

Welcome to

KNOW YOUR RIGHTS: Legal Rights of People with Criminal Conviction & Histories

**LEGAL
ACTION
CENTER**



Webinar

Prepared by the Legal Action Center
with support from Partners for
Recovery

Presented by:

The logo for the Legal Action Center, featuring the words "LEGAL", "ACTION", and "CENTER" stacked vertically. "LEGAL" is in black text on a white background, "ACTION" is in white text on a red background, and "CENTER" is in black text on a white background.

**LEGAL
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CENTER**

Today's Presenters
Judy Whiting, Esq.
Anita Marton, Esq.

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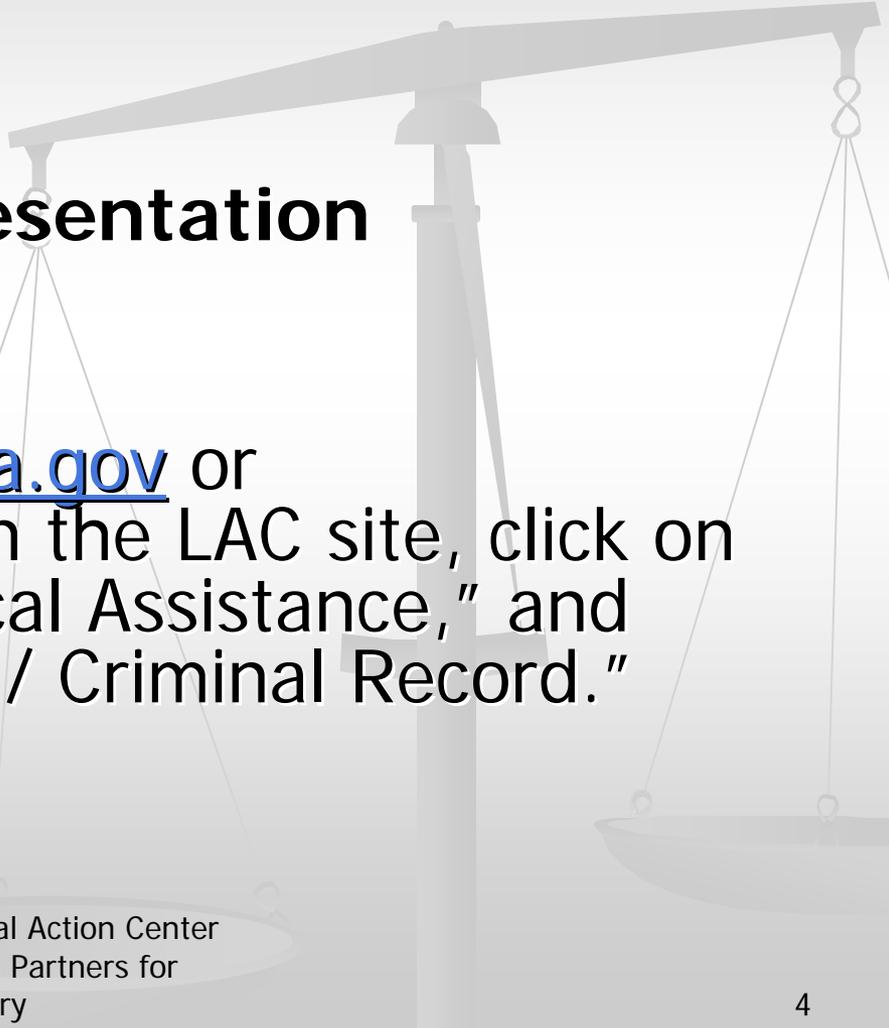
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Today's Materials



- ▶ This **PowerPoint presentation**
- ▶ Download it from <http://www.pfr.samhsa.gov> or <http://www.lac.org>. On the LAC site, click on "Trainings and Technical Assistance," and then "Alcohol & Drugs / Criminal Record."

Recording of this webinar

. . . available at <http://www.lac.org>

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Who's the audience?

This training is for . . .

- ▶ People with criminal conviction histories
- ▶ Anyone working with/on behalf of people with criminal conviction histories
- ▶ Employers, government officials, and others who want to learn about criminal records and their relation to employment, housing and government benefits **and** learn about resources available when hiring a person with a conviction history
- ▶ Anyone else interested in the topic.

This Webinar is different . . .

This area of the law is *different* than those covered in previous webinars.

WHY?



No Federal law specifically prohibits discrimination against people with criminal conviction histories.

However...

There are steps that people can take to protect their rights.

This webinar will help you understand:

1. The scope of the problem and why it is important for people with criminal records to know their rights
2. Errors that may appear on rap sheets and how they may be fixed

This webinar will help you understand: (cont.)

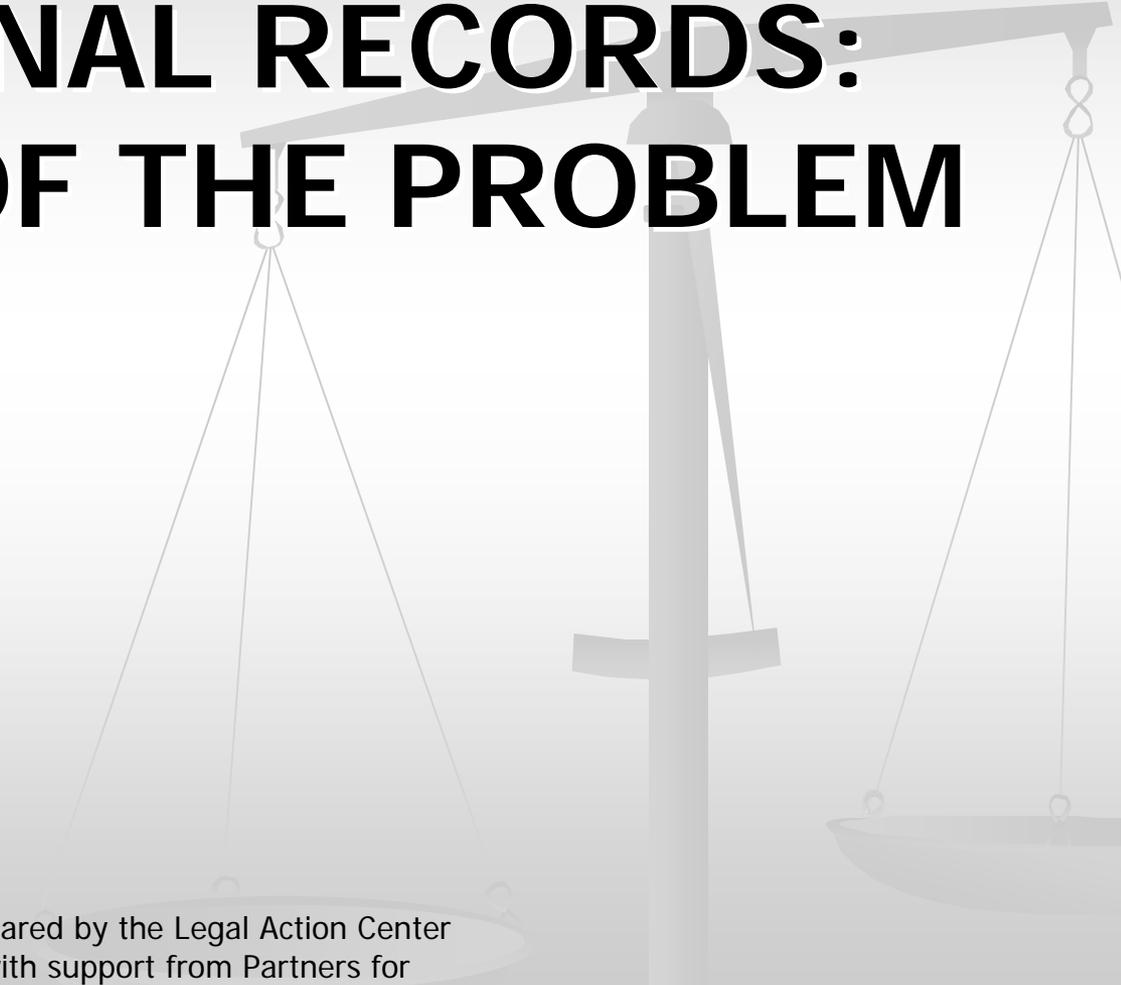
3. Laws governing criminal background checks' contents and use, and employer obligations
4. Employment protections under Federal and State law

This webinar will help you understand: (cont.)

5. Federal programs to assist people with criminal records in obtaining and keeping employment
6. How criminal records affect housing, access to public benefits and Federal financial aid for higher education

Part One

CRIMINAL RECORDS: SCOPE OF THE PROBLEM



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Criminal Records: Scope of the Problem

The number of people under supervision in the nation's criminal justice system rose to **7.2 million** in 2006:

- **2 million+** incarcerated in jail or prison
- **4.2 million** on probation
- **800,000** (approx.) on parole.

Criminal Records: Scope of the Problem (cont.)

As of December 31, 2006, State repositories had records of over **81 million *arrests*** on file.*

* See Bureau of Justice Statistics, Background Checks for Firearms Transfers, (2005). Criminal Record Systems Statistics.

<http://www.ojp.usdoj.gov/bjs/crs.htm>

Criminal Records: Scope of the Problem (cont.)

More than **600** consumer reporting agencies in the United States produce *criminal background checks*.

Criminal Records: Scope of the Problem (cont.)

- ▶ At least 80% of large *private* employers now conduct background checks on prospective employees.
- ▶ Many Federal and State *government* agencies now require background checks.

Criminal Records:

Scope of the Problem (cont.)

Mistakes and omissions in criminal record data may cause people to be turned down for jobs, housing or benefits.

Learning about and correcting these errors and omissions is sometimes difficult.

Part Two

WHO MAINTAINS CRIMINAL RECORD INFORMATION?

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Who Maintains Criminal Record Information?

- ▶ **Courts**
- ▶ **State repositories**
- ▶ **FBI -- through National Crime Information Center:**

<http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>

Who Maintains Criminal Record Information? (cont.)

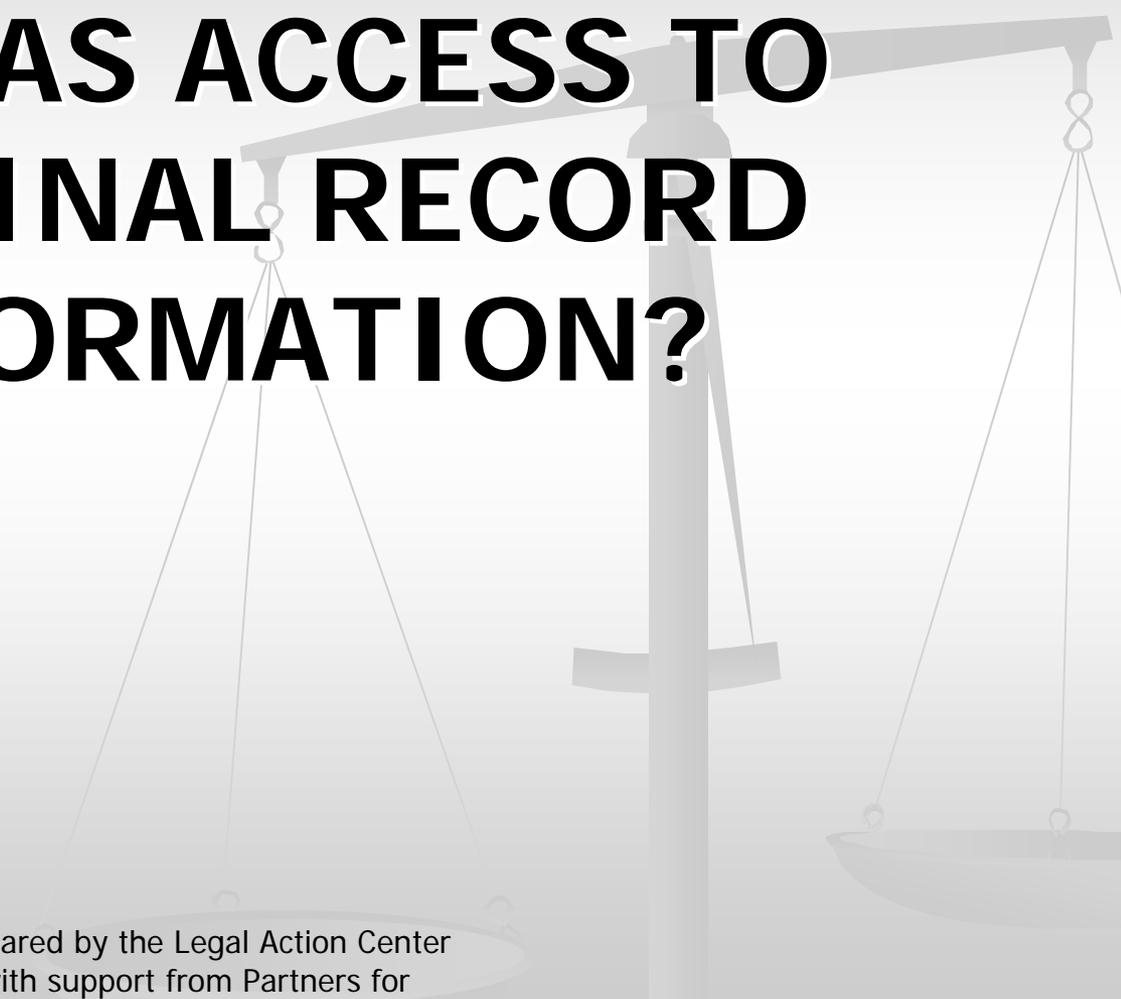
Consumer reporting agencies may also collect and store criminal record information in their databases . . . for use in preparing background checks.

Who Maintains Criminal Record Information? (cont.)

- **22** States put *all* conviction records on the Internet.
- **5** States make available records of those who are *currently serving criminal justice sentences*.
- **8** States make available records of those who are *currently incarcerated*.
- **16** States *do not* have records on the Internet.

Part Three

WHO HAS ACCESS TO CRIMINAL RECORD INFORMATION?



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Who Has Access to Criminal Record Information?

In general . . .

- The subject of the records him/herself
- Counsel for the subject

Others . . . depends on State law (and, in the case of FBI/NCIC records, Federal law).

Who Has Access to Criminal Record Information? (cont.)

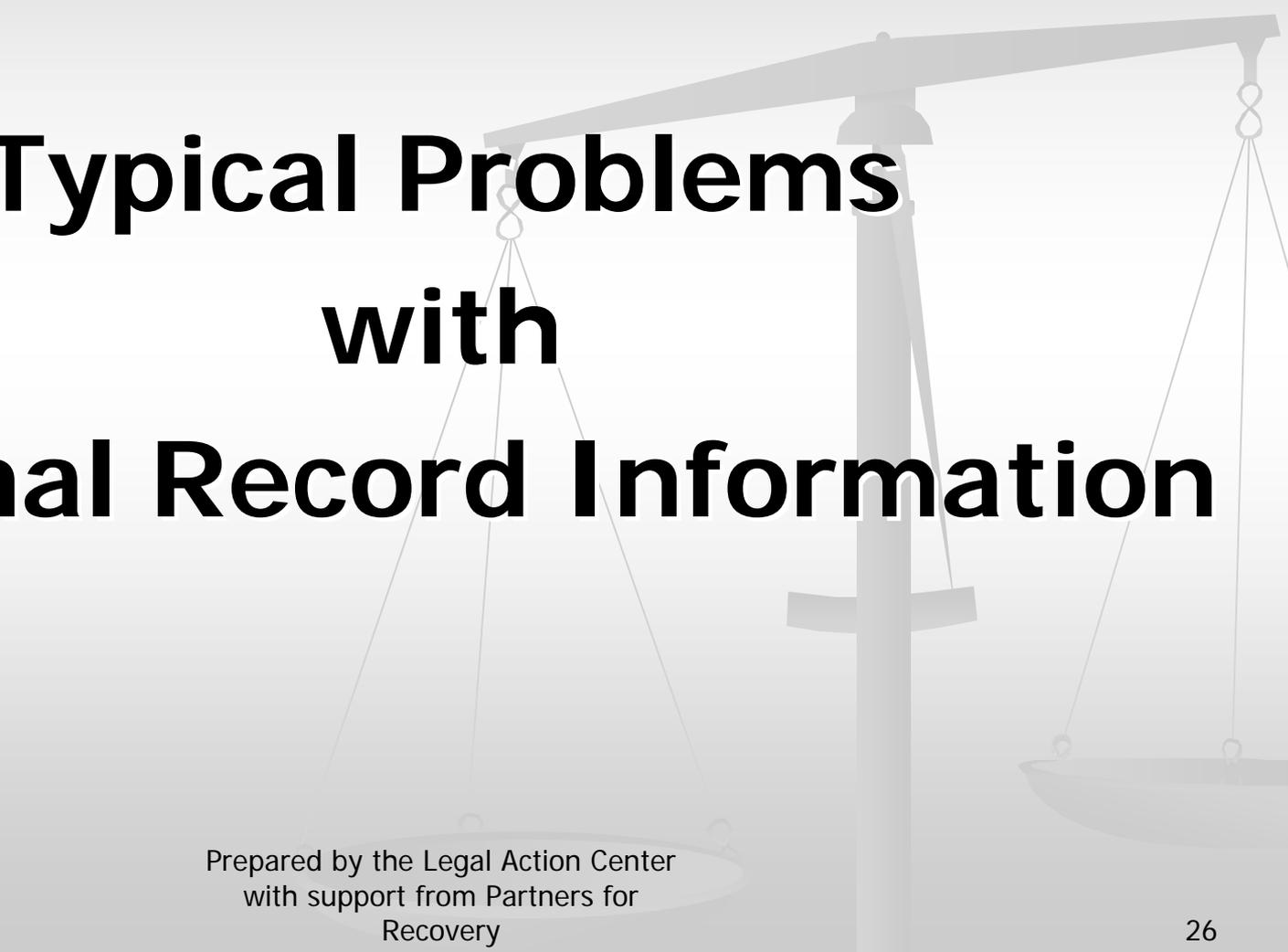
States have different limits:

- Specific purposes only
- Specific users
- Advance notification to subject
- Arrest records vs. conviction records
- Time limits

Who Has Access to Criminal Record Information? (cont.)

In general, information on file with FBI/NCIC can only be accessed by Federal, State or local law enforcement authorities or criminal justice agencies, though there are limited exceptions.

Part Four



Typical Problems with Criminal Record Information

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Typical Problems with Criminal Records

Some of the more common problems with criminal records:

- Missing dispositions
- Sealed cases appear
- “Quashed” bench warrants appear
- Other inaccuracies

Typical Problems with Criminal Records (cont.)

Where original records have problems, commercial background reports *also* have problems.

We'll discuss commercial background reports in a moment.

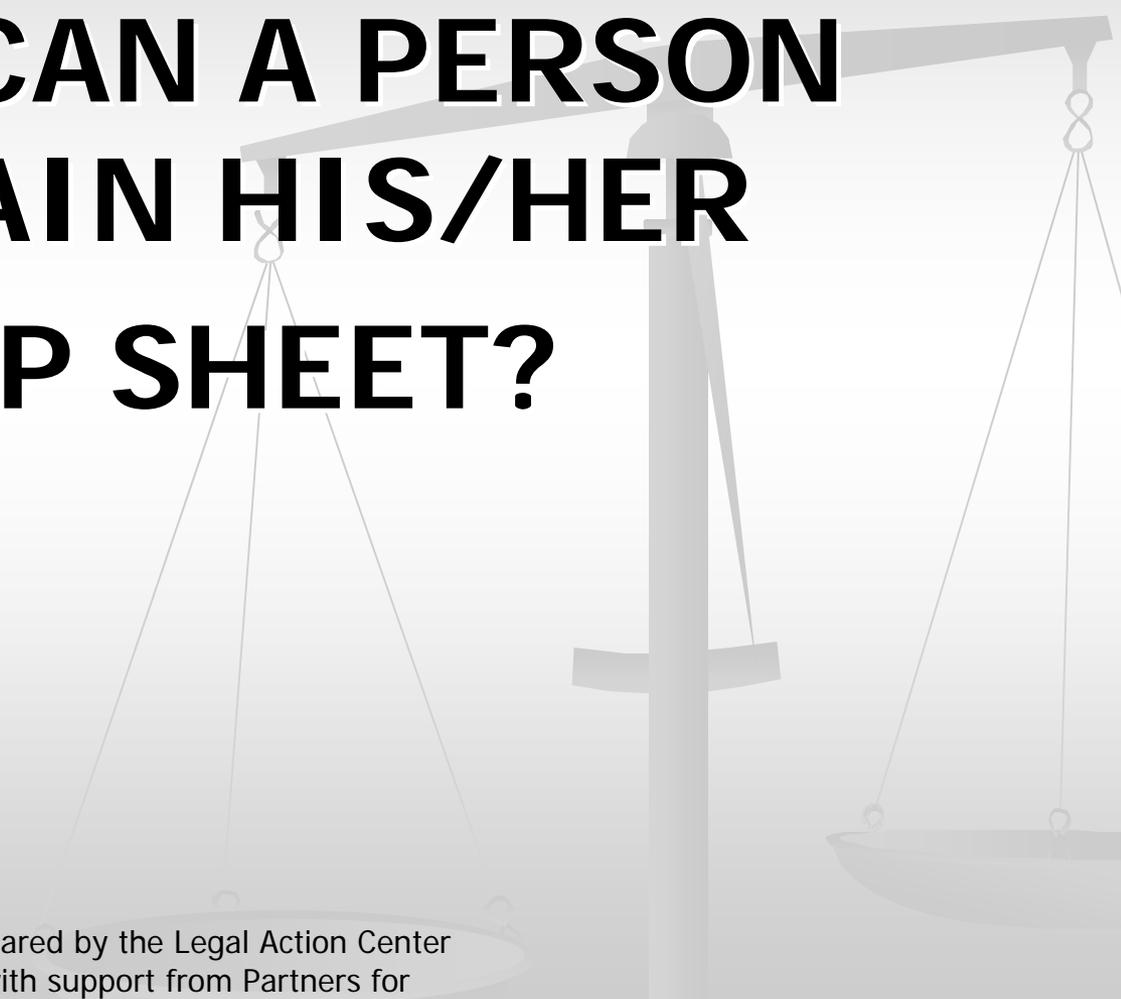
Typical Problems with Criminal Records (cont.)

Good idea for individual to get his own criminal record history (a/k/a "**rap sheet**") so he can see what is listed and

- Understand it
- Be able to discuss it in job and housing applications, if necessary
- If there are errors, take steps to fix them

Typical Problems with Criminal Records (cont.)

HOW CAN A PERSON OBTAIN HIS/HER RAP SHEET?



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Obtaining a State Rap Sheet

Each State has its own procedures for giving people access to their rap sheets.

Obtaining a State Rap Sheet (cont.)

Information on each **State's** criminal record repository and the process for obtaining a State rap sheet, is available on the National H.I.R.E. Network's website "Resource and Assistance" section.

Click on the State for which you need information and go to Section II Criminal Record Repository.

<http://www.hirenetwork.org/resource.html>

Obtaining an FBI Rap Sheet

To obtain an **FBI rap sheet**, write to

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

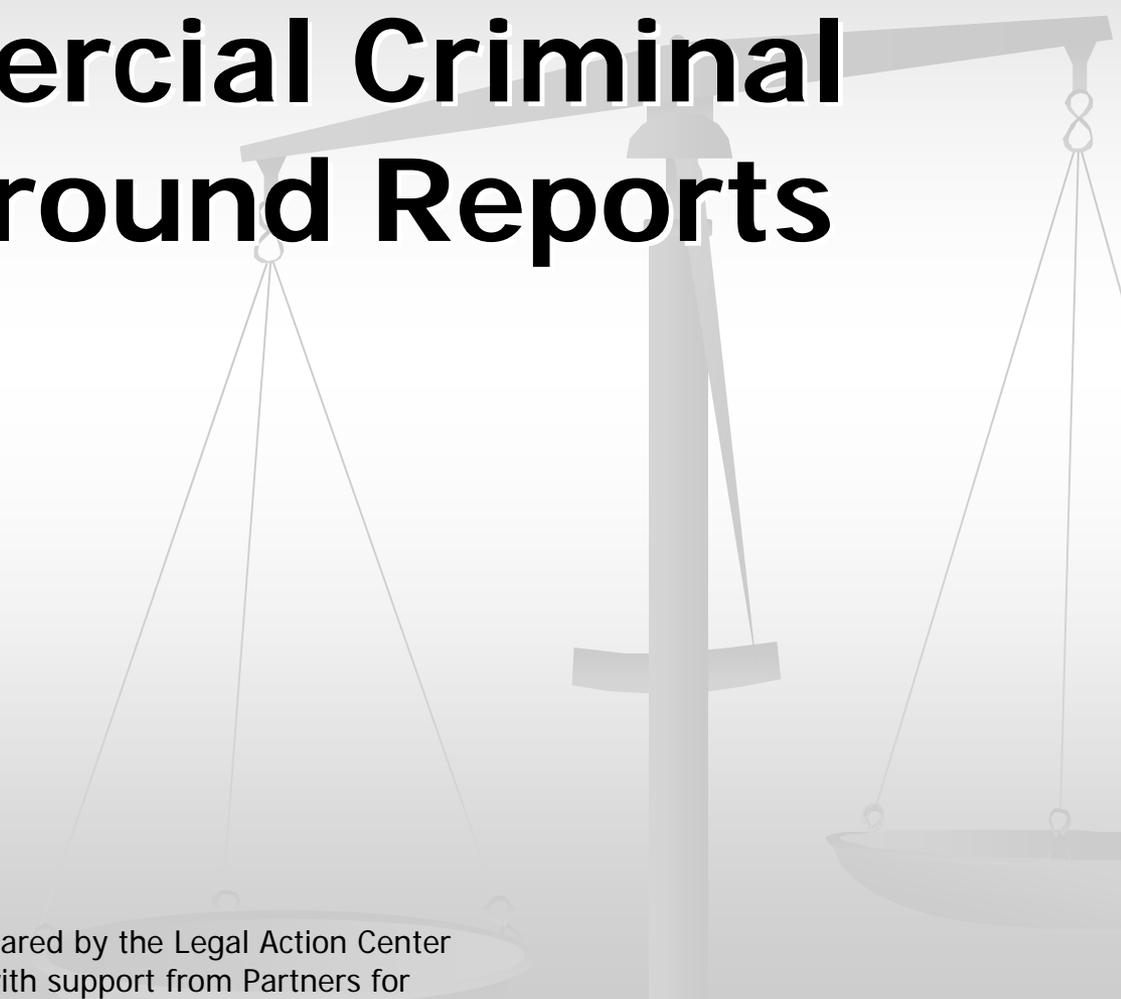
Fixing Problems with Criminal Records

Fixing errors or omissions can be a multi-step process.

Once fixed at the State level, though, the changes should be transmitted by State authorities to the FBI, automatically correcting that record as well.

Part Five

Commercial Criminal Background Reports



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Commercial Criminal Background Reports

How do private employers usually learn about job applicants' criminal records?

- They ask during the application process *and*
- They get a **criminal background report** – often through private “consumer reporting agencies” that collect criminal record information from public sources.

Commercial Criminal Background Reports (cont.)

Example – Monica

Monica applies for a job as a legal secretary. With her permission, the law firm hires a company to do a criminal background check. The report shows a misdemeanor conviction from 30 years ago for which she was sentenced to community service.

Commercial Criminal Background Reports (cont.)

Monica (cont):

Is this legal?



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Commercial Criminal Background Reports (cont.)

Monica:

Answer:

- YES, under Federal law
- But in some States it may *not* be.

Commercial Criminal Background Reports (cont.)

The Federal **Fair Credit Reporting Act** ("FCRA")

limits what information may be included in
these reports.

Commercial Criminal Background Reports (cont.)

Federal Fair Credit Reporting Act:

Q: What criminal record information may be included in the background report?

A: *Criminal convictions* no matter how old.

But...

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Commercial Criminal Background Reports (cont.)

may NOT include:

- ***arrests*** (that did not lead to criminal conviction) more than **7** years before the report, *and*
- other “adverse information” more than **7 years** before the report. This includes non-criminal convictions, such as infractions or violations.

Commercial Criminal Background Reports (cont.)

State fair credit reporting acts in effect on or before September 30, 2006 may contain *more protection* as to **contents** of consumer reports.

Commercial Criminal Background Reports (cont.)

Monica (again):

Monica is denied the law firm job; Human Resources tells her “there was a problem with your background check” but does not tell her what it was and does not show her the report.

Was there something else the law firm should have done here?

Commercial Criminal Background Reports (cont.)

YES.

**Employers have obligations
under the Federal Fair Credit
Reporting Act too.**

Commercial Criminal Background Reports (cont.)

If the employer plans to “take **adverse action**” based at least in part on the report, **employer must give applicant (or employee):**

Commercial Criminal Background Reports (cont.)

▶ *a copy of the background report*
and . . .

▶ “Summary of Consumer Rights”
published by the Federal Trade
Commission

before taking the adverse action.

Commercial Criminal Background Reports (cont.)

Q: What is an "*adverse action*"?

A: Includes

- Refusing to hire an applicant
- Terminating a current employee
- Denying promotion to a current employee
- Demoting a current employee
- Reassigning a current employee

Commercial Criminal Background Reports (cont.)

Monica (again):

What if the law firm sends Monica a copy of her background report *at the same time* as it sends out her denial letter?

Is this legal?



Commercial Criminal Background Reports (cont.)

No.

There is no set time under the law, but courts and the FTC have suggested at least *five days*.

Commercial Criminal Background Reports (cont.)

Federal Fair Credit Reporting Act (cont.):

If information in report is *inaccurate*, the applicant has the right to insist that the Credit Reporting Agency:

- correct the report *and*
- send the employer the corrected information.

Commercial Criminal Background Reports (cont.)

**What are typical mistakes on a
commercial criminal background
report?**



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Commercial Criminal Background Reports (cont.)

Incorrect or Incomplete Information

- Wrong person
- Wrong conviction information
- Report of arrest without conviction information
- Report conviction incorrectly (e.g. leaving out the word “attempted”)

Commercial Criminal Background Reports (cont.)

Poorly Presented Information

- listing each arrest charge as a separate entry, making it appear that there were multiple arrests
- using abbreviations without explanation
- classifying crimes in misleading way

Commercial Criminal Background Reports (cont.)

Misleading Format

- listing noncriminal convictions under heading “scope of search: felony and misdemeanor”
- stating that search is limited to past seven years, but including conviction history that goes back farther in time
- printing “Sex Offender Registration Requirement” on one page; stating applicant is *not* a sex offender on next page

Commercial Criminal Background Reports (cont.)

Why so many mistakes???



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Commercial Criminal Background Reports (cont.)

Because . . . background screening **companies** may

- Use unreliable sources of information
- Only consult one public record database
- Not obtain enough identification information, and so obtain information about the wrong people
- Cut and paste without checking their work
- Mislabel information

Commercial Criminal Background Reports (cont.)

Federal Fair Credit Reporting Act (cont.):

Example – Bob

Bob was denied a job because of a criminal background report that included 2 misdemeanor convictions. Bob only had 1 misdemeanor. Misdemeanor charges in a 2nd case had been dismissed. What can Bob do?

Commercial Criminal Background Reports (cont.)

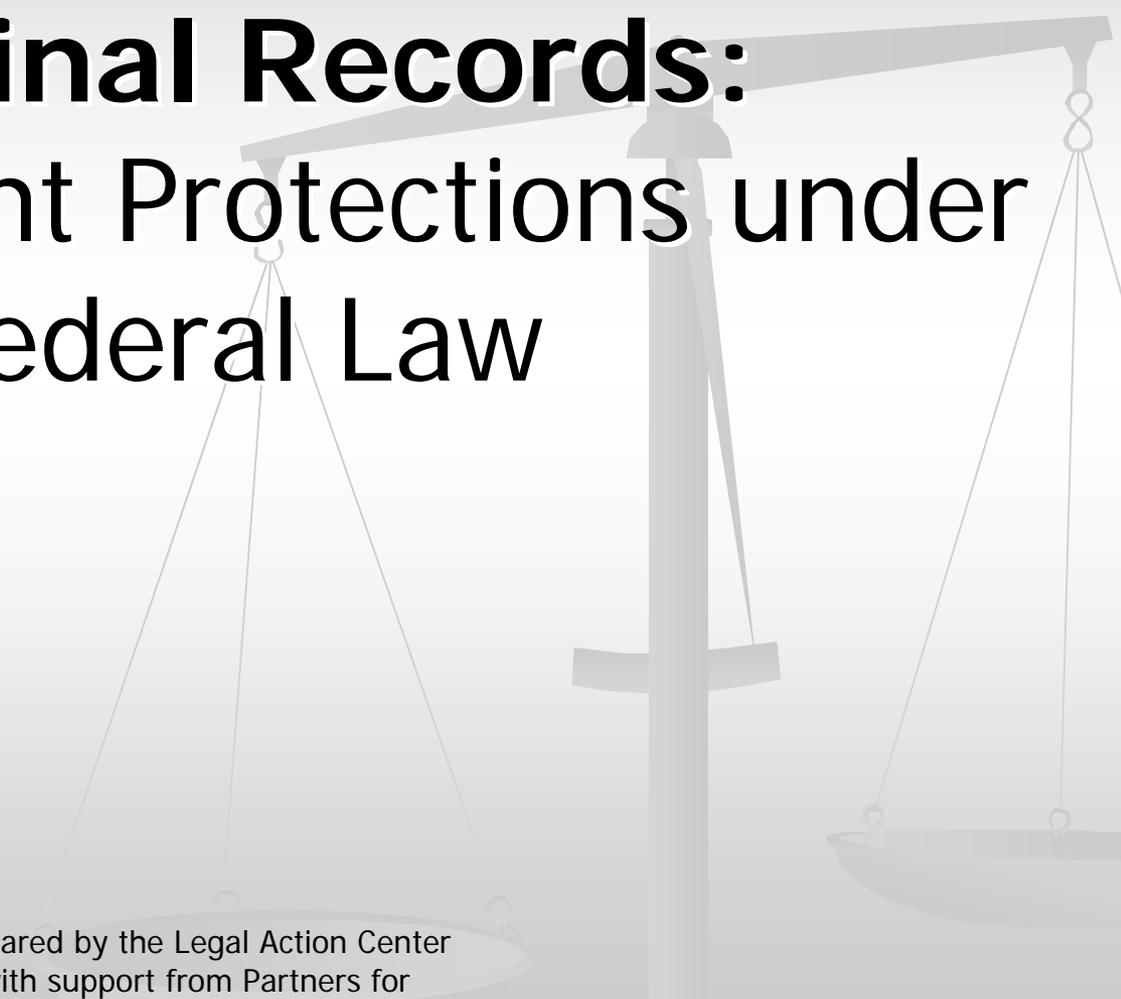
Federal Fair Credit Reporting Act (cont.):

Answer – Bob

Bob should get proof from the courts that the second misdemeanor case was dismissed and send the proof to the credit reporting agency with a letter demanding that the agency correct its report and send the corrected copy to the employer.

Part Four

Criminal Records: Employment Protections under Federal Law



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Criminal Records: Employment Protections under Federal Law

**Is it legal to discriminate
against someone with a
criminal record?**

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Criminal Records:

Employment Protections under Federal Law (cont.)

Federal law may protect against criminal-record related discrimination in employment.

State laws may also provide protections
– we will talk about these shortly.

Criminal Records:

Employment Protections under Federal Law (cont.)

Federal anti-discrimination law:

No Federal law *directly* prohibits employment discrimination based on a criminal record, but...

Criminal Records:

Employment Protections under Federal Law (cont.)

Discrimination based on a criminal record *may* be race discrimination in violation of Title VII of the Civil Rights Act of 1964.

Criminal Records:

Employment Protections under Federal Law (cont.)

The Federal Equal Employment Opportunity Commission (EEOC) & courts: criminal-records based discrimination *can* be illegal race discrimination.

(EEOC Notice No. N-915, Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964 (2/4/87))

Criminal Records:

Employment Protections under Federal Law (cont.)

**Flat bans on hiring people
with criminal conviction
histories may violate
Title VII.**

Criminal Records:

Employment Protections under Federal Law (cont.)

What is a flat ban?

It's a policy, written or otherwise, of not hiring people with criminal histories or certain types of criminal histories, such as felonies.

Real-Life Example: An Online Job Application

"Please take a moment to answer these brief questions and then proceed to the application by clicking on the continue button below:

- Are you at least 20 years of age? *Yes/ No*
- Do you have at minimum a high school diploma or equivalent? *Yes/ No*
- Are you legally authorized to work in this country? *Yes/ No*
- Do you have a valid driver's license? *Yes/ No*
- Can you work full-time and Saturdays? *Yes/ No*
- Are you willing to consent to a criminal background, motor vehicle record and drug screen? *Yes/ No*
- Have you had any felony convictions within the last 7 years or any other convictions involving violence, threat of violence, sexual misconduct or theft?** *Yes/ No "*

Real-Life Example: An Online Job Application

What happens when you answer “**yes**” to the last question?



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Criminal Records:

Employment Protections under Federal Law (cont.)

ENFORCEMENT

If you believe you have suffered **race discrimination** because of an employer's policy not to hire people with criminal convictions or arrests, you may file a **Title VII charge** with the EEOC.



Criminal Records:

Employment Protections under Federal Law (cont.)

There are time limits for filing a charge

180 days from date of discrimination

- or -

300 days from date of discrimination ***IF***
claim is also covered by a State or local
anti-discrimination law

Criminal Records:

Employment Protections under Federal Law (cont.)

But note: this is a developing area of the law, not used very often in this situation, so some EEOC offices may not be as far along as others.

For this reason and others . . .

Criminal Records:

Employment Protections under Federal Law (cont.)

If you are considering filing a charge, it is a **very good idea** to consult with an attorney first.



Criminal Records:

Employment Protections under Federal Law (cont.)

Contact your local bar association or legal services office for potential referral sources or visit the National H.I.R.E. Network website,

<http://www.hirenetwork.org/>

Part Five

CRIMINAL RECORDS: EMPLOYMENT PROTECTIONS UNDER STATE LAWS



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Criminal Records: State Anti-Discrimination Laws/Employment

Some States prohibit employers from *asking about* arrests that did not lead to conviction.



Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Some States prohibit employers from *considering* arrests that did not lead to conviction in making employment decisions.

Some States have different rules for public and private employers.

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Most States *permit* employers to deny jobs across the board to anyone who has been convicted of a crime.

But . . .

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Some States *do* have laws *prohibiting* this type of employment discrimination.

See Legal Action Center's Roadblocks to Reentry webpages for specific information about your State's (and other States') laws.

<http://www.lac.org/roadblocks-to-reentry/>

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Some States have laws designed to minimize criminal-records based employment discrimination at the application phase.

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

The State of Minnesota, and cities of Boston MA, Chicago IL, New Haven CT and Portland OR have passed "**Ban the Box**" legislation prohibiting public and/or municipal employers from asking questions about applicant's arrest and/or conviction histories on *initial* job applications.

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

May people with criminal records be barred from working in certain jobs?

YES. Many States and the Federal government have regulations that –

- limit the employment opportunities for some people with criminal records and
- make it harder (or impossible) to get certain occupational licenses.

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Example:

Susan wants to work as a teacher's aide. She has a ten-year old felony conviction for drug sale. In many States it will be very difficult (and in some States, impossible) for her to be hired for this job based on the nature of her conviction history.

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Not all hiring restrictions are absolute!

- Sometimes they can be lifted if the applicant shows **evidence of rehabilitation.**
- Some States grant **certificates of rehabilitation.**
- Some job and licensure denials can be **appealed.**

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

When applying for a **job**, an applicant should be prepared to . . .

- **Accurately describe** her convictions:
 - list date(s) and offense(s)
- **Explain the circumstances** underlying the conviction(s)
 - (what happened?) and
 - take responsibility for what happened.
- **Present the best evidence of rehabilitation.**
See **“How to Gather Evidence of Rehabilitation”** at <http://www.lac.org>.

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Example:

Jason has a 25-year old felony conviction for drug possession that happened at a time when he was addicted to heroin. He completed a drug program 20 years ago and has been drug-free since that time. But every time he applies for a job, employers ask about his record and refuse to hire him because of it. What can Jason do?

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Jason (cont):

- If he lives in a State where criminal-records based job discrimination is illegal, see about **enforcing his rights** under State laws
- See if his State permits **sealing or expungement** of his record
- Find out whether his State grants **certificates of rehabilitation** or has another means of allowing him to demonstrate rehabilitation

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Sealing or Expungement of Records

- Some States permit sealing after a certain period of time
- Some States permit sealing of only certain kinds of convictions (e.g. violation-level offenses)
- Some States permit conditional or partial sealing (e.g. for some purposes or for some parts of record)

Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

State laws differ on the effect of sealing or expungement

- In some States, you can answer “no” to employment application question about convictions
- In some States, employers and others may not have access to sealed records

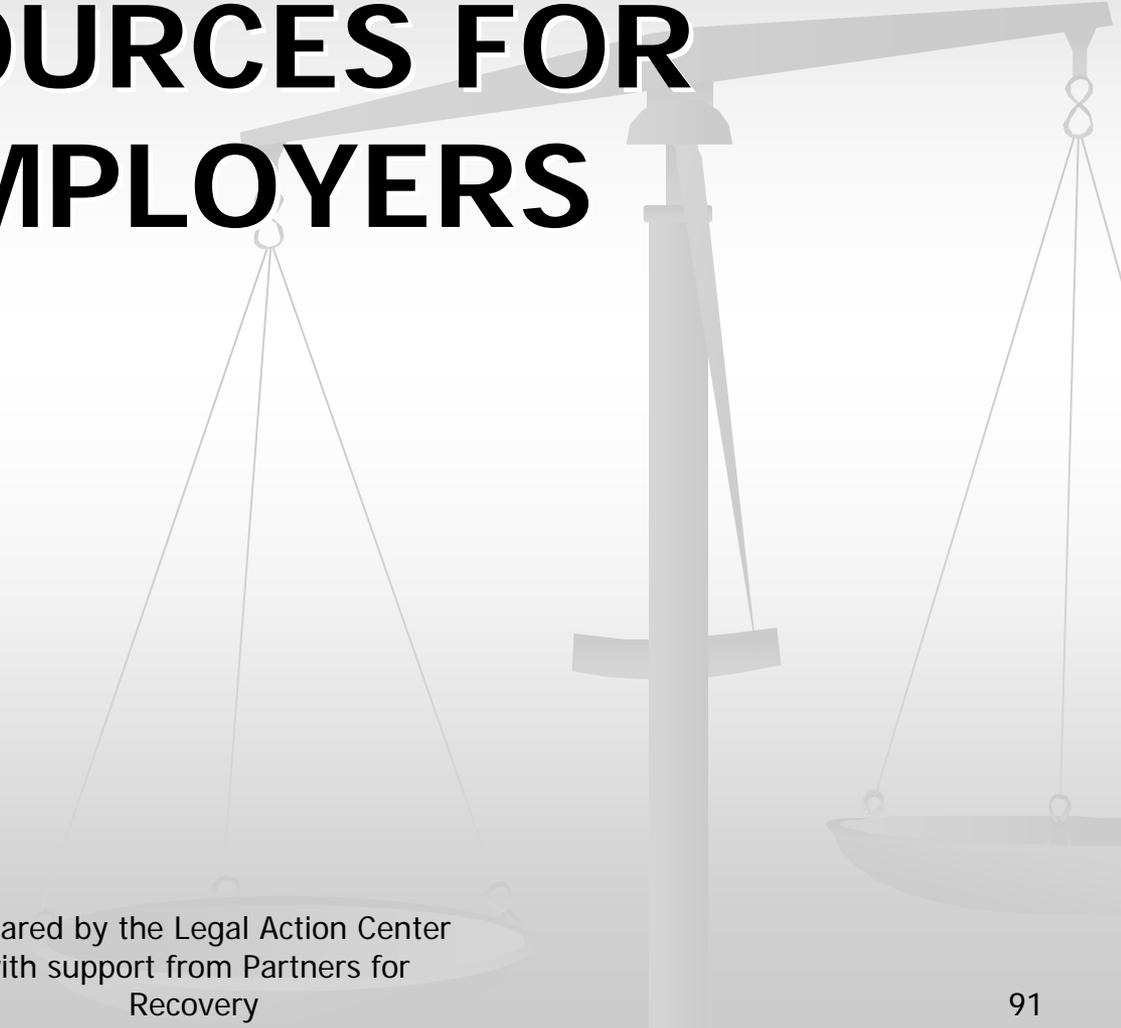
Criminal Records: State Anti-Discrimination Laws/Employment (cont.)

Many States have a mechanism permitting people with convictions to **demonstrate rehabilitation** or restore their civil rights. Some States offer a **"certificate of rehabilitation."**



Part Six

RESOURCES FOR EMPLOYERS



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Resources for Employers

Federal Bonding Program

- Administered by State Depts. of Labor
- Provides employer with up to \$5000
- Covers theft, embezzlement, or forgery
- For “high risk” employees under insurance
- <http://www.bonds4jobs.com/highlights.htm>

Resources for Employers (cont.)

Work Opportunity Tax Credit

- Administered by State Depts. of Labor
- Tax credit up to \$2,400 (40% of first \$6,000 in wages)
- For employers who hire adults within one year of release from incarceration on felony charges
- Employment: full time
- Credit available once employee works for a minimum of 400 hours or 180 days for the employer

Part Seven

CRIMINAL RECORDS AND GOVERNMENT PROGRAMS



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Criminal Records and Government Programs

Public assistance & food stamps: 1996 welfare reform law imposed a lifetime ban on Federal cash assistance & food stamps for anyone convicted of drug-related felony after 8/22/96.

- States may “opt out,” and many have.
- Individual States’ laws are available on Legal Action Center’s “ Roadblocks to Re-entry” webpages,
<http://www.lac.org/roadblocks-to-reentry/>

Criminal Records and Government Programs (cont.)

Student loan ban: People convicted of drug offenses *while enrolled in school & while receiving Federal financial assistance* become ineligible for Federal student loans, grants and work assistance unless they complete a treatment program.

- Before 7/1/06, ban applied regardless of when the conviction occurred – even if it was years before the student received Federal financial assistance. But that changed.

Criminal Records and Government Programs (cont.)

Student loan ban (cont.):

- Applies to **convictions** for drug offense only; not arrests.
- Length of ban depends on the conviction and evidence of rehabilitation.
- State-funded programs may have different rules.

Part Eight

CRIMINAL RECORDS AND HOUSING



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Criminal Records and HOUSING

**Is it legal to deny someone
HOUSING because of a criminal
record?**



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Criminal Records and HOUSING (cont.)

Example:

Steve was convicted of petit larceny in 1978, sentenced to 2 days' community service and out of trouble since then. Steve applies for an apartment. The landlord does a background check and denies him the apartment, telling Steve that he does not want "convicts" in his building.

Criminal Records and HOUSING (cont.)

Q: Do you think **Steve** is protected by Federal anti-discrimination laws because of his conviction history?

Criminal Records and HOUSING (cont.)

NO.

There is NO Federal law that directly prohibits housing discrimination – in either public or private housing – based on a criminal record.

Criminal Records and HOUSING (cont.)

Private landlords, especially in large cities, often obtain background checks on potential tenants, looking for credit history AND criminal records history.

Criminal Records and HOUSING (cont.)

Some of these background reports also include Housing Court and other landlord/tenant court records.

Criminal Records and HOUSING (cont.)

These background reports are subject to the **Fair Credit Reporting Act**.

But there is ***no*** Federal law prohibiting housing denial based on a criminal record.

Criminal Records and HOUSING (cont.)

Public Housing:

Federal law prohibits housing authorities from admitting people, or issuing Section 8 Rental Assistance vouchers, if any household member:

- has ever been convicted of manufacturing methamphetamine on the premises of Federally assisted housing *or*
- is subject to a lifetime sex offender registration requirement in any State.

Criminal Records and HOUSING (cont.)

Public Housing:

Also, Federal law *permits* local housing authorities to exclude people whose history of criminal activity –

- “would adversely affect the health, safety, or welfare of other tenants.”

Criminal Records and HOUSING (cont.)

Except for the two categorical bans on Slide 109, local housing authority admissions policies concerning criminal records are generally *not mandatory* and it is possible to challenge them, usually through an informal or administrative hearing.

Criminal Records and HOUSING (cont.)

At such a hearing, applicant will want to demonstrate **evidence of rehabilitation**: basically show and explain how he has changed his life for the better since his conviction.



Criminal Records and HOUSING (cont.)

Housing Authority – Local Policies

To find out what your local housing authority's policies are, look for their Administrative Plans. Contact your local HUD office to get them or to ask questions.

<http://www.hud.gov/localoffices.cfm>

HAVE QUESTIONS?

Remember:

Visit our website to see answers to questions submitted during today's webinar.

Go to <http://www.lac.org>.

Click on "Trainings and Technical Assistance," and look for the "training materials" section.

WANT MORE INFORMATION?

Visit the websites of:

- Legal Action Center, <http://www.lac.org>
Partners for Recovery (PFR),
<http://www.pfr.samhsa.gov>

Both websites contain “**Know your Rights**” materials developed by Legal Action Center and PFR, as well as other useful information.

HAVE QUESTIONS ABOUT YOUR STATE'S LAWS?

Visit Legal Action Center's
"Roadblocks to Reentry" webpages:

<http://www.lac.org/roadblocks-to-reentry/>

Thank you!

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