



# Bay Area Job Seeker with a conviction? **KNOW YOUR RIGHTS!**

This factsheet includes only general legal information; learn more about your rights by contacting the Second Chance Legal Clinic at the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 415-814-7610.

## 1. BE PREPARED, CLEAN YOUR RECORD.

### Can I get rid of any kind of conviction on my record?

In general, convictions cannot come off your record, but you can take steps so that most private employers won't have access. For example, you can petition the court for a "dismissal" of certain convictions under Penal Code sections 1203.4, 1203.4a, or 1203.41. Cases that resulted in a prison sentence generally can't be dismissed, but there may be other options.

## 2. TIPS FOR APPLYING FOR A JOB.

### How do I answer the question "have you ever been convicted?" Is that legal?

- If an employer is posting a job as requiring a "clean record" or "no felony convictions," or is asking about *any* and *all* convictions on an application, that could be a red flag. An employer that won't hire anybody with a record could be violating federal law.
- Under state law, most government jobs shouldn't include this question on the job application. Also, in San Francisco, the city's law restricts most employers from asking about convictions until after at least the first live interview.
- In general, try to answer the specific question that's asked accurately. You can get denied the job or fired for being "dishonest" if you have errors or you leave out information.

### Is it legal for an employer to ask about convictions that are more than 7 years old?

- Generally, yes. An employer can ask about convictions, no matter how old. However, under state law, a background check report should only *show* convictions from the last 7 years.
- San Francisco is an exception. The city's law creates consistency: an employer can only ask about convictions within the last 7 years.

### Is it legal for an employer to ask, "have you ever been arrested?"

Probably not. Under state law employers **can't** ask about: (1) arrests that didn't result in conviction; (2) participation in a diversion program; and (3) court-dismissed convictions. Examples of exceptions are law enforcement or jobs working with children, seniors, or people with disabilities.

### The judge dismissed all my convictions. Can't I legally say I have no convictions?

- Generally, yes. For most jobs with private companies, if all of your convictions have been "dismissed" by a judge or the court, then you can state "no convictions" on most applications.
- But you will probably need to share your dismissed convictions for government jobs, professional licenses, or sensitive jobs that require fingerprinting.

## I have a juvenile record. Should I include this when I'm asked about convictions?

Generally, no. An "adjudication" in juvenile court is not considered a conviction. If you have petitioned to seal your juvenile record, then don't disclose it any situation. But sealing is **not automatic**. You must file a petition in court.

## 3. THE BASICS OF BACKGROUND CHECK REPORTS.

### I'm applying for a job that's running a background check. What's going to show up?

#### "I wasn't fingerprinted..."

Because you weren't fingerprinted, it's a background check conducted by a private company. The following shouldn't be on the report: (1) convictions older than 7 years; (2) arrests that didn't result in conviction; (3) completed diversion programs; (4) court-dismissed convictions; and (5) certain marijuana convictions.

#### "I was fingerprinted..."

Because you were fingerprinted (aka "LiveScan"), it's a government background check and could include your full record.

### How can I get a copy of my background check report?

#### "I wasn't fingerprinted..."

- Under the law, the employer must ask permission to run the background check and must include a check-box so you can request a copy of the report.
- Protect your rights by always asking for a copy of the report.
- Didn't ask for a copy? The employer must provide you a copy before they decide not to hire you.

#### "I was fingerprinted..."

Under the law, the employer should provide you a copy of the report if they decide not to hire you. Ask the employer for the copy.

## 4. TAKE ACTION IF YOUR RIGHTS ARE VIOLATED.

