



EXPANDING FAIR CHANCE IN LOS ANGELES COUNTY



**December
2017**

Response to AGN Nos. 5 and 7

D | H | R

Department of Human Resources
County of Los Angeles

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INTRODUCTION

As an employer, the County of Los Angeles has a proud history of advancing Equal Opportunity Employment and most recently, has established itself as an *Employer of Choice* by being listed as one of America's Best Employers 2016 by Forbes.

As early as 1998, the Board took steps to ensure that individuals with a felony or misdemeanor conviction had a fair opportunity for employment by conducting an assessment of the conviction, which included a review of mitigating circumstances or a determination of whether the conviction had a nexus to the position sought. The County has continued to stay abreast of developments in the area of fair chance employment. In 2013, the state legislature passed Assembly Bill (AB) 218, also known as Ban the Box, which took effect on July 1, 2014, and amended labor practices to prohibit State and local governments from asking about conviction backgrounds on job applications. The County took action to meet and exceed compliance with the law by its effective date and revised its [standard](#) online employment application to eliminate the former question requesting conviction history and instead require disclosure at a later stage in the hiring process and only after a contingent job offer has been extended. All County applications that sought conviction history of applicants were deleted or destroyed – except those needed by law enforcement or as required by law. This goes beyond the requirements of AB 218, which allows requests for criminal conviction information once an agency has determined an applicant is qualified. The County set a higher bar and determined criminal conviction information should be sought only after a candidate has been selected for a position.

The County developed policy, procedures, and guidelines, to provide direction to departments in complying with the new legislation, and departmental human resources managers were trained on the new process. Additionally, a frequently asked questions document was posted on our job search website to assist those seeking employment with the County.

In 2015, President Barack Obama mandated the federal government and its contractors to not consider conviction history in the initial stages of an applicant's interview process. In addition, municipalities across the country are passing Fair Chance Initiatives and delaying background checks until an employer decides if an applicant is qualified for the position.

On July 11, 2017, the Board adopted motions by then Chairman Ridley-Thomas and Supervisor Solis instructing the Director of Personnel; the Chief Executive Officer; the Directors of the Office of Diversion and Re-Entry; Consumer and Business Affairs (DCBA); and Workforce Development, Aging and Community Services (WDACS) to make recommendations to enhance and expand its Fair Chance policies for not only those applying for County positions, but also to contractors doing business with County departments and agencies, and employers of all sizes doing business in the unincorporated areas of the County. This report is a collaborative effort that included the departments named above as well as County Counsel and the departments of Internal Services (ISD) and Health Services (DHS).

ADOPTION OF AB 1008

On October 14, 2017, Governor Brown signed into California Law AB 1008, *Employment Discrimination: Criminal History*, which adds Section 12952 to the Government Code, and repeals Section 432.9 of the Labor Code, relating to employment discrimination (Addendum I). AB 1008 includes as State law much of what was considered as part of the July 11, 2017, motions and the County will fully implement all provisions of the law. The Board directed the departments to provide a recommendation for a County ordinance to adopt a Fair Chance policy – the recently passed California Fair Chance law addresses this need. It is recommended that the Board implement and support the California Ban-the-Box/Fair Chance law for County employment, those businesses contracting with the County, and all businesses operating in unincorporated areas.

Effective January 1, 2018, AB 1008 makes it unlawful for employment applications to include any question(s) that seek disclosure of an applicant's criminal conviction history, as well as inquire into or consider an applicant's conviction history until after the employer has made a conditional offer of employment. The new law further requires an employer who intends to deny employment to an applicant, solely or in part because of the applicant's conviction history, to make an individualized assessment of whether the conviction history has a direct, adverse relationship with the specific duties of the position, and to consider certain topics when making the assessment. AB 1008 also requires an employer, who makes a preliminary decision to deny employment based on the individualized assessment, to provide the applicant written notification of the decision and the notification shall contain specific information. Under the new law, an applicant is granted five-business days to respond to the notification before the employer may make a final decision. If the applicant disputes the accuracy of the conviction history in writing to the employer timely, and is in the process of obtaining evidence to support that assertion, the applicant is granted an additional five-business days to respond. Finally, AB 1008 requires the employer to consider submitted information before making a final employment decision and requires the employer to notify the applicant in writing of the decision and the basis for their denial. State agencies will be responsible for enforcement and the appeals process.

FAIR CHANCE BEST PRACTICES

A workgroup comprised of the Department of Human Resources (DHR) and County Counsel researched best practices in 32 government agencies nationwide. The committee also reviewed the 10 best practice recommendations as identified by the National Employment Law Project (NELP), which developed best practice recommendations based on a nationwide study of 150 cities and counties that have adopted a fair chance policy to determine alignment with current County practices (Addendum II).

Currently, the County utilizes seven of the 10 best practices recommended by the NELP.

No.	NELP Best Practice	Consistent with Current County Practice?
1.	Avoid stigmatizing language such as “ex-offenders” or “ex-felons.”	Yes
2.	A background check may be unnecessary for a job position.	Yes ¹
3.	Avoid blanket exclusions and include equal opportunity statement on job applications.	Yes
4.	If a background check is necessary, only consider those convictions with a direct nexus to job duties and responsibilities and consider the recency of the offense.	Yes
5.	Remove inquiries into convictions from the job application.	Yes
6.	Remove self-reporting questions about conviction history.	No – Policy enhancements are needed
7.	If an applicant is rejected because of their conviction history, inform the applicant. Provide the applicant with written notice of the specific item in the background report that is considered job-related and a copy of the report.	Yes – Policy enhancements will improve the process
8.	Provide the applicant the right and sufficient time to submit evidence of mitigation or rehabilitation when a record is considered in hiring.	Yes – Policy enhancements will improve the process
9.	Expand the fair chance policy to private employers.	AB 1008 mandates fair chance policies for private employers
10.	Combine data collection and effective enforcement.	No – Process enhancements are needed

¹ There are currently only two positions in the County that are not considered sensitive and therefore do not require a background check.

RECOMMENDATIONS

1. Revise DHR Policies, Procedures, and Guidelines Nos. 514, *Designation of Sensitive Positions and Requirements for Criminal History Information*, and 524, *Candidate Disclosure of Conviction Information During The Hiring Process* (Addendum III), to align with AB 1008 and eliminate the use of the Candidate Criminal History Questionnaire (CCHQ) currently required at the time of contingent offer and only inquire about criminal history if the live scan returns criminal history information.²
2. Enhance the candidate notification letters to inform candidates of the disqualifying conviction(s) that are the basis of the preliminary decision to rescind the offer. Inform applicants of their right to respond to the notice in writing within 10-business days before the decision becomes final and that their response can include the following:
 - a. Evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer; and/or
 - b. Evidence of rehabilitation or mitigating circumstances.
3. Expand guidance to departments on conducting nexus evaluations of convictions and mitigating factors.
4. Develop and implement a new, online Application Criminal History Approval form that considers the criminal history, the applicant's statements, and the duties of the position to assist in the completion of an individualized job nexus assessment. This will also serve as the mechanism to maintain Countywide metrics related to Fair Chance hiring.
5. Develop an automated, web-based tracking application that is integrated with existing enterprise systems to capture metrics such as:
 - a. Number of applicants provided a conditional offer of employment with a criminal history.
 - b. Number of applicants disqualified based on their criminal history, and reason.
 - c. Number of applicants where a job nexus was initially identified; however, an official offer of employment was made after consideration of mitigating factors.

The web-based application will identify employment opportunities tailored to applicants under the Fair Chance program, provide assessments of departmental hiring practices, and identify Countywide trends and gaps between legislative updates and County compliance.³

² Policy revisions require union consultation prior to making changes.

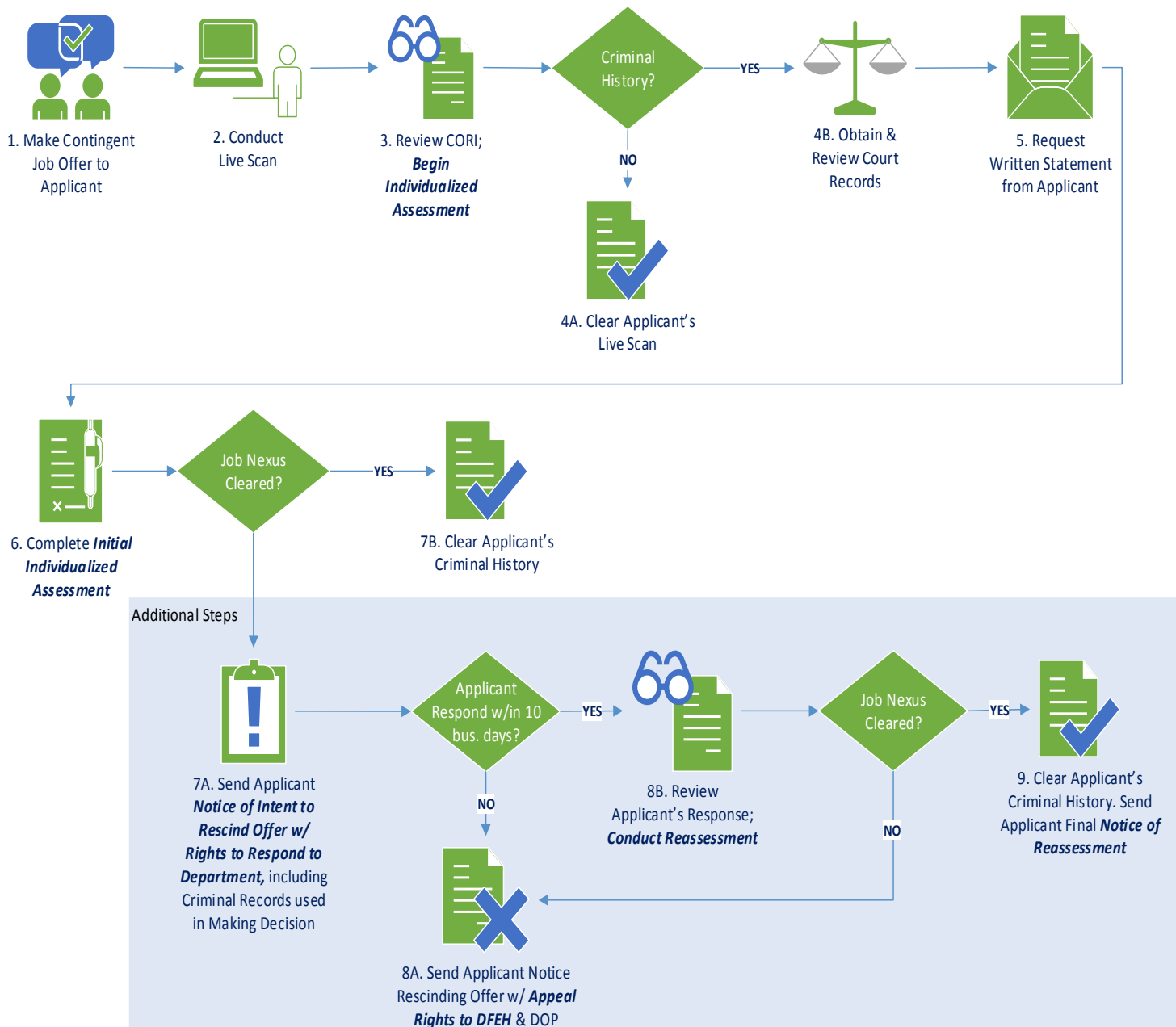
³ The development of automated forms and systems are contingent on funding.

6. Develop and implement a Fair Chance marketing campaign that will highlight the County as a Fair Chance employer by:⁴
 - a. Creating a Fair Chance logo for use when marketing the County as a Fair Chance employer. The logo can be placed on various County websites and link to a Fair Chance program website (Addendum IV).
 - b. Creating a Fair Chance tab on the DHR website available to the public to serve as a repository for information related to the County's Fair Chance program.
 - c. Creating a Fair Chance informational video linked to the website explaining the Fair Chance program; similar to the *How an Application Becomes a Job* video currently on the DHR website (Addendum V).
 - d. Creating a multilingual public service announcement for use on multiple platforms such as television, social media, and the internet; creating a script for radio advertisements.
7. Amend the County application and job bulletins to:
 - a. Include a Fair Chance statement
 - b. Revise language on background checks
 - c. Eliminate CCHQ language and link; replace with Fair Chance explanation.
8. Create hardcopy Fair Chance promotional material explaining applicant rights under the law and distributing material through the Office of Diversion and Reentry initiatives intended to provide workforce development skills to individuals who have interfaced with the criminal justice system or who were formerly incarcerated. The material will be integrated in the strategic partnerships with WDACS, Probation, and community-based organizations (CBOs) that will collectively adopt protocols and procedures identified by the committee to empower individuals pursuing gainful employment. Further, contracted CBOs will integrate the Fair Chance material into their training and intensive case management activities to lessen barriers to employment and self-sufficiency.

⁴ The development of automated forms and systems are contingent on funding.

PROPOSED PROCESS FLOWCHART

The specific changes proposed are shown as steps 7-9 below (highlighted in blue):



UNIQUE FAIR CHANCE PROGRAMS IN OTHER JURISDICTIONS

Of the 32 agencies reviewed, 17 have a Fair Chance Ordinance, and 23 conduct targeted outreach to populations with records. Provided below are four innovative initiatives for your further consideration. DHR will explore the feasibility of implementation of any of these programs upon direction from the Board.

1. Employer Incentives/Resources - City of Philadelphia, PA

- Launched the Fair Chance Hiring Initiative pilot in July 2017; program budget is \$500,000.
- Incentivizes employers to hire the reentry population by providing salary reimbursement for hiring from this population.
- Provides reentry population with a professional career path and higher pay (\$12.10 compared to the city's minimum wage of \$7.25), while employers discover a new talent pool of candidates.
- Funding is similar to the Department of Public Social Services (DPSS) Transitional Subsidized Employment program.

2. Re-Entry Partnership (OCREP) - Orange County, CA

- Developed by their Sheriff and Probation departments; program is self-funded through annual fundraisers.
- The non-profit partnership establishes ties between 40 public agencies as well as private and non-profit organizations to consolidate assistance efforts to the reentry population by examining current reentry practices and enhance referrals to community-based services upon release.
- Marketed through their developed Advisory Committee, social media, community surveys, and annual OCREP Resource fairs.
- Program is similar to the Los Angeles Regional Reentry Partnership (LARRP), partnering possibly with the Department of Health Services (DHS) Division of Diversion and Reentry.

3. Fair Chance Job Fairs - City of Los Angeles, CA

- Office of Re-Entry has co-hosted two Fair Chance job fairs to help facilitate employment opportunities for formerly incarcerated individuals. At the first fair, more than 50 employers and 30 workforce development organizations provided 100 follow-up interviews and/or on-the-spot job offers. The second fair resulted in 85 follow-up interviews.
- Provides participants with pre-fair training. The City partnered with LA Trade Tech to provide participants with training on soft skills.
- The Mayor's Blue Ribbon Commission and community-based clients assisted in recruiting employers to attend and potentially provide employment opportunities.

4. Goodwill New Opportunity Work (NOW) Program - County of Santa Clara, CA

- Goodwill, a contracted non-profit, provides reentry populations paid 90 days of on-the-job training within Goodwill or outsider partners with the goal of transitioning population to permanent jobs.
- All participants are assigned a case worker; together they create an individualized plan of desirable skills and job experience that can be facilitated during the 90-day training period; participants are given courses on interviewing, job applications, resumes, and soft skills.
- Low recidivism; 8 out of 10 participants stay in jobs and do not return to jail/prison. Private companies are more willing to offer permanent jobs because of the quality of the candidates they hired previously.
- Similar to WDACS Workforce Development Program, enhancing services by developing a tailored career path and offering a continued support system.

EXEMPTIONS REQUIRED PURSUANT TO STATE AND FEDERAL LAW

Most fair chance ordinances acknowledge that employers are sometimes exempt from such regulation and are required to conduct criminal background checks and consider an applicant's criminal background prior to extending a conditional offer of employment to an applicant. To evaluate the reach of those exemptions, County Counsel formed a separate workgroup. The workgroup conducted a review of other jurisdictions at the State and local level that have fair chance ordinances to identify the most common exemptions.

Following that review, the workgroup identified the following common scenarios where an employer would be exempt from complying with a fair chance ordinance:

- Where federal, State, or local laws require the consideration of an applicant's criminal history.
- Where an employer is a law enforcement agency.
- Where an employer is involved in the criminal justice system.
- Where an employer hires employees who have contact with "vulnerable populations" such as children, the elderly, or patients.
- Where an employer's primary purpose is performing financial or fiduciary functions.
- Where an employer hires a candidate to a position requiring a license where the licensing authority explicitly authorizes or requires a background check.

BUSINESSES CONTRACTING WITH THE COUNTY

A contractor workgroup comprised of the departments of Internal Services, County Counsel, DCBA, DHS, Mental Health, DPSS, Sheriff's, Probation, and WDACS was convened to gather data to develop standards for the proposed ordinance.

The workgroup:

- Surveyed departments to obtain data regarding current processes.
- Convened a stakeholder's meeting on September 6, 2017, to identify reasons for their support or opposition to the proposed ordinance. The County recognizes the need to develop a program to coordinate and leverage County resources to assist businesses to comply with the AB 1008.
- Also, based on the discussions, the final recommendations are likely to include exemptions for certain business categories to be determined by the committee.
- Conducted a review of fair chance employment standards and procedures implemented by the City of Los Angeles. Also, contacted City staff to discuss the development, implementation, and administration of their ordinance. The feedback on their lessons learned was used to structure the stakeholder's meeting and will be used as standards for the County are developed.

RECOMMENDATION

The contractor workgroup developed a proposed Board policy requiring businesses contracting with the County to comply with fair chance employment practices set forth in California Government Code Section 12952, *Employment Discrimination: Conviction History*. The proposed policy will require all County solicitations and contracts, including renewed and amended contracts, to include standard language requiring contractors and its subcontractors to certify compliance with fair chance employment hiring practices set forth in California Government Code Section 12952 (Addendum VI).

As part of its outreach, the County will use the Webven system to send a notification advising registered vendors of the requirement to comply with fair chance employment hiring practices set forth in California Government Code Section §12952. Additionally, departments may elect to send notification letters to those contractors currently under contract, and/or post information concerning contractor/vendor compliance with fair chance employment hiring practices on their departmental website.

It is recommended that the Board adopt the proposed policy drafted by the workgroup.

UNINCORPORATED LOS ANGELES

DCBA formed two workgroups that consisted of County Counsel, WDACS, and DHR to provide recommendations for establishing fair chance standards of employment and an outreach program. In developing the recommendations, the workgroup solicited feedback from targeted businesses through an online survey and a focus group that consisted of small businesses and business organizations. Additionally, the workgroup examined the programmatic and legal logistics of establishing a Fair Chance ordinance.

The concerns expressed by businesses were consistent, and included: increased overhead costs created by additional human resource and appeal procedures, impacted businesses' ability to hire and expand, and making it more difficult for small businesses to compete with larger companies. In order to address these concerns, the County recognized the need to develop a Countywide program to coordinate and leverage resources to assist businesses to comply with the new law.

RECOMMENDATIONS

COUNTYWIDE OUTREACH AND EDUCATION

DCBA serves as the County's central source of information for the business community in the County.

It is recommended that DCBA work with relevant departments, including the CEO Countywide Communications, WDACS, DHR, the Internal Services Department, and any other department with the ability to engage the business and workforce community to develop and include a fair chance outreach campaign to educate businesses and employees about the new programs. CEO Countywide Communications will be utilized to amplify efforts to reach businesses operating in the unincorporated area.

It is recommended that the Board direct DCBA and relevant departments with all necessary funding support, to develop and enact an outreach and education campaign to educate employees and employers on the rights and responsibilities of the fair chance law. DCBA will:

- Create a multilingual public service announcement that can be used on multiple platforms such as television, social media, website, etc.
- Create posters using their graphic design resources.
- Create a fair chance resource pamphlet and a link to the resource pamphlet on lacounty.gov.
- Develop a script for radio advertisements.
- Disseminate press releases.
- Secure interviews on the County Channel.

PRINT MATERIAL

It is recommended that the County develop a pamphlet identifying resources available to unincorporated businesses to assist them reach compliance with AB 1008. This resource will be distributed extensively throughout the business community as addressed in further detail below.

PARTNERSHIPS WITH STATE AND LOCAL AGENCIES

In addition to working with County departments, DCBA, CEO Countywide Communications, WDACS, DHR, ISD, and any other relevant department will forge partnerships with State and local agencies that have a nexus to small business. This includes the Small Business Administration, the Governor's Office of Small Business and Economic Development, and local Chambers of Commerce. These partner agencies will assist in disseminating information about the fair chance law. Additionally, the County will work with the State agency responsible for enforcement and the appeals process.

EARNED MEDIA

Earned media is media in which the press voluntarily covers a topic of interest to their audience. DCBA will develop a strategy for pitching coverage of the Fair Chance law to local media outlets and newspaper publications to reach businesses.

SOCIAL MEDIA CAMPAIGN

The County will use its existing social media accounts to share messages in English and Spanish about the Fair Chance law and resources available to businesses. DCBA will also coordinate with other departments to leverage their social media resources to ensure the information is disseminated to a broad spectrum of constituents.

WEBSITE CONTENT

The County and DCBA will create content for County websites relating to the new Fair Chance law. All written resource materials will be posted on the website. In addition, DCBA will work with other departments to disseminate this information on their respective websites.

COMMUNITY AND STAKEHOLDER EVENTS

On January 1st, 2018, California will enact the Fair Chance law. County representatives of relevant departments, including, DCBA, CEO Countywide Communications, WDACS, DHR, Internal Services Department, and Public Works will continue to attend business industry events and host community business events and meetings to disseminate information regarding the Fair Chance law. These events will afford the County the opportunity to build relationships with the business community.

FINANCING REQUIREMENTS

The proposed education and outreach plan is estimated to cost \$170,000. This funding will allow DCBA to expand existing programs, develop and distribute media material for education and outreach, collaborate with business associations, other County departments, and State and federal enforcement agencies, and develop additions to

County website(s). This funding estimate is based on a similar campaign of education and outreach for the increase to minimum wage and enforcement.

COMMUNITY OUTREACH AND TRAINING

The Office of Diversion and Reentry is engaged in the planning and implementation of several initiatives intended to provide workforce development skills to individuals who have interfaced with the criminal justice system or who were formerly incarcerated. The common theme among the programs is a long-term goal of improving employability among individuals with barriers to employment and self-sufficiency, with added goals of increasing protective factors and reducing the impact of risk factors that can lead to recidivism. The programming is the result of strategic partnerships with WDACS, Probation, and community-based organizations (CBOs) that will collectively adopt protocols and procedures identified by the committee to empower individuals as they pursue gainful employment. Further, contracted CBOs will integrate Fair Chance material into their training and intensive case management activities to effectively lessen barriers to employment and self-sufficiency.

EXPANSION OF THE FAIR CHANCE TO A BROADER POPULATION OF UNDERSERVED CONSTITUENTS

DHR has improved outreach strategies to individuals with barriers to employment by:

- Compiling and managing a list of CBOs providing services to the homeless, reentry, disabled, youth, and veteran populations.
- Partnering with CBOs to learn about their services and bridge work-ready candidates to County employment through the DHR BRIDGES Programs.
- Implementing new strategies and content into all outreach announcements, flyers, bulletins, and overall marketing to ensure candidates understand they have a fair chance at employment.
- Presenting at various job fairs and outreach centers to help various impacted populations apply for County employment and refer them for supportive services as needed.
- Ensuring that exam plans consider accessibility options.
- Continuing to work with County Counsel and other agencies regarding potential changes to legislation that could facilitate the hiring of individuals with barriers to employment and self-sufficiency.
- Referring candidates not meeting the hiring criteria to the Public Defender for possible reduction under Prop 47.

DHR PROGRAMS THAT EXPAND FAIR CHANCE OPPORTUNITIES

- The *Temporary Services Registry Program* (TempLA) targets individuals who receive benefits from DPSS and have completed a work or job readiness program through WDACS/DPSS.
- The *Career Development Internship Program* targets current and previous foster/disconnected youth, disabled, homeless, and individuals with lived experiences.
- The *Veteran Internship Program* targets veterans who have been honorably discharged from any United States armed forces.
- The *Road to Integration & Successful Employment* (RISE) Program targets work-ready Prop 47 individuals.

ADDENDUMS

ADDENDUM I: AB 1008 (5 pages)

ADDENDUM II: NELS BEST PRACTICES AND MODEL POLICIES (20 pages)

ADDENDUM III: DRAFT POLICY, PROCEDURE, AND GUIDELINE NO. 524 (28 pages)

ADDENDUM IV: FAIR CHANCE LOGO SAMPLES (11 pages)

ADDENDUM V: FAIR CHANCE VIDEO STORYBOARDS (6 pages)

ADDENDUM VI: DRAFT BOARD OF SUPERVISORS FAIR CHANCE POLICY (3 pages)

Assembly Bill No. 1008

CHAPTER 789

An act to add Section 12952 to the Government Code, and to repeal Section 432.9 of the Labor Code, relating to employment discrimination.

[Approved by Governor October 14, 2017. Filed with
Secretary of State October 14, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, McCarty. Employment discrimination: conviction history.

Existing law, the California Fair Employment and Housing Act (FEHA), prohibits an employer from engaging in various defined forms of discriminatory employment practices.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or posttrial diversion program, except as specified. Existing law also prohibits a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, except as specified, until the agency has determined the applicant meets the minimum employment qualifications for the position.

This bill would repeal the prohibition on a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, as described above. The bill would, instead, provide it is an unlawful employment practice under FEHA for an employer with 5 or more employees to include on any application for employment any question that seeks the disclosure of an applicant's conviction history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate information related to specified prior arrests, diversions, and convictions.

This bill would also require an employer who intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history to make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment. The bill would require an employer who makes a preliminary decision to deny employment based on that individualized assessment to provide the applicant written notification of the decision. The bill would require the notification to contain specified information. The bill would grant an applicant 5 business days to respond to that notification before the

employer may make a final decision. If the applicant notifies the employer in writing that he or she disputes the accuracy of the conviction history and is obtaining evidence to support that assertion, the bill would grant the applicant an additional 5 business days to respond to the notice. The bill would require an employer to consider information submitted by the applicant before making a final decision. The bill would require an employer who has made a final decision to deny employment to the applicant to notify the applicant in writing of specified topics. The bill would exempt specified positions of employment from the provisions of the bill.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) In 2013, the State of California passed historic legislation to reduce barriers to employment for people with conviction histories, and to decrease unemployment in communities with concentrated numbers of people with conviction histories, recognizing that these barriers are matters of statewide concern. The Ban the Box law passed in 2013 applied to state agencies, all cities and counties, including charter cities and charter counties, and special districts.

(b) In 2015, President Obama directed all federal agencies to “Ban the Box” and refrain from asking applicants about their convictions on the initial job application.

(c) Nationwide, 29 states and over 150 cities and counties have adopted a “Ban the Box” law, and over 300 companies have signed the White House Fair Chance hiring pledge.

(d) Nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair chance hiring laws that cover both public and private sector employers. Over 20 percent of the United States population now lives in a state or locality that prohibits private employers from inquiring into an applicant’s record at the start of the hiring process.

(e) Since 2013, when Assembly Bill 218 was signed into law, five states have adopted fair chance hiring laws that cover private employers, Connecticut, Illinois, New Jersey, Oregon, and Vermont, as well as several major cities, including Baltimore, New York City, Philadelphia, and Austin, Texas.

(f) Roughly seven million Californians, or nearly one in three adults, have an arrest or conviction record that can significantly undermine their efforts to obtain gainful employment.

(g) Experts have found that employment is essential to helping formerly incarcerated people support themselves and their families, that a job develops prosocial behavior, strengthens community ties, enhances self-esteem, and improves mental health, all of which reduce recidivism. These effects are strengthened the longer the person holds the job, and especially when it pays more than minimum wage.

(h) Experts have found that people with conviction records have lower rates of turnover and higher rates of promotion on the job and that the personal contact with potential employees can reduce the negative stigma of a conviction by approximately 15 percent.

SEC. 2. Section 12952 is added to the Government Code, to read:

12952. (a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

(1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.

(3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(c) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the 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. In making the assessment described in this paragraph, the employer shall consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) An employer may, but is not required to, commit the results of this individualized assessment to writing.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's

reasoning for making the preliminary decision. The notification shall contain all of the following:

(A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.

(B) A copy of the conviction history report, if any.

(C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.

(3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.

(B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.

(C) The right to file a complaint with the department.

(d) This section does not apply in any of the following circumstances:

(1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.

(2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.

(3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.

(4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.

(f) For purposes of this section:

(1) “Conviction” has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of Section 432.7 of the Labor Code.

(2) Notwithstanding paragraph (1), the term “conviction history” includes:

(A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of Section 432.7 of the Labor Code, when an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, may ask an applicant for certain positions about specified types of arrests.

(B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

SEC. 3. Section 432.9 of the Labor Code is repealed.

Best Practices and Model Policies: Creating a Fair Chance Policy

As you craft a fair chance policy, including “ban the box,” here are the top ten principles to follow. These have been distilled from our work with jurisdictions across the country and are applicable to any state or region.

1. **Avoid stigmatizing language** such as “ex-offenders” or “ex-felons.” Use terms that lead with “people,” such as “people with records.” NELP was educated by the [language campaign](#) of the Center for NuLeadership on Urban Solutions on this point.
2. **A background check may be unnecessary for a job position** because most jobs do not involve unsupervised access to sensitive populations or handling sensitive information. If the background check is not legally required, it may be cost-saving to forego. Even if a background check is legally mandated, it is unnecessary to exempt a position from the majority of these best practices as these practices do not interfere with conducting background checks.
3. **Avoid blanket exclusions and instead include an equal opportunity statement on job applications** to indicate that a record will not automatically disqualify anyone from a job, unless there is a specific legal exclusion. If a background check is required or if there is a specific legal barrier, inform applicants that “a background check will be conducted for this position.” However, avoid phrases such as “must pass a background check,” or “clean background only” as this language may be interpreted as a categorical exclusion.
4. **If a background check is necessary, only consider those convictions with a direct relationship to job duties and responsibilities and consider the length of time since the offense.** Follow the best practices of the [2012 U.S. Equal Employment Opportunity Commission guidance](#) in evaluating convictions and avoid consideration of records of arrest not followed by a valid conviction. Do not consider sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
5. **Remove inquiries into convictions from the job application.** The most effective policy is to delay all conviction inquiries, oral or written, until after a conditional offer of employment. Do not include a provision to permit “voluntary disclosure” of background check information from the applicant. “Voluntary disclosure” circumvents “ban the box” as applicants are often directed to provide background check information by job services.

6. **Remove self-reporting questions about conviction history.** Discrepancies between self-disclosed information and background checks are often caused by workers' misunderstanding of their own records, and too often are inaccurate "truth tests." If a background check will be run, there is no benefit to this additional step, which trips up well-intentioned workers. Prior to any discussion about the applicant's conviction history, provide the applicant with a copy of any background check.
7. **If a job applicant is rejected because of a record, inform the applicant.** Provide the applicant with written notice of the specific item in the background check report that is considered job-related and provide the applicant with a copy of the report. Background check reports are often inaccurate, so give applicants the chance to verify or challenge the information.
8. **Provide the applicant the right and sufficient time to submit evidence of mitigation or rehabilitation** when a record is considered in hiring. Evidence may include letters of recommendation from community members and certificates from programs or education. Hold the position open until the review is complete.
9. **Expand the fair chance policy to private employers.** To maximize the impact of the fair chance policy, apply the policy to government contractors and private employers. Another method of strengthening the policy for government contractors is to combine it with targeted hiring, as shown in "Community Hiring Model Language" in the Appendix.
10. **Combine data collection and effective enforcement.** At a minimum, a government agency should have the infrastructure to process complaints and to audit compliance. If the policy applies to private employers, the ability to bring a lawsuit based on a violation of the ordinance may be an effective means of enforcement. With government contractors, the ability to rescind the contract is motivation to comply. Data collection to ensure that the policy is opening job opportunities for people with records will also support enforcement.

Ultimately, a robust enforcement regime will ensure that the law or policy is not just well-intentioned, but effective. NELP is currently developing a chapter for the Fair Chance Toolkit on best practices that are specific to enforcement and implementation.

A. Model Administrative Memo for Cities and Counties

A mayor, city manager, or human resources director ready to enact a fair chance policy may be able to do so by developing an administrative memo or by executive order. This could be the most viable option if a local council or board is unwilling to entertain a fair chance policy. Legislation is a more permanent solution, but an administrative change may provide the foundation for a new law. However, an administrative policy change may be inappropriate if the goal of the campaign is to apply the fair chance policy to non-government employers.

This model administrative memo provides a comprehensive approach. A more limited approach could be taken by omitting sections below. Note that local- and state-specific terms, such as criminal justice related terms, must be adjusted for local law. For examples, see [Oakland, California](#) and [Durham, North Carolina](#). A downloadable text version of the model policy is [available](#).

Sec. 1. Policy

The City will not conduct background checks on applicants unless it is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted. Applicants will be considered for employment opportunities on the merits of their skills and experience related to the position sought, and will not be denied employment solely or in part because of a prior conviction, unless the City determines that the conviction is job-related. If the City has determined that a background check is warranted for the position, the background check will be conducted after the City has selected the best candidate for the position. If a background check yields information that is of concern to the City, the applicant will be provided an individualized assessment. The applicant will be given an opportunity to review the background check findings and present information regarding inaccuracy, mitigating circumstances, and rehabilitation.

Sec. 2. Definitions

“Adverse action” means to refuse to hire, to not promote, to discharge a person, or to revoke an applicant’s conditional offer of employment.

“Applicant” means a person who has filed an application for examination to a City job position.

“City” means the City, department, agency, or office thereof.

Sec. 3. Existing Law

The City will comply with state and federal law requiring background checks for certain positions and dictating certain disqualifying offenses and other existing law. An employer’s use of an individual’s arrest and conviction record in making employment decisions to automatically disqualify applicants may violate the prohibition against employment discrimination under federal law, Title VII of the Civil Rights Act of 1964.

The U.S. Equal Employment Opportunity Commission (“EEOC”) Guidance recommends employers adopt the following best practices to avoid violating federal law. The employer should only consider job-related convictions taking into account length of time since the conviction. In addition, the guidelines recommend that the employer perform an individualized assessment on the applicant, which would allow the applicant to demonstrate

that the conviction history is inaccurate or provide evidence of mitigating circumstances or of rehabilitation.

The federal Fair Credit Reporting Act, 15 U.S. Code Sec.1681, *et seq.*, governs the use of commercially-prepared background reports. The subject of the background report must authorize the report. These reports should not include information on arrests older than seven years and the applicant should be provided a copy of the report prior to any adverse action.

Sec. 4. Considering Conviction History in Employment Decisions

1. **Identifying position as requiring background check.** Human Resources analyst performs initial review of position to determine if the position is of such sensitivity that a background check is warranted or if a background check is required by law.
2. **Posting job announcements.** All job announcements and position descriptions shall contain the following statement if the position requires a background check, unless otherwise required by law: *"This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate."*
3. **Job applications.** Job applications shall not inquire into an applicant's conviction history.
4. **Examination process.** A list of eligible applicants will be created based on examination results and the list will be sent to the hiring department. The hiring department will conduct interview(s) and select an individual from the list of eligible applicants.
5. **Notice of rights.** Once an individual has been selected, the hiring department shall notify Human Resources (HR), and HR shall send the individual a conditional offer letter, notice of rights under this policy, and a request for authorization to conduct a background check, if so required.
6. **Limitation to conviction history.** HR shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
7. **Conviction history inquiry.** If required, HR shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, HR shall consider:
 - (a) Whether the conviction is directly related to the duties and responsibilities of that employment position;
 - (b) Whether the position offers the opportunity for the same or a similar offense to occur; and

- (c) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
 - (d) The length of time since the offense occurred.
- 8. **Pre-adverse action notice.** If an applicant's conviction history contains information that may be the basis for an adverse action, HR shall:
 - (a) Identify the conviction item(s) that are the basis for the potential adverse action;
 - (b) Provide a copy of the conviction history report, if any;
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
 - (d) Provide the applicant with an individualized assessment as described below.
- 9. **Individualized assessment.** A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. HR shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the EEOC.
- 10. **Evidence of mitigation or rehabilitation.** Evidence of mitigation or rehabilitation may be established by:
 - (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or
 - (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
- 11. **Final notice.** If HR makes an adverse decision, the applicant shall be informed of the final decision, the appeal process, and that the applicant may be eligible for other City positions.
- 12. **Appeal.** Applicants may appeal the final decision to the Director of Human Resources.
- 13. **Confidentiality.** Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the City or any of its agencies, or its vendors, to any other entity, except as required by law.
- 14. **Data Collection.** The Human Resources Department shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants: (a) for a position; (b) who were found eligible for a position; and (c) who were provided a conditional offer for a position. In addition, the Department shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence

of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. The Department shall also regularly conduct a confidential, anonymous survey of employees in positions, in which background checks are not conducted, to determine the number of people with records hired.

15. **Audit.** The Human Resources Department shall conduct a quarterly audit and submit a report to the City Council which will review the City's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the City.

B. Model Resolution for Cities and Counties

A resolution, as a formal expression of the intention or position of the city or county, often entails a simpler process than legislation. Although an ordinance has the benefit of typically being more detailed and thus, potentially more effective, a resolution may be the best course for a fair chance policy that applies only to public employment. In addition, a resolution may be appropriate as an initial step if you need to build your campaign to push for an ordinance that applies to private employers.

This model resolution provides a comprehensive and effective approach. A more limited approach can be achieved by omitting sections. Note that local- and state-specific terms, such as criminal justice related terms, must be adjusted for local law. For examples of resolutions, see [Minneapolis, Minnesota](#) and [Petersburg, Virginia](#). A downloadable text version of the model policy is [available](#).

Purpose

Ensuring that the hiring practices of the City do not unfairly deny people with arrest and conviction records employment with the City and further encouraging rehabilitation of people with records to strengthen communities.

WHEREAS, the ability of people with records to successfully reintegrate into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities; and

WHEREAS, people with records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

WHEREAS, people of color are arrested, convicted, and incarcerated in numbers disproportionate to their representation in the population as a whole; and

WHEREAS, many people with records in the City are likely to be unemployed or underemployed; and

WHEREAS, people with records represent a workforce that have skills to contribute and a desire to add value to their community; and

WHEREAS, the City seeks to assist the rehabilitation of people with records and ensure healthier, safer communities; and

WHEREAS, studies indicate that stable employment is one of the best predictors of post-conviction success; and

WHEREAS, states and cities across the country have adopted fair chance hiring policies to remove unfair barriers to employment of people with records; and

WHEREAS, the U.S. Equal Employment Opportunity Commission, to maximize compliance with federal anti-discrimination law, recommends delaying inquiry of a job applicant's

conviction history and considering the job-relatedness of the conviction taking into account length of time since conviction, and providing an individualized assessment affording the opportunity to correct any inaccuracies and to submit evidence of mitigation or rehabilitation; and

WHEREAS, it is the public policy of the City to encourage the employment of people previously convicted.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY, that the City Human Resources Department shall enact a fair chance policy and prohibit inquiry into conviction history information on all City employment applications unless required by state or federal law; and be it

FURTHER RESOLVED, that the City shall make a good faith determination as to which specific positions of employment are of such sensitivity that a background check is warranted or are required by law; and shall conduct background checks for these positions only; and be it

FURTHER RESOLVED, if it has been established that a position requires a background check, the City shall not conduct the check until after the applicant has been provided a conditional offer of employment; and be it

FURTHER RESOLVED, the City shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions; and be it

FURTHER RESOLVED, that the City shall consider job-related convictions taking into account the length of time since the offense occurred, such that no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction; and be it

FURTHER RESOLVED, that if an applicant has been convicted of an offense that is directly related to the position sought, the Human Resources Department shall notify the applicant and conduct an individualized assessment that permits the applicant to submit information regarding inaccuracy of the record and evidence of mitigation or rehabilitation, as appropriate; and be it

FURTHER RESOLVED, the Human Resources Department shall conduct an audit and submit a report to the City Council which will review the City's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the City; and be it

FURTHER RESOLVED, that the City urges private employers and government contractors to adopt fair hiring practices that encourage the rehabilitation and employment of people with records.

C. Model Ordinance for Cities and Counties

Enacting local law is the best option for regulating private employers. Because it has the force of law, an ordinance is more permanent and authoritative than a resolution. This model ordinance provides a comprehensive approach including the government, vendors, and an option for private employers. A more limited approach could be taken by omitting sections. Note that local- and state-specific terms, such as criminal justice related terms, must be adjusted for local law. For examples, see [New Haven, Connecticut](#) and [San Francisco, California](#). A downloadable text version of the model policy is [available](#).

[EXAMPLE OF PREAMBLE ARE PROVIDED IN “WHEREAS” SECTION OF MODEL RESOLUTION]

Sec. 1. Definitions

“Adverse action” means to refuse to hire, to not promote, to discharge a person, or to revoke an applicant’s conditional offer of employment.

“Applicant” means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position, by the employer.

“Awarding authority” means any department, agency, or office of the City that authorizes a vendor to provide requested goods and/or perform services.

“City” means the City, department, agency, or office thereof.

“Employer” means the City; [IF APPLYING TO PRIVATE EMPLOYERS, THEN INCLUDE:] any person regularly employing five or more persons; any person acting as an agent of an employer, directly or indirectly; or any person undertaking for compensation to procure employees or opportunities for employment.

“Employment” means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

“Vendor” means any vendor, contractor, or supplier of goods or services to the City.

Sec. 2. Considering Conviction History in Employment Decisions

1. **Identifying position as requiring background check.** The employer shall not conduct background checks on applicants unless the employer has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted or if a background check is required by law.
2. **Posting job announcements.** All job announcements and position descriptions shall contain the following information if the position requires a background check, unless otherwise required by law: *“This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate.”*
3. **Job applications.** Job applications shall not inquire into an applicant’s conviction history.

4. **Notice of rights.** Prior to any conviction history check, the employer shall send the applicant a conditional offer letter, notice of rights under this ordinance, and a request for authorization to conduct a background check, if so required.
5. **Limitation to conviction history.** The employer shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
6. **Conviction history inquiry.** The employer shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. If the employer is considering the conviction history of the applicant, the employer shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the employer shall consider:
 - (a) Whether the conviction is directly related to the duties and responsibilities of that employment position;
 - (b) Whether the position offers the opportunity for the same or a similar offense to occur;
 - (c) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
 - (d) The length of time since the offense occurred.
7. **Pre-adverse action notice.** If an applicant's conviction history contains information that may be the basis for an adverse action, the employer shall:
 - (a) Identify the conviction item(s) that are the basis for the potential adverse action;
 - (b) Provide a copy of the conviction history report, if any;
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
 - (d) Provide the applicant with an individualized assessment as described below.
8. **Individualized assessment.** A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.
9. **Evidence of mitigation or rehabilitation.** Evidence of mitigation or rehabilitation may be established by:

- (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or
- (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

10. **Final notice.** If the employer makes an adverse decision, the applicant shall be informed of the final decision and that he or she may be eligible for other positions.
11. **Appeal.** If denied employment by the employer, applicants may appeal adverse decisions to the Enforcement Agency.
12. **Confidentiality.** Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the employer or any of its agencies, or its vendors, to any other entity, except as required by law.

Sec. 3. Vendors [CONSIDER COMBINING WITH TARGETED HIRING]

1. The City shall do business only with vendors that have adopted and employ conviction history policies, practices, and standards that are consistent with City standards outlined in this chapter.
2. During the bid or contracting process, the Awarding Authority shall review all vendors' conviction history policies for consistency with City standards. The vendors' conviction history standards shall be part of the criteria to be evaluated by the City when determining whether to award a City contract. Further, the City will be able to evaluate a vendor's execution of the conviction history standards as a part of the performance criteria of said City contract(s). The Awarding Authority shall consider any vendor's deviation from these conviction history standards as grounds for fines or rejection, rescission, revocation, or any other termination of the contract, or debarment from all City contracts.

Sec. 4. Compliance

1. **Enforcement Agency.** The employer shall retain application forms, records of employment, and other pertinent data and records required under this chapter, including but not limited to, communication with the applicant, for a minimum of three years, and shall allow the Enforcement Agency access to such records to monitor compliance with this chapter. Any person who is aggrieved by an employer's violation of these provisions may contact the Agency to report any problems, concerns, or suggestions regarding the implementation, compliance, and impact of these sections, and the Agency shall keep a record. In addition, the Agency shall conduct periodic reviews to assess compliance with these sections. The Agency shall investigate and review complaints. The Agency shall report quarterly on complaints, investigations, and reviews.
2. **Data Collection.** The employer shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional

offer. In addition, the employer shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. The City shall also regularly conduct a confidential, anonymous survey of employees in City positions, in which background checks are not conducted, to determine the number of people with records hired.

3. **Audit.** The Human Resources Department shall conduct an audit and submit a report to the City Council which will review the City's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the City.

[IF APPLYING TO PRIVATE EMPLOYERS, THEN INCLUDE:]

4. **Penalty.** The Enforcement Agency may issue a fine of up to \$1000 for a first violation of this chapter and provide counseling to the private employer to ensure future compliance. Subsequent violations are subject to fines of up to \$2000 per violation. In addition, an individual may bring a civil action in any court of competent jurisdiction against the employer or other person violating this chapter, and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to damages, injunctive relief, and reasonable attorney's fees and costs. Where an employer does not maintain or retain adequate records documenting compliance or does not allow the Enforcement Agency reasonable access to such records, it shall be presumed that the employer did not comply, absent clear and convincing evidence otherwise.

D. Model State Executive Order

In both California (2010) and Illinois (2013), the governors were committed to enacting a fair chance policy at a time when passing a bill was not feasible. Although legislation is a more permanent solution, it is also resource-intensive to initiate a statewide campaign. With the governor's backing assured, an executive order may be an appropriate first step in a legislative campaign. In fact, in both California and Illinois, the legislatures passed fair chance legislation in 2013 and 2014, respectively. If the goal of the fair chance campaign is to apply the policy to private employers, a bill may be the only vehicle.

This model executive order provides a comprehensive approach for state agencies. A more limited approach could be taken by omitting sections. Note that state-specific terms, such as criminal justice related terms, must be adjusted for state law. For an example of a state administrative order, see [Illinois](#). A downloadable text version of the model policy is [available](#).

Sec. 1. Scope

This Order shall apply to all positions in State agencies, boards, and commissions. This Order also urges private employers and government contractors to adopt similar fair hiring practices that encourage the rehabilitation and employment of people with records.

Sec. 2. State Employment Applications

The State Personnel Department shall modify the application for state employment to remove any questions about the applicant's conviction history.

Sec. 3. Authorization of Release of Background Check

To the extent a background check is conducted for the position being filled, each agency, board, and commission shall use an Authorization for Release form that obtains an applicant's consent to acquire information relating to the applicant's conviction history. The form shall indicate that the State shall not base employment decisions on the information contained in the background check of an applicant unless the law prohibits hiring an individual with a certain conviction for the position sought or the applicant's conviction is directly related to the duties and responsibilities of the position sought. The form shall indicate that job-related convictions will not automatically disqualify the candidate.

Sec. 4. Considering Conviction History in Employment Decisions

1. **Establish procedure.** Each agency, board, and commission shall establish a documented review process: (a) to determine whether the relevant position is of such sensitivity that a background check is warranted or if a background check is required by law; and (b) to evaluate an applicant's background check in accordance with procedures below.
2. **Limitation to conviction history.** The agency, board, or commission may not inquire into or consider records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
3. **Conviction history inquiry.** The agency, board, or commission shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. If the agency, board, or commission is considering the conviction

history of the applicant, the agency, board, or commission shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the agency, board, or commission shall consider:

- (a) Whether the conviction is directly related to the duties and responsibilities of that employment position;
- (b) Whether the position offers the opportunity for the same or a similar offense to occur;
- (c) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
- (d) The length of time since the offense occurred.

4. **Pre-adverse action notice.** If an applicant's conviction history contains information that may be the basis for an adverse action, the agency, board, or commission shall:
 - (a) Identify the conviction item(s) that are the basis for the potential adverse action;
 - (b) Provide a copy of the conviction history report, if any;
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and
 - (d) Provide the applicant with an individualized assessment as described below.
5. **Individualized assessment.** A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The agency, board, or commission shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.
6. **Evidence of mitigation or rehabilitation.** Evidence of mitigation or rehabilitation may be established by:
 - (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or
 - (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
7. **Final notice.** If the agency, board, or commission makes an adverse decision, the applicant shall be informed of the final decision, the appeal process, and that the applicant may be eligible for other State positions.
8. **Appeal.** Applicants may appeal the final decision to the Personnel Department.

9. **Confidentiality.** Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the State, except as required by law.
10. **Data Collection.** The State Personnel Department shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the Department shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. The Department shall also regularly conduct a confidential, anonymous survey of employees in positions, in which background checks are not conducted, to determine the number of people with records hired.
11. **Audit.** The State Personnel Department shall conduct an audit and submit a report to the Governor's Office which will review the State's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the State.

D. Model State Legislation

The first state, Hawaii, has had its fair chance statute in place since 1998. Each year an increasing number of legislatures are introducing fair chance bills. The model legislation below provides a comprehensive example applying to all public employment, including state agencies, cities, counties, and state licensing, and contractors with an option for private employers. A more limited approach could be taken by omitting sections. Note that state-specific terms, such as criminal justice related terms, must be adjusted. For an example of a comprehensive state law, see [Minnesota](#). For an example of a more modest state law, see [California](#). A downloadable text version of the model legislation is [available](#).

Sec. 1. Policy

The Legislature finds and declares that reducing barriers to employment for people with arrest and conviction records, and decreasing unemployment in communities with concentrated numbers of people with records, are matters of statewide concern. The Legislature further finds and declares that increasing employment opportunities for people with records will reduce recidivism and improve economic stability in our communities.

Sec. 2. Definitions

“Applicant” means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position, by the employer.

“Employer” means the State, its agencies, or political subdivisions; **[IF ADDING PRIVATE EMPLOYERS, THEN ADD:]** and any person in this State employing four (4) or more individuals; any person acting in the interest of an employer directly or indirectly; or any person undertaking for compensation to procure employees or opportunities for employment.

“Hiring authority” shall mean the person, board, commission, or department of the State, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment.

“Licensing authority” shall mean the person, board, commission, or department of the State, its agencies or political subdivisions, responsible by law for the licensing of persons for occupations.

“License” includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the State, its agents, or political subdivisions before a person can pursue, practice, or engage in any occupation.

“Occupation” includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the State, its agencies, or political subdivisions.

Sec. 3. Availability of Records

- (a) The following criminal records shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions in connection with any application for employment nor in connection with an application for a license:

- (1) Arrest not followed by a valid conviction.
 - (2) Convictions which have been sealed, dismissed, or expunged.
 - (3) Misdemeanor convictions for which no jail sentence can be imposed or infractions.
- (b) Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions, except as required by law.

Sec. 4. Considering Conviction History

- (a) An employer or hiring authority shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer.
- (b) A licensing authority shall not inquire into or consider the conviction history of an applicant for licensing until after an applicant is found to be otherwise qualified for the license.
- (c) Job applications and licensing applications shall not inquire into an applicant's conviction history.

Sec. 5. Relation of Conviction to Employment or Occupation

- (a) No person shall be disqualified from employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of a prior conviction, unless it is a directly related conviction to the position of employment sought or to the occupation for which the license is sought. If a statute explicitly requires that certain convictions are automatic bars to employment or licensing, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment or licensing, solely or in part because of a prior conviction, unless it is a directly related conviction to the position of employment sought or to the occupation for which the license is sought.
- (b) In determining if a conviction directly relates to the position of employment sought or the occupation for which the license is sought, the employer, hiring authority, or licensing authority shall consider:
- (1) Whether the conviction is directly related to the duties and responsibilities of that employment position or occupation;
 - (2) Whether the position or occupation offers the opportunity for the same or a similar offense to occur;
 - (3) Whether circumstances leading to the conduct for which the person was convicted will recur in the position or occupation; and
 - (4) The length of time since the offense occurred;

Sec. 6. Notification of Denial of Employment or Disqualification from Occupation

- (a) If an employer, hiring authority, or licensing authority intends to deny an applicant a position of employment or intends to disqualify an applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's prior conviction of a crime, the employer, hiring authority, or licensing authority shall notify the applicant in writing of the following, prior to a final decision:

- (1) Identify the conviction item(s) that are the basis for the potential denial or disqualification;
 - (2) Provide a copy of the conviction history report, if any; and
 - (3) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide.
- (b) The applicant who has been convicted of an offense which directly relates to the employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the employment sought or the occupation for which the license is sought.
- (c) The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer or hiring authority shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.
- (d) Evidence of mitigation or rehabilitation may be established by:
- (1) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or
 - (2) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
- (e) If an employer, hiring authority, or licensing authority denies an applicant a position of employment or disqualifies the applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's prior conviction of a crime, the employer, hiring authority, or licensing authority shall notify the applicant in writing of the following:
- (1) The final denial or disqualification;
 - (2) The appeal process;
 - (3) The applicant may be eligible for other employment or occupation; and
 - (4) The earliest date the applicant may reapply for a position of employment or a license.

Sec. 7. Contractors

- (a) It shall be the policy of the State to do business only with contractors that have adopted and employ written policies, practices, and standards that are consistent with the requirements of Sections 1-6.
- (b) State agencies shall review all contractors' background check policies for consistency with the policies of the State as expressed in Sections 1-6, and shall consider background check policies and practices among the performance criteria in evaluating a contract.

Sec. 8. Compliance

- (a) The employer shall retain application forms, records of employment, and other pertinent data and records required under Sections 1-6, including but not limited to, communication with the applicant, for a minimum of three years, and shall allow the Enforcement Agency access to such records to monitor compliance with Sections 1-6. Any person who is aggrieved by an employer's violation of these provisions may contact the Agency to report any problems, concerns or suggestions regarding the implementation, compliance and impact of these sections, and the Agency shall keep a record. In addition, the Agency shall conduct periodic reviews to assess compliance with these sections. The Agency shall investigate and review complaints. The Agency shall report quarterly on complaints, investigations, and reviews.
- (b) The employer shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the employer shall maintain a record of the number of applicants with a record for a position: (a) who were provided a pre-adverse action notice; (b) who provided evidence of mitigation or rehabilitation; (c) who were provided a final adverse notice; and (d) who were hired. Public employers shall also regularly conduct a confidential, anonymous survey of employees in public employment positions, in which background checks are not conducted, to determine the number of people with records hired.
- (c) Any appeals or complaints or grievances concerning violations of these sections by public employers shall be processed and adjudicated in accordance with established State procedures.
- (d) The State Personnel Department shall conduct an audit to review the State's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the State.

[IF ADDING PRIVATE EMPLOYERS, THEN ADD:]

- (e) The Enforcement Agency may issue a fine of up to \$1000 for a first violation of Sections 1-6 and provide counseling to the private employer to ensure future compliance. Subsequent violations are subject to fines of up to \$2000 per violation. In addition, an individual may bring a civil action in any court of competent jurisdiction against the employer or other person violating Sections 1-6, and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to damages, injunctive relief, and reasonable attorney's fees and costs. Where an employer does not maintain or retain adequate records documenting compliance or does not allow the Enforcement Agency reasonable access to such records, it shall be presumed that the employer did not comply, absent clear and convincing evidence otherwise.

Sec. 9. Application

The provisions of these sections shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of employment on the grounds of conviction of an offense. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or

terminate employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of an offense but only in the same manner and to the same effect as provided for these sections. Nothing in these sections shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of employment. ■



County of Los Angeles
Department of Human Resources
POLICIES, PROCEDURES, AND GUIDELINES

Subject: LIVE SCAN PROCEDURES	Policy Number: 524	Page(s): TBD
	Effective Date: TBD	
	Approved By: DRAFT	

PURPOSE

The purpose of this policy is to provide guidelines to line departments on the implementation of the August 4, 2009 Resolution adopted by the Board of Supervisors which provides the authority to expand current access to State and local summary criminal history information to include federal level criminal history information. This information is obtained via the State of California, Department of Justice's (DOJ) automated fingerprinting process known as Live Scan.

BACKGROUND

The California DOJ approved the Board's resolution expanding authority for Los Angeles County to access State, local and federal-level criminal history information for employment purposes, pursuant to Penal Code Section 11105. This expanded provision for federal-level review was first implemented on September 15, 2009, for executive-level candidates for employment.

On March 12, 2013, the Board approved an expansion of the County's criminal background check program to include a federal-level review for all current and prospective employees and designated volunteers and contract personnel in sensitive positions. The implementation and completion of the new County Live Scan requirement will be the responsibility of each County department.

Effective January 1, 2018, pursuant to Assembly Bill (AB) 1008, Chapter 789 "Employment Discrimination: Conviction History", added Section 12952 to the Government Code, and repealed Section 432.9 of the Labor Code. This policy aligns with this section of the Government Code and ensures that criminal conviction information is obtained from applicants only after the applicant receives and accepts a conditional job offer.

POLICY

In accordance with California Government Code Section 12952, the County of Los Angeles will not ask an applicant for employment to disclose, orally or in writing, information concerning the conviction history of the applicant, including any inquiry about conviction history on any employment application, before the County has made a conditional offer of employment.

This policy does not apply to positions for which the County is otherwise required by law to conduct a conviction history background check including, but not limited to, any position within a criminal justice agency per Penal Code Section 13101; positions involving access to or care of children per Welfare and Institutions Code 16501; and positions in health facilities where there is access to patients, drugs and medication per health and safety code 11590. In these exceptions, the County department may continue to ask for conviction history information on the employment application form.

GUIDELINES

The County will not ask, review or evaluate an individual's conviction history information until a contingent job offer is made for the position being sought. Upon a candidate's selection for the target position, the Departmental Human Resources Manager or his/her designee may commence the background check clearance process. Information regarding the County's Live Scan procedures are to be provided to the selected candidate before the Live Scan is conducted.

The Departmental Human Resources Manager or designee will review the candidate's Live Scan results. If the Live Scan results disclose a conviction, the Departmental Human Resources Manager or designee will conduct an individualized criminal history assessment utilizing the Job Nexus Evaluation form (Attachment A) to determine whether there is a nexus between the conviction history information and the position for which the candidate has been conditionally selected.

The County will evaluate mitigating factors as set forth in Policy, Procedures and Guidelines (PPG) No. 514, *Designation of Sensitive Positions and Criminal History Assessments*. These factors include, but are not limited to, the following:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- The applicant's age at the time of conviction, or release from prison;

- Consideration of evidence showing the applicant performed similar type of work after the conviction with no known incidents of additional criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;
- The evidence and extent of rehabilitation (e.g., education/training) by the applicant;
- Employment or character references and any other information regarding fitness for the particular position.

For candidates who are disqualified based on conviction history information, the candidate's name may remain on the eligible list or eligible register for consideration to other positions that may have different job nexus criteria. For example, a candidate on an eligible list who is disqualified for a driving under the influence (DUI) conviction for a position that requires driving may still be available for consideration for a position where driving is not an essential function of the position.

PROCEDURES

All County departments are required to comply with all California DOJ requirements, including those outlined within the *Live Scan Subscriber Agreement* form (Attachment B). The *Live Scan Subscriber Agreement* is between the user (County department) and the DOJ. Criminal conviction information will be obtained through fingerprints submitted to the DOJ.

Criminal Offender Record Information (CORI) and the information derived from there shall be accessible only to the Custodian of Records and/or hiring authority charged with determining the suitability of the applicant. The CORI may also be reviewed by those individuals who have a "need to know."

Custodian of Records

Pursuant to Penal Code Section 11102.2, beginning January 1, 2011, the DOJ implemented a confirmation program to process fingerprint-based criminal offender record information background responses on individuals designated by applicant agencies to serve as Custodian of Records. Effective July 1, 2011, no person shall serve as an agency Custodian of Records unless they have been confirmed by the DOJ. For more information about the DOJ Custodian of Records confirmation process, please contact DHR's Central Live Scan Unit.

The Departmental Human Resources Manager (DHRM) as the recipient of the criminal conviction information from the DOJ and FBI must sign the required DOJ *Custodian of Records* form (Attachment C) acknowledging an understanding of the CORI security requirements. Upon receipt of criminal conviction information, the DHRM will take

custody of the information and be responsible for maintaining the security and confidentiality of the information.

All staff receiving access, or in proximity to computer terminals or fax machines, to background check information obtained from the DOJ and/or FBI must undergo a background check. The Custodian of Records shall ensure that appropriate staff undergo background checks. The Custodian of Records is also required to maintain a record/log to verify that all staff who have a role in the Live Scan and criminal history review process have received a Live Scan.

Confidential information received electronically or via mail shall be used solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination. All State summary criminal history records obtained for employment purposes should be destroyed by cross-cut shredding once an employment decision is made. Retention of criminal history records beyond this time must be based upon documented legal authority and need.

The Custodian of Records is also responsible for the retention, maintenance, and destruction of all criminal history record information. The DHRM shall establish the following procedures to maintain confidentiality and may establish additional procedures as are necessary to implement this policy:

- Record Security – The information will be maintained under lock and key and will not leave the premises of the human resources office.
- Record Storage – CORI or related background information shall not be filed in the *Official Employee Personnel Folder*. Note: A temporary background file may be generated only as necessary while the background history information is retained for evaluation, until destroyed.
- Record Reproduction – CORI is confidential and shall not be reproduced for dissemination.
- Record Dissemination – Per amendment to Penal Code Section 11105, effective January 1, 2013, agencies “must expeditiously furnish a copy of the CORI to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision.” In any other case, the DHRM will determine “need to know” and will ensure that only those individuals with a legitimate “need to know” are permitted to review the information.

The DHRM will maintain an Authorized Criminal Record Review (Attachment D) log containing:

- The name and title of the individual reviewing the information
- The date and time the individual examined the information in the Human Resources office

- The individual's "need to know" reason for viewing the information
- The signature of the DHRM approving the examination of the information
- All automated systems containing conviction information must be secured to prevent unauthorized access, alteration, deletion, or release of the information

Certified Live Scan Operators

The department shall maintain a current Live Scan Operators list (Attachment E) providing fingerprint services. CORI shall be accessible only to the hiring authority or designee charged with determining the suitability for employment of an applicant. The department is to ensure that operators who function in a primary role or serve as back-up operators are not authorized to receive and/or review CORI or related background information.

The Live Scan operator is responsible for confirming the photo identification validity of an applicant and subsequently operating a Live Scan device and/or providing applicant fingerprint services. A valid *Fingerprint Roller Certification* issued by the DOJ shall be posted and maintained for every operator providing services on behalf of any County department. Operators are also required to complete the DOJ *Security and Disclosure Certification* form (Attachment F) to acknowledge the responsibilities of protecting confidential applicant information, and the restrictions concerning the use of such information and the penalties for misuse.

Operators will manually complete a *Fingerprint Transaction Log* (Attachment G) containing:

- The name of the Operator who performed each transaction
- The name of the applicant fingerprinted
- The date the applicant was fingerprinted
- The type of photo identification presented
- The *Applicant Tracking Identifier* (ATI) number associated with the transaction

Access to the log shall be controlled by the department and be maintained for a minimum of one year from the date of the transaction.

Employees Who Access and/or Review DOJ Notifications

All staff with access to CORI must receive training and counseling on the handling of CORI. Recipients of the DOJ and/or FBI information are required to maintain confidentiality and only share information with authorized individuals. Staff involved in the Live Scan process must sign *Employee Statement* forms (Attachment H) acknowledging an understanding of the criminal penalties of misuse of the strictly confidential CORI requirements.

In addition to any administrative action, penalties for improper and unauthorized disclosure of background check information may include criminal prosecution as authorized by California Penal Codes 11140, 11142, and 11143.

Departments should maintain records of training for certified Live Scan operators and staff with access to CORI, including confidentiality training.

Review and Handling of Subsequent Arrest Notifications (Arrests vs. Convictions)

The DOJ provides notification for the arrest of any employee, volunteer, or contract personnel whose fingerprints are maintained on file with the DOJ. The notification shall consist of a current copy of the State summary criminal history records. The designated departmental representative shall evaluate each subsequent arrest notification leading to a conviction for a current employee, volunteer, or contract personnel in a sensitive position, on a case-by-case basis.

Upon receipt of information regarding a conviction and/or arrest pending final adjudication, the designated departmental representative shall evaluate the effect and/or potential effect of the record or arrest of the employee, volunteer, or contract personnel. The department shall take appropriate action to maximize public safety and minimize potential liability while respecting the rights of the employee, volunteer, or contract personnel. Subsequent arrest notifications should be handled in the same confidential manner as the initial DOJ notification.

Note: Generally, convictions, not arrests, are relevant to a job nexus determination for suitability of employment.

No Longer Interested Notification Process

The DOJ shall be notified immediately, that the department is no longer interested in subsequent arrest notification/CORI on any employee, volunteer, or contract personnel who transferred or terminated service and/or an applicant disqualified from employment. It is the responsibility of the department to send timely *No Longer Interested Notification* forms (Attachment I) to the DOJ, and to document the date the forms were faxed/mailed to the DOJ. Any department who fails to provide the DOJ with timely notification may be denied further subsequent arrest notification service (Penal Code 11105.2, Subsection g).

Additionally, when a department merges with or 'splits' from another County department, the outgoing department must contact the DOJ to ensure that subsequent arrest and conviction information regarding the former employees will no longer be sent to the outgoing department. The incoming department will then need to prepare the DOJ information for the new or transferred employees entering the department.

The department shall maintain records that verify the date that *No Longer Interested Notification* forms were sent to the DOJ, for audit compliance purposes.

Departmental Exceptions

For positions in which the County is required by law to conduct a conviction history background check, the hiring department may disqualify an applicant based on a review of conviction history information as submitted on the employment application.

Applicable exceptions may include, but are not limited to, certain positions in the Sheriff's Department, Probation Department, Office of the Public Defender, Office of the Alternate Public Defender and Office of the District Attorney, per Penal Code Section 13101. Exceptions may also apply to positions in health facilities where there is access to patients, drugs and medication, per Health and Safety Code 11590; and to those positions where there is access to or care of children, per Welfare and Institutions Code 16501.

Appeal Rights

Candidates/Employees who are disqualified based on conviction history information shall be notified in writing. The letter should include the following appeal rights language:

If you believe that an error has been made in determining your eligibility in this examination, you may file an appeal with the Department of Human Resources. The appeal must be in writing and provide specific facts and information, which demonstrate where the error occurred. Any appeal that fails to contain such information will be denied as insufficient. The appeal must be received by the Appeals Program within ten (10) business days from the postmark date on the envelope in which this notice was mailed, or from the date an electronic notification was sent, by using this web address:

<https://eappeals.lacounty.gov/dashboard/>

For technical support related to online appeal submissions go to <http://apps.hr.lacounty.gov/eAppeal/>.

You also have the right to file a complaint with the California Department of Fair Employment and Housing (DFEH). For assistance on how to submit a complaint with DFEH, please visit their website at <https://www.dfeh.ca.gov/complaint-process/> or you may contact them at:

- Communication Center at 800-884-1684 (voice), 800-700-2320 (TTY) or California's Relay Service at 711
- Email: contact.center@dfeh.ca.gov.
- DFEH Headquarters
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

AUTHORITY

November 10, 1998: Resolution of the Board of Supervisors of the County of Los Angeles declaring its intention to provide for the access of criminal history information for employment in sensitive positions

August 4, 2009: Resolution of the Board of Supervisors of the County of Los Angeles providing authority to expand access to summary criminal history information at the State and local level to the federal level for employment purposes

March 12, 2013: Board of Supervisors approval regarding the expansion of the criminal background check program to include recommendations from the Live Scan Feasibility Report

July 11, 2017: Resolution of the Board of Supervisors of the County of Los Angeles to develop a County Fair Chance Ordinance establishing guidelines on how to reduce employment barriers to applicants with criminal convictions

California Government Code Section 12952

California Health and Safety Code Section 11590

California Labor Code Section 432.7

California Health and Safety Code 11590

California Penal Code Sections: 1203.4, 1203.4(a), 1204.45, 1210.1, 11102.2, 11105, 11140, 11142, 11143, 13101, 13300 California Welfare and Institutions Code 16501

Policies, Procedures and Guidelines 514, *Designation of Sensitive Positions and Criminal History Assessments*

DATE ISSUED

Original Issue Date: June 30, 2014

Review Date: December 1, 2017

Attachment	Description
A	Job Nexus Evaluation Form
B	Applicant Fingerprint Response Subscriber Agreement
C	DOJ Custodian of Records
D	Authorized Criminal Record Review Log
E	Live Scan Operators List
F	DOJ Security and Disclosure Certification
G	Fingerprint Transaction Log
H	Employee Statement
I	DOJ No Longer Interested (NLI) Notification



COUNTY OF LOS ANGELES - DEPARTMENT OF HUMAN RESOURCES
APPLICATION / CRIMINAL HISTORY APPROVAL FORM

Reason for Criminal History Assessment (Per DHR PPG 514):

- ☐ New Hire
☐ Promotion to Sensitive Position
☐ Transfer to Sensitive Position
☐ Contract or Volunteer to Sensitive Position
☐ Reinstatement
☐ Subsequent Conviction

Applicant/Employee Information	
Name:	
Employee Number (if applicable):	
Date of Birth:	
Continuous Service Date (if applicable):	

Position Information	
Classification Title / Item Number:	
County Department/Dept. #:	
Division/Section:	
Exam Title/Exam Number:	

PART ONE – JOB NEXUS EVALUATION

I. CRIMINAL HISTORY INFORMATION

DEPARTMENT OF JUSTICE (DOJ) RELATED INFORMATION			
Date LiveScan Submitted to DOJ:	Date of DOJ Report:	Date DOJ Report Received by HR Operations:	Date DOJ Report Forwarded to HR Employee Relations or Performance Management:
REVIEW and ASSESS, BUT DO <u>NOT</u> COPY THE CRIMINAL CONVICTION INFORMATION DETAILED ON THE STATE of CALIFORNIA / DEPT. OF JUSTICE REPORT			

All convictions indicated by APPLICANT/EMPLOYEE on Employment Application and/or Employee Information Sheet:

Conviction Date	Violation Code	Violation Title	Conviction Type/Court Disposition	Court Name	Sentence Imposed	Dismissed Yes/No

Originated: Nov 2008

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Developed by the County of Los Angeles - Department of Human Resources

II. ASSESSMENT OF WORK FUNCTION (Please follow these instructions carefully before proceeding.)

Does the preliminary information obtained cover/impact any of the "Work Functions" listed below? ☐ YES ☐ NO

If "**YES**", please do the following:

- A) Obtain court records (i.e., court order/minute order/court docket) immediately. (These records are necessary to make a job nexus determination, as DOJ information is strictly confidential and cannot be used/copied for employment decisions.) Note: Please see attached *DHR Guidelines for Requesting Court Records*.
- B) Once court records are obtained, identify the impacted Work Function(s). Specify and mark the offense(s) listed under the corresponding "Work Function" below, based on the court records.

If "**NO**", proceed to *Part One – Job Nexus Evaluation, Section III, Self Disclosure Information*.

☐ **Work Function #1**

Care, Oversight, or Protection of Persons Through Direct Contact with Such Persons (e.g., Physician, Nurse, Clinical Social Worker, etc.).

- ☐ Robbery ☐ Intoxication ☐ Theft ☐ Forgery ☐ Assault ☐ Receiving Stolen Property
☐ Embezzlement ☐ Fraud ☐ Kidnapping ☐ Manslaughter ☐ Homicide ☐ Drug or Narcotics Offenses
☐ Sex offenses which involve victims (e.g., rape, child molestation, etc.) ☐ Elder/Child Abuse
☐ Weapons Offense ☐ Threat ☐ Other (Explain) _____

☐ **Work Function #2**

Direct or Indirect Access to Funds or Negotiable Instruments (e.g., Assistant Deputy Director, Finance Manager, Cashier, etc.).

- ☐ Bribery ☐ Fraud ☐ Robbery ☐ Theft ☐ Forgery ☐ Embezzlement ☐ Receiving Stolen Property
☐ Assault ☐ Drug or Narcotics Offenses ☐ Weapons Offense ☐ Threat
☐ Other (Explain) _____

☐ **Work Function #3**

Requirement of State and/or Professional Licensing (e.g., Registered Nurse, Physician, Optometrist, Pharmacist, Physical Therapist, etc.).

- ☐ Violation of any certification or licensing provisions relating to duties of the position in question may also be the basis for disqualification. ☐ Assault ☐ Drug or Narcotics Offenses ☐ Weapons Offense ☐ Threat
☐ Other (Explain) _____

☐ **Work Function #4**

Public Safety or Law Enforcement (e.g., Environmental Health Specialist, Public Health Investigator, etc.).

- ☐ Robbery ☐ Intoxication ☐ Theft ☐ Forgery ☐ Assault ☐ Embezzlement ☐ Fraud ☐ Kidnapping
☐ Homicide ☐ Drug or Narcotics Offenses ☐ Sex offenses which involve victims (e.g., rape, child molestation, etc.) ☐ Weapons Offense ☐ Threat ☐ Other (Explain) _____

☐ **Work Function #5**

Access to or Charge for Drugs or Narcotics (e.g., Pharmacist Tech, Pharmacy Helper, Physician, Registered Nurse, Clinical Pharmacist, etc.).

- ☐ Fraud ☐ Robbery ☐ Theft ☐ Forgery ☐ Embezzlement ☐ Receiving Stolen Property
☐ Drug or Narcotics Offenses ☐ Assault ☐ Weapons Offense ☐ Threat
☐ Other (Explain) _____

☐ **Work Function #6**

Access to Confidential or Classified Information, Including Criminal Conviction Information (e.g., Personnel Officer, Systems Analyst, Patient Resources Worker, Eligibility Worker, etc.).

- ☐ Fraud ☐ Robbery ☐ Theft ☐ Forgery ☐ Extortion ☐ Receiving Stolen Property ☐ Perjury
☐ Assault ☐ Drug or Narcotics Offenses ☐ ID Theft ☐ Computer Crimes ☐ Weapons Offense ☐ Threat
☐ Other (Explain) _____

☐ **Work Function #7**

Charge of or Access to County, Public or Private Property (e.g., Warehouse Worker, Custodian, Materials Manager, Facilities Manager, etc.).

- ☐ Embezzlement ☐ Robbery ☐ Theft ☐ Receiving Stolen Property ☐ Weapons Offense ☐ Threat
☐ Assault ☐ Drug or Narcotics Offenses
☐ Other (Explain) _____

Originated: Nov 2008

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III. SELF-DISCLOSURE INFORMATION

- 1) ☐ **Full and Complete Self-Disclosure** of ALL Conviction(s) on: ☐ County Application
☐ Employee Information Sheet ☐ Previous County Application ☐ Previous Employee Information Sheet
☐ Other _____
- 2) ☐ **Partial Disclosure** of Conviction(s) on: ☐ County Application ☐ Employee Information Sheet
☐ Previous County Application ☐ Previous Employee Information Sheet ☐ Other _____
- 3) ☐ **Non-Disclosure** of Conviction(s) on: ☐ County Application ☐ Employee Information Sheet
☐ Previous County Application ☐ Previous Employee Information Sheet ☐ Other _____

Important: Identify which conviction(s) were not disclosed by applicant/employee. For employees, if there is no job nexus obtain court records and identify which conviction(s) were not disclosed:

IV. JOB NEXUS DETERMINATION

☐ **NO JOB NEXUS**

New Hire/Non-County Worker

☐ Disclosed conviction(s) and "no job nexus."

Note: Proceed to Part Two - Hiring Standards, Section III – Human Resources' Determination.

☐ Did **not** disclose conviction(s). Application is rejected per Civil Service Rule 6.04.

Note: Proceed to Part Two – Hiring Standards, Section III – Human Resources' Determination.

Promotions/Transfers/Subsequent Conviction

☐ Disclosed conviction(s) and "no job nexus."

Note: Proceed to Part Two – Hiring Standards, Section III – Human Resources' Determination.

☐ Did **not** disclose conviction(s) and "no job nexus." (For promotions, transfers and subsequent convictions, obtain statement from employee.)

Note: Proceed to Section V – Court Record Information and begin analysis.

☐ **JOB NEXUS**

New Hire/Non-County Worker

☐ Application is rejected per Civil Service Rule 6.04.

Note: Proceed to Part Two – Hiring Standards, Section III – Human Resources' Determination.

Originated: Nov 2008

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Promotions/Transfers/Subsequent Conviction

☐ Determine if employee is acceptable for continued County employment based on an analysis of the convictions to the Hiring Standards as set forth by DHR PPG No. 514.

Note: Proceed to Section V – Court Record Information and obtain statement from employee. After response is obtained, proceed to Part Two – Hiring Standards, Section I and continue analysis.

☐ Place on ordered absence (if appropriate). Please refer to DHR PPG 810 for more information. Effective date of ordered absence: _____.

Note: Proceed to Part Two – Hiring Standards, Section I.

V. **COURT RECORD INFORMATION** (See attached *DHR Guidelines for Requesting Court Records*.)

If Job Nexus is established, or if employee did not disclose conviction(s), proceed with obtaining written statement from employee.

All convictions identified through court records which were not indicated on DOJ Report:

Conviction Date	Violation Code	Violation Title	Conviction Type/Court Disposition	Court Name	Sentence Imposed	Dismissed Yes/No

If no court documents obtained to verify conviction reported on DOJ report, were the court records

☐ Archived ☐ Destroyed ☐ Other Explain: _____

Has the Applicant been convicted of workers' compensation fraud?

☐ Yes. **Must** be deemed unacceptable for County employment based on County Code Section 5.12.110.
☐ No

PART TWO – HIRING STANDARDS

I. **HIRING STANDARDS**

Please refer to the following standards from DHR PPG 514 pages 3 – 4 used for new hires, promotions to sensitive positions, transfers to sensitive positions and contract/sensitive positions in evaluating suitability for the position.

Seriousness of the offense.

Was the individual: ☐ incarcerated ☐ placed on probation ☐ suspended sentence
☐ fined \$_____ ☐ community service ☐ Other _____?

(Note: It is important to remember that there are certain offenses that are not easily mitigated by extenuating circumstances. Such offenses will generally result in a finding of incompatibility with County service such as: murder, rape, crimes against children and the elderly, etc.)

Recency of the last offense.

Date: (mm/yyyy) _____

Age of the employee at the time of the offense and conviction: _____

Date of conviction: (mm/yyyy) _____

Extent of criminal record.

Was the offense and conviction(s) a single incident? ☐ Yes ☐ No

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CONFIDENTIAL EMPLOYEE INFORMATION

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Developed by the County of Los Angeles - Department of Human Resources

- OR -

Were there numerous incidents of similar convictions? ☐ Yes ☐ No

Evidence and extent of rehabilitation by the employee. (*Note: Obtain and review Employee's Written Statement*)

What evidence was considered? _____

II. DISCIPLINARY / WORK HISTORY REVIEW AND ANALYSIS

Additional factors to be considered in your analysis of existing County employees include the following:

- ☐ Assessment and review of employee's work history as contained in the Official Personnel File and/or Area File (e.g., performance evaluations, length of service, prior disciplinary action, commendations, etc.)

Non-Disciplinary Actions: 1. Confirmation of Counseling (also referred to as a *Notice of Expectation*) contained in Area File

Disciplinary Actions: 2. Written Warning 3. Written Reprimand
4. Suspension (1-5 days) 5. Suspension (1-30 days) 6. Other

Action # _____	Date issued _____	Policy Violation _____
Action # _____	Date issued _____	Policy Violation _____
Action # _____	Date issued _____	Policy Violation _____

- ☐ Last three performance evaluations

<input type="checkbox"/> Probationary	<input type="checkbox"/> Annual: Rating Period _____	Rating _____
<input type="checkbox"/> Probationary	<input type="checkbox"/> Annual: Rating Period _____	Rating _____
<input type="checkbox"/> Probationary	<input type="checkbox"/> Annual: Rating Period _____	Rating _____

- ☐ Continuous Service Date _____

- ☐ Written Statement, if received. Date: _____

- ☐ Disclosure on prior Applications and/or Employee Information Sheets

- ☐ Level of responsibility and scope of authority in their current position

- ☐ Impact on the Department's mission. (*Note: Specify in the Administrative Action Letter.*)

III. HUMAN RESOURCES' DETERMINATION

Acceptable

- ☐ No Job Nexus.
☐ Conviction set aside & dismissed per P.C. 1203.4
☐ Job Nexus, but mitigated by other relevant factors. (*Explain below.*)
☐ Job Nexus and failure to fully disclose, but mitigated by other relevant factors
☐ Other (*Explain*) _____

Unacceptable

- ☐ Job Nexus. Civil Service Rule 6.04(D)&(E).
☐ Failure to disclose conviction(s) on County document(s). Civil Service Rule 6.04(H).
☐ Other (*Explain*) _____

Originated: Nov 2008

CONFIDENTIAL EMPLOYEE INFORMATION

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Developed by the County of Los Angeles - Department of Human Resources

Promotion/Transfer/Subsequent Conviction

Based on Hiring Standards as set forth by DHR Policies, Procedures, and Guidelines No. 514 and a work history review and analysis:

- ☐ Employee is suitable for continued County employment.
☐ Unacceptable – Candidate **not** suitable for County employment per Civil Service Rule 18.031.

Based on “job nexus” and/or “failure to fully disclose,” Human Resources’ recommends the following administrative action:

- ☐ Letter of Determination (Written notice informing employee of suitability for continued employment.)
☐ Administrative Reassignment or Reassignment of job duties or Ordered Absence (See, DHR PPG 210). (*Note: Please contact DHR Civil Service Advocacy Division or County Counsel’s Labor & Employment Division for consultation on these issues.*)
☐ Written Warning
☐ Written Reprimand
☐ Suspension (1-5 days)
☐ Suspension (6-30 days)
☐ Demotion/Reduction – Position reduced to: _____
☐ Discharge/Release

Identify any mitigating factors that were considered in reaching this administrative action:

IV. CERTIFICATION

Analysis and notification of determination to Hiring Manager (e.g., Director, Sr. Manager, Program Head, etc.) made by:

_____ Name and Title Human Resources Division	_____ Telephone Number	_____ Date
---	---------------------------	---------------

Signature

The Human Resources Division has notified me of their determination:

_____ Executive Level Manager or Hiring Manager (Name and Title)	_____ Facility
--	-------------------

_____ Signature	_____ Date
--------------------	---------------

Telephone Number

Originated: Nov 2008

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CONFIDENTIAL EMPLOYEE INFORMATION

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AUTHORITY

- DHR Policies, Procedures, and Guidelines No. 514
- DHR Policies, Procedures, and Guidelines No. 120
- Civil Service Rule 18.01
- Civil Service Rule 6.04
- County Code Section 5.12.110



APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

SECURITY OF CRIMINAL OFFENDER RECORD INFORMATION

Criminal Offender Record Information (CORI) is information identified through fingerprint submission to the Department of Justice (DOJ) with a criminal record or "No Record". It is confidential information disseminated to applicant agencies authorized by California statute for the purposes of employment, licensing, certification, and volunteer clearances. The following information describes each agency's responsibility toward accessing, storage, handling, dissemination, and destruction of CORI.

Background

Penal Code sections 11105 and 13300 identify who may have access to criminal history information and under what circumstances it may be released.

The DOJ maintains the California Law Enforcement Telecommunications System (CLETS) that provides law enforcement agencies with information directly from federal, state, and local computerized information files. However, restrictions have been placed on the user to ensure that the rights of all citizens of California are properly protected.

Article 1, section 1 of the California Constitution grants California citizens an absolute right to privacy. Individuals or agencies violating these privacy rights place themselves at both criminal and civil liability. Laws governing Californians' right-to-privacy were created to curb, among other things, the excessive collection and retention of personal information by government agencies, the improper use of information properly obtained for a proper purpose, and lack of a reasonable check on the accuracy of existing record: (*White v. Davis* (1975) 13 Cal. 3d 757, 775.)

Employment Background Checks

It is only through the submission of fingerprints to the DOJ that the true identity of an individual can be established. In a 1977 lawsuit (*Central Valley v. Younger*), the court ruled that only arrest entries resulting in conviction, and arrest entries that indicate active prosecution, may be provided for evaluation for employment, licensing, or certification purposes.

Exceptions

Some statutory provisions, such as those relating to youth organizations, schools, and financial institutions further limit information dissemination to conviction for specific offenses. Records provided for criminal justice agency employment as defined in Section 13101 of the Penal Code are exempt from these limitations. In addition, arrest information for certain narcotic and sex crimes, irrespective of disposition, will be provided for employment with a human resource agency as defined in section 1250 of the Health and Safety Code. Other exceptions are listed in the CLETS Policies, Practices, and Procedures (section 1.6.1).



APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

SECURITY OF CRIMINAL OFFENDER RECORD INFORMATION (continued)

Unauthorized Access and Misuse

The unauthorized access and misuse of CORI may affect an individual's civil rights. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a state agency or from records within a system of records maintained by a governmental agency has violated various California statutes. There are several code sections that provide penalties for misuse or unauthorized use of CORI.

Authorized Access

CORI shall be accessible only to the Records Custodian and/or hiring authority charged with determining the suitability for employment or licensing of an applicant. The information received shall be used by the requesting agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency.

The retention and sharing of information between employing and licensing agencies are strictly prohibited. Retention and sharing of information infringes upon the right of privacy as defined in the California Constitution, and fails to meet the compelling state interest defined in *Loder v. Municipal Court* (1976) 17 Cal. 3d 859. In addition, maintenance of CORI separate from the information maintained by the DOJ precludes subsequent record updates and makes it impossible for the DOJ to control dissemination of CORI as outlined in section 11105 of the Penal Code.

CLETS Policies, Practices, and Procedures state that any information transmitted or received via CLETS is confidential and for official use only by authorized personnel (section 1.6.4). The California Code of Regulations, Article 1, section 703, addresses the "right and need" to know CLETS-provided information.

The Bureau of Criminal Information and Analysis (BCIA) recommends that state summary criminal history records, obtained for employment, licensing, or certification purposes, be destroyed once a decision is made to employ, license, or certify the subject of the record. Agencies that either are mandated or permitted by California statute to receive subsequent arrest notifications pursuant to Penal Code (PC) section 11105.2 must complete a Contract for Subsequent Arrest Notification Service (BCII 8049).

Retention of criminal history records beyond this time should be based on documented legal authority and need. Any records retained must be stored in a secured, confidential file. The agency should designate a specific person responsible for the confidentiality of the record and have procedures to prevent further dissemination of the record, unless such dissemination is specifically provided for by law or regulation.



APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

As an agency receiving background clearance information in response to the submission of applicant fingerprint cards to the DOJ, you are aware of the regulations regarding the security of the hard copy information that you currently receive. The purpose of this Subscriber Agreement is to restate existing regulations and clarify how they apply to the electronic receipt of this same information via fax or e-mail. There are no new regulations. Items 1, 2, 4, 5, and 7 restate existing regulations relative to receiving hard copy information. Item 2 has been expanded to include electronic information. Items 3 and 6 are intended to clarify these regulations relative to electronic information.

In accordance with section 11077 of the Penal Code, the Attorney General is responsible for the security of criminal offender record information. Section 707(a) of the California Code of Regulations requires that **"Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion, or release. The computer terminals shall be located in secure premises."**

SUBSCRIBER AGREEMENT

This agreement is between the _____
and the Department of Justice for the purposes of the exchange of criminal offender record information.
The above agrees that:

1. Criminal offender record information and the information derived therefrom shall be accessible only to the records custodian and/or hiring authority charged with determining the suitability of the applicant.
2. Confidential information received electronically or via mail shall be used solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency.
3. Retention of CORI is permissible if, after making its initial employment, licensing, or certification decision, the agency has legitimate business need for the information and there are no statutory requirements to destroy such information. Any record information that is retained by the applicant agency must be stored in a secure and confidential file.
4. Criminal history background checks have been completed on all individuals with access or proximity to terminals or fax machines receiving criminal offender record information.
5. Staff with access to criminal offender record information have received training and counseling on the handling of criminal offender record information and have signed employment statement forms acknowledging and understanding of the criminal penalties for the misuse of criminal offender record information (Penal Code sections 502, 11142, and 11143).



APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

6. Reasonable measures shall be taken to locate terminals and fax machines in a secure area to provide protection from unauthorized access to criminal offender record information by other than authorized personnel. Access is defined as the ability to view criminal offender record information on a terminal or on paper.
7. Pursuant to section 702 of the California Code of Regulations, authorized agencies violating this agreement may lose direct access to criminal offender record information maintained by the Department of Justice.

Contributing Agency Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Phone Number: _____

Signature of Agency Official _____

Printed Name of Agency Official _____

Title of Agency Official _____

Date _____

**CALIFORNIA DEPARTMENT OF JUSTICE
CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION
CRIMINAL OFFENDER RECORD INFORMATION SECURITY REQUIREMENTS
Use of Applicant Criminal Offender Record Information**

Custodian of Records must sign and return document

CUSTODIAN OF RECORDS DUTIES

1. The information provided by the Department of Justice (DOJ) to this agency is **confidential** and shall not be disseminated to any other person or agency not authorized by law. A violation of this section is a misdemeanor. (Penal Code Section 11142). However, the requesting agency may provide a copy of the DOJ applicant response to the subject of the record.
2. All personnel/individuals with access to Criminal Offender Record Information (CORI) will have a fingerprint background clearance record check completed through the DOJ as required by the California Code of Regulations Section 703 (d) prior to the submission of fingerprints for employment, licensing, certification or volunteer purposes. (\$32 processing fee)
3. All personnel/individuals with access to CORI will have a signed "Employee Statement Form" on file acknowledging an understanding of laws prohibiting its misuse. **(See Employee Statement)**
4. All personnel/individuals with access to CORI will be trained in the secure handling, storage, dissemination and destruction of CORI.
5. My agency/organization will have a written policy for securing access, storage, dissemination and destruction of criminal record information. This policy will include the steps to be taken to prevent unauthorized access to CORI maintained in our agency files.
6. The Department of Justice may conduct audits of the authorized persons or agencies using CORI to ensure compliance with state laws and regulations. (Section 702 (c) California Code of Regulations)
7. The information provided by the Department of Justice will be maintained in a secured area/locked cabinet separate from the employees personnel file and be used only for the purpose for which it was acquired.
8. Our agency/organization will notify the Department of Justice with regard to any change of agency name, address, telephone number, fax number, Custodian of Records and contact person.
9. The "No Longer Interested Notification Form" will be sent to DOJ, when applicable.
10. Our agency/organization will send an updated Live Scan Subscriber Agreement form to DOJ signed by our new agency official, when applicable.

On behalf of our agency/organization, I hereby acknowledge that I have read and agree to the above.

Signature: _____ Date: _____

Print Name: _____ Title: _____

Contributing Agency/Organization Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Physical Address: _____

Department:

Authorized Criminal Record Review Log

[illegible]

Live Scan Operators List

[illegible]

Live Scan Service Providers
Security and Disclosure Certification

Individuals providing live scan fingerprinting services collect and have access to personal Applicant information, including fingerprint images, which are considered to be confidential under California law. The California Department of Justice (DOJ) is committed to protecting the privacy rights of individuals and protecting personal information from unauthorized access, use, or disclosure. As an individual providing live scan fingerprinting services on behalf of

(Agency Name), you are responsible for understanding and complying with the following duties and responsibilities related to the protection, use and handling of confidential information.

- 1) You may request and collect only that information which is necessary to perform an applicant live scan transaction.
- 2) You may not deliberately enter false or incomplete data or images, or omit or modify existing valid data in an attempt to affect the outcome of an Applicant's criminal history background check.
- 3) You are strictly prohibited from using any personal Applicant information for any purpose other than the purpose for which the information was expressly provided by the Applicant. You may not share, replicate, compile, remove, delete, alter, or disclose information collected from or regarding Applicants.
- 4) You may not remove materials from the area approved for the placement and use of a live scan device and accompanying secured storage areas without specific authorization from the DOJ. The only exception to this is during the use of a portable live scan device, when materials are transported to and from the site where the live scan device is used.
- 5) You must take reasonable precautions to protect Applicant information from unauthorized access. These reasonable precautions include, but are not limited to: ensuring that any live scan device is inaccessible when unattended; ensuring that unauthorized persons are not allowed to view the screen of a live scan device; storing materials containing confidential information in a secure place; and immediately reporting unauthorized or suspicious individuals or activities to the Live Scan Provider or to the DOJ.

I have read and understand the duties, responsibilities, and restrictions stated above, and have received a copy. I understand that failure to comply with these policies may result in administrative action up to and including criminal and/or civil prosecution in accordance with applicable statutes.

Printed Name of Employee

Title

Signature of Employee

Date

BCII LS SD 01(4-2004)

Department:

Fingerprint Transaction Log

[illegible]

**CALIFORNIA DEPARTMENT OF JUSTICE
CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION
EMPLOYEE STATEMENT
Use of Applicant Criminal Offender Record Information**

All personnel with access must sign this form which is kept by the Custodian of Records

As an employee/volunteer of:

Contributing Agency/Organization Name: _____

You may have access to confidential criminal record information which is controlled by state and federal statutes. Misuse of such information may adversely affect the individual's civil rights and violate constitutional rights of privacy. Penal Code section 502, prescribes the penalties relating to computer crimes. Penal Code Sections 11105 and 13300, identify who has access to criminal history information and under what circumstances it may be disseminated. Penal Code Sections 11140-11144 and 13301-13305, prescribe penalties for misuse of criminal history information. Government Code Section 6200, prescribe felony penalties for misuse of public records. Penal Code Sections 11142 and 13300 state:

"Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive a record or information is guilty of a misdemeanor."

Civil Code Section 1798.53, Invasion of Privacy, states:

"Any person who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal or confidential information maintained by a state agency or from records within a system of records maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual."

CIVIL, CRIMINAL, AND ADMINISTRATIVE PENALTIES:

- * Penal Code Section 11141: DOJ furnishing to unauthorized person (misdemeanor)
- * Penal Code Section 11142: Authorized person furnishing to other (misdemeanor)
- * Penal Code Section 11143: Unauthorized person in possession (misdemeanor)
- * California Constitution, Article I, Section (Right to Privacy)
- * 1798.53 Civil Code, Invasion of Privacy
- * Title 18, USC, Sections 641, 1030, 1951, and 1952

Any employee who is responsible for such misuse may be subject to immediate dismissal. Violations of this law may result in criminal and/or civil action.

**I HAVE READ THE ABOVE AND UNDERSTAND THE POLICY REGARDING MISUES OF
CRIMINAL RECORD INFORMATION**

Signature: _____ Date: _____

Print Name: _____ Title: _____

Contributing Agency/Organization Name: _____

PLEASE NOTE: Do not return this form to the DOJ. Your Custodian of Records should maintain these forms



**NO LONGER INTERESTED (NLI) NOTIFICATION
(FOR NON-DEPARTMENT OF JUSTICE APPLICANTS)**

California Penal Code section 11105.2(d) states, in part, that any agency which submits the fingerprints of applicants for employment or approval to the Department of Justice (DOJ) for the purpose of establishing a record of the applicant to receive notification of subsequent arrests, shall immediately notify the department when employment is terminated or the applicant is not hired.

It is the responsibility of the hiring/approving authority to notify the DOJ, Bureau of Criminal Information and Analysis when employment has been terminated or when an applicant or volunteer is not actually retained to the position for which they applied.

STEP I - APPLICANT INFORMATION (Please type or print in ink)		
FULL NAME (MANDATORY):		
LAST	FIRST	MIDDLE
ALIASES (MAIDEN NAME, AKAs)		
LAST	FIRST	MIDDLE
GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	DATE OF BIRTH (MANDATORY)	CII NUMBER
APPLICATION TYPE (MANDATORY)		
Specific to requesting agency (i.e., credentialed, classified, volunteer, non-sworn, license, permit, peace officer, etc.)		

STEP II - AGENCY INFORMATION	
AGENCY NAME AND ADDRESS (MANDATORY)	AGENCY ORI (MANDATORY)
CONTACT PERSON	

*** FORM MUST BE FILLED OUT COMPLETELY TO ENSURE TIMELY PROCESSING.**

CONTACT INFORMATION
For questions about this form, you may contact the DOJ by email at NLI@doj.ca.gov . Forms must be mailed or faxed to: California Department of Justice Bureau of Criminal Information and Analysis Quality Update & Expedite Section P.O. Box 903417 Sacramento, CA 94203-4170 Fax (916) 227-4722



NO LONGER INTERESTED (NLI) NOTIFICATION (FOR NON-DEPARTMENT OF JUSTICE APPLICANTS)

Privacy Notice

As Required by Civil Code § 1798.17

Collection and Use of Personal Information. The California Justice Information Services (CJIS) Division in the Department of Justice collects the information requested on this form as authorized by Penal Code section 11105.2(d). The CJIS Division uses this information to terminate any further notifications of subsequent arrests to a hiring/approving authority when employment is terminated or the applicant is not hired. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at: <http://oag.ca.gov/privacy-policy>.

Providing Personal Information. All the personal information requested in the form must be provided.

Access to Your Information. You may review the records maintained by the CJIS Division in the Department of Justice that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

Possible Disclosure of Personal Information. In order to terminate any further notifications of subsequent arrests to a hiring/approving authority when employment is terminated or the applicant is not hired, we may need to share the information you give us with other government agencies.

The information you provide may also be disclosed in the following circumstances:

- With other persons or agencies where necessary to perform their legal duties, and their use of your information is compatible and complies with state law, such as for investigations or for licensing, certification, or regulatory purposes;
- To another government agency as required by state or federal law.

Contact Information. For questions about this notice or access to your records, you may contact the Criminal Offender Record Program manager by email at NLI@doj.ca.gov or via mail at:

California Department of Justice
Bureau of Criminal Information and Analysis
Quality Update & Expedite Section
P.O. Box 903417
Sacramento, CA 94203-4170



Fair Chance Employer



Fair Chance Employer
County of Los Angeles



Fair Chance Employer



Fair Chance Employer
County of Los Angeles



Fair Chance Employer



County of Los Angeles
Fair Chance Employer

*Logo Source: www.freelogoservices.com, there is a \$39.95 charge for the final logo design

DHR Fair Chance Program Logos
November 2017



FIND A JOB ▾

WORKING IN THE COUNTY ▾

COUNTY CAREERS ▾

VIDEO LIBRARY ▾

FAQS



FOR EMPLOYEES

YOUR CAREER STARTS **HERE.**

Find out why LA County is your Employer of Choice.



DHR Website - Logo can be placed on the website, it can be linked to the Fair Chance Program website

DHR Fair Chance Program Logos
November 2017

Online **Job Application** System

Applications for most jobs in Los Angeles County are accepted through our online Job Application System.

It's easy to create a personalized profile which includes your contact information as well as your education and work history. You can then use that profile to apply for jobs throughout the County. Click the **CREATE A PROFILE** button above to get started on your Profile.

Once you have searched the open County positions and found the jobs you want, just follow the simple online instructions to apply. You will receive immediate email notification that your application has been received and additional emails as your application progresses through the evaluation process.

THINGS TO INCLUDE IN YOUR **PROFILE**

- ✓ An up-to-date resume
- ✓ A work history
- ✓ Your educational background
- ✓ Certifications and licenses
- ✓ Special skills or languages you speak
- ✓ References



What is a **Class Specification**?

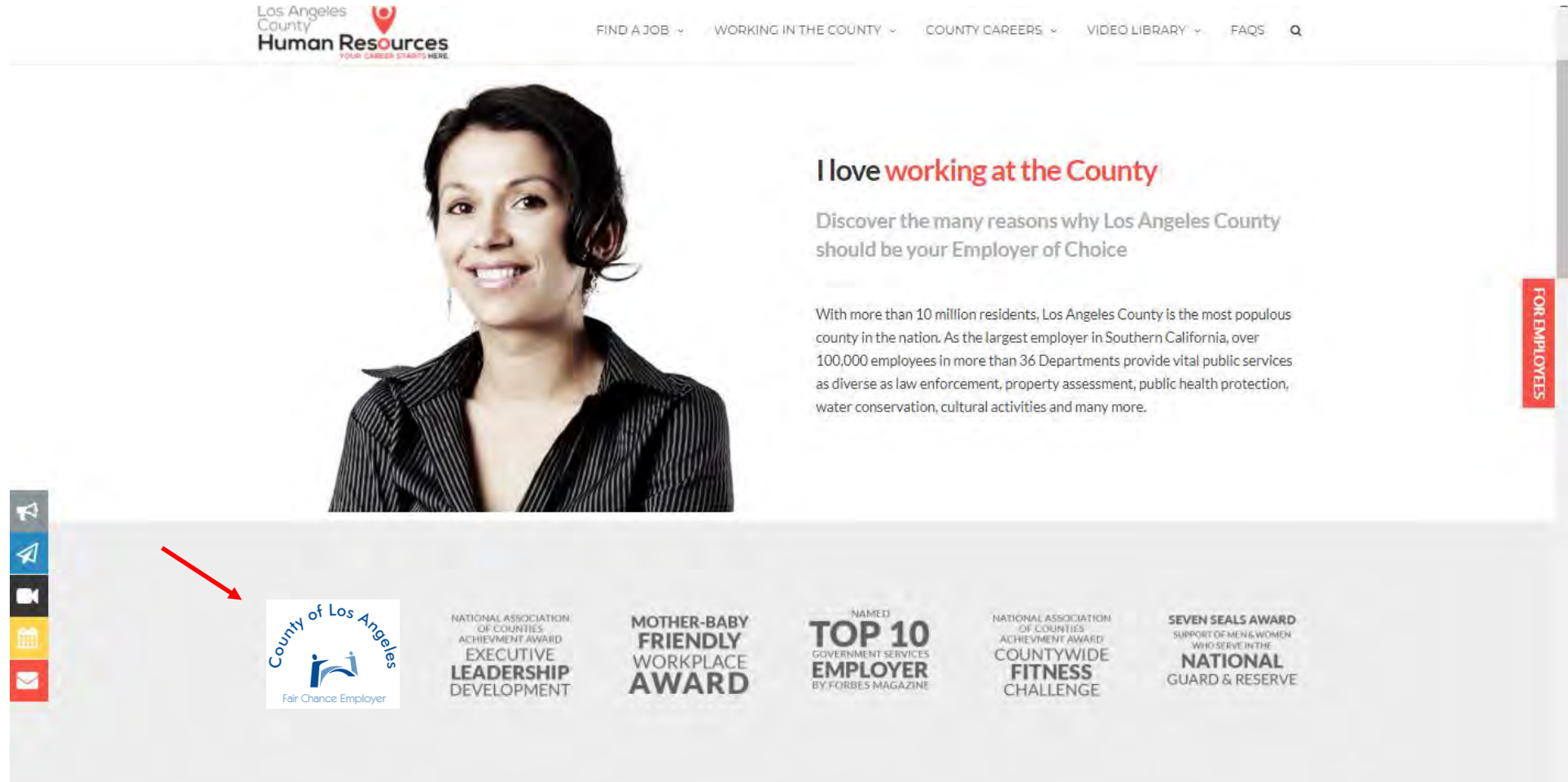
Class Specification is simply government lingo for Job Description. You'll see this term used by public sector agencies from cities, counties and states to even the federal government. The Class Specification will not only describe the job duties, responsibilities and salary range, but also list qualifications, training and credentials required for the position.

[VIEW CLASS SPECS](#)

FOR EMPLOYEES

DHR Website - Logo can be placed on the website, it can be linked to the Fair Chance Program website

DHR Fair Chance Program Logos
November 2017



DHR Website - Logo can be placed on the website, it can be linked to the Fair Chance Program website

DHR Fair Chance Program Logos
November 2017

[SHOW MORE](#)

Job Title	Job Type	Exam Type	Salary	Closing	Posted ▾	Category	Department	Job Number
CHIEF EPIDEMIOLOGIST	Full time	Open	\$84,757.20 - \$117,356.88 yr		10/19/17	Public Health / Statistics/Mathematics	PUBLIC HEALTH	PH1761A
PARK PROJECT COORDINATOR	Full time	Open	\$71,501.52 - \$88,823.04 yr	11/20/17	10/17/17	Parks and Beaches / Planning and Development / Recreation	PARKS AND RECREATION	D4105B

Page 5 of 11



COUNTY OF LOS ANGELES
invites applications for the position of:

PARK PROJECT COORDINATOR

SALARY: \$34.24 - \$42.54 Hourly
\$5,958.46 - \$7,401.92 Monthly
\$71,501.52 - \$88,823.04 Annually

OPENING DATE: 10/17/17

CLOSING DATE: 11/20/17 05:00 PM

POSITION/PROGRAM INFORMATION:

DEPARTMENT OF PARKS AND RECREATION

Filing Begins: October 18, 2017 at 8:00 AM (PST)
Filing Closes: November 20, 2017 at 5:00 PM (PST)

EXAM NUMBER: D4105B

TYPE OF RECRUITMENT: Open Competitive (OC)
JOB TYPE: Permanent

DEFINITION:

Coordinates and inspects park and landscape construction projects.

CLASSIFICATION STANDARDS:

Positions allocable to this class are characterized by having immediate responsibility for coordinating park and landscape construction activities with recreation and maintenance activities in the Department of Parks and Recreation and for inspecting all construction projects and landscape projects developed under Landscape Maintenance Districts to insure compliance with approved plans and specifications and with the program needs of the Department.

ESSENTIAL JOB FUNCTIONS:

Coordinates construction and alteration activities by conferring with both construction personnel and the appropriate recreation and maintenance personnel to determine their basic requirements, to make convenient arrangements and to provide information on the scope and schedule of the construction.

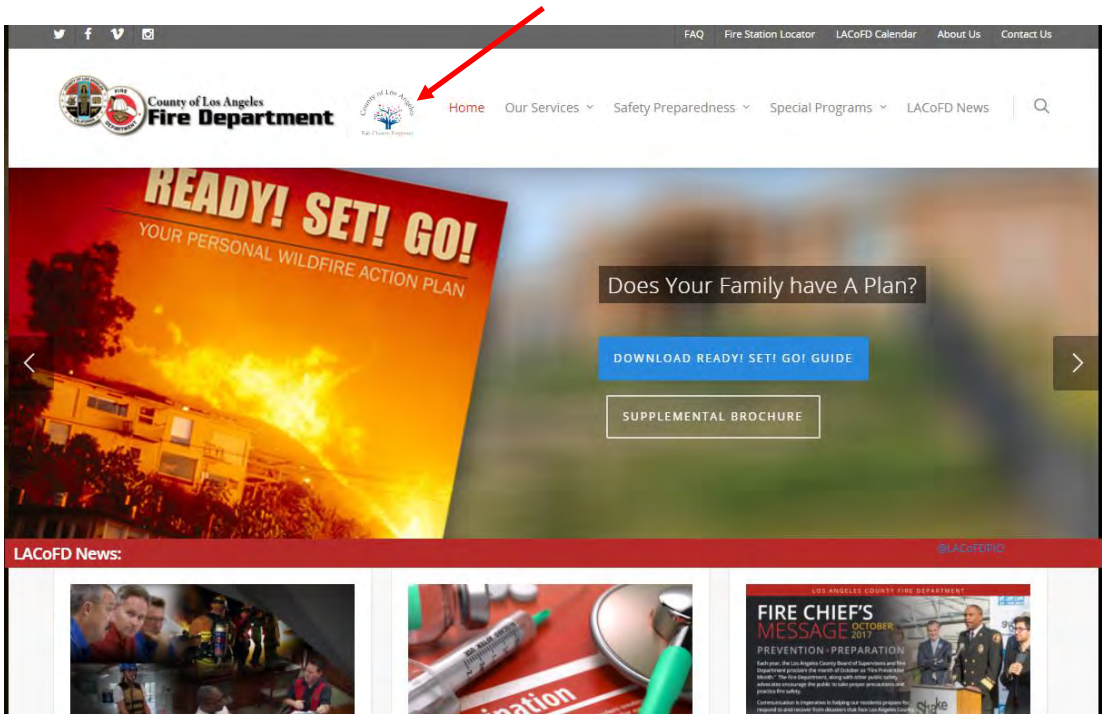
Inspects and supervises the inspection of all construction projects including capital projects, force account, concessionaire, purchase order contract, service contract, volunteer improvement projects and Urban Beautification projects.

Maintains liaison on capital projects activities with the County Engineer and the Chief Executive Office.



Job Bulletin - Logo can be placed on the bulletin, it can be linked to the Fair Chance Program website

DHR Fair Chance Program Logos
November 2017



Department Websites - Logo can be on homepages, linked to the Fair Chance Program website



DHR Fair Chance Program Logos
November 2017



Social Media - Logo can be rotated on the page:

#fairchanceLA #EmployerofChoice

DHR Fair Chance Program Logos
November 2017

Office of Diversion and Reentry

[Office of Diversion & Reentry](#)[+ About Us](#)[Resources and Reports](#)[Media](#)[Contact Us](#)

About Us

The Office of Diversion and Reentry (ODR) was created by the Board of Supervisors in September 2015 to develop and implement county-wide criminal justice diversion for persons with mental health and/or substance use disorders, including persons who are homeless. The following provides an overview of current ODR programming aimed at

DHS Office of Diversion and Reentry homepage - Linked to the Fair Chance Program website, and more resources can be on this website linked to DHR

Fair Chance Program Logos
November 2017



Fair Chance Employer
County of Los Angeles




Fair Chance Employer
County of Los Angeles



Fair Chance Employer
County of Los Angeles



Fair Chance Employer
County of Los Angeles



Fair Chance Employer
County of Los Angeles

*Logo Source: www.freelogoservices.com, there is a \$39.95 charge for the final logo design

DHR Fair Chance Program Logos
November 2017



*Logo Source: www.freelogoservices.com, there is a \$39.95 charge for the final logo design.

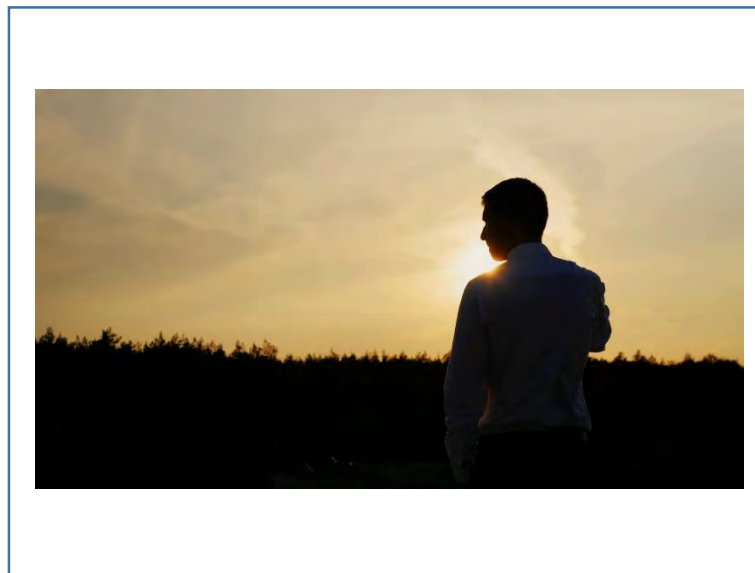
DHR Fair Chance Program Logos
November 2017

Storyboard - Option #1

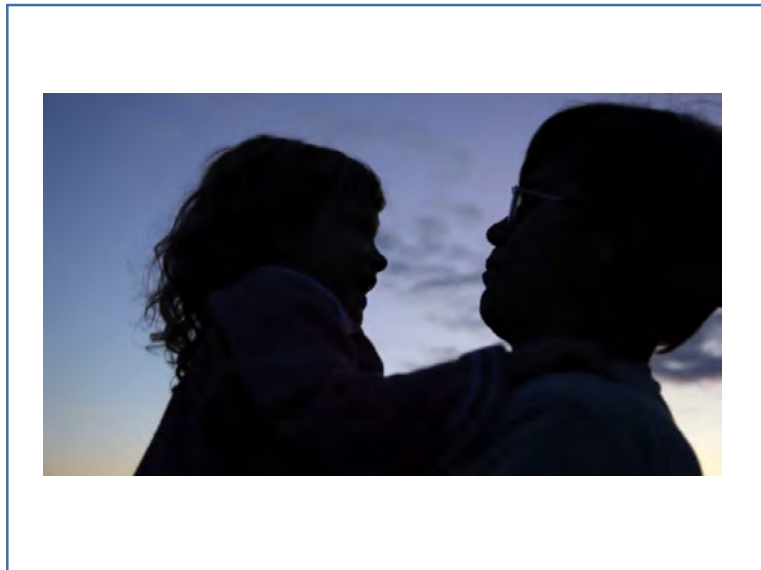
ADDENDUM V



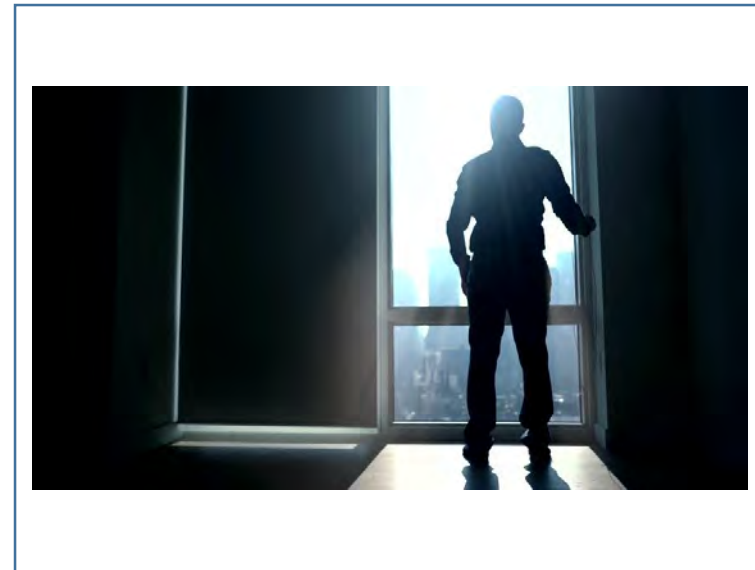
Logo with County Seal



Silhouette of speaker talking about fear of the checkbox



Speaker silhouette talking about experience after being convicted/incarcerated, family is counting on them



Speaker silhouette talks about fear of the criminal record bias, before given a chance to interview



Statistics about the number of people in CA that have prior arrests or convictions



Statistics about the people who find gainful employment, less likely to return to crime.

Storyboard - Option #1



Person in the light, talking about talents and competencies, what they bring to the table, real people



People talking about the current job and their successful transition in the County



People talking about the current job title and their successful transition in the County



Ban the Box

fairchanceLA.org
[#fairchanceLA](https://twitter.com/fairchanceLA)

Logo and resources

Video Reference - NAACP: [Ban the Box](#) (5:17), YouTube.com

Storyboard - Option #2



Can you tell which one has a conviction record?



All of the people have conviction histories, but through Fair Chance, they have jobs in the County



CEO speaks about ban the box, asking the viewer, what do you bring to the table?



DHR DOP speaks about joining the employer of choice, welcoming viewer



fairchanceLA.org
[#fairchanceLA](https://twitter.com/fairchanceLA)



Final shot of CEO and DHR DOP with the group together, fade to resources and website

Video Reference: City of Austin, TX – Fair Chance Hiring Ordinance (1:56), YouTube.com

Storyboard - Option #3



Logo with County Seal and department supporter of the program



One interviewer, one department hiring manager talking about their employee hired through Fair Chance



Hiring manger –about how they are just like everyone else and how the employee benefits the department



Hiring manger – what does ban the box mean to the department and prospects of good future employees

WHAT IS BAN THE BOX?



The new Ban The Box regulation in California is in line with several similar laws and regulations recently adopted across the country. The movement to "ban the box" began with the simple removal of the criminal history/record box on the employment application to prevent early rejection in the hiring process, allowing applicants to make it through the interview before disclosing a criminal history.

However, some of these provisions have migrated from the employment screening realm to tenant screening. We recommend you consult with your counsel regarding your specific legal responsibilities.

Definition of the law and Fair Chance and resources

Video Reference:

Access Ventures – Fair Chance Employment (3:37)

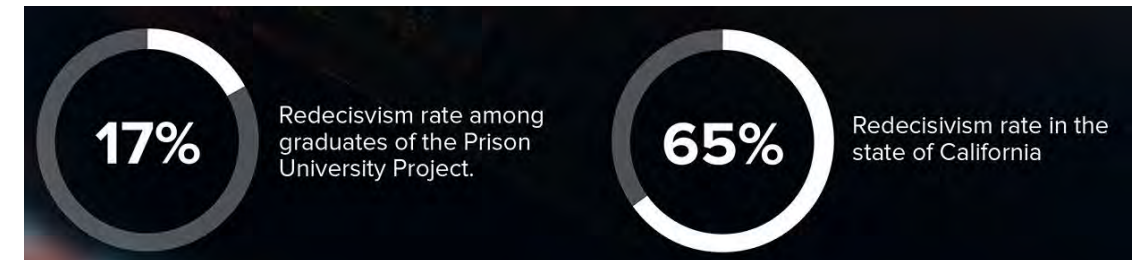
The Daily Show w/ Trevor Noah – Breaking Down the Ban the Box (1:45)

YouTube.com

Possible Statistics



RESEARCH REVEALS
THAT EMPLOYEES WITH
CRIMINAL BACKGROUNDS
ARE IN FACT A BETTER POOL
FOR EMPLOYERS



Sources: BACK TO BUSINESSHOW HIRING FORMERLY INCARCERATED JOB SEEKERS BENEFITS YOUR COMPANY, 2017, American Civil Liberties Union (ACLU); STATE OF RECIDIVISM THE REVOLVING DOOR OF AMERICA'S PRISONS, 2011, Pew Center of the States

Non-profit Organizations - Video Options

Goodwill of Silicon Valley, CA, New Opportunity Work Program (NOW)

<http://www.goodwillsv.org/mission-services/now-program/>

https://www.youtube.com/watch?time_continue=1&v=iwxGQ7SHxdI

Legal Services for Prisoners with Children (LSPC) All of Us or None, Manuel La Fontaine

<https://www.youtube.com/watch?v=O4mb2g-XVjs>

Homeboy Industries, Stand With Us

<https://www.homeboyindustries.org/>

<https://www.youtube.com/watch?v=gRfdOJRTSPM>



Los Angeles County BOARD OF SUPERVISORS POLICY MANUAL

Policy #:	Title:	Effective Date:
XXXX	Fair Chance Employment	00/00/18

PURPOSE

Requires businesses that contract with the County to provide fair chance employment by complying with California Government Code Section 12952, Employment Discrimination: Conviction History.

REFERENCE

July 11, 2017 Board Motion Establishing a Fair Chance Ordinance for Businesses that Contract with Los Angeles County or Do Business in the Unincorporated Areas

[DATE] Board Letter approving Fair Chance Employment Policy

[DATE], Implementation Guidelines for Fair Chance Employment Policy

“Compliance with Fair Chance Employment Hiring Practices Certification” form

POLICY

All County solicitations and contracts, including renewed and/or amended contracts, shall include standard language that requires contractors and its subcontractors to provide fair chance employment by complying with California Government Code Section 12952, Employment Discrimination: Conviction History. Additionally, existing and prospective County contractors and subcontractors must certify in new, renewed, or amended contracts their compliance with fair chance employment practices.

RESPONSIBLE DEPARTMENT

Internal Services Department
Department of Human Resources
County Counsel
Consumer and Business Affairs

DATE ISSUED/SUNSET DATE

Issue Date:

Sunset Date:

SOLICITATION

X.XX Proposer's Acknowledgement of County's Commitment to Fair Chance Employment Hiring Practices

X.XX.X On [date], the Los Angeles County Board of Supervisors approved a Fair Chance Employment Policy in an effort to remove job barriers for individuals with criminal records. The policy requires businesses that contract with the County to comply with fair chance employment hiring practices set forth in California Government Code Section 12952, Employment Discrimination: Conviction History (Section 12952).

Contractors are required to complete Exhibit XX (Compliance with Fair Chance Employment Hiring Practices Certification) in Appendix X (Required Forms), certifying that they are in full compliance with Section 12952, as indicated in Section X.XX (Compliance with Fair Chance Employment Practices) of Appendix X (Sample Contract). Further, contractors are required to comply with the requirements under Section 12952 for the term of any contract awarded pursuant to this solicitation.

SAMPLE CONTRACT

X.XX Compliance with Fair Chance Employment Practices

Contractor shall comply with fair chance employment hiring practices set forth in California Government Code Section 12952, Employment Discrimination: Conviction History. Contractor's violation of this paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract.

REQUIRED FORMS - EXHIBIT XX

COMPLIANCE WITH FAIR CHANCE EMPLOYMENT HIRING PRACTICES CERTIFICATION

Company Name:		
Company Address:		
City:	State:	Zip Code:
Telephone Number:	Email address:	
Solicitation/Contract for _____ Services		

PROPOSER/CONTRACTOR CERTIFICATION

The Los Angeles County Board of Supervisors approved a Fair Chance Employment Policy in an effort to remove job barriers for individuals with criminal records. The policy requires businesses that contract with the County to comply with fair chance employment hiring practices set forth in California Government Code Section 12952, Employment Discrimination: Conviction History (California Government Code Section 12952), effective January 1, 2018.

Proposer/Contractor acknowledges and certifies compliance with fair chance employment hiring practices set forth in California Government Code Section 12952, as indicated in Section 8.56 (Compliance with Fair Chance Employment Practices) of the Contract, and agrees that proposer/contractor and staff performing work under the Contract will be in compliance. Proposer/Contractor further acknowledges that noncompliance with fair chance employment practices set forth in California Government Code Section 12952 may result in rejection of any proposal, or termination of any resultant Contract, at the sole judgment of the County.

I declare under penalty of perjury under the laws of the State of California that the information herein is true and correct and that I am authorized to represent this company.

Print Name:	Title:
Signature:	Date: