



# California Fair Chance Toolkit

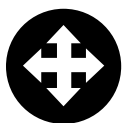
A Toolkit for Job Seekers with Criminal Records

NOVEMBER 2020

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# ABOUT THIS TOOLKIT

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Approximately 7 million Californians – nearly one in three adults in California – have an arrest or conviction record. In this toolkit, you will find information about laws in California that protect job seekers with criminal records and sample letters and materials you can use to exercise those rights.

Literally thousands of formerly-incarcerated people around California, their family members, and a wide variety of social and racial justice organizations – most notably All of Us or None – worked together to pass the laws discussed in this guide and start a “Ban the Box” movement to fight the discrimination people face because of their arrest or conviction history.



**If you have any questions about these laws or the sample materials provided in the toolkit, you can contact Legal Aid at Work at 1-415-864-8848.**





**DISCLAIMER:** This toolkit 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 changes and differing interpretations, Legal Aid at Work cannot ensure that the information in this toolkit 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.

This toolkit was created by Sairah Budhwani and Stacy Villalobos. We thank all of the individuals who provided feedback and suggestions on previous drafts, including directly impacted individuals and social service providers.

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## **About Legal Aid at Work**

Legal Aid at Work is a nonprofit legal organization that seeks justice for and with low-wage workers. We represent clients in cases covering a broad range of employment-related issues including discrimination on the bases of race, color, gender, age, disability, pregnancy, sexual orientation, and national origin. Through community education, direct services, and litigation, our Racial Economic Justice Program advocates on behalf of workers and job seekers faced with discrimination because of an arrest or conviction history.





# COMMONLY USED TERMINOLOGY

## **CONVICTION:**

a plea, verdict, or finding of guilt, regardless of whether a sentence is imposed by the court.

## **DISMISSAL (“EXPUNGEMENT”):**

although commonly used, in California, “expungement” is not a legal term. Instead, the law uses the word “dismissal” to describe when a court allows a defendant to withdraw their guilty plea or plea of nolo contendere and enter a plea of not guilty.

## **CLEAN SLATE REMEDIES/ RECORD CLEARING:**

these refer to different ways to get convictions or arrests off your record or processes that “clean up” your record. For example, changing the outcome of your conviction to a dismissal, a reduction from a felony to a misdemeanor, and certificates of rehabilitation.



## **CONDITIONAL JOB OFFER:**

an offer of employment that is pending, subject to a background check. After making a conditional job offer, employers may conduct a criminal history or background check. In most cases, they are not required to do so.

## **CRIMINAL RECORD:**

also known as a “summary criminal history” or a “rap” sheet. It is a list of all 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 should list, among other things, the date, the charges and the final disposition (what happened). It also lists all your criminal convictions, including their dates, 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 show that as well. In this toolkit, we use the term “criminal record” to refer to all contact with law enforcement, including arrests and convictions.



# KNOW YOUR RIGHTS

## THE CALIFORNIA FAIR CHANCE ACT

### 1 BAN THE BOX

Before job offer

What's the box? The box on a job application that asks whether you've been convicted.

Most employers can't ask ANY questions about a criminal record before giving you a job offer—including on an application or at an interview.

### 2 FAIR CHANCE PROCESS

After job offer

#### INDIVIDUAL EVALUATION

The company must look at you as an individual & evaluate 1) whether your specific convictions are directly related to your job duties, and 2) how much time has passed since the convictions.

#### INITIAL WRITTEN NOTIFICATION

If it decides to take back your job offer, the company must identify the specific convictions it has a problem with.

The company must give you a background check copy.

#### YOU RESPOND

You must be given a minimum of five business days to respond & be told that the response can include evidence of background check errors, rehabilitation or circumstances of the crime or your current life.







## 2 FAIR CHANCE PROCESS (cont)

After job offer

### RE-EVALUATION

The company must consider the new information you submit and reevaluate whether your convictions still justify not hiring you.

### FINAL WRITTEN NOTIFICATION

The company must inform you of the final decision & of your right to file a complaint with the government about their decision.

## 3 OFF-LIMITS INFORMATION

Before & after job offer

Most employers can't ask about the following off-limits information or (if they accidentally get it) use it to make employment decisions— at any point in the job process:

- Arrests that did not result in convictions (unless the case is currently open)
- Diversion (pretrial & post-trial); marijuana-related convictions older than 2 years
- Arrests or convictions that have been sealed, dismissed, "expunged," erased by statute, pardoned or issued a certificate of rehabilitation (COR)
- Juvenile proceedings and court records



## THE CALIFORNIA FAIR CHANCE ACT:

### WHAT

- bans the box, making it illegal for most employers in California to ask about your conviction history before offering you a job;
- creates a Fair Chance process after the job offer; and
- identifies off-limits criminal history information that most employers can't ask for or use at all to make employment decisions.

For more information, go to pages 7-8.

### WHO

Most government and private employers with five or more employees are required to follow this law.

**EXCEPTION:** Law enforcement and criminal justice employers are not covered by this law. Additionally, if any other law requires an employer to run a background check for the job you applied for, the employer may ask about your record up front before giving you a job offer.

### WHEN

Most employers can ask about your criminal history only **AFTER** giving you a conditional job offer.

### WHERE

This law covers employers doing business in California.

### WHY

Providing employment opportunities to people with convictions strengthens our communities. Not only do employers benefit from having access to a larger pool of potential employees, but it also creates safer communities, reduces childhood poverty and strengthens families.



# INDIVIDUAL EVALUATION



After an employer has given you a conditional job offer, they must make an individualized assessment about you and your specific conviction history. They must take into account:



The nature of the specific offense you were convicted of. This includes the kind of conduct that led to your conviction and the seriousness of the offense.



The amount of time that has passed since the offense and the completion of the sentence.

The more time that has passed since the offense/completion of your sentence, the better argument you have that the conviction should be given low consideration or not considered at all.



The nature of the job duties and whether the conviction history is directly related to the position.

There must be a direct and negative connection between the conduct that led to your conviction and the requirements of the position for the employer to consider you unsuitable for the job.

For example, if you have a six-month old conviction for bank robbery and apply to work as a bank teller, you will probably not be hired because a direct and negative connection exists between the job duties and your conviction history.

**An employer should not deny a job to an applicant that passes this three-part test.**



Employers who, after the individual evaluation, decide that they don't want to hire you anymore must give you a chance to provide evidence of background check errors, changes or rehabilitation since your conviction or mitigating circumstances. For examples of a response, go to pages 23-44. For more details about the Fair Chance Process, go to page 7.



## THE FAIR CHANCE PROCESS (CONT):

### JOB APPLICATION PROCESS:



**NOTE:** These protections apply even if you have already started working with the employer. For example, if you have been working for two weeks while waiting for the results of your background check, your employer must still follow the Fair Chance Process outlined above and on pages 7-8 if they want to fire you based on those results!





## COMMON VIOLATIONS:

- Asking about convictions on job applications
- Conducting a background check before a conditional offer of employment
- Stating that no individuals with convictions will be hired on job announcements (E.g. “no felonies”; “no convictions in the last 7 years”)
- Considering off-limits information, like convictions that have been dismissed
- Wrong process or no process at all for telling applicants that the employer is taking back the job offer
- Employer does not provide a copy of the background check
- Employer gives applicant less than 5 business days to review and respond to notice



**NOTE:** “Blanket bans” like “we will not hire anyone with a felony record” are most likely illegal!

## WHAT YOU CAN DO IF YOUR RIGHTS ARE VIOLATED:

**1. DOCUMENT WHAT’S HAPPENING** – Keep notes about your application process, including any conversations you have with company personnel where your criminal record comes up; save texts, emails, and letters from the employer in a safe place (consider emailing them to yourself in case your phone is lost or broken).

**2. INFORMALLY RESOLVE THE SITUATION** – Write a letter using one of the sample letters in this toolkit to the appropriate person at the company to explain that you believe it has violated the Fair Chance Act.





## IF YOUR RIGHTS ARE VIOLATED (CONT):

**3. TAKE LEGAL ACTION** – Consult with an attorney, including by contacting Legal Aid at Work at 1-866-864-8208 or <https://legallaidatwork.org/our-programs/racial-justice/> and/or file a complaint with the California Department of Fair Employment and Housing (DFEH) online, in-person, or via mail. A sample Department of Fair Employment and Housing Complaint form is at the end of this toolkit, on pages 50-54.



**Online:** <https://ccrs.dfeh.ca.gov>



**In-person:** You can find DFEH office's locations here: <https://www.dfeh.ca.gov/contact-us/office-locations/>. There are offices in Bakersfield, Elk Grove, Fremont, Fresno, and Los Angeles.



**Mail:** Download an intake form at <https://www.dfeh.ca.gov/complaintprocess/> and mail to 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758



**Phone:** 800-884-1684



Please note that there are strict deadlines for taking legal action. Typically, you have **3 years** from the date of the violation to file a Fair Chance Act claim with the Department of Fair Employment and Housing.

**4. TURN TO YOUR COMMUNITY** – Organize with your community against unjust and illegal actions by prospective employers. For instance, you can reach out to your local chapter of All of Us or None (a grassroots civil and human rights organization fighting for the rights of formerly and currently-incarcerated people and their families), <https://prisonerswithchildren.org/chapters/>.



# KNOW YOUR RECORDS




Getting a copy of your criminal court records is an important first step to seeing what employers may see when they run your criminal background check. Those records may also contain errors, which you can fix before an employer sees your records.

**COUNTY:** Each court maintains its own records and has its own process for requesting your criminal court documents. A list of all of the Superior Courts in California can be found here: [https://www.courts.ca.gov/find-my-court.htm?query=browse\\_courts](https://www.courts.ca.gov/find-my-court.htm?query=browse_courts), which can help you figure out the steps you need to take to get your county record.

**CALIFORNIA:** You can request a copy of your California statewide criminal records (commonly called a “RAP” sheet, which stands for “Records of Arrests and Prosecutions”) that includes any contact you have had with the criminal system, including arrests for offenses you were not found guilty.

## To request your California statewide records (RAP sheet):

1. Complete the Request for Live Scan Service form (BCIA8016RR) - [https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/bcia\\_8016RR.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/bcia_8016RR.pdf)
2. Bring completed request form, valid government ID, the fee and, if applicable, a fee waiver form, (BCIA 8690 - <https://oag.ca.gov/fingerprints/record-review/fee-waiver>) to a Live Scan provider. Find a LiveScan provider: <https://oag.ca.gov/fingerprints/locations>
3. Complete your Live Scan and receive RAP sheet in the mail  
 The Live Scan operator will charge you a fee for their services, as well as a \$25 fee from the California Department of Justice (DOJ). If you qualify, you may be able to get the \$25 California DOJ fee waived.

For more information visit the California DOJ’s website: <https://oag.ca.gov/fingerprints/record-review>



## KNOW YOUR RECORDS (CONT):

**NATIONAL:** You can also request a copy of your national criminal records from the Federal Bureau of Investigation (FBI).

To obtain a copy of your FBI RAP sheet, write to:



FBI CJIS Division – Record Request,  
1000 Custer Hollow Rd., Clarksburg, WV 26306



Or visit the website: <https://www.fbi.gov/services/cjis/identity-history-summary-checks>



### **NOTE: CLEAN UP YOUR RECORDS!**

To clean up your records, including getting a dismissal (“expungement”), certificate of rehabilitation, early termination of probation, reductions from felonies to misdemeanors, sealing, and more, you can reach out to nonprofits or public defenders’ offices for assistance! Free services are available at [clearmyrecord.org](http://clearmyrecord.org) for certain counties. For other counties, you can visit this web page: <https://ebclc.org/reentry-legal-services/>. General information on how to clean up your records is available here: <https://www.courts.ca.gov/1070.htm?rdeLocaleAttr=en>

Going through these clean slate/record clearing processes could make it easier for you to get a job! For example, dismissed (“expunged”) convictions cannot be considered by most employers at all in deciding whether to hire you!





# PREPARING TO APPLY TO JOBS



## RESEARCH POTENTIAL EMPLOYERS & BENEFITS OF HIRING PERSONS WITH RECORDS

- Some employers recognize the immense benefits that can come from being open to hiring persons with criminal records. Ask around or do research on the internet for “Fair Chance” employers.
- You may also be able to convince some employers to be open to hiring individuals with records with information about the:
  - Work Opportunity Tax Credit (<https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>)
  - Federal Fidelity Bonding program (<https://bonds4jobs.com/>)
  - California New Employment Tax Credit (<https://www.ftb.ca.gov/file/business/credits/new-employment-credit/index.html>).
- You can also share this California Employer’s Fair Chance Hiring Toolkit with potential employers: <https://www.rootandrebond.org/resources/ca-employers-fair-chance-hiring-toolkit/> (Root & Rebound).



## PREPARE YOUR RESUME

- **VOLUNTEER EXPERIENCE:** Any volunteer experience you have should be included, especially if it involved transferable skills such as record-keeping or working in collaboration with others. It's also legitimate to include training programs and educational degrees you completed while incarcerated.
- **WORK YOU DID WHILE INCARCERATED:** If you were incarcerated for a long time or have limited work history, think about whether to list the work you did while incarcerated on your resume. Think about the responsibilities you had and the skills that apply to the job you are applying for, as well as whether you want to communicate that you held the position while incarcerated. You can list these positions on your resume by job title. Examples of positions you may have held while incarcerated: custodian, kitchen crew member, librarian, welder, assembler, laundry room attendant.

## PREPARE TO BE ASKED ABOUT YOUR CRIMINAL RECORD BY A POTENTIAL EMPLOYER

**What if a potential employer asks about my criminal history on the application?**

There is no one right answer about what to do if this happens. Here are some things to think about and some options to consider:

1. **BE TRUTHFUL!** If an employer later runs a background check and discovers you weren't being truthful, they can fire you.
2. **BUT KNOW YOUR RIGHTS!** You don't have to tell them everything, and for most employers this is probably an illegal question they're not permitted to ask before giving you a conditional job offer.



### 3. READ THE QUESTION CAREFULLY!



Does the question ask:

“Have you EVER been convicted?”

Or “Have you been convicted of a FELONY?”

Or “Have you been convicted of a crime IN THE LAST SEVEN YEARS?”

These are all different questions.



#### **NOTE: PROCEED WITH CAUTION!**

Sometimes employers use these questions as “truth tests” and will use your responses later, even if they’re based on misunderstanding your own records or some other legitimate reason, to say that you lied and you won’t be hired for that reason.

**4. THINK ABOUT YOUR CONVICTION HISTORY,** and how it relates to the job you’re applying for: are the job responsibilities related to what your convictions are about?

#### **5. REMEMBER — YOU HAVE OPTIONS!**

- You can leave the question blank.
- You can answer (truthfully), but then include additional information (even if the application only gives you a box to check).

FOR INSTANCE: “Yes, but that was almost 5 years ago” or “Yes, but I have worked hard to rehabilitate myself since then” or “No, conviction dismissed” or “Yes, but my conviction is related to a past drug addiction.”

- You may be able to pursue legal options at this stage. Remember to keep a copy of the paper application or take a picture of the online application as evidence, and keep these in a safe place (for example, by emailing it to your personal email account)!

#### **6. TAKE LEGAL ACTION!**

This is probably an illegal question, so you can file a complaint with the government agency that enforces the California Fair Chance Act. For info about how to take legal action, go to page 13. For a sample official complaint form, go to pages 50-54.





## What if a potential employer asks about my criminal history during an interview?

Just like an employer might—even if unlawfully—ask about your criminal history on the application, they might do so during the job interview.

The same considerations as when an employer asks this question on a job application apply (for these, go to pages 17-18). You should also:

- PRACTICE, PRACTICE, PRACTICE your response. Practice actually saying your answer out loud in front of a mirror or with a friend.
- Think creatively about your response. We have learned from the formerly incarcerated folks we have worked with who have said:

*“What I can tell you is that there is nothing in my past that would keep me from doing this job well.”*

*“Regardless of what’s in my past, I know I am qualified for this job and could perform it with excellence.”*

*“I think that under a California law called the Fair Chance Act, you’re not supposed to ask that question at this stage.”*

*“I do have some convictions, but I owned up to what I did and accepted the consequences. I learned from my mistakes, and now I am hungry to earn a living lawfully. I think I could contribute to your business because of my skills....”*





## What if a potential employer asks about a large gap in my employment history?

- Think about whether you should include work you did inside on your resume, to make this gap smaller.
- Consider preparing a general response that acknowledges the gap, but emphasizes that this is in the past.

FOR EXAMPLE:

*“I had significant issues in my personal life that prevented me from working for a time, but that is resolved now, and I am ready to re-enter the workforce and excited about working for you!”*





# PREPARE FOR THE FAIR CHANCE PROCESS

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Employers covered by the Fair Chance Act must give you a chance to respond to their preliminary decision to take back your job offer. Here's what you can do to prepare to respond:

## GATHER LETTERS OF SUPPORT AND OTHER REHABILITATION EVIDENCE

- Gather support letters from people in your life. For sample support letters, go to pages 37-44

Letters of support or recommendation from previous teachers or professors, counselors, instructors or employers; from probation or parole officers attesting that you satisfied all terms of probation or parole; recovery programs or counselors attesting to your current state of rehabilitation or others

- Proof of enrollment or completion of school (e.g. high school or college diploma, GED)
- Proof of enrollment or completion in job training programs
- Proof of completion of a rehabilitation program after the conviction (e.g. substance abuse treatment, anger management course, residential drug treatment)
- Proof of community service or other self-improvement efforts



## WRITE A PERSONAL STATEMENT DESCRIBING THE NATURE & CIRCUMSTANCES OF YOUR CONVICTION & YOUR REHABILITATIVE EFFORTS



For a sample personal statement letter, go to pages 33-36.

Short examples of a personal statement are below:

*“I assure you that I learned from my previous mistakes. I have spent time training for this career path because I am more mature now and have a solid plan for my future. If given the chance, I will give your company 100 percent effort.”*

*“In 2014, I was convicted of grand theft. During my incarceration, I realized how my actions hurt other people and learned how to overcome the urge for instant gratification. I dedicated my time to reflection, self-improvement and ultimately discovered my passion for learning and technology. After taking all of the available classes on computers and engineering, I am grateful to have received extensive training in this field. Also, I worked as a mechanic for 18 months and was proud of being promoted after a year of hard work. I am excited by this job and the opportunity to work for you.”*

*“From the time I was 15 years old until I turned 25, I struggled with drug addiction. I was convicted several times for drug-related offenses. I regret this period of my life and I take full responsibility for my actions. After my most recent conviction in 2015, I entered a residential drug treatment program for 18 months. I successfully completed the program and I am proud to say that I have not used drugs for five years. I also moved forward in other areas of my life. I obtained my high school diploma and now volunteer with an organization that mentors young people with risk factors for substance abuse.”*



# SAMPLE LETTERS

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**NOTE:** The following pages, 23-44, provide sample letters you can use with your employer during the Fair Chance process.

Be sure to put in **YOUR** information in the bracketed [ ] areas in green to fit your circumstances.

## Letter to Employer to Ask for a Copy of Your Background Check & More Time

### **WHEN TO USE:**

This letter can be used when the employer has failed to provide you with a copy of your background check and to ask for additional time to provide a response to convince your employer not to take back your job offer.





[Date]

[Address of Employer]

RE: [Your Name]

To Whom it May Concern:

I am writing in response to your [date] letter regarding my conviction. I appreciate your office giving me an opportunity to respond regarding my suitability to work as [position] at [employer]. In order to do so to my fullest practicable extent, I would like to request a copy of my background check pursuant to California Government Code section 12952(c)(2)(B).

Additionally, I would like to request more time to provide a response to your notice so that I am able to gather evidence of my rehabilitation and letters of support. I request to have until [insert date] to respond. Please also let me know when I can expect to receive a copy of my background check.

Thank you for your consideration.

Sincerely,

[Full name]



## Letter to Background Check Company about Errors

### **WHEN TO USE:**

The following letter can be used when your background check has errors. Examples of errors include convictions showing up multiple times, the “disposition” being incorrect (e.g. a dismissed or “expunged” conviction shows up without that information), and the dates or name of the crime being wrong.



**NOTE:** For instructions on how to get a copy of your records, please go to page 14, *KNOW YOUR RECORDS*



[Date]

[Address of background check company]

RE: [Your Name]

To Whom it May Concern:

My name is [Full name] and I am writing to report an error in the background check report that your company conducted for [employer]. [Explain what the error is]. I have attached [any supporting evidence you have] supporting my dispute. I ask that you please correct this error as soon as possible, and notify me at [insert email] when you have made the correction.

Thank you.

Sincerely,

[Full name]



## Letter to Employer when Background Check Contains Off-Limits Information or You Don't Have Convictions

### **WHEN TO USE:**

The following letter can be used when your background check has errors. Specifically, this letter should be used when your background check includes off-limits information or if you do not have the convictions listed on your background check.

### OFF-LIMITS INFORMATION INCLUDES:

- Arrests that did not result in convictions (unless the case is currently open)
- Diversion programs (both pretrial and post-trial)
- Arrests, convictions, or juvenile proceedings that have been sealed, dismissed, or "expunged" or for which you have been issued a certificate of rehabilitation
- Convictions for minor marijuana-related offenses, if the conviction is more than 2 years old
- convictions that have been erased by statute ("statutorily eradicated") or pardoned
- Juvenile court records



[Date]

[Address of Employer]

RE: [Your Name]

To Whom it May Concern:

This letter comes in response to your office's [date] notice stating that I have conviction[s] for [state the conviction in the notice] that [disqualify/disqualifies] me from the [position you applied for] position. The background check on which the notice relies contains mistakes. [insert mistake, for example: I am writing to clarify that [the identified conviction[s] have/has been dismissed/sealed/statutorily eradicated; I have never had conviction(s) for [state conviction]; the conviction(s) cannot be considered because they were handled by a juvenile court; participation in/referral to a diversion program cannot be considered.]



Examples of Off-Limits Information that you can ADD are on the FOLLOWING PAGES, 29-30.



Thank you for your consideration.

Sincerely,

[Full Name]



## CONTINUED: To Employer when Background Check Contains Off-Limits Information or You Don't Have Convictions

IF YOUR ARREST/  
DETAINMENT **DID  
NOT RESULT IN A  
CONVICTION**, STATE  
THE FOLLOWING:



**NOTE:** Add appropriate scenario to previous page 28 letter.

Under California Government Code section 12952(a)(3) (A) and California Labor Code section 432.7(a)(1), an employer cannot consider information concerning an arrest or detention that did not result in conviction. An employer cannot seek information on any record of arrest or detention that did not result in conviction, nor may an employer utilize any record of arrest or detention that did not result in conviction as a factor in determining any condition of employment. Pursuant to California Government Code section 12952(a)(3)(A) and California Labor Code section 432.7(a)(1), I ask that you re-evaluate my application for employment since I do not have this conviction.

IF YOU WERE REFERRED TO OR PARTICIPATED IN A **DIVERSION PROGRAM**, STATE THE FOLLOWING:

Under California Government Code section 12952(a)(3) (B) and California Labor Code section 432.7(a)(1), an employer cannot ask an applicant to disclose information concerning a referral to, and participation, in any pretrial or post-trial diversion program. An employer may not seek out nor utilize this information. I ask that you re-evaluate my application without considering my participation in any diversion program.



IF YOUR OFFENSE WAS HANDLED  
BY A **JUVENILE COURT**, STATE THE  
FOLLOWING:

Under California Labor Code section 432.7(a)(2) and California Government Code section 12952(f)(1), an employer cannot consider information concerning an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the applicant was subject to the process and jurisdiction of a juvenile court. An employer may not seek out nor utilize this information. I ask that you re-evaluate my application without considering this juvenile case, since its consideration is prohibited by law.

IF YOUR CONVICTION WAS **DISMISSED**  
OR **SEALED**, STATE THE FOLLOWING:

Under California Government Code section 12952(a)(3)(C) and California Labor Code section 432.7(a)(1), an employer cannot consider information concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. An employer cannot seek information concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, nor may an employer utilize information concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law as a factor in determining any condition of employment. I ask that you re-evaluate my application for employment without the dismissed or sealed conviction.



## Letter to Employer About Other Background Check Errors

### **WHEN TO USE:**

This letter can be used when your background check has errors. Examples of errors include convictions showing up multiple times, the “disposition” being incorrect (e.g. a dismissed or “expunged” conviction shows up as active), and the dates or name of the crime being wrong.



**NOTE:** For instructions on how to get a copy of your records, please go to page 14, *KNOW YOUR RECORDS*.

You can attach copies of these records to these letters to prove that the background check contains errors.





[Date]

[Address of Employer]

RE: [Your Name]

To Whom it May Concern:

I am writing in response to your [date] letter regarding my background check. The letter states that [what it says regarding alleged conviction(s)]. This is not correct. [Explain why it is a mistake. Example: "My conviction was not for burglary, it was for shoplifting."].

I have attached [supporting evidence you have. Example: "court documents"] supporting this.

Thank you for your consideration.

Sincerely,

[Full name]



## Personal Statement Letter to the Employer

**WHEN TO USE:** This letter can be used when the employer has learned that you have conviction(s) and you'd like to explain changes you've made to your life since those convictions and how those convictions do not prevent you from doing this job. The goal of this letter is to explain each factor that the employer must consider under the Fair Chance Act when evaluating job applicants with a conviction history. For shorter examples of a personal statement, go to page 22.



**NOTE:** This sample letter continues on the following pages, pages 34-36.



[Date]

[Address of Employer]

RE: [Your Name]

To Whom it May Concern:

I am writing in response to your [date] letter regarding my conviction[s]. I appreciate [employer's] willingness to provide me with an opportunity to respond. As you know, I applied for the [position] with [employer]. I do not believe my conviction[s] [is/are] in conflict with the duties of the job, which I am still very much interested in and qualified for. I have taken steps to turn my life around since my conviction[s] and have demonstrated a commitment to avoid making the mistakes I did in the past.

I was convicted in [year] of [list conviction].

I believe my conviction does not have the requisite nexus with the [position]. California Government Code section 12952 governs how an employer may request and consider an applicant's conviction history. Section 12952(c)(1)(A) instructs that an *"employer that intends to deny an applicant a position of employment solely or in part because of an applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position."*



**NOTE:** letter continued on next page, page 35.





## CONTINUED: Personal Statement Letter to Employer



**NOTE: continuation of letter from previous page, page 35.**

My conviction has no bearing on my suitability to work as [this position]. It is unrelated to the responsibilities of [position], which include [describe the basic responsibilities of the position]. [Include details about how your conviction is unrelated to the positions' job responsibilities].

***[If your conviction was drug-related, add the following if it is true: I will not have access to medication or other controlled substances in this position.]***

As such, there is no relationship between my conviction and the specific duties of the job, let alone a "direct and adverse" one.

Section 12952 lists a number of factors that an employer must consider when making the assessment of whether a direct and adverse relationship exists, including the time passed. I would like to emphasize that the underlying events of this conviction occurred over [\_\_ years/months ago].

I would also like to explain the nature and circumstances of my conviction. [Insert some of the circumstances that explain the conviction. For example: "For many years, I



**NOTE: letter continued on next page, page 36.**





**NOTE:** continuation of letter from previous page, page 35.

was addicted to drugs. My drug addiction explains my conviction, as I started stealing in order to support my addiction.”]. I regret this period of my life and take full responsibility for my actions. During my incarceration, I [participated in/completed] [insert rehabilitative programs you participated in, even if they were mandatory, such as substance abuse treatment programs, counseling, anger management classes, etc.]. My incarceration also gave me an opportunity to reflect on the consequences of my actions, including the harm I did to myself and to others. [You can insert an example of a lesson you learned or something you did to rectify the harm caused, such as giving back to your community].

I am also expecting letters of support from [other letters you will also submit]. I will send this information as soon as possible.

Thank you for your consideration. I am very excited about working with [employer], and I hope that you will give me the opportunity to do so.

Sincerely,

[Full name]



## Support Letter from Probation / Parole Officer

### **WHEN TO USE:**

You can share this sample letter with your probation or parole officer, and ask them to provide you with a similar letter.



**NOTE:** This letter should be on official letterhead.



[Date]

To Whom It May Concern:

I am [give name and relationship to Applicant] and I have supervised [Applicant] for [X years/X months]. [Applicant] [is currently completing/has successfully completed] a term of [probation/parole/supervised release], which began on [date] and [is scheduled to] expire[d] on [date]. [He/she/they is/are] in compliance with the terms of probation.

[Include any helpful details about the terms of probation.]

For example:

- [Applicant]'s terms of probation require that [he/she/they] report on time to regularly scheduled meetings with me. [Applicant] has always been on time to our required meetings.
- [Applicant]'s terms of probation require that [he/she/they] take regular drug tests. [Applicant] has taken [X number] of drug tests, and has passed them all [OR not failed a drug test since date].
- [Applicant] appears to be taking responsibility for [his/her/their] past actions and has demonstrated an intention to maintain a law-abiding lifestyle.
- To my knowledge, [Applicant] does not appear to pose any kind of security risk.

Sincerely,

[Name]

[Title]

[Address]

[Phone Number]



## Support Letter from Past Employer / Supervisor / Manager

### **WHEN TO USE:**

You can share this sample letter with someone you used to work with, like a supervisor or manager, and ask them to provide you with a similar letter.





[Date]

[Address of Employer]

RE: [Your Name]

To Whom it May Concern:

I am a [job title] with [company]. I supervised [employee] from [start date] to [end date]. [Employee] worked for [company] as a [position]. [Employee's] job responsibilities include [brief description of job duties]. I am aware of [Employee's] record.

[Employee] is hardworking, reliable, honest, respectful, courteous, and well-liked by [his/her/their] co-workers and management. [Employee] has never been subject to any discipline, nor have any complaints been made about [him/her/them] by customers or coworkers. [Employee] made some mistakes in [his/her/their] past, but [he/she/they has/have] turned their life around.

[Insert any specific stories demonstrating good qualities and any details regarding rehabilitation efforts].

Any employer would be lucky to have [Employee] working for them.

Sincerely,

[Full name]



## Support Letter from Health Care Provider (including Doctor, Nurse, Therapist, Counselor)

### **WHEN TO USE:**

You can use this letter when your convictions were related to a past drug addiction. You can share this sample letter with your healthcare provider (including your mental healthcare provider), counselor or therapist, and ask them to provide you with a similar letter certifying that you are undergoing treatment for that drug addiction. Please note that you should only use this letter if you are currently not using illegal drugs.



**NOTE:** This letter should be on official letterhead of Healthcare Provider.



[Date]

To Whom It May Concern:

I am a [licensed medical/healthcare professional, counselor] from [Organization] for [Applicant]. [Applicant] is a patient in my care and has been in my care since [Date].

[Applicant] had a past drug addiction that substantially limited [his/her/their] ability to [concentrate, think, other major life activities], among other major life activities. I have worked with [Applicant] to develop a treatment plan for [his/her/their] addiction. [Applicant] also successfully completed a 60-day residential drug treatment program]. [Applicant] is no longer engaging in the use of illegal drugs and has not used illegal drugs for approximately [time].

The strides [Applicant] has made toward recovery are nothing short of amazing. [Applicant] has worked very hard to overcome [his/her/their] addiction and has built up an arsenal of tools to fight against a relapse.

In my opinion, [Applicant] is ready to work and would be a great employee.

Sincerely,

[Healthcare provider Name, Title, License Number (if applicable)]



## Support Letter from Service Providers, Job Training, Education, Volunteering, Religious Leaders, and Others

### WHEN TO USE:

Be creative about who can write you a support letter! Think about the people and organizations in your life who can help you convince an employer to hire you and not revoke your job offer. Anyone can write a support letter for you!



**NOTE:** If applicable, use official letterhead.

[Date]

To Whom It May Concern:

I am [describe relationship to job applicant]. I have known [Applicant] for [Amount of Time]. [Include any additional details about relationship, for instance]:

- [Applicant] regularly attends religious services at my church.
- [Applicant] successfully completed a job training program with [Organization], where [he/she/they]



**NOTE:** letter continued on next page, page 44.





were an enthusiastic, responsible, and hardworking participant.

- [Applicant] regularly volunteers with [Organization] as a [Position]. [Applicant] has been an invaluable volunteer, showing up early, leaving late, and bravely and courageously sharing their story with our program participants to inspire them to not make the same mistakes [he/she/they] did.
- [Applicant] was a student in my class. I found [Applicant] to be a bright, hard working person, who was a joy to have in class.
- [Applicant] successfully completed anger management counseling and received a certification of completion from [Organization].

During that time, I have known [Applicant] to be a reliable, truthful, respectful, courteous, and well-liked person. [Applicant] made mistakes in [his/her/their] past, but has moved on with their life.

[Include other detailed description of positive qualities, rehabilitative efforts, and other helpful information, including specific facts and details].

Thank you for taking the time to review my letter.

Sincerely,

[Name]



# SUPPORT LETTERS TIPS

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## PAROLE / PROBATION OFFICER

If your parole or probation officer can say the following truthfully, ask them to write a letter commenting on:

- Negative drug tests
- Positive outlook
- Compliance with all requirements of parole/probation
- Exceptional motivation
- Any other positive qualities or accomplishments



## EMPLOYMENT

If you have had positive work experiences in the past, try to get as many letters as you can from supervisors, managers or even coworkers who can comment on:

- What the job was and how long you worked there
- What your job responsibilities were
- How well you performed your job
- Whether you were promoted while on the job
- Your excellent attendance record and punctuality
- That you are motivated, responsible, and get along well with others
- Any other positive qualities or accomplishments





## **JOB TRAINING**

If you participated or are participating in a job training program to grow your skills related to the job you are applying for, ask a program supervisor or administrator to write a letter commenting on:

- Your participation, enrollment, and/or successful completion of the program
- Your excellent attendance record and punctuality
- Your motivation to learn and get ahead in life
- The useful skills you learned that can be applied to the job
- Any other positive qualities or accomplishments



## **EDUCATION / SCHOOL**

If you are enrolled in or have successfully completed an education program, ask a teacher or school administrator to write a letter commenting on:

- Your enrollment or completion in the program
- Your excellent attendance and punctuality
- Your great grades
- Your motivation to learn and get ahead in life
- Any other positive qualities or accomplishments



**HEALTH CARE  
PROVIDER /  
COUNSELING /  
SOCIAL SERVICE  
PROGRAM**

If you have spent any time receiving treatment or in a counseling or other social service program (like a drug treatment or anger management program), and your instructor, program coordinator, or health care provider can accurately say the following, ask them to write a letter commenting on:

- Your past drug addiction
- That you are currently not using illegal drugs
- The length of time for which you have not used illegal drugs
- Your attendance in the program
- Negative drug tests
- Demonstrated motivation and desire to change
- Full participation the program
- Your understanding of the causes of your past behavior and commitment to changing
- Any other positive qualities or accomplishments



**CLERGY /  
RELIGIOUS  
LEADERS**

If you play a leadership role in your community or have a relationship with a religious leader, ask your priest, minister, imam, rabbi or other spiritual leader to write a letter on your behalf describing your leadership, character, or any positive qualities and accomplishments.







## **VOLUNTEER WORK**

If you have volunteered for a school, nonprofit or other group, ask them for a letter saying that you:

- Are responsible and reliable
- Have contributed to the work of the program
- Are dedicated to your volunteer work
- Any other positive qualities or accomplishments



## **ANYONE ELSE!**

If there is someone else you think might be able to convince your employer that they should give you the job and not take back your job offer, ask them to write a letter attesting to:

- Your positive character
- Your rehabilitation efforts to change after your convictions
- Any other positive qualities or accomplishments



# TEMPLATE FOR PERSONAL STATEMENT

## DISCUSS CONVICTION

- what, when (stick to the basic facts)
- take responsibility/show remorse
- mitigating factors

*"this situation taught me..."*

## DISCUSS ACCOMPLISHMENTS

- social and community ties
- programs completed inside
- programs completed while out
- employment
- education

## CLOSE WITH RELATABLE SKILLS AND RESTATE QUALITIES, SHARED VALUES AND RELEVANT SKILLS

- commitment to work, family, etc.
- personal strengths

*"I am a good candidate because..."*



**NOTE:** For personal statement examples, go to page 22.





CALIFORNIA DEPARTMENT OF  
FAIR EMPLOYMENT & HOUSING  
**SAMPLE INTAKE FORM**  
USE OF CRIMINAL HISTORY  
INFORMATION IN EMPLOYMENT

Use this Intake Form if you would like to file a complaint against an employer for unlawfully asking you about or using your criminal history information in making an employment decision. The Intake Form is not a filed complaint. After you complete and submit this form, a DFEH representative will interview you to determine if a complaint can be accepted for investigation.



**DISCLAIMER: DO NOT FILL OUT  
THE FORM IN THIS TOOLKIT.**  
THE FOLLOWING IS ONLY A SAMPLE.

This is the **REQUIRED PORTION** of the intake you'll need to fill out to start the legal complaint process.

THE ACTUAL FORM IS AVAILABLE AT:

[https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/06/IF-CriminalHistoryEmployment\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/06/IF-CriminalHistoryEmployment_ENG.pdf)

TO FILE A COMPLAINT ONLINE, VISIT THIS WEBSITE:

<https://ccrs.dfeh.ca.gov/>

## COMPLAINANT (YOU)

NAME: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_



**NOTE:** Here, you fill out your basic information, including your contact information and whether you would like an interpreter to assist you.

Do you need an interpreter during the complaint process?  
 Yes  No

If yes, indicate language: \_\_\_\_\_

Are you currently out on bail or released on your own recognizance pending trial?  
 Yes  No

Were you applying for a job at a health care facility?  
 Yes  No

Were you applying for a farm labor job?  
 Yes  No

Were you applying for a law enforcement position or a position with a state criminal justice agency?  
 Yes  No



**NOTE:** The yes/no check boxes relate to exceptions to the California Fair Chance Act or other relevant information the government agency will use to determine whether it can investigate your claim.



**NOTE:** form continued on next page, page 52.



## RESPONDENT (EMPLOYER OR COMPANY)

NAME: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_



**NOTE:** Here you provide basic information about the employer, including their contact information.

CITY/STATE/ZIP: \_\_\_\_\_

NUMBER OF EMPLOYEES: \_\_\_\_\_

TYPE OF EMPLOYER: \_\_\_\_\_



**NOTE:** For number of employees, you can include an estimate of the number of employees they have - for example, "5+" or "50+".

## ADD CO-RESPONDENT

NAME/TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FIRST DATE OF HARM (Month/Day/Year): \_\_\_\_\_

LAST DATE OF HARM (Month/Day/Year): \_\_\_\_\_



**NOTE:** If there is another employer, company, or individual who you would like to file a complaint about, add them here. For example, if you applied to work through a temp agency, and you believe that both the temp agency and the other employer violated your rights, you would include both companies.



**NOTE:** form continued on next page, page 53.



## COMPLAINT

Please describe your complaint about the employer's use of criminal history information during the employment process.

[CHECK BOXES



**NOTE:** Here, check the relevant box or boxes explaining what the company did to violate your rights.

- Application included a question about conviction history before a conditional job offer was made.
- Employer asked about or considered my conviction history before a conditional job offer was made.
- Employer considered, distributed, or disseminated information about:
  - An arrest not followed by conviction
  - My referral to or participation in a pretrial or posttrial diversion program
  - Convictions that had been sealed, dismissed, expunged, or statutorily eradicated
- Employer did not make an individualized assessment considering the nature and gravity of the conduct, the time passed, and the nature of the job held or sought.
- Employer did not notify me in writing of the preliminary decision that my conviction history disqualified me from employment.
- Employer did not provide me a notice of the conviction(s) that disqualified me from employment.
- Employer did not provide me with a copy of my conviction history report.



**NOTE:** form continued on next page, page 54.



- Employer did not explain my right to respond to the preliminary disqualification decision or the deadline by which I had to respond.
- Employer did not explain my right to submit evidence challenging the conviction history report, mitigating circumstances, or circumstances regarding my rehabilitation.
- Employer did not consider my response to the preliminary disqualification decision.
- Employer did not notify me in writing of the final decision to disqualify me because of my conviction history.
- Employer did not notify me in writing of:
  - Employer's existing procedure for challenging their decision.

Describe procedure: \_\_\_\_\_  
 \_\_\_\_\_

My right to file a complaint with DFEH

Other: \_\_\_\_\_

1. Do you have an attorney who agreed to represent you in this matter?  Yes  No

If yes, please provide the attorney's contact information below.


### COMPLAINANT'S REPRESENTATIVE INFORMATION

Attorney Name: \_\_\_\_\_

Attorney Firm Name: \_\_\_\_\_

Attorney Address: \_\_\_\_\_

Attorney City, State, and Zip: \_\_\_\_\_



**NOTE:** You do not need an attorney for the DFEH process. If you have an attorney, you can include their contact information here.



**NOTE:** For help filling out a complaint intake form, contact Legal Aid at Work.

**LEGAL  
AID AT  
WORK**

**[legallaidatwork.org](http://legallaidatwork.org)**

**415-864-8848**