

# Know Your Rights

---

# Criminal Records

## A Guide to Rights in Employment & Housing



September 2019

Massachusetts residents with criminal records often face unique challenges in living their daily lives. 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 with criminal records 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 <https://www.mass.gov/forms/file-a-criminal-history-civil-rights-complaint>;
- ▶ **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@mass.gov](mailto:civilrights@mass.gov);
- ▶ **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 as soon as possible after receipt of your complaint. 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 protections available to individuals with criminal records when applying for a job. This guide answers some frequently asked questions about these rules.

## ***Can an employer ask me about my criminal history on a job application?***

Probably not. Under the “Ban the Box” law, most employers in Massachusetts are not allowed to ask you about your criminal record on a job application. There are a few limited exceptions for certain types of jobs in specific industries (for example, jobs at day cares and certain financial institutions) where employers can ask about criminal records on job applications because they are legally prohibited from hiring people with criminal records for those jobs.

## ***Can an employer ask me to provide a copy of my own criminal record?***

No. Employers are never allowed to ask you to provide a copy of your own criminal offender record information (CORI) or arrest records.

## ***What type of criminal records can an employer ask me about during the hiring process?***

As a general matter, employers are permitted to ask you about felony convictions and some misdemeanor convictions during the hiring process (after the initial job application). However, most employers are not allowed to ask you about any of the following at any point during the hiring process:

- ▶ Criminal cases that did not end in a conviction (including CWOs);
- ▶ 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;
- ▶ Misdemeanor convictions where the date of the conviction or the release from incarceration was 3 or more years ago (unless there were subsequent convictions within the 3-year time period);
- ▶ Juvenile court records; or
- ▶ Sealed or expunged criminal records.

## ***My conviction is sealed. Do I have to tell my employer about it if I am asked prior about prior convictions?***

No. A job applicant whose criminal record is sealed or expunged does not have to provide an employer with any information about the sealed or expunged case. In response to any questions about prior convictions, a job applicant with no convictions other than a sealed or expunged case may answer that he or she has "No Record."

## ***Is my employer allowed to conduct criminal background check on my as part of the hiring process?***

Yes, but employers must obtain your written permission before accessing your CORI records through the state system. Employers must follow additional steps if they use a private consumer reporting agency, rather than the state, to conduct criminal background checks.

## ***Can an employer refuse to hire me because of my criminal records?***

Employers may refuse to hire you based on your criminal record if there is some relationship between your criminal record and the work to be performed. However, employers cannot refuse to hire you based on your criminal record without first notifying you, giving you a copy of your CORI or criminal history information, and providing information to you about how to correct an inaccurate criminal record.

In addition, employers that automatically reject all applicants with criminal records 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. To avoid potential liability for civil rights violations, employers should conduct an individualized assessment before determining that a particular criminal record disqualifies an applicant 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, No. 915.002 (April 25, 2012), [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

Summary of Rules Applicable to Most Employers		
Job Application	Later During Hiring Process	Never
May NOT ask about criminal history on initial application.	May ask about any felony convictions (if not sealed) and misdemeanor convictions that were not first-time convictions for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace.	Never permitted to ask about: <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 3 or more years ago;</li> <li>5. Most juvenile records unless tried as an adult;</li> <li>6. Sealed or expunged criminal cases.</li> </ol>
	May obtain a CORI from the state system if written permission from applicant is obtained. Employers must follow additional steps if they use a private consumer reporting agency, rather than the state, to conduct criminal background checks.	<b>Never</b> permitted to ask applicant/employee to provide a copy of his or her own CORI.

# **HOUSING**

There are fewer rules for housing providers than for employers, but housing applicants still have important protections. This guide highlights a few of those protections.

## ***Can a housing provider ask me to provide a copy of my own CORI as part of the rental application process?***

No. Housing providers are not permitted to ask you to provide a copy of your own criminal offender record information (CORI) or arrest records. However, a public housing authority may ask you to obtain and provide copies of your "docket sheets" from the court.

## ***Is a housing provider allowed to conduct a criminal background check on me as part of the rental application process?***

Yes, although housing providers must first obtain your written permission before accessing your CORI records through the state system. Housing providers must follow additional steps if they use a private consumer reporting agency, rather than the state, to conduct criminal background checks.

## ***Can a housing provider refuse to rent to me because of my CORI?***

Housing providers may refuse to rent to persons with criminal records. However, housing providers that automatically reject all applicants with criminal records 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 particular 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;
- ▶ That 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*, April 14, 2016, [http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHAStandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf).

## ***Can I be admitted to a federally- or state-funded housing project even though I have a criminal record?***

It depends on the criminal offense. 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, can never be admitted to federally-assisted housing developments and can only be admitted to state-funded housing developments if they can show why they should be admitted despite the criminal record. Beyond these offenses, public housing authorities can consider other types of criminal offenses involving drug-related activity, violence-related activity, and other activity that may pose a risk to the safety or well-being of other tenants.

## **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"): [https://www.mass.gov/files/documents/2017/12/26/804-CMR-3\\_2.pdf](https://www.mass.gov/files/documents/2017/12/26/804-CMR-3_2.pdf)


## Office of Attorney General Maura Healey

(617) 963-2917

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

 /@MassAGO

 /MassAttorneyGeneral

 /mass\_ago