
Consumer Protection for People with Criminal Records: Fair Credit Reporting Act (FCRA), California Law, and Commercially Prepared Background Checks

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National Employment Law Project's Second Chance Labor Project:

Working to reduce barriers to
employment for people with
criminal records.

Increasing Use of Background Checks

- **Commercially Prepared Background Checks**
 - 80% of large employers now conduct criminal background checks.
 - Private employers cannot usually access FBI or CADOJ rap sheets unless specifically required/allowed by law.
- **FBI Rap Sheets**
 - Federal laws requires background checks using FBI rap sheets for millions of workers.
 - In 2002, for the first time, the FBI conducted more fingerprint-based background checks for civil purposes than for criminal investigations (5 million for employment purposes).
- **California Department of Justice Rap Sheet**
 - State laws require criminal background checks on hundreds of entry-level occupations (including schools, transportation, private security and health care).
 - State licensing agencies



Home

Order

Order Lookup

Sample Record

Search ICC

Employee Check

FAQ

InstantCriminalChecks.com Order Form

Person You Are Investigating:

* = Required Information

*First Name:

Middle Initial:

*Last Name:

Suffix (if any):

 (Jr, Sr, III)

Social Security Number:

 - -

*Date of Birth:

[Month] [Day] [Year] Please Select Statewide, 3-State or National Criminal Check:**Statewide Criminal Check \$24.95** California multi-county (CA) [view state descriptions](#)

– Add 2 additional states for only \$20 –

3-State Criminal Check \$44.952nd –Select 2nd State \$20– 3rd –Select 3rd State FREE–

OR

National Criminal Check \$59.95 National Criminal Check[view national description](#)

46 state national search plus Washington DC:

AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, VT, WA, WI, WV

All orders include a free [national sex offender search](#), [terrorist background report](#) & [most wanted check](#).

Contact Information:

*E-Mail Address:

Phone Number:

Credit Card Information:

We Accept:



*Name:

Enter name exactly as appears on your card

*Type of Card:

[Select One]

*Card Number:

Common Problems with Commercially Prepared Background Checks

- Inaccuracies: wrong grade of offense, failure to list disposition of an arrest, or that a conviction was overturned on appeal
- False positives: mismatched records of people with similar names and birthdates
- “Over-reporting” information: with a disclaimer when uncertain of a match
(ex: “There is a conviction with Mr. X’s name. This may or may not be your Mr. X.”)
- Presenting information in misleading format: repeating information on the same case in upper and lower courts, listing all charges even though the majority of the charges (often the most serious) were dropped

Federal Fair Credit Reporting Act:

Restrictions on **Commercially Prepared Background Checks**

- Reporting of Arrests: Private background check companies cannot report arrests or most other adverse information that is more than seven years old (unless the report concerns employment of an individual whose annual salary is \$75,000 or more). (15 U.S.C. § § 1681c(a)(2), 1681c(b)(3))
- However, convictions can be reported indefinitely. (15 U.S.C. § 1681c(a)(5))

Federal Fair Credit Reporting Act:

Employer Obligations

- Notice and Authorization Required: The employer requesting the report must provide clear written notice and obtain written authorization from the job applicant. (15 U.S.C. § 1681b(b)(2)(A))
- “Adverse Action” Procedure Required: If the employer plans to take “adverse action” (not hiring, firing) based on the report, the employer must provide the applicant with a copy of the report and a copy of the Federal Trade Commission Summary of Rights **before** the action is taken. This gives the applicant the opportunity to clear up any inaccuracies in the report.
- If the employer goes forward with the adverse action, it must provide notice to the applicant about the adverse decision, the contact information of the reporting agency, and the applicant’s right to dispute the accuracy or completeness of the report. (15 U.S.C. §§ 1681b(b)(3), 1681m(a))

California Consumer Protection Laws Regarding Criminal Background Checks

- Under California law, **commercially prepared background checks** cannot report:
 - Arrests: arrests not leading to a conviction (unless the company has verified in the last 30 days that the arrest is still open).
 - Convictions: convictions dating back more than 7 years
 - This does not apply to FBI & CADODJ rap sheets since they are not commercially prepared

- Copy of Report: Workers are entitled to a copy of the report within three days of when it is provided to the employer. (CA Investigative Consumer Reporting Agencies Act, CA Civil Code § 1786)

What California Employers Cannot Ask About a Criminal Record

- Arrests that did not lead to convictions.
 - Exceptions: law enforcement and certain drug arrests for positions in healthcare facilities or pharmacies. (Cal. Labor Code § 432.7(a))
- Arrests for which a diversion program was completed. (Cal. Labor Code § 432.7(a); 2 CCR § 7287.4(d)(1)(C))
- Certain marijuana-related convictions, if the conviction is over two years old. (Cal. Labor Code § 432.8)
- Misdemeanor convictions that have been dismissed pursuant to Cal. Penal Code § 1203.4. (2 CCR § 7287.4(d)(1)(B))
- Any conviction that has been sealed or expunged (*e.g.*, juvenile records). (2 CCR § 7287.4(d)(1)(B))

What California Employers Can Ask About a Criminal Record

- There is no time limit on direct questions about convictions.
 - An employer can ask: “Have you ever been convicted of a felony?”
- Public employers and law enforcement can request more information from applicants than private employers.

What Can California Employers Learn About (1) Arrests and (2) Convictions?

	Can the <u>employer ask</u> about it?*	Will it be reported on a <u>commercially prepared background check?</u> **	Will it be on a <u>rap sheet</u> from FBI / CA DOJ?
Arrest that did not lead to conviction	No (unless for law enforcement position or certain drug arrests for some healthcare positions)	No (unless company has verified in last 30 days that arrest is still open)	Yes / Yes
Conviction <7 years old	Yes	Yes	Yes / Yes
Conviction >7 years old	Yes	No	Yes / Yes
1203.4 dismissal for misdemeanors	No	No	Probably / Yes
Successful diversion program	No	No	Probably / Yes

* This does not include the over 200 occupations in California that require state licensing or certification.

** Remember, commercially prepared background checks are often inaccurate and report arrests and/or convictions they should not under CA law.

National Employment Law Project Contact Information

Hotline for applicants denied
employment based on criminal record:

(510) 409-2427

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www.nelp.org