



# Criminal Records & Employment

**KNOW YOUR 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.
- Include your fingerprints. You must include a complete fingerprint card with your letter or application. To get a fingerprint card, go to your local police or sheriff's station and ask to be fingerprinted. Some private companies also fingerprint people; you can check the phone book for the nearest company. You will probably have to pay a fee to be fingerprinted. For example, the Berkeley police department currently charges \$10.00 for two cards. Private companies often charge more.
- Pay an application fee. Currently, the fee is \$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.
- Mail the application. Mail the request letter or application, your fingerprint card, and your check or money order to:

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



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

If you cannot afford the fee, you may request a waiver. In your original letter or application, you must include a separate letter that requests a waiver of the fee. In the letter, 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, she or he 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. I was convicted, but the conviction has been expunged. Will that conviction appear on my summary criminal history?**

**Yes.** Your record will list the original conviction, but then underneath that history, the record will state that the court has dismissed or set aside the charge. (See California Penal Code § 1203.4 for a description of the expungement process.)



## **10. 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 him or her 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, he or she 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.



## 11. 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.



## 12. 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.



### **13. 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.



### **14. 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:

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



## **Consult the appropriate agency or an attorney about your rights.**

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, call:**

**The Workers' Rights Clinic  
(415) 864-8208**

**The Legal Aid Society - Employment Law Center** is a non-profit organization focusing on the employment-related legal problems of low-income workers and providing free legal information on a wide range of employment-related problems. For information, call the LAS-ELC's 24-hour Direct Services Information Line at (415) 864-8208.

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