



**Questions and Answers from
Webinar: *Know Your Rights: Legal Rights
of People with Criminal Convictions***

NOTE: We answered a substantial number of the questions received; however, we did not answer questions that did not directly relate to the topics of the webinar series. We also did not answer questions that were unclear – which can easily happen in a webinar because the presenter does not know at what point the question was asked. We apologize, but hope that the many questions we did answer will be helpful.

Q: Does a “conviction” include a plea of no contest?

A: Yes. For purposes of the federal Fair Credit Reporting Act, a plea to a criminal charge results in a conviction for that charge, no matter whether the plea is (1) guilty to the charge or some lesser charge or charge added to the complaint or indictment for plea purposes (but note that a plea to a non-criminal offense does NOT constitute a criminal conviction), (2) no contest (*nolo contendere*), or (3) an Alford plea (i.e., where defendant does not admit the act and asserts innocence, but admits that sufficient evidence exists with which the prosecution could likely convince a judge or jury to find the defendant guilty without admitting guilt).

Q: Would it be considered an “adverse action” to keep someone from a particular program, even if they get paid the same or more in another program?

A. Maybe. “Adverse action” is defined in the federal Fair Credit Reporting Act as “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.” 15 U.S.C. §1681a(k)(1)(B)(ii). If a court determined that keeping a person from a particular program “adversely affected” them, this would be an adverse action and the notice requirements we’ve discussed would apply.

Q: Do you know of any law requiring sex offenders to disclose to an employer that their crime was of a sexual nature?

A: We know of no such federal law, but individual states may have such a requirement, or this may be a condition of a person’s parole, probation or post-release supervision.

Q: What about municipal denial of housing to sex offenders in certain areas as a result of Megan’s Law or other laws?

A: As we noted, federal law prohibits federally-funded housing authorities from leasing or providing Section 8 rental assistance vouchers to people subject to lifetime sex offender registration requirements under any state law. And because there is no federal law that prohibits discrimination against people with criminal conviction histories, unless there is some specific state law protection, both private and public/municipal/government landlords *may* deny housing to people because of their sex offense conviction histories.

Q: If the background check is not provided prior to “adverse action” taken by an employer, what is the recourse by the potential employee? Do they need to retain a lawyer?

A: The federal Fair Credit Reporting Act requires that, where an employer plans to take “adverse action” against an employee or job applicant based in whole or in part on a consumer report (a background check is a form of consumer report), the employer must provide the report, together with a copy of the Fair Trade Commission’s Summary of Consumer Rights, to the employee or job applicant in advance of taking the adverse action. Where an employer has violated this law, the employee or job applicant may file a lawsuit in federal court seeking damages and other relief. While there is no legal requirement that a person retain a lawyer to file a lawsuit, it is a very good idea to at least consult with – and preferably retain – a lawyer. You may want to consult with your local bar association for attorneys who practice in this field, or for suggestions on other referral sources. A few legal services offices do work in this area and may have attorneys available free of charge to people of very low income.

Q: What needs to happen if there are missing dispositions on a rap sheet?

A: Sometimes rap sheets (i.e. official conviction history reports prepared by the state criminal records repository or the FBI) will list an arrest or filing of charges but will not list what happened after the filing. Generally speaking, an individual will need to go to the court where the action was filed and get an official record of the disposition in the case. If no action was filed, the individual will need to go either to the arresting authority and get an official record that the arrest did not lead to a prosecution, or to the district attorney and get an official record that the district attorney declined to prosecute the case, whichever is appropriate. After obtaining the official record of what happened, the individual will generally need to send it on to the state criminal records repository with a request that they

correct their files. Each state has different procedures, though. See the National H.I.R.E. Network website, www.hirenetwork.org, for information about your state's policies and procedures.

Q: If you have a criminal conviction history, how do you answer the question “do you have a criminal record” truthfully and still get an interview?

A: There is no magic answer to this question. We suggest that people with conviction histories answer “yes” to this question and list their convictions . . . but also state that they have made great strides in changing their lives since the convictions occurred and attach proof of rehabilitation (*see* the Legal Action Center publication, “How to Gather Evidence of Rehabilitation” for suggestions). You are right that being truthful may often result in an applicant not getting an interview, but it is better to be truthful than not to be, because you may in some cases have protection against discrimination under state law. But if you lie on an application, you have no such protections, and can be legally denied a job.

Q: Do you have to report that you have been arrested for DWI in Canada?

A: Look at the application question carefully. If it asks about criminal convictions, you do not need to report arrests that terminated without a criminal conviction. Some state laws make it illegal to ask about or consider arrests that did not lead to a conviction. If the application asks “have you ever been convicted of a crime,” though, you will have to answer “yes” if this arrest led to a criminal conviction.

Q: Who is pushing to change the policy on employment and housing discrimination against people with criminal records?

A: There are various national organizations working in these areas, among them the National Employment Law Project, the National Housing Law Project, and the Legal Action Center. For more resources, look at the National H.I.R.E. Network website, www.hirenetwork.org.

Q: What are the protections of pre-trial intervention, when there is no conviction, as far as housing goes?

A: Assuming the concern is whether a landlord or housing agency will run a background check, the answer depends on the program, the stage a person is at in the course of the program, state law and state reporting customs. Generally speaking, if pre-trial intervention does not require a guilty plea in order for an individual to participate, then a background check will probably show the filing of the case but no disposition during the pendency of required programming. If pre-trial intervention requires a guilty plea pending successful completion of programming, then this plea

will probably appear as a conviction on a background report while the programming is pending. If at successful completion of pre-trial intervention a person's guilty plea is withdrawn and the records sealed, then there will probably be no record of this conviction once the records are sealed.

Q: Can federal housing ask about arrests?

A: Federal law permits local housing authorities to ask about arrests and convictions, but some housing authorities ask only about convictions. See Legal Action Center's "Roadblocks to Reentry" webpages for information about practices of some housing authorities in your state, www.lac.org (link to Roadblocks report is at bottom of this homepage).

Q: Should a job applicant get a copy of his background check to be sure a company is in compliance if it decides not to hire him or take other adverse action due to the results of a background check? Or is the company having one on hand enough?

A: If you're asking whether it is a good idea to get a copy of the background check that your employer ordered and relied on to deny you a job or take other "adverse action," then the answer is definitely yes. You want to make sure that it did not contain errors. If it did, you should point them out to the employer and provide back-up documentation. As we said in the webinar, the federal Fair Credit Reporting Act entitles you to get a copy of that report *in advance* of the adverse employment action that is based in whole or in part on the results of a background check.

If you are trying to learn what an employer *might* see *if* it ordered a background check, this becomes a more difficult question. As we mentioned, there are more than 600 background screening companies operating in the United States, and there is no way to know in advance what a report created by any of them will look like. However, it is possible to see what source information the company will likely use by obtaining a copy of a rap sheet (i.e. official record of arrest and prosecution) for each and every state where the individual has had any contact with the criminal justice system. We advise that people get their rap sheet(s), understand them and correct errors on them before beginning the job search, if at all possible.

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