

# State Laws and Their Impact on Use of Criminal Records for Employment Purposes

While the FCRA and EEOC provide a legal framework under which consumer reporting agencies and employers report and use criminal records, there are a number of state laws that limit the use of arrest and conviction records by prospective employers. These range from laws and rules prohibiting the employer from asking the applicant any questions about arrest records, to those restricting the employer's use of conviction data in making an employment decision. In some states, while there is no restriction placed on the employer, there are protections provided to the applicant with regard to what information they are required to report.

## ALABAMA

**Arrest:** No Alabama statutes have been located that restrict an employer's ability to obtain and/or use information regarding arrests.

**Conviction:** No Alabama statutes have been located that restrict an employer's ability to obtain and/or use information regarding convictions.

## ALASKA

**Arrest:** Alaska has a statute indicating an individual may not obtain non-conviction information or correctional treatment information. Despite this qualification, all criminal justice information, including information relating to a serious offense, may be provided if needed to determine whether to grant a person supervisory or disciplinary power over a child or dependent adult. Alaska Stat. §§ 12.62.160 (b)(8), 12.62.160 (b)(9), 12.62.900.

**Conviction:** There are no Alaska statutes restricting an employer's ability to obtain or use information regarding convictions. However, as discussed above, Alaska limits the

release of non-convictions and correctional treatment criminal justice information. Alaska Stat. § 12.62.160 (b)(9).

## Arizona

**Arrest:** No Arizona statutes have been located that restrict an employer's ability to obtain and/or use arrest records. However, the Civil Rights Division's guide to pre-employment inquiries states that asking an applicant about his or her arrest record is an impermissible question unless there is a "compelling" business reason directly related to the job sought. Arizona Guide to Pre-Employment Inquiries, Fair Employment Practices Manual (BNA), 453:1861.

**Conviction:** No Arizona statutes have been located that specifically restrict a private employer's ability to obtain and/or use conviction records. An employer's inquiries into an applicant's prior convictions are acceptable provided it states on the employment application or during interview that convictions are not an absolute bar to employment. Guide to Pre-Employment Inquiries Under the Arizona Civil Rights Act, Fair Employment Practices Manual (BNA), 453:1861.

## Arkansas

**Arrest:** No Arkansas statutes have been located to restrict any private employer's ability to obtain and/or use arrest records.

**Conviction:** No Arkansas statutes have been located to restrict any private employer's ability to obtain and/or use conviction records.

## California

California law places restrictions on the prospective employer's ability to ask about certain criminal records while protecting the applicant from any requirement to disclose certain arrest information.

**Arrest:** Employers cannot ask job applicants to disclose information about arrests or detentions that did not result in a conviction or that resulted in a referral to and participation in a pre- or post-trial diversion program (e.g., a drug treatment program). Employers also are prohibited from seeking such information from any source. If an employer does obtain this information, it cannot use it as a factor in determining any condition of employment, including hiring, promotion, or termination. The statute does not prevent an employer from *asking* an employee or applicant about an arrest for which the individual is out on bail or on his or her own recognizance pending trial. Cal. Lab. Code § 432.7. The statute is silent on how the employer can use such pending arrest information obtained, although at least one California court has held that the statute does not authorize an employer to utilize an arrest alone as a basis for disciplinary action. *Pitman v. City of Oakland*, 197 Cal. App. 3d 1037 (1988). Under the California Fair Employment & Housing Commission's Regulations, unless otherwise provided by law, it is unlawful for an employer or other covered entity to inquire or seek information regarding any applicant concerning any arrest or detention which did not result in conviction or any arrest for which a pre-trial diversion program has been successfully completed. Cal. Code Regs., tit. 2, § 7287.4. California's Department of Fair Employment & Housing's Pre-employment Inquiry Guidelines DFEH-161 also provide that pre-employment inquiries regarding arrests not resulting in convictions are unacceptable.

**Conviction:** Employers can inquire about an applicant's prior criminal convictions if the inquiry is accompanied by a statement that such a conviction will not necessarily disqualify the applicant from employment. California Pre-employment Inquiry Guidelines DFEH-161. Employers cannot ask applicants about convictions for certain marijuana-related convictions if the convictions are more than two years old. Cal. Lab. Code § 432.8 Employers are prohibited from asking an applicant to disclose information concerning an arrest or detention that did not result in a conviction from any source or utilizing information obtained as a hiring factor. If an employer does obtain this information, it cannot use it as a factor in determining any condition of

employment, including hiring, promotion, or termination. Cal. Lab. Code § 432.8. Employers also cannot ask about convictions that have been sealed, expunged, or statutorily eradicated or about any misdemeanor convictions for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed. Cal. Code Regs., tit. 2, § 7287.4; California Pre-employment Inquiry Guidelines DFEH-161. Employers cannot require an employee or applicant to obtain a copy of his or her own criminal record. Cal. Penal Code § 13326.

## Colorado

**Arrest:** Colorado law prohibits employers from requiring applicants to disclose information contained in sealed arrest records. Colo. Rev. Stat. § 24-72-308. According to the Colorado Civil Rights Commission, questions concerning arrests are not permitted and are considered discriminatory. Colorado Pre-employment Inquiry Guidelines (BNA)

**Conviction:** Colorado law prohibits employers from requiring applicants to disclose information contained in sealed conviction records. Colo. Rev. Stat. § 24-72-308. According to the Colorado Civil Rights Commission, inquiries about convictions are limited to those that are job-related. Colorado Pre-employment Inquiry Guidelines (BNA)

## Connecticut

**Arrest:** Employers are restricted from requesting or using arrest records. Connecticut prohibits the state from distributing arrest records not followed by a conviction or a conviction record that has been erased in connection with an application for employment. Conn. Gen. Stat. § 46a-80(d). Connecticut allows arrest records to be automatically “erased” when someone is not convicted and allows him or her to deny having an arrest record when asked. Connecticut General Statutes § 54-142a

**Conviction:** No statute or regulation prohibits the collection and use of conviction information. However, it is the policy of the state of Connecticut to encourage all employers to give favorable

consideration to providing jobs to qualified individuals, including those with criminal convictions. Conn. Gen. Stat. §§ 46a-79, 46a-80.

## District Of Columbia

**Arrest:** No District of Columbia statutes have been located that restrict an employer's right to obtain and/or use arrest records.

**Conviction:** No District of Columbia statutes have been located that restrict an employer's right to obtain and/or use conviction records.

## Florida

**Arrest:** No Florida statutes have been located that restrict an employer's ability to obtain and/or use arrest records. However, a person whose criminal history records have been expunged or sealed may lawfully deny or fail to acknowledge the arrest, except when the person is (a) a candidate for employment with a criminal justice agency; (b) a defendant in a criminal prosecution; (c) petitioning to have his or her record expunged or sealed; (d) a candidate for admission to the Florida bar; (e) seeking to be employed or licensed by the state Department of Education, a district school board, or any local governmental entity that licenses child care facilities; or (f) seeking to be employed by, licensed by, or contracted with the state Department of Children and Family Services or Department of Juvenile Justice, or to be employed or used by a contractor or licensee in a position involving direct contact with children, the developmentally disabled, the aged, or the elderly. Fla. Stat. ch. 943.0585.

**Conviction:** No Florida statutes have been located that restrict an employer's ability to obtain and/or use conviction records.

## Georgia

**Arrest:** Employers may 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. Employers cannot obtain or use sealed records. Ga. Code Ann. §§ 15-11-79.2, 35-3-37. Certain first offender crimes in which the offender has been discharged without court adjudication of guilt are not reportable under Georgia law and a notification of discharge and exoneration is to be placed upon the record by the clerk of court. The discharge is not considered a conviction of a crime and may not be used to disqualify a person in any application for employment. Exception: Registration requirements with the state sexual offender registry will be followed, if applicable. GA Code §42-8-60 through 42-8-63

**Conviction:** Employers may not obtain or use convictions of those individuals who have had their convictions expunged under Georgia's probation of First Offender's Law. Ga. Code Ann. § 42-8-63. The underlying facts of a criminal action or the employee's guilty plea may, however, be used as the basis of an employment decision. 1986 Op. Att'y Gen. No. U86-25.

## Hawaii

**Arrest:** Employers may not obtain or make adverse employment decisions based upon arrest or court record information found on employment applications or other inquiries into an individual's "arrest or court records." Haw. Rev. Stat. § 378-2- §378.3. Individuals having expungement certificate may deny arrest record in employment context. Haw. Rev. Stat. § 831-3.2(e).

**Conviction:** Once a conditional offer of employment has been made, but not before, an employer may inquire into and consider an applicant's or employee's conviction record, if that record bears a rational relationship to the job. Haw. Rev. Stat. § 378-2.5.

This section applies only to convictions within the past 10 years (excluding periods of incarceration), and does not include final judgments required to be kept confidential by the courts.. Haw. Rev. Stat. §§ 378-6, 378-2.5.

Exceptions: The law provides for broader use of conviction information in banking, education, childcare, and in homes for the care of developmentally disabled adults.

## Idaho

**Arrest:** Employers may not obtain or use any record of an arrest without disposition after one year from the date of the arrest without written consent from the applicant or employee. Idaho Code § 67-3008.

**Conviction:** No statutes has been located that restrict an employer's ability to obtain and/or use conviction records, however these should not be an absolute bar to employment unless the number, nature, and recentness make the candidate unsuitable. Idaho Human Rights Commission Pre-Employment Inquires Guide.

## Illinois

**Arrest:** Employers may not make adverse employment decisions based upon arrest records, sealed/expunged criminal histories, or arrests for which an individual has pleaded guilty to a crime, received supervision, complied with the supervision requirements, and received a judgment dismissing the charges. 775 ILCS 5/2-103, 20 ILCS 2630/5.

**Conviction:** Employers may use conviction information to evaluate prospective employees. 775 ILCS 5/2-103, 20 ILCS 2630/3. However, when obtaining conviction information, employers must obtain a signed release from the subject, keep a copy of the release on file for two years, and provide the subject

with a copy of the report. Employers are not liable for actions reasonably taken in good faith reliance on the report. 20 ILCS 2635/7; 20 Ill. Adm. Code 1215.30. The Guidelines on Discrimination in Employment adopted by the Illinois Department of Human Rights state that an employer cannot reject an applicant because of a conviction record unless “the nature of the individual’s convictions, considered together with the surrounding circumstances and the individual’s subsequent behavior, reveals the individual as objectively unfit for the job in question.” An example of a permitted inquiry regarding conviction records is as follows: “Have you been convicted of a crime in the past 7 years (excluding sealed or expunged convictions)?” 20 ILCS 2630/5.

## Indiana

**Arrest:** Employers may obtain limited criminal histories (including arrests, indictments, and convictions) of applicants for employment purposes. Ind. Code Ann. § 10-13-3-27. However, the Indiana Pre-Employment Guide states that it may be discriminatory to ask for arrest records.

**Conviction:** Employers may obtain limited criminal histories of applicants for employment purposes. Ind. Code Ann. § 10-13-3-27. However, the Indiana Pre-Employment Guide states that it may be discriminatory to ask for conviction records of misdemeanors or summary offenses.

## Kansas

**Arrest:** Employers may require applicants (and prospective independent contractors) to grant them access to criminal history records to determine the applicants’ fitness for

employment, and may make adverse employment decisions pursuant thereto as long as the information relied upon implicates the applicants' trustworthiness, or the safety of other employees or customers. Kan. Stat. Ann. § 22-4710.

**Conviction:** A job applicant whose arrest record, conviction, or diversion of crime has been expunged may state that he or she has never been arrested, convicted, or diverted of such crime, except when applying for a position in certain state agencies and commissions or in private security. The custodian of records will release expunged records on these subjects to potential employers. KS §21-4619 Criminal history must reasonably bear on the applicant's trustworthiness or the safety or well-being of the employer's employees or customers. Kan. Stat. Ann. § 22-4710(f). According to the Kansas Human Rights Commission, this standard applies to both public and private employers.

## Kentucky

**Arrest:** Kentucky has adopted the federal Uniform Guidelines on Employee Selection Procedures, which encompass any "selection procedure used to make employment decisions." Therefore, inquiry into criminal record information may be invalidated if it is a discrete step in employment decisions and if it adversely affects members of a protected class, unless the employer can demonstrate the relationship of the inquiry to performance on the job. Ky. Admin. Reg. § 1:050.

**Conviction:** Employers can request conviction records for felonies, most misdemeanors committed within five years of the request, and guilty pleas. Ky. Rev. Stat. § 17.160. Employers have no access to applicants'/employees' expunged criminal records. Ky. Rev. Stat. § 431.078.

## Louisiana

**Arrest:** No Louisiana statutes have been located that restrict an employer's ability to obtain and/or use arrest records.

**Conviction:** No Louisiana statutes have been located that restrict an employer's ability to obtain and/or use conviction records. Records of criminal convictions that have not been expunged are public record. La. Rev. Stat. § 44:3(I). However, individuals may not be disqualified from engaging in any profession requiring a state license solely because of a criminal record unless convicted of a felony directly relating to the position sought. Any decision by a Louisiana agency barring an applicant from engaging in such a profession that is based partially on a criminal record must be in writing and must explicitly state the reasons for the decision. This statute is not applicable to law enforcement agencies or certain state boards regulating professions where integrity is of the utmost concern (e.g., medical examiners, dentistry, nursing, pharmacy, state bar association, private investigators, engineering, architecture, funeral directors, and the board of education). La. Rev. Stat. § 37:2950. Once a criminal record has been expunged, employers have no right to obtain information therein (except for certain health care providers as noted below). La. Rev. Stat. § 44:9.

## Maine

**Arrest:** Non-conviction records may be accessed by employers only with the express authorization of a court or statute or to determine the suitability of prospective law enforcement officers. 16 Me. Rev. Stat. § 613. Employers may obtain criminal history records for individuals currently within the judicial system. Employers may also confirm criminal records through inquiries as to specific individuals, charges and dispositions. Pretrial

detention records (*i.e.*, time and place of arrest, name of arrested individual, and attendant circumstances) are in the public domain. 16 Me. Rev. Stat. §§ 612, 612-A.

**Conviction:** Employers have free access to conviction records. 16 Me. Rev. Stat. § 615. However, the use of the criminal record information may be invalidated if it adversely affects members of a protected class, unless the employer can demonstrate the relationship of such a selection procedure to performance on the job. Maine Pre-Employment Inquiry Guide Regs. § 3.02. Juvenile adjudications can be sealed 3 years after final discharge provided the person has no subsequent criminal history and there are not current charges pending against the person. Me. Rev. Stat. Ann. tit. 15, § 3308(8)(A)

## Maryland

**Arrest:** No Maryland statutes have been located that restrict an employer's ability to obtain and/or use arrest records. However, employers or prospective employers may not require individuals to inspect or challenge their CHRI. Md. Code Ann., Crim. Proc. § 10-228.

**Conviction:** No Maryland statutes have been located that restrict an employer's ability to obtain and/or use conviction records. Employers may not require disclosure of expunged information regarding criminal charges in an application or interview or by other means. A person need not give information regarding an expunged charge that did not result in a conviction. The refusal of an applicant to disclose an expunged charge cannot be the sole reason for his or her rejection from employment. Md. Crim. Procedure Code Ann. § 10-109.

## Massachusetts

**Arrest:** Employers are prohibited from requesting, making record or using an application to obtain information about an arrest, detention, or disposition for any violation of the law that did not result in a conviction. Mass. Ann. Laws. ch.21- 151B, § 4(9). The Massachusetts Guidelines also prohibit questions about arrests that did not result in a conviction. Mass. Regs. Code tit. 804 § 3.02.

**Conviction:** Employers may ask individuals if they were convicted of a misdemeanor with some limitations. Employers cannot inquire about a first conviction for the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace. Employers also are prohibited from asking about any misdemeanor convictions occurring five or more years before the date of the application or interview, or the last day of incarceration (whichever date is later). If the individual was convicted of any offense within five years preceding the inquiry, then employers may also inquire about misdemeanor convictions more than five years old. Mass. Ann. Laws ch.21- 151B, § 4(9). The Massachusetts Commission Against Discrimination Guidelines provide that an employer can ask prospective employees if they have been convicted of a felony.

Individuals who answer in the negative to any of the prohibited inquiries are immune from liability for perjury and giving false statements. Mass. Ann. Laws ch.21-151B, § 4(9); Mass. Regs. Code tit. 804 § 3.02.

## Michigan

**Arrest:** Employers are prohibited from requesting, making or maintaining records regarding a misdemeanor arrest, detention, or disposition that did not result in a conviction.. Employers may inquire about felony charges including those that have not resulted in a conviction or dismissal. Mich. Comp. Laws § 37.2205a.

**Conviction:** Employers may inquire about convictions or pending felony charges. Mich. Civil Rts. Comm. "Michigan Pre-Employment Inquiry Guidelines." (NAPBS)

## Minnesota

**Arrest:** Arrest records in Minnesota are public records in the originating agency. Minn. Stat. § 13.82. However, the Department of Human Rights warns employers that inquiries about arrests may violate the Minnesota Human Rights Law because they may have an adverse impact on a protected group.

**Conviction:** The Department of Human Rights has indicated that inquiries about prior convictions do not violate Minnesota law. The employer must, however, consider how recent the convictions are and whether they are closely related to the position. The Department of Human Rights prohibits employers from using prior convictions as an absolute bar to employment absent a bona fide occupational qualification.

## Mississippi

**Arrest:** No Mississippi statutes have been located that restrict an employer's ability to obtain and/or use arrest records. If an individual's misdemeanor conviction has been expunged, the individual can answer in the negative to inquiries regarding arrest or conviction. Miss. Code Ann. § 99-19-71.

**Conviction:** No Mississippi statutes have been located that restrict an employer's ability to obtain and/or use conviction records.

## Missouri

**Arrest:..** The Missouri Commission on Human Rights Pre-Employment Inquiry Guidelines state that inquiries about arrests

are unacceptable and inquiries about the number and kind of arrests are inadvisable.

**Conviction:** Missouri law also prohibits employers from disqualifying individuals based on a criminal conviction unless there is a “reasonable relationship” between the conviction and the individual’s ability to perform the job. Mo. Rev. Stat. § 561.016.

## Montana

**Arrest:** The Montana guidelines regarding pre-employment inquiries warn employers about inquiring into criminal arrest records. The guidelines state that such inquiries may raise suspicion of discrimination. Mont. Admin. Rule 24.9.1406(2)(h)

**Conviction:** The Montana guidelines state that it is lawful for employers to inquire about criminal convictions. Mont. Admin. Rule 24.9.1406(2)(h). Montana has adopted the EEOC Uniform Guidelines on Employee Selection Procedures, which address all selection procedures used to make employment decisions including criminal history. Inquiry into criminal information may be invalidated if it adversely affects a protected class. This provision will not apply if the employer can show a relationship between the inquiry and performance of the job. 29 CFR Chapter XIV, Part 1607; Mont. Admin. Rule 24.9.1410.

## Nebraska

**Arrest:** No Nebraska statutes have been located that restrict an employers ability to obtain and/or use arrest records.

**Conviction:** No Nebraska statutes have been located that restrict an employers ability to obtain and/or use conviction records.

## Nevada

**Arrest:**.. Nev. Rev. Stat. Ann. § 179A.100. The Nevada Human Rights Commission prohibits inquiries regarding arrests.

**Conviction:** No Nevada statutes have been located that restrict an employer's ability to obtain and/or use of conviction records. The Nevada Human Rights Commission explicitly permits inquiries regarding felony convictions or misdemeanor convictions that result in imprisonment. The Commission requires employers to inform the consumer that a conviction will not necessarily disqualify the consumer from consideration for the position. NRS §391.100, §449.179, §463A.030

## New Hampshire

**Arrest:** No New Hampshire statutes have been located that restrict an employer's ability to obtain and/or use arrest records

**Conviction:** No New Hampshire statutes have been located that restrict an employer's ability to obtain and/or use arrest records. New Hampshire law provides that a person who has an annulled conviction may be questioned about his or her criminal record using language such as "Have you ever been arrested for or convicted for a crime that has not been annulled by a court?" N.H. Rev. Stat. Ann. § 651:5.

## New Jersey

**Arrest:** No New Jersey statutes have been located that restrict an employer's ability to obtain and/or use arrest records.

**Conviction:** No New Jersey statutes have been located that restrict an employer's ability to obtain and/or use conviction records.

## New Mexico

**Arrest:** No New Mexico statutes have been located that restrict a private employer's ability to obtain and/or use arrest records.

**Conviction:** No New Mexico statutes have been located that restrict a private employer's ability to obtain and/or use conviction records. However, New Mexico has a statute that aims to allow ex-convicts an opportunity to secure employment and to engage in professions by removing barriers in an effort to make rehabilitation possible. N.M. Stat. Ann. § 28-2-2.

## New York

**Arrest:** Employers may not request information relating to an arrest without a conviction, unless the charges are still pending. N.Y. Exec. Law 15.296.16. The New York Division of Human Rights Guide to Pre-Employment Inquiries also declares inquiries into an applicant's arrest record to be unlawful.

**Conviction:** Employers may only consider (1) an applicant's convictions that bear a direct relationship to the job (2) whether employment would create an unreasonable risk to property or to the safety or welfare of specific individuals or the general public, or (3) whether the position is in relation to the regulation of child-care facilities. N.Y. Corr. Law. §§23-A 752, 753; N.Y. Exec. Law § 296(15).

## North Carolina

**Arrest:** No North Carolina statutes have been located that restrict an employer's ability to obtain and/or use arrest records. The subject of an expunged record may legally refrain from responding to any inquiry regarding expunged entries related to arrest or trial. NCGS §15A-146

**Conviction:** No North Carolina statutes have been located that restrict an employer's ability to obtain and/or use conviction records.

## North Dakota

**Arrest:** No North Carolina statutes have been located that restrict an employer's ability to obtain and/or use arrest records.

**Conviction:** No North Carolina statutes have been located that restrict an employer's ability to obtain and/or use conviction records.

## Ohio

**Arrest:** Employers cannot question an applicant about an expunged juvenile arrest record. Ohio Rev. Code Ann. § 2151.358(I). Additionally, the Ohio Civil Rights Commission's Pre-Employment Inquiry Guide cautions that employers should avoid any inquiry that would reveal an arrest without a conviction.

**Conviction:** Employers may not question applicants about sealed convictions unless the question bears a direct and substantial relationship to the position for which the person is being considered. Ohio Rev. Code Ann. §§ 2953.32, 2953.33, 2953.55. The Ohio Civil Rights Commission's Pre-Employment Inquiry Guide states that employers may ask about specific crimes related to qualifications for a particular job. Arrest or conviction for a minor misdemeanor violation in regards to marijuana does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record including any inquiries contained in an application for employment. Ohio Rev. Code Ann. §2925.04.

## Oklahoma

**Arrest:** Employers may request criminal history records, including arrests, for prospective employees. However, certain

“non-serious offenses” as enumerated by statute will be excluded. Okla. Admin. Code §§ 375:9-1-1, 375:9-1-2. Employers may not ask employees about, or request information concerning, sealed arrest records. Okla. Stat. tit. 22 § 19. Employers may not require an applicant to disclose any information contained in sealed arrest and criminal records. The applicant need not provide any information about sealed records and may state that no such action has ever occurred. The employer may not deny the application because of the applicant’s refusal to disclose such information. 22 O.S. § 19

**Conviction:** Employers may request criminal history records for prospective employees. Okla. Admin. Code §§ 375:9-1-1, 375:9-1-2.

## Oregon

**Arrest:** No Oregon statutes have been located that restrict an employer’s ability to obtain and/or use arrest records.

**Conviction:** Employers cannot rely on a juvenile record that has been expunged to make employment decisions. Or. Rev. Stat. § 659A.030.

## Pennsylvania

**Arrest:** Under Pennsylvania’s Criminal Record Information Act, employers generally may not have access to the following criminal history records to determine eligibility for employment or volunteer services: (1) records of arrests with no convictions or no disposition reported; (2) expunged or pardoned convictions; and (3) convictions relating to summary offenses. 18 Pa. Cons. Stat. § 9125.

**Conviction:** Employers may consider a prospective employee's convictions only to the extent they relate to the applicant's suitability for the position for which he or she applied. 18 Pa. Cons. Stat. § 9125. The applicant must be notified in writing if he or she was not hired based in whole or in part on his criminal history. 18 Pa. Cons. Stat. § 9125.

## Rhode Island

**Arrest:** Employers may not inquire about an applicant's arrest records, unless the applicant is applying for a law enforcement or agency position. R.I. Gen. Laws § 28-5-7(7).

**Conviction:** Employers may inquire about conviction records. R.I. Gen. Laws § 28-5-7(7). However, if a job applicant has had a conviction expunged, the applicant can respond that he or she has not been convicted of a crime. Exception: Applicants for licenses in the area of law enforcement and education must disclose the fact of a conviction and the custodian of records shall disclose the existence of the expunged record . *RIGL §12-1.3-4*

## South Carolina

**Arrest:** No South Carolina statutes have been located that specifically restrict an employer's ability to obtain and/or use arrest records.

**Conviction:** No South Carolina statutes have been located that restrict an employer's ability to obtain and/or use conviction records.

## South Dakota

**Arrests:** No South Dakota statutes have been located that specifically restrict an employer's ability to obtain and/or use arrest records

**Convictions:** No South Dakota statutes have been located that specifically restrict an employer's ability to obtain and/or use conviction records. However, questions about a person's arrest, court, or conviction record may be unlawful under the South Dakota Human Relations Act if they are not "substantially related" to the functions of the employment sought.

## Texas

**Arrest:** The release or use of expunged felony or misdemeanor arrest records for any purpose is prohibited and the person whose records are expunged may deny the arrest and the existence of the expunction order. *Texas Code of Criminal Procedure, Art. 55.03.*

**Conviction:** No Texas Statutes have been located that restrict an employer's ability to obtain and/or use conviction records. However, a person whose juvenile records have been sealed is not required in any application for employment to state he or she has ever been the subject of a juvenile court proceeding. *Texas Family Code, Title 3, §58.003(j)*

## Utah

**Arrest:** Employers may not ask about arrest records and are advised to limit conviction inquiries to those that are job-related. Utah Admin. R. 606-2-2(U) and (V). A person whose arrest record has been expunged may respond to any inquiry as though the arrest did not occur, unless otherwise provided by law. *UT Code §77-18-10*

**Conviction:** No Utah statutes have been located that restrict an employer's ability to obtain and/or use conviction records. However, the Utah Pre-Employment Inquiry Guide issued by the Labor Commission Anti-discrimination Division provides that only

inquiries into prior *felony* convictions are proper, and those inquiries are only advisable if they are job related. Utah Admin. Code § 606-2-2(V)(1)(2).

## Vermont

**Arrest:** No Vermont statutes have been located that specifically restrict an employers ability to obtain and/or use arrest records

**Conviction:** No Vermont statutes have been located that specifically restrict an employer's ability to obtain and/or use arrest or conviction records.

## Virginia

**Arrest:** Employers cannot require applicants (and agencies cannot require licensees) to disclose information about arrests or criminal charges that did not result in conviction or that have been expunged. Va. Code §19.2-392.4

**Conviction:** Criminal history record information may be disseminated for investigations of applicants for employment if the job will involve personal contact with the public or when past criminal conduct would be incompatible with the nature of employment under consideration. Va. Code Ann. § 19.2-389.

## Washington

**Arrest:** The Washington administrative regulations declare that pre-employment inquiries regarding arrests must include whether charges are still pending, have been dismissed, or led to 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

**Conviction:** The Washington Pre-Employment Inquiry Guide provides that inquiries regarding convictions will be considered justified by business necessity if the crimes inquired about reasonably relate to the job duties, and if such convictions (or release from prison) occurred within the last 10 years. Wash. Admin. Code § 162-12-140.

## WEST VIRGINIA

**Arrest:** According to West-Virginia's Pre-Employment Inquiry Guide, pre-employment inquiries into general arrest records are prohibited. W. Va. Pre-Employment Inquiries Technical Assistance Guide (adapted from EEOC guidance materials).

**Conviction:** Employers are prohibited from obtaining arrest or conviction records unless the employer first obtains the applicant's consent. W. Va. Code § 15-2-24(d). Pre-Employment inquiries into prior convictions are permissible if reasonably related to job qualifications. Consideration should be given to the nature and recentness of the conviction and rehabilitation of the offender. This inquiry "should" be accompanied by a disclaimer that states that a conviction record will not necessarily be a bar to employment. W. Va. Pre-Employment Inquiries Technical Assistance Guide (adapted from EEOC guidance materials);

## Wisconsin

**Arrest:** Under Wisconsin law, requesting an applicant, on an application form or otherwise, to supply information regarding any arrest record is generally considered employment discrimination and is prohibited. However, an employer may inquire regarding, and base employment decisions on:

- (1) arrest records that are relevant to the employee's bondability when employment depends on bondability; and

(2) pending criminal charges if the circumstances of the charge are substantially related to the circumstances of the job. Wis. Stat. §§ 111.33, 111.321, 111.335.

The Wisconsin Pre-Employment Inquiry Guide provides that if an applicant has a pending arrest that is related to the job to be performed, the employer can either suspend judgment until the court decision, if possible, or advise the applicant to apply when the pending charge has been resolved. An employer should never reject an applicant outright, or discharge an employee, because of a pending arrest. Wisconsin Pre-Employment Inquiry Guide 2.

**Conviction:** Under Wisconsin law, employers generally may not discriminate against an individual (e.g., refuse to hire, license, bar or terminate from employment) based on arrest or conviction records. Wis. Stat. § 111.321. Use of conviction records is allowed under the same circumstances as pending arrest records may be used, *i.e.*, where relevant to the employee's bondability, or to the circumstances of the job sought. Wis. Stat. Ann. §§ 111.32 *et seq.*, 111.335(1)(c)1, 2. However, it is not unlawful to bar an individual from employment (or licensure) if he or she was convicted of a felony. Wis. Stat. § 111.335.

The Wisconsin Pre-Employment Inquiry Guide adds that if an application form makes any inquiry about convictions, it should indicate that a criminal record does not constitute an automatic bar to employment and will be considered only as it relates to the job in question. Wisconsin Pre-Employment Inquiry Guide 6.

## WYOMING

**Arrest:** No Wyoming statutes have been located that specifically restrict an employer's ability to obtain and/or use arrest records

**Conviction:** No Wyoming statutes have been located that specifically restrict an employer's ability to obtain and/or use arrest or conviction records

In preparing this reference document, GIS attempted to provide a concise guide to those state laws that restrict the use of criminal records in some manner. While we have tried to be thorough in our approach to this subject, the states and references to law noted here do not represent an exhaustive compilation of every statute or regulation that may be applicable to your particular business or locale. The information provided as referenced by the NAPBS, CCH, BNA, EEOC and state statutes herein should not be considered legal advice and should not replace legal counsel sought by your company. GIS assumes no liability for any errors or omissions within this document.