

Criminal Records & Employment

YOUR LEGAL RIGHTS

1. What exactly is a criminal record?

A criminal record, formally known as a summary criminal history, or more commonly known as a “rap” sheet, is a list of arrests and convictions. Any time the police fingerprint you because of a criminal investigation, that information is added to your summary criminal history. For an arrest, the history will list, among other things, the date, the charges, and the final disposition (what happened). If the district attorney refused to prosecute the charge, the summary criminal history should show that. The history also lists all your criminal convictions, including the date of the conviction, the charges, the sentence, and whether the crime was a felony or a misdemeanor. If you entered and successfully completed a “diversion” program, the history should indicate that as well.

2. How do I find out what my summary criminal history is?

To get your own summary criminal history, you must do four things:

Request your record: You may request your record in one of two ways: by letter or by application. If by letter, simply write a letter to the California Department of Justice that includes your name, the address to which you want the record sent, and why you need the record. (You are allowed to see your own record so you can say that you simply want to make sure that there are no errors in the record.) If by application, you can get an application from either a local police or sheriff’s department or from the California Department of Justice. Forms are available by calling (916) 227-3849 or on the web at: <http://ag.ca.gov/fingerprints/forms/AOCSSCHR.pdf>.

Pay an application fee. As of January 1, 2006, the fee was \$25. You must send a check or a money order. Do NOT send cash. Make the check out to the California Department of Justice. Put “Fee for Summary Criminal History” in the memo line. If you cannot afford the fee, see below for instructions on getting the fee waived.

Mail the application. Mail the request letter or application, and your check or money order to:

California Department of Justice
P.O. Box 903417
Sacramento, CA 94203-4170
ATTN: Records Review Unit

Get Fingerprinted: After the DOJ receives your application, it will send you a “Live Scan” fingerprint card and a list of locations to have your fingerprints “imaged” (digitally photographed). A list of “Live Scan” locations is also available on the web at: <http://ag.ca.gov/fingerprints/publications/contact.htm>.



The fee for having your fingerprints imaged is around \$20. After you have your fingerprints taken, the location will send an electronic copy to the DOJ in Sacramento. After they receive your fingerprints, the DOJ will send you a copy of your criminal records.

3. How can I get my records if I cannot afford the fee?

If you cannot afford the fee, you may request a waiver. You may do this by filling out a “Application for Fee Waiver” form or attaching a separate letter that requests a waiver of the fee. In the letter or application, you must state that you cannot afford the fee because you are poor, and you must include some proof that you are poor. To prove that you are poor, you may be able to simply explain how much you make a month and what your expenses are (rent and utilities) in the letter. If possible, you should include a copy of your pay stubs or bank accounts. Do NOT send original documents.

4. How do I read my summary criminal history?

The history will include your name, date of birth, and a list of all prior arrests and convictions. Most of the information will be clear. The history will list an abbreviation of the code sections of all charges and convictions. For example, if the history lists “H&S § 11359”, the letters refer to the California Codes (“H&S” refers to the California Health and Safety Code—the code for most drug violations) and the number tells you the section identifying the crime in that code (for example, H&S § 11359 is possession of marijuana with intent to sell it). You can look up your code section at a law school or courthouse library. The section numbers are on the spines of the books. Librarians often will be able to help you find the code section that you need. If you have questions about your summary criminal history, you should call the Criminal History Unit at the California Attorney General’s office: 916-227-3899 and ask for the Records Review department.

5. Can I look up someone else’s summary criminal history?

No. You can only request your own history. No other individual or person can request your history either.

6. Can my employer get my summary criminal history?

Generally no. Most private employers do NOT have the right to request your summary criminal history. In fact, unauthorized use of your private information is a crime. There are some important exceptions to this rule, mostly listed in Penal Code § 11105. Some of the most important exceptions are listed below:

- Law enforcement personnel, such as police officers or parole and probation officers, may see your summary criminal history if it is necessary for their jobs. People involved in a criminal case, such as court officers, judges, prosecutors, and defense attorneys, may see your summary criminal history if you are a party or a witness for a case.

- Government employers, like a job with the city or state, may see your summary criminal history in considering your application for a job if authorized by law or regulation. (Labor Code § 432.7.)
- Public utilities, especially nuclear power facilities, may be able to request your summary criminal history.
- Some organizations are considered “agencies of the state,” and can see your records if permitted by law or regulation. This may include applications for licenses or certifications, such as entrance to the California bar or an application for a concessionaire’s license.
- Some laws expressly allow other employers, such as schools or eldercare agencies, generally to see summary criminal history information to screen job applicants. To have access under this exception, the law must (1) explicitly authorize the employer to see summary criminal history information, (2) refer to specific criminal conduct (i.e., specific crimes, not just any convictions), and (3) require that the employer act on the existence of such information. For example, the law might require the exclusion of job applicants with certain convictions, like child molestation, from certain jobs, such as teaching.
- Employers can also get access to some of your records (but not your “rap” sheet) through a general background check, using public record and databases kept by courts, news reporting agencies, or for-profit information-gathering services.

7. Can my employer make me provide a copy of my summary criminal history record?

Normally, no. With very few exceptions, your employer may NOT ask you to provide a copy of your summary criminal history. California Penal Code § 11126 and § 13326 make it a misdemeanor to request someone else’s summary criminal history records without authorization. If your employer is entitled to the information, it must request it directly from the appropriate agency, NOT from you.

8. I was arrested but never charged. Will that arrest appear on my summary criminal history?

Probably. The summary criminal history includes information on all arrests. Nonetheless, if you were arrested and either (1) not charged OR (2) not convicted, you may be able to seal your records. See California Penal Code § 851.8 (covering arrests of adults) or California Penal Code § 851.7 (covering arrests and misdemeanor convictions of minors).

If your arrest (or conviction of a misdemeanor while a minor) has been sealed, the information should NOT appear in your summary criminal history. If it does, you may correct the records. To do so, see the section below titled “How do I correct mistakes in my summary criminal history?”

9. Can my employer ask me about arrests or use information about past arrests to fire me (or to not hire me)?

Generally not. Under California Labor Code § 432.7, if you are applying for a job, or being considered for promotion, termination, or placement in a job training program, your employer cannot ask about any arrests that don't result in a conviction, or any arrests that led to participation in a diversion program (such as drug rehabilitation). Your employer is also prohibited from trying to find out from other sources whether you have been arrested. If your employer somehow learns of your arrest record, § 432.7 prohibits it from considering any arrest that did not lead to a conviction, or any arrest that led to a diversion program, in making decisions regarding your hiring, firing or promotion.

There are some important exceptions to this general rule:

- **Arrests pending trial:** An employer may ask you about any arrests that are pending trial, for which you are out on bail or your own recognizance. However, while your employer may generally inquire about any unresolved arrest, it may not rely on this as the sole determining factor in making an adverse decision to not hire or promote you.
- **Law enforcement positions:** Applicants to police departments, the Department of Justice, and other criminal justice agencies are not protected by the bar on arrest inquiries. However, current employees of these agencies are protected.
- **Health facility positions:** If the employer is a health care provider, and you are trying to obtain a position that has regular access to patients, the employer may ask if you were ever arrested (without conviction) for any of the sex crimes listed in California Penal Code § 290 (such as rape and incest). If you are applying for a job in which you will have access to drugs and medication, then the employer may ask you about past arrests for any of the drug offenses listed in California Health and Safety Code § 11590 (such as possession or sale), even if the arrests did not lead to conviction.

10. Can my employer ask me about past convictions?

Generally, yes. It is legal for your employer to ask about all convictions, including misdemeanors as well as felonies. However, employers normally ask only about past felonies.

11. How do I correct mistakes in my summary criminal history?

When you request your summary criminal history from the Department of Justice, they should automatically send you a correction request form along with your records. If you find something wrong with your records, fill out the form and return it to:

California Department of Justice
P.O. Box 903417
Sacramento, CA 94203-4170
ATTN: Records Review Unit

When you fill out the correction form, you must include certain information. First, you should describe as specifically as possible the information that is wrong or missing from your record. For example, if a charge had been dismissed and the record did not show that, you should indicate exactly which charge (use the code section), including the appropriate dates, when you make the request to have the dismissal included. Second, you should include a copy of any proof that will back up your request to change your record. Never send an original unless you are specifically told to, and if you do, keep a copy for yourself. Finally, always include your current return address in all letters to the Department of Justice.

12. What does the Department of Justice do when I ask them to correct a record?

When the Department of Justice receives your request for correction, it will first compare the information you sent with its own records (in other words, they check to see whether someone in their department simply made an error in typing your record into the computer). If the Department of Justice made a mistake, they will change your record and send you a copy of the new record.

If the information that you sent is different from the records the Department of Justice used to create your summary criminal history, the Department of Justice will send your new information to the agency that originally provided the records to the Department of Justice. (The Department of Justice created your record by taking any records of arrests and convictions received from other agencies.) For example, if you had been arrested in Alameda County, the Department of Justice would send your new information to Alameda County. The original agency must check its own records within thirty (30) days of receiving the new information from the Department of Justice.

If the original agency agrees with you, it will correct your records and inform the Department of Justice. Both agencies must notify anyone to whom they gave your records within the last ninety (90) days of the correction.

If the original agency does not agree with you, you are entitled to an administrative hearing. The Department of Justice should provide you with information on how to request a hearing. At the hearing you will have a chance to present evidence about the mistake. The hearing judge decides whether or not to require that the agencies change the record.

13. I tried to correct my summary criminal history, but the Department of Justice refused. What can I do now?

If you lost in the administrative hearing, you have several options:

1. You may, but do not have to, ask the agency to reconsider the decision.

2. You may appeal to the courts through a writ of mandamus (per California Government Code § 11523). Filing a writ is very complicated. For information on how to file a writ, contact your local law library for a guide on filing “Writs & Receivers.”

- You must appeal within thirty (30) days of the agency’s decision becoming final.
- If you request your transcripts from the hearing within ten (10) days of the decision, you can receive an extension to file your court appeal until thirty (30) days after you have received the transcript.

14. How do I get my past criminal conviction expunged?

(You will not be able to get your conviction completely erased from your record. You may, however, be able to get your conviction “dismissed.” A dismissed conviction remains on your record, but it will show that you had “a dismissal pursuant to Penal Code Section 1203.4.”

To get a dismissal, you must fill out a “1203.4 Petition Form,” available from the criminal court clerk in the county where the conviction occurred. You will be given a court date at which you **MUST APPEAR**. If you appear at the court date and fit the following profile, the judge **MUST GRANT** your petition:

- As a result of your conviction, you were sentenced to probation, a fine, time in county jail, and/or no sentence
- You have fulfilled your entire sentence, including your entire probation period
- You have not be charged with any subsequent crime
- Your conviction was **NOT** for a sex offense

If you are still on probation, your petition for dismissal of a conviction can still be granted if it is “in the name of justice.” To accomplish such a dismissal, you should consult an attorney. You will need to submit a declaration, letters of support, and any other “proof of rehabilitation.”

15. How do I seal records of my nonviolent drug offense?

If your record contains a nonviolent drug offense, you may be eligible to have it *sealed*, not merely *dismissed*. If you are successful in sealing your record, no employers will have access to the information. To qualify for the sealing of your drug offense, you must:

- Have been admitted to a deferred entry of judgment or drug diversion program. This will be apparent from your RAP sheet
- Successfully complete the drug program
- Pay any fines, fees, or restitution

16. Do I have to tell prospective employers about my dismissed or sealed conviction?

If your conviction was SEALED, you do not have to tell your employer about it. Your employer will not have access to the sealed information.

If your conviction was DISMISSED, it is up to you whether or not you tell future employers. Keep in mind that, if an employer runs a background check, it may see that you had a conviction and that the conviction was dismissed. To avoid having your potential employer question whether you were truthful on your application regarding the previous conviction, you might consider answering any questions about whether you have any past convictions with “Yes—conviction dismissed.”

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

