

# Know Your Rights

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# Criminal Records

## A Guide to Rights in Employment & Housing



February 2017

Massachusetts residents with criminal records often face unique challenges when re-entering society. Among these challenges are barriers to securing employment and housing – key parts of productive participation in our society and critical pathways to economic security.

Because we recognize the importance of access to employment and housing, we have prepared this guide to help educate residents on their basic rights in these areas. If you believe that your rights have been violated, we encourage you to file a complaint with the Attorney General's Civil Rights Division. There are many ways to reach us:

- ▶ **Online:** Complete a Criminal History E-Complaint at <http://www.mass.gov/ago/consumer-resources/your-rights/civil-rights/criminal-history-civil-rights-complaint.html>;
- ▶ **By Mail:** Send a completed Criminal History Complaint form to the Civil Rights Division at One Ashburton Place, 18th Floor, Boston, MA 02108;
- ▶ **By E-mail:** Email a completed Criminal History Complaint form to the Civil Rights Division at [civilrights@state.ma.us](mailto:civilrights@state.ma.us);
- ▶ **By Phone:** Call (617) 963-2917; or
- ▶ **In Person:** Visit the Civil Rights Division on Monday through Friday between the hours of 9:30 a.m. and 4:30 p.m. at 100 Cambridge Street, 11th Floor, Boston, MA 02114.

Because the Civil Rights Division receives many complaints, the time it takes to review each complaint can vary. We will do our best to contact you to discuss your complaint within one week of receipt. If you already have filed a complaint with the Civil Rights Division and wish to inquire about the status, you should contact us by calling (617) 963-2917.

Information provided in this booklet is for informational purposes and does not constitute legal advice or legal representation.

# **EMPLOYMENT**

There are a number of rules that apply when individuals with criminal records seek employment.

## WHAT EMPLOYERS MAY NOT ASK

- ▶ State law prohibits most employers from asking about an applicant's criminal history on an initial job application.
  - ▷ Exception: Some employers are permitted to ask about an applicant's criminal history. Examples include certain jobs that involve working with young children or working at financial institutions.
- ▶ It is always illegal for employers to ask an applicant or employee to provide a copy of his or her own criminal offender record information (CORI) or arrest records.
- ▶ State law prohibits most employers from asking about the following – at any stage of the hiring process:
  - ▷ Criminal cases that did not end in a conviction (including CWOFs);
  - ▷ An arrest or detention (e.g. being held at a police station) that did not end in a conviction;
  - ▷ A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;
  - ▷ Convictions for a misdemeanor where the date of the conviction OR the release from incarceration was 5 or more years ago, provided there were no subsequent convictions in the last 5 years;
  - ▷ Juvenile records, except for juvenile cases that transferred from the Juvenile Court to an adult court and where the juvenile was tried as an adult; or
  - ▷ Sealed criminal records (which may be reported as “No Record”).
- ▶ However, an employer may ask about criminal convictions if:
  - ▷ The applicant is applying for a position for which certain convictions disqualify the applicant under state or federal law, or
  - ▷ The employer is prohibited by state or federal law from employing individuals who have been convicted of certain criminal offenses.
- ▶ State agencies are required to wait until the final stage of the hiring process (after they find an applicant otherwise qualified for a job) to ask questions about criminal records. *See e.g., Executive Order No. 495.*

## WHAT EMPLOYERS ARE PERMITTED TO ASK

- ▶ After the initial job application, employers may ask an applicant about:
  - ▷ Felony convictions at any time (if the records are not sealed); and
  - ▷ Misdemeanor convictions (if the records are not sealed) that were not first-time convictions for the following offenses: drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace.
- ▶ Employers are required to obtain an applicant's written permission before accessing his or her CORI records.
- ▶ If an employer makes an adverse decision based on an applicant's CORI (such as a decision not to hire the applicant), the employer is required to give the applicant notice and provide the applicant with a copy of his or her CORI. If an employer obtains criminal history information through a "consumer report" prepared by a consumer reporting agency (such as TransUnion, Experian, and Equifax, or other background screening companies) and takes any adverse action based on information contained in the report, the applicant is entitled to notice and a copy of the report, as well as an opportunity to correct/explain any errors.

## ADDRESSING SEALED RECORDS

- ▶ A job applicant whose criminal records are sealed does not have to provide an employer with any information about the sealed case or charge(s) at any stage of the hiring process. In response to any inquiries regarding a sealed criminal case or charge, a job applicant may answer that he or she has "No Record."
- ▶ Sealed criminal records may not be used to disqualify an applicant for employment with the Commonwealth or any political subdivision thereof.

## INDIVIDUAL REVIEW OF CRIMINAL HISTORY INFORMATION

- ▶ Employers that have a policy or practice of automatically rejecting any job applicant with a criminal record may be violating state and federal civil rights laws because using criminal records in this way can have a disproportionate effect on protected groups, including racial minority groups.
- ▶ In most cases, employers should conduct an individualized assessment before determining that a particular criminal record disqualifies an individual for a particular job. Relevant considerations generally should include:

- ▷ The facts or circumstances surrounding the offense or conduct;
- ▷ The number of offenses for which the individual was convicted;
- ▷ Age at the time of conviction, or release from prison;
- ▷ Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- ▷ The length and consistency of employment history before and after the offense or conduct;
- ▷ Rehabilitation efforts, e.g., education/training; and
- ▷ Employment or character references and any other information regarding fitness for the particular position.

See e.g., EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records, <http://www.mass.gov/ago/docs/civilrights/eec-guidance-arrest-conviction.pdf>.

<b>Summary of Rules Applicable to Most Employers</b>		
<b>Job Application</b>	<b>Later During Hiring Process</b>	<b>Never</b>
<p>May NOT ask about criminal history on <u>initial application</u>.</p>	<p>May ask about any felony convictions (if not sealed) and misdemeanor convictions that were <b>not</b> first-time convictions for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace.</p>	<p>Never permitted to ask about:</p> <ol style="list-style-type: none"> <li>1. Criminal cases that did not end in a conviction;</li> <li>2. An arrest or criminal detention that did not end in a conviction;</li> <li>3. A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;</li> <li>4. Convictions for a misdemeanor where the date of the conviction OR the release from incarceration was 5 or more years ago, provided there were no subsequent convictions in the last 5 years;</li> <li>5. Most juvenile records unless tried as an adult; and</li> <li>6. Sealed criminal cases.</li> </ol>
		<p><b>Never</b> permitted to ask applicant/employee to provide a copy of his or her own CORI.</p>

# HOUSING

There are fewer specific rules for housing providers than there are for employers, but housing applicants do have certain rights.

## BASIC RIGHTS AND RESTRICTIONS

- ▶ Housing providers are required to obtain an applicant's written permission before accessing his or her CORI records.
- ▶ If a housing provider makes an adverse decision based on an applicant's CORI (such as a decision not to rent to the applicant), the housing provider is required to give the applicant notice and provide the applicant with a copy of his or her CORI. If a housing provider obtains criminal history information through a "consumer report" prepared by a consumer reporting agency (such as TransUnion, Experian, and Equifax, or other background screening companies) and takes any adverse action based on information contained in the report, the applicant is entitled to notice and a copy of the report, as well as an opportunity to correct/explain any errors.
- ▶ It is illegal for housing providers to ask an applicant to provide a copy of his or her own CORI or arrest records.

## INDIVIDUAL REVIEW OF CRIMINAL HISTORY INFORMATION

- ▶ Housing providers that have a policy or practice of automatically rejecting any applicant with a criminal record may be violating state and federal civil rights laws because using criminal records in this way can have a disproportionate effect on protected groups, including racial minority groups.
- ▶ In most cases, housing providers should conduct an individualized assessment before determining that a criminal record disqualifies an applicant for housing. Relevant considerations generally should include:
  - ▷ The nature and severity of a conviction;
  - ▷ The amount of time that has passed since the criminal conduct occurred;
  - ▷ The facts or circumstances surrounding the offense or conduct;
  - ▷ The age of the individual at the time of the conduct;
  - ▷ Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and
  - ▷ Evidence of rehabilitation efforts.

See e.g., *HUD Guidance on Application of FHA Standards to the Use of Criminal Records*, <http://www.mass.gov/ago/docs/civilrights/hud-ogcguidappfnastandcr.pdf> (2/10)

- ▶ Individuals who have been convicted of (1) sexual offenses and subjected to a lifetime sexual offender registration requirement, or (2) drug-related criminal activity involving the manufacture or production of methamphetamine on the premises of federally-assisted housing, are permanently prohibited from admission to federally-assisted housing developments and are only eligible for admission to state-funded housing developments if they can establish sufficient mitigating circumstances.

## **OTHER RESOURCES**

### ADDITIONAL INFORMATION & HELP SEALING RECORDS

- ▶ Greater Boston Legal Service's CORI & Re-Entry Project: <https://www.gbls.org/our-work/cori-and-re-entry-project>
- ▶ Mass Legal Help: <http://www.masslegalhelp.org/cori>

### REQUEST A COPY OF YOUR CORI

- ▶ Department of Criminal Justice Information Services: <http://www.mass.gov/eopss/crime-prev-personal-sfty/bkgd-check/cori/>

### MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION (MCAD)

- ▶ MCAD Fact Sheet, Criminal Offender Record Procedure Reforms: <http://www.mass.gov/mcad/resources/employers-businesses/criminal-records-fact-sheet.pdf>
- ▶ MCAD Regulations, 804 CMR 3.02 ("Permissible Inquiries"): <http://www.mass.gov/mcad/pubs-regs/statutes-regs/804-cmr-03-00-mcad-gen.html>

### OTHER RE-ENTRY SERVICES

- ▶ "Coming Home Directory," A Resource Directory of Offender Reentry Services in Greater Boston: [http://www.ma-atr.org/Images/coming\\_home\\_directory.aspx](http://www.ma-atr.org/Images/coming_home_directory.aspx)

## Office of Attorney General Maura Healey

(617) 963-2917

[www.mass.gov/ago/civilrights](http://www.mass.gov/ago/civilrights)

