than 3 business days), and keep the position open during that time.  NYC Admin. Code § 8-107.11-a(b)

ROCHESTER

• The City, its vendors, and any employer located within City limits cannot make any inquiry regarding, or to require any person to disclose or reveal any criminal conviction during the application process.  The "application process" shall be deemed to begin when the applicant inquires about the employment sought and shall end when an employer has conducted an initial employment interview or made a conditional offer of employment.

• If an employer does not conduct an interview, it must inform the applicant whether a criminal background check will be conducted before employment is to begin.  Rochester City Code § 63-14

OKLAHOMA

• Employers, educational institutions, state and local government agencies, officials, and employees must not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records.  An applicant need not, in answer to any question concerning arrest and criminal records provide information that has been sealed, including any reference to or information concerning such sealed information and may state that such action has ever occurred.  Such an application may not be denied solely because of the applicant’s refusal to disclose arrest and criminal records information that has been sealed.  OK Stat. § 22-19.F

OREGON

• Employers must not exclude an applicant from an initial interview solely because of a past criminal conviction.  An employer excludes an applicant from an initial interview if the employer:  (a) requires an applicant to disclose on an employment application a criminal conviction; (b) requires an applicant to disclose, prior to an initial interview, a criminal conviction; or (c) if no interview is conducted, requires an applicant to disclose, prior to making a conditional offer of employment, a criminal conviction.  OR Rev. Stat. § 659A.360

• Employers must not refuse to hire or employ an individual or to bar or discharge an individual from...
CITY OF PORTLAND

- Employers cannot access an applicant’s criminal history prior to making a conditional offer of employment.
- Employers cannot exclude an applicant from consideration solely because of an applicant’s criminal history.
- Employers cannot use criminal history unless the specific offense or conduct is job related for the position and consistent with business necessity.
- Employers cannot use or consider: (a) an arrest not leading to a conviction, except where a crime is unresolved or charges are pending against an applicant, (b) convictions that have been judicially voided or expunged, and (c) charges that have been resolved through the completion of a diversion or deferral of judgment program. Portland Code Chapter 23.10.030

PENNSYLVANIA

- Employers may consider an applicant’s felony and misdemeanor convictions only to the extent it relates to the applicant’s suitability for the position. 18 Pa. Stat. § 9125.(b)
- Employers must not use arrest records for employment purposes. 18 Pa. Stat. § 9125.(b)
- Employers must not consider “summary offenses.” 18 Pa. Stat. § 9125.(b)
- Employers must notify applicants in writing if not hired based in whole or in part on criminal history. 18 Pa. Stat. § 9125.(c)

PHILADELPHIA, PA

- Employers must not: (a) inquire about criminal convictions during the application process; (b) access an applicant’s criminal history prior to making a conditional offer of employment; or (c) exclude an applicant from consideration solely because of an applicant’s criminal history unless it is job related and consistent with business necessity.
- Employers must conduct an individualized assessment if criminal history is considered and provide written notice and a copy of the criminal report to an applicant if a job offer is rescinded.
- Employers must post a summary of the Chapter (§ 9-3509) requirements in a form to be supplied by the Commission, in a conspicuous place on the employer’s website and premises. This form is not yet available on the Commission’s website. Philadelphia Code Title 9 Section 9-3504

PITTSBURGH

- Vendors must not inquire about an applicant’s conviction history until after it has been determined that the applicant is otherwise qualified for the position.
- If the vendor finds a valid reason to rescind, revoke, or withdraw the conditional offer, the applicant will have an opportunity to provide clarifying information for consideration prior to its final decision about the offer. 181.12 Ensuring Equal Employment Opportunity for Persons Previously Convicted
Employers must not include on any application for employment, except applications for law enforcement agency positions or positions related to law enforcement agencies, a question inquiring either orally or in writing whether the applicant has ever been arrested, charged with or convicted of any crime; provided, that: (i) if a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on a person’s conviction of one or more specified criminal offenses, an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those offenses; or (ii) if a standard fidelity bond or an equivalent bond is required for the position for which the applicant is seeking employment and his or her conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond, an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those offenses; and (iii) notwithstanding, any employer may ask an applicant for information about his or her criminal convictions at the first interview or thereafter, in accordance with all applicable state and federal laws. RI Gen. Laws § 28-5-7.(7)

TEXAS

• A person whose juvenile records have been sealed is not required in any proceeding or in any application for employment, information, or licensing, to state that the person has been the subject of a proceeding under the Family Code and any statement that the person has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding. TX Family Code § 58.03(j)

Austin

• Employers must not inquire an applicant about criminal history or conduct a background check prior to making a conditional offer of employment.
• Employers must not publish information about a job that implies that an applicant’s criminal history automatically disqualifies the individual from consideration for the job.
• Employers must not inquire about the criminal history of a potential employee in a job application.
• Employers must not refuse to consider employing an individual for a job because the individual did not provide criminal history information before the individual received a conditional employment offer.
• Employers may not take adverse actions against an individual because of the individual’s criminal history unless the employer has a good faith belief that the individual is unsuitable for the job based on an individualized assessment conducted by the employer. Austin Code Chapter § 4-15-4 Fair Chance Hiring Practices

UTAH

• Unless otherwise provided by law or ordered by a court to respond differently, a person who has received an expungement of an arrest or conviction may respond to any inquiry as though the arrest or conviction did not occur. UT Criminal Code §77-40-108.(2)

Vermont

• Employers must not inquire about the criminal history of a potential employee in a job application.
• Employers may inquire about a prospective employee’s criminal history record in an interview or when the
State and Local Restrictions on Criminal History Inquiries and Background Checks

prospective employee is deemed qualified for the position.

- Under two conditions can an employer inquire about any criminal convictions on the initial application form:
  - 1) the applicant is applying for a position for which any federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offense; and
  - 2) the employer or an affiliate of the employer is subjected to an obligation imposed by any federal or state law or regulation not to employ an individual, in either one or more positions, who has been convicted of one or more type of criminal offenses.

- When requesting the applicant’s criminal history information, the employer must allow the potential employee to explain the circumstances behind any convictions including post-conviction rehabilitation.  Sec. 1. 21 V.S.A §495

WASHINGTON

- Employers must not inquire about convictions that do not reasonably relate to the job duties or that occurred more than 10 years prior.  Wash. Admin. Code § 162-12-140
- Employers may not ask about arrests or convictions before an applicant is determined “otherwise qualified” for a position.
- Pre-employment inquiries about arrests must include whether the charges are still pending, have been dismissed, or led to a conviction of a crime involving behavior that would adversely affect job performance, and whether the arrest occurred within the last ten years.  Wash. Admin. Code § 162-12-140
- Employers cannot advertise employment openings in a way that excludes people with criminal records from applying (i.e. “no felons” or “no criminal background”).  Washington House Bill 1298 Effective Date June 7, 2018

SEATTLE, WA

- Employers must not advertise, publicize, or implement any policy or practice that automatically or categorically excludes all individuals with any arrest or conviction record from any employment position that will be performed in whole or in substantial part (at least 50% of the time) within the City.
- Employers may perform a criminal background check on a job applicant or require a job applicant to provide criminal history information, but only after the employer has completed an initial screening of applications or resumes to eliminate unqualified applicants.
- Employers must not carry out a tangible adverse employment action solely based on an employee’s or applicant’s criminal conviction record or pending criminal charge, unless the employer has a legitimate business reason for taking such action.
- Before taking any tangible adverse employment action solely based on an applicant’s or employee’s criminal conviction record, the conduct relating to an arrest record, or pending criminal charge, the employer must identify to the applicant or employee the record(s) or information on which they are relying and give the applicant or employee a reasonable opportunity to explain or correct that information.  Seattle Municipal Code 14.17.040 The Use of Criminal History in Employment Decisions

Spokane, WA

- Employers cannot include any question in an application for employment, inquire orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an applicant’s arrest or conviction record prior to an in-
person, telephonic, or video interview or a conditional offer of employment

- Employers cannot advertise employment openings in a way that excludes people with arrest or conviction records from applying (i.e. “no felons” or “no criminal background.”
- Employers cannot disqualify an applicant before an in-person, telephonic, or video interview solely because of a prior arrest or conviction unless the conviction is related significant duties of the job.
- Employers cannot disqualify an applicant for failure to disclose a criminal record before initially determining the applicant is otherwise qualified for the position. **Ordinance No.C-35564 (Effective Date June 14, 2018)**

### WISCONSIN

- Employers must not refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of an arrest or conviction record. **Wis. Stat. § 111.322**
- Employers may refuse to employ based on a conviction if the conviction is for a felony, misdemeanor or other offense that substantially relate to the circumstances of the particular job or licensed activity or it renders the individual not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer. **Wis. Stat. § 111.335**
- Employers may refuse to employ or to suspend from employment, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity. **Wis. Stat. § 111.335**

### MADISON, WI

- Employers must not request an applicant, employee, member or any other person, on an application form or otherwise, to supply information regarding any credit history or arrest record, except a record of a pending charge, of the applicant, employee or member; except for applicants for law enforcement officers or when an employer may lawfully consider or rely upon such arrest or conviction record. **Madison Dept. of Civil Rights Code § 39.03(8)(f)(1)**

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