

EMPLOYMENT

WHAT YOU NEED TO KNOW

Having a criminal record does not prevent you from getting a job. However, your record may make it more difficult to find work, and some jobs may not be available to you because of your conviction. To increase your chances, begin thinking about your job search before you are released; consider your skills and experience, what kind of job you might want, and start working on your resume.

In most cases, employers cannot have a blanket rule that they will never hire anyone with a criminal record. However, an employer can legally deny you a specific job depending on the kind of criminal record you have and the type of job you applied for. For example, if you were convicted of a sexual offense involving a child, you will probably not be able to get a job at a school.

Prepare to answer questions about your criminal record. Unless you are applying for a job in Seattle, potential employers can ask about past arrests and convictions (see section 9 for more information about Seattle-specific rules). Always read questions about criminal records on job applications carefully (for instance, a question about felony convictions may have a different answer than a question about “all crimes”). **Do not lie about your criminal history when you are seeking a job.**

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INTRODUCTION

Although having a criminal record makes it harder to get a job, many employers will still consider hiring people with a record as long as they have the required skills, experience or knowledge needed for the job. It is important for people with criminal records to show employers that they have moved on from whatever led to them being incarcerated.

To get a job after incarceration, it is crucial to begin planning as early as possible. This means gathering important information and documentation before release. This chapter will provide information and checklists to help you prepare for the job search while still in custody, as well as a list of what you will need for the application process. This chapter also answers common questions about how to handle job applications when you have a criminal record. It will help you understand the effect your criminal history will have on various areas of employment. It will inform you about your rights regarding background checks and the application process, and your rights once you are employed.

PRE-RELEASE: PREPARING FOR THE JOB SEARCH

1. WHAT ARE MY EMPLOYMENT OPTIONS WHEN I AM RELEASED?

Some people think that you should not apply for a job if you have a criminal record. This is not true. There are some jobs that people with certain criminal histories cannot hold (which are discussed in Section 2, “Will my conviction impact my ability to work in some jobs?”). But, apart from those jobs, you can apply to almost any job with any employer if you have the required skills, knowledge or experience for the job. While an employer may be able to deny you a job based on your criminal history, it is often more important to that employer that you have the skills to match the job.

2. WILL MY CONVICTION IMPACT MY ABILITY TO WORK IN SOME JOBS?

As you consider jobs to apply for after release, you should be aware that some jobs may not be available to you because of your conviction. Except for jobs in law enforcement agencies and jobs providing unsupervised access to children and vulnerable adults (such as the elderly in nursing homes), employers cannot have a blanket rule that they will never hire someone with a criminal record.¹ But an employer can legally deny you a job depending on the type of criminal record you have and the type of job that you applied for. For example, guilty pleas or convictions for felony offenses involving certain sexual offenses against children will bar licensing for many positions in education that involve unsupervised access to children, including teaching.²

To find out whether your offense will or may disqualify you from a certain type of job, you can check the Council of State Governments Map, at <https://niccc.csjjusticecenter.org/map/>. To use the map, click on Washington State, and do a search for the category “Employment.”

The Department of Health and Human Services (DHS) also has a list of crimes that would disqualify you for jobs that require unsupervised access to vulnerable adults, juveniles and children. These jobs are generally with nursing homes, in-home service providers, home care agencies, assisted living facilities and adult family houses. The list is available at: www.dshs.wa.gov/bccu/bccucrimeslist.shtml.

3. WHAT CAN I DO TO PREPARE FOR THE JOB HUNT

4. STILL IN CUSTODY?³

You will have a much better chance at getting a job soon after your release if you begin planning while still in custody. Thinking about what you can offer an employer and what you want from a job, collecting the necessary documents, and looking for potential jobs or specific employers will speed up the application process upon release. You can take these steps to put yourself in a better position once you are released:

a. Get a copy of your criminal record. This is important so that you can answer questions accurately on job applications. You also will want to make sure that the information on your criminal history report is correct (if you find incorrect information, please see Section 20, “How can I remove or change incorrect information in a background report?”).

There are a few ways to get a copy of your criminal record. You can get detailed criminal history information from the Washington State Patrol either online or by mail. You may have to pay a fee, which is usually \$12. If you are currently incarcerated, it is unlikely that you will be charged a fee.⁴ Note that if you submit your request through the mail, you can only get information about convictions; if you request the information online you can also get information about arrests less than one year old with dispositions pending. Because employers can consider arrests under certain situations, it is best to get a copy of your criminal record from the internet, so that you have your arrest record. Instructions on how to get these records from WSP are available at www.wsp.wa.gov/crime/chrequests.htm.

You can also get your criminal record directly from the Washington courts. If you, or someone in contact with you, has access to the internet, you can conduct a free search of your history in the Washington State court system at: <https://dw.courts.wa.gov/?fa=home.namesearchTerms>. This will give you a list and timeline for your criminal cases in Washington Courts, but not specific details about each case. Because this search gives less information than the WSP criminal record report, we recommend that you get a copy of your record from WSP if possible.

These are the recommended sources for getting a copy of your criminal records, but there are other sources as well. For information about those sources, and tips on

finding your criminal record, see the American Civil Liberties Union of Washington's www.aclu.org and Reading Criminal History Reports, available at www.wa.gov.
www.aclu.org/reading-and-reading-criminal-history-reports-washington.

Write a draft résumé that you can finalize after you are released. A résumé is a summary of your personal, educational, and professional skills and experience, including your studies/degrees in school and jobs that you have had. Make sure to include the following on your draft résumé:

- **Contact information.** List your name, address, phone number and e-mail address. Some of these will have to wait until after you are released.
- **Employment history.** The usual way to write this section is to list your jobs in date order (most recent first). List names, locations, dates employed, duties, skills and achievements (like being named employee of the month). When listing where you were employed while incarcerated, many recommend that you use “State of Washington” as your employer. This is true and prevents employers from possibly rejecting your application immediately when seeing that you were incarcerated.
- **Education.** List your education, including when and where you graduated or got your degree (or if you did not graduate or get a degree, how long you worked toward it), your focus (sometimes called a major or minor), and any certificates, academic awards or honors that you received. Make sure you use the official name for schools and degrees (for example, say “Washington State University” instead of “WSU” and “Associate of Arts” instead of “AA”). Also include industry accreditations and certifications that you have.
- **Other qualifications.** Add anything important that doesn't fit anywhere else. For example, list your computer knowledge, foreign language ability or other specialized skills.
- **Job objective.** The best résumés explain not only what job you want, but also why you are a good fit for that job. You should work on explaining why you want to be employed, and then fill in this section when you know what specific job you are applying for.

Here are some general tips for creating a good résumé:

- Be brief. One page per 10 years of work experience is a good rule of thumb.⁵
- Only include information that relates to the job you are looking for.

- Do not include your interests unless they relate to the job.

Remember, your résumé is easy to read.

Don't include information about the salary/wage that you want.

c. Create a list of three or more contacts from your prior jobs who can provide you good references during the application process and collect their contact

information. As you get close to release, you should contact these people to ask if they would be willing to be a reference for you, so that they can prepare letters of recommendation and are ready to help you if a potential employer contacts them.

d. Go through the same process to get character references. The best character references are from people in your community whose opinions employers would trust, like church leaders, government leaders or leaders from non-profit organizations (like Big Brothers or Habitat for Humanity).

e. Get your ID. You should obtain one or more of the following forms of legal identification, which you will need for a job application:

- Birth certificate;
- Driver license or State ID card – getting a driver's license may also be important so that you can get to and from a job after release;
- Social Security Card; or
- Military records or Release/Discharge from active duty (DD-214)

See the Identification chapter in this guide for information on how to obtain these items.

f. Practice answering interview questions. When you apply for a job, you may have to complete an interview where the potential employer will ask you questions about your job history, experience and qualifications. Practicing your answers to these types of questions can make the interview process go more smoothly. Make sure you also practice answering questions about your criminal history, so that you are as comfortable as possible discussing this topic in a job interview.

4. WHERE CAN I LOOK FOR JOB LISTINGS?

There are many resources that provide listings of open jobs; below are some that may be especially helpful.

- **Washington State WorkSource.** WorkSource offers self-help programs, group programs and activities, workshops, one on one consultations, and training programs for job seekers. It has an extensive website, and offices in several areas across Washington. www.worksourcewa.com , 888-316-5627.
- **Employment Security Department (ESD).** The ESD provides resources for job seekers. The agency works with local WorkSource centers and other sites in addition to providing placement assistance. www.esd.wa.gov/jobs-and-training
- **People for People.** People for People provides several resources, including employment training, for people in Eastern Washington. www.pfp.org (then click on “Departments,” and “Workforce Training”), (509) 248-6726, adminreception@pfp.org.
- **Goodwill.** Goodwill offers those with criminal backgrounds pre-release services, basic skills development, employment readiness training, occupational skill training, and job placement assistance. www.goodwill.org/find-jobs-and-services/find-a-job/ (and scroll down to “People with Criminal Backgrounds” section), (800) GOODWILL.
- **Craigslist.** Craigslist lists many jobs in a variety of occupations. Sort by county listings by clicking at the top of the screen on the county where you want to work. <http://seattle.craigslist.org/>
- **Washington State Department of Labor & Industries.** The Department of Labor & Industries lists Apprenticeship Programs in Washington. [Apprenticeships](http://www.lni.wa.gov/tradeslicensing/apprenticeship/programs/) are generally a mix of work and school that results in the apprentice being trained in a specific field (often, in the construction trades). www.lni.wa.gov/tradeslicensing/apprenticeship/programs/
- **Careeronestop.** This website is sponsored by the U.S. Department of Labor, and is a resource for finding jobs and job training. www.careeronestop.org/
- **Monster.com and Indeed.com.** By using either of these websites you can search for jobs by type and location and also create accounts that recruiters use to contact you. Monster.com also features career advice and resume help. www.monster.com/ and www.indeed.com/

Non-internet sources such as newspaper classifieds are also useful. In addition to these resources, you can ask a counselor where you can look for job listings while

in custody.

CAN I FIND THE EMPLOYERS THAT ARE MOST ACCEPTING OF THOSE WITH CRIMINAL RECORDS?

Apprenticeship programs typically do not care much about whether someone has a felony conviction or criminal record.⁶ Employers are also less likely to deny you an entry-level job because of your criminal record than a higher-level job. Although entry-level jobs are not as desirable, they give you stability, in the form of an income, while you look for a better job. They also show future employers your willingness to work, and help you build a post-release résumé. For a list of employers that hire people with felony convictions, use <http://jobsthathirefelons.org>. Note that this is not necessarily a complete list, and that it is possible to work at a company that is not listed here.

In addition, Goodwill, mentioned in the previous section, has employment specialists who work with people that have criminal records. Contact a Goodwill specialist in the area where you want to work and ask them about employers that are friendlier to those with criminal records. WorkSource and other independent non-profit agencies also have employment specialists that may be able to help you.⁷

6. WHAT OTHER TYPES OF JOB SEARCHING ASSISTANCE ARE AVAILABLE TO ME?

If you have a disability, you may be eligible for re-training or other job placement assistance with the DSHS Division of Vocational Rehabilitation (DVR). For more information, visit DVR's website at www.dshs.wa.gov/dvr/.

7. WHAT JOB TRAINING OPTIONS ARE AVAILABLE TO ME WHILE STILL IN CUSTODY?

Under Washington law, the Department of Corrections must develop an individual reentry plan for every offender before they are released, except those sentenced to life imprisonment or the death penalty, or those who are deportable.⁸ While eligible offenders do not have a right to specific services or education, the DOC must connect them with existing resources to serve their reentry needs.⁹ This includes

creating a portfolio that includes their education achievements, certifications, previous work experience, skills, and any training received prior to and during incarceration.⁹ This portfolio should provide the majority of information needed to create a résumé.

The JOC also has an Offender Education Program that offers you opportunities to increase your knowledge, skills, and ability to function effectively while incarcerated and upon release. There are several standard classes in every Offender Education Program, but some class availability depends on where you are incarcerated.¹¹ Programs address a broad range of offender needs, including Adult Basic Education, English as a Second Language, vocational skills training, and offender change programs.¹²

POST-RELEASE: APPLYING AND INTERVIEWING FOR A JOB

A. APPLICATIONS

8. HOW DO I APPLY FOR A JOB UPON RELEASE?

Use the resources listed in Section 4, “Where Can I Look for Job Listings?”, to find jobs that seem like a good fit for your skills and goals. If there are instructions in the job listing about how to apply for the job, follow the instructions. If there are not instructions in the job listing about how to apply, contact the employer to ask how to apply. If the employer does not tell you how to apply, send the employer your résumé with a cover letter explaining the job that you are applying for, how you found out about the job, and why you would be a good fit for the job.

9. WHAT TYPES OF QUESTIONS CAN AN EMPLOYER ASK ME ABOUT MY CRIMINAL HISTORY?

Under the recently-passed Washington Fair Chance Act, most employers in Washington cannot ask on a job application whether you’ve ever been arrested or convicted. Employers can ask questions about criminal matters, but not until they determine that you are qualified for the job. The remainder of this section only applies to questions asked after you have submitted your application and passed

the initial screening. What employers can ask at that point depends on whether they are asking about convictions or arrests. Employers can also legally ask you about employment listed on your résumé.

Even for employers that have fewer than eight employees, and for the jobs listed in Section 2 above, a potential employer cannot ask you about convictions that are more than ten years old, or are not reasonably related to the duties of the job that you are applying for.¹³

Additionally, if an employer asks you about arrests, they must also ask:

- whether the charges are still pending,
- whether the charges have been dismissed,
- whether the arrest led to a conviction of a crime involving conduct that would negatively affect job performance, and
- whether the arrest occurred within the last 10 years.¹⁴

Seattle-Specific

If you are applying for a job with a private (non-government) employer where you would work a substantial amount of time in the City of Seattle, a special law called the Fair Chance Employment Ordinance may apply to you. This law provides additional protections for employees beyond those in the state-wide Fair Chance Act.¹⁵ See Section 23 for more information.

10. HOW SHOULD I ANSWER QUESTIONS ON A JOB APPLICATION ABOUT MY CRIMINAL RECORD?

Although most employers cannot ask you questions about your criminal history until they have determined that you are qualified for the job for which you are applying, they can still ask these questions, in writing or verbally, at that point. The first step is to make sure you understand what the employer is asking. The information that you have to provide in response to a question about your felony convictions could be very different from a question about all “crimes.”

Once you understand the question about your criminal record, you should answer as honestly and accurately as possible. Answering questions inaccurately can lead to

employers denying you employment (or firing you if they find out about it later), your criminal history would not have prevented you from being hired. Lying about questions about your criminal history (not giving information that you should be given is viewed the same as giving incorrect information) and do not provide false or misleading information.

If you check “yes” next to a question about your criminal history, there are a variety of ways to proceed. You can write “will discuss during interview” next to it and explain your record in person. If you choose this option you should plan out and practice how you will explain your record to the interviewer. You can also write the type of crime, such as “nonviolent drug offense,” if you feel that the crime is not serious or related to the job. Finally, you can include a letter of explanation.

Before choosing one of these options, you should consult with a job search specialist, such as those listed in Section 4 of this chapter.

11. SHOULD I GIVE MORE INFORMATION THAN THE EMPLOYER ASKS FOR?

You do not have to give information about your criminal history that an employer does not request, but there is a good chance that the employer will find out about it, whether during the interview process or after you get the job.

When deciding whether to disclose something not asked about, you should consider:

- the age and type of the conviction (the older and less serious the conviction is, the less important it is to tell the employer about it);
- the job that you are applying for and how the conviction relates to it (if the conviction relates to the job you are applying for, it makes sense to tell the employer about it);
- whether the employer will conduct a background check (if the employer will conduct a background check, they will find out about at least the last 7 years of convictions and arrests, so you will likely want to disclose them); and
- whether the employer will conduct a background check (if the employer will conduct a background check, they will find out about at least the last 7 years of convictions and arrests, so you will likely want to disclose them).

12. WHAT DO I SAY ABOUT VACATED OR SEALED CASES?

This depends on the type of case. If you were convicted as a juvenile and your court records were *sealed*, you do not need to tell the employer about that conviction.¹⁶ For more information about sealing records, see the Criminal Records and Background Checks chapter of this Guide.

If you have a conviction that has been *vacated*, you have the right to say that you were never convicted of that crime.¹⁷ The Washington State Patrol will not report convictions that have been vacated. But since vacated convictions can still show up in public records, they are often reported on background checks. As a result, if the employer is likely to run a background check on you, you should consider telling the employer about the conviction, but explain that it was vacated.

13. CAN I SUBMIT DOCUMENTATION TO SHOW THAT I AM REHABILITATED SINCE A CONVICTION?

You can submit documents that you think will help explain your criminal record. Employment or character references (as discussed in Section 3, “What can I do to prepare for the job hunt while still in custody?”) can be very helpful if the employer will accept them. Employers are not required to accept such documents, but generally will do so.

B. BACKGROUND CHECKS

14. DO I HAVE A RIGHT TO KNOW WHETHER AN EMPLOYER IS DOING A BACKGROUND CHECK ON ME?

It depends. If the employer is doing its own investigation, such as looking at court records or interviewing people that know you, then you do not have a right to know. But if an employer uses a third-party, such as a Consumer Reporting Agency (CRA), to perform a background check on you, then you have the right to know about it under a law called the Fair Credit Reporting Act. Most employers use CRAs to perform background checks on potential employees.

an employer who requests a background check from a CRA must get your written consent, so.¹⁸ In addition, the employer must notify you in writing that it may use a background check report to deny you employment.¹⁹

WHAT'S INCLUDED IN AN EMPLOYEE BACKGROUND CHECK?

It depends on the source. For example, if an employer orders a copy of your criminal history from the Washington State Patrol, it will receive a report with all non-sealed and non-vacated adult and juvenile convictions from Washington state courts, no matter how old the convictions are. But if an employer orders a background report from a CRA, it will generally receive a report with adult and juvenile information (including arrests) from all states, including federal offenses.

16. WHAT KINDS OF INFORMATION ARE CRAS PREVENTED FROM INCLUDING IN THEIR BACKGROUND CHECK REPORTS?

There are limits on what information a CRA can report about you. As long as you are applying for a job with an annual salary below \$75,000, federal law does not allow CRAs to report arrests that are more than 7 years old and that did not result in a conviction.²⁰ In addition, under Washington law, if you are applying for a job with an annual salary under \$20,000, CRAs cannot report information about arrests or convictions that are more than 7 years old.²¹ CRAs also cannot report juvenile convictions if you are 21 years old at the time of the background check.²²

There is a big difference between what a CRA can report versus what information an employer can use when making employment decisions. For example, even though CRAs generally cannot report arrests older than 7 years if they didn't result in convictions, an employer can consider those arrests in making an employment decision if they find out about them another way (such as through a search of court records).

17. DO I HAVE A RIGHT TO KNOW IF AN EMPLOYER PLANS TO DENY ME EMPLOYMENT BASED ON MY BACKGROUND CHECK?

as long as the background check report is provided by a CRA. Before an employer can deny you a job (or, after you are hired, fires you or refuses you a promotion) based at least in part on information from a background report, it must tell you in writing that it plans to do so and must provide you with a copy of the background report and a document titled "A Summary of Your Rights Under the Fair Credit Reporting Act."²³

Before denying you a job, the employer also has to give you a chance to review the background report and respond to any information in the report.²⁴ The law does not say how long you have to respond, but courts and congress have found that as little as five days is reasonable.²⁵ As a result, you should act quickly to review and respond to the background check report.

18. HOW SHOULD I RESPOND TO AN EMPLOYER WHO PLANS NOT TO HIRE ME AS A RESULT OF INFORMATION IN MY BACKGROUND CHECK?

First, you should review the background report to see if the information is accurate. If it is not, then you should tell the employer what information is wrong, and let the employer know that you are contacting the CRA to correct the information.

If the information in the background report is correct, you can still try to change the employer's mind by explaining the circumstances under which you were arrested or convicted, or how your conviction has nothing to do with the job that you are applying for, or that you are rehabilitated (employer or character references are helpful here). You can also point out the benefits available to employers who hire people with criminal records, discussed in more detail in Section 29, "Can I do anything to encourage an employer to hire someone with a criminal record?".

19. DO I HAVE A RIGHT TO KNOW IF AN EMPLOYER HAS DENIED ME EMPLOYMENT BASED ON MY BACKGROUND REPORT?

Even if an employer has already given you notice that it plans to deny you a job based on information from a background report that it received from a CRA, it must

Give you additional information once it actually denies you the job. Specifically, the employer must give you (not necessarily in writing):

- A description of the action taken based on information from the background report; the name, address, and telephone number of the CRA that supplied the background report;
- A statement that the CRA that supplied the background report did not make the decision to deny you a job and cannot give you specific reasons for that decision; and
- Notices of your right to challenge the accuracy or completeness of any information in the background report, and your right to an additional free copy of the report, if requested from the CRA within 60 days of when you were denied the job.²⁶

20. HOW CAN I REMOVE OR CHANGE INCORRECT INFORMATION FROM A BACKGROUND REPORT?

If the background report was provided by a CRA, you should contact the CRA, in writing if possible, using the contact information provided by the employer. You should explain what part of the report is wrong, highlighting or otherwise marking that part of the report on a copy. You should also give the CRA the correct information, with document backup, if possible. Finally, a reasonable time period after contacting the CRA, you should follow up with the CRA to make sure that the correct information is being used.

If the background report was provided by the Washington State Patrol, you should provide similar information to that agency, using its Request for Modification of Record form, available at: www.wsp.wa.gov/crime/chupdates.htm.

21. WHAT MUST A CRA DO WHEN I ASK FOR IT TO CORRECT INFORMATION FROM MY BACKGROUND REPORT?

Once you have requested that a CRA correct information from your background report, it must perform an investigation (including consideration of the information that you submitted) within 30 days. If, after this time, the CRA finds that the

information is wrong or if the CRA cannot verify its accuracy, it must delete the information or change it so that it is correct. The CRA also has to take reasonable steps to ensure that the incorrect information will not be included in background reports in the future, and it must tell any employers that received the inaccurate report over the last two years that information has been deleted or corrected.²⁷

22. WHAT CAN I DO IF THE CRA OR THE EMPLOYER DOES NOT FOLLOW THE LAW REGARDING MY BACKGROUND CHECK?

If you think an employer or CRA broke the laws on background checks, you should contact an attorney. The law allows people to sue employers or CRAs for certain violations and to recover money for damage caused by the violation.

You can also report the violation to the Federal Trade Commission, the government agency that enforces the Fair Credit Reporting Act, by filing a complaint:

- By telephone at 1-877-382-4357; or
- By mail to: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or
- Online at www.ftccomplaintassistant.gov/ (then click “Credit and Debt,” then click “Credit and Loans,” then click “Credit Reporting”).

C. THE EMPLOYER’S DECISION ABOUT HIRING ME

23. CAN AN EMPLOYER REFUSE TO HIRE ME BECAUSE OF MY CRIMINAL HISTORY?

Washington is an “at will employment” state, which means that employers can refuse to hire (or can fire) people for any reason except for certain things about them that are protected by law, like their race, color, age (if over 40 years old), sex, marital status, sexual orientation, creed (religion), national origin, military status or disability.²⁸ Having a criminal record is not a protected characteristic.

However, because refusing to hire anyone with a criminal record can cause an employer to potentially discriminate against people of a particular protected class (like race), employers should consider your individual circumstances and how they relate to the needs of the employer's business before making a decision based on your criminal record.²⁹ This is known as an *individualized assessment*. Employers performing an individualized assessment should consider:

- The facts or circumstances surrounding the offense;
- The number of offenses you have;
- Your age at the time of conviction or release from prison;
- Whether you have had jobs in the past that are similar to the job that you are applying for;
- Your employment history;
- Your education, training or other efforts at rehabilitation;
- Employment or character references, if provided; and
- Whether you can be bonded under a federal, state, or local program (see Section 29, "Can I do anything to encourage an employer to hire someone with a criminal record?" for more information about bonding.)³⁰
- If, after considering these factors, the employer determines that your conviction is related to the job, and that it is necessary for the business to deny you that job, it can legally deny you the job based on your conviction.³¹

Seattle-Specific:

If you are applying for a job where you would work a substantial amount of your time in Seattle, then, with certain exceptions for jobs in law enforcement and with vulnerable children and adults, an employer cannot refuse to hire you solely based on your criminal conviction record unless the employer has a legitimate business reason for doing so.³² An employer only has a legitimate business reason to refuse you hire you if your conviction would have a negative impact on your ability to perform the job, or if it would harm people, property, or the employer's reputation.³³ For instance, if Joe Smith gets out of prison and applies for a job, the employer can consider his particular conviction history when deciding whether or not to hire him. As an example, if Joe went to prison for stealing and now he is applying for a job where he would have access to large sums of cash, the employer may think that hiring Joe is too risky. However, the employer must have a reason

that is related to Joe's specific circumstances. The employer may **not** say, "Sorry Joe, we don't hire people with criminal records."

Even if an employer has a legitimate business reason to deny you employment solely based on your conviction(s), the employer must identify for you the record or information that it is relying on, and give you a reasonable opportunity to explain or correct that information.³⁴ Specifically, employers have to hold the position open for at least two business days after giving you notice to allow you time to respond.³⁵

If you feel an employer has violated this law, you can sue them or file a complaint with the Seattle Office of Labor Standards (SOLS). For more information, you can call SOLS at (206) 684-4500 or visit their office at 810 Third Avenue, Suite 750, Seattle, WA, 98104. You may also submit a question or complaint to SOLS online at <https://seattle-cr.entellitrak.com/etk-seattle-cr-prod/page.request.do?page=page.form.intake.questionnaire>.

24. HOW OLD OF A CONVICTION CAN AN EMPLOYER USE TO DENY ME EMPLOYMENT?

Pre-employment questions about convictions are generally acceptable under Washington law if the convictions relate to the duties of the offered job, and if the convictions occurred within the last 10 years.³⁶ So, decisions based on convictions more than 10 years old or that do not relate to the duties of the job will not be considered justified by business necessity (except for the jobs discussed in Section 2, "Will my conviction impact my ability to work in some jobs?", above).³⁷

25. CAN AN EMPLOYER DENY ME EMPLOYMENT BECAUSE OF AN ARREST?

The fact that you have been arrested does not prove that you committed a crime. An employer cannot deny you employment just because you've been arrested.³⁸ However, an employer can legally make an employment decision based on the conduct underlying the arrest if the conduct makes you unfit for the job.³⁹ Remember that this is up to the employer; one employer may be willing to hire you after an arrest while another may not. This is why it is important to keep applying for jobs and not get discouraged.

Seattle-Specific:

...ations discussed in the Seattle Specific part of Section 23, “Can an employer refuse to hire me because of my criminal history?” apply to employer decisions based solely on arrests and pending charges against you.⁴⁰

26. CAN AN EMPLOYER DENY ME EMPLOYMENT BASED ON POOR CREDIT?

Yes, but only if the information about your credit is substantially related to the job that you are applying for.⁴¹ In addition, because credit information must generally be provided by a third party, the employer must get your consent to look at this information, and must provide you with notice and an opportunity to respond if it plans to deny you employment based on your credit. See Sections 14-23, above, for more information about these requirements.

27. WHAT CAN I DO, OR WHERE CAN I GO, IF I’M TURNED DOWN FROM EMPLOYMENT BECAUSE OF MY CRIMINAL HISTORY?

If an employer has not followed the laws discussed above, you may have grounds for a discrimination claim. If this has occurred, you can:

- Contact a private attorney;
- Contact the Federal *Equal Employment Opportunity Commission* within 300 days of the violation by calling 1-800-669-4000; or
- Fill out a complaint form with the Washington State Human Rights Commission (WSHRC), and mail it to the address on the form **within six months of the violation**. The form is available online at: www.hum.wa.gov/discrimination-complaint. If the WSHRC finds that the employer is at fault, it will try to put together a voluntary agreement for both you and the employer to sign. If you cannot come to an agreement, the WSHRC will send the information to an Administrative Law Judge, who can penalize the employer for not following the law.⁴²

King County Specific:

- If your employer is located in King County, you can file a complaint with the King County Office of Civil Rights by:

calling (206) 467-0626 or (206) 263-2446 and asking to speak with an investigator about a complaint;

Sending an email to Civil-Rights.OCR@kingcounty.gov with your concerns; or

- Filling out a Complaint Form available online at www.kingcounty.gov/~media/exec/civilrights/documents/intakeFE.ashx?la=en, and mailing it to the address on the last page of the form. A copy of the form is included in the Resources section of this chapter.

Seattle Specific:

If your employer is located in Seattle, you can file a complaint with the Seattle Office of Civil Rights by:

- Calling SOLS at (206) 684-4500;
- Visiting SOLS from 8 a.m. to 5 p.m., Monday-Friday, at 810 Third Avenue, Suite 750, Seattle, WA, 98104; or
- Submitting a complaint to SOLS online, at <https://seattle-cr.entellitrak.com/etk-seattle-cr-prod/page.request.do?page=page.form.intake.questionnaire>

D. OTHER PRE-EMPLOYMENT QUESTIONS

28. CAN I GET UNEMPLOYMENT BENEFITS WHILE I LOOK FOR A JOB IMMEDIATELY AFTER RELEASE?

Not likely. You need to work a certain number of hours in Washington to be eligible for unemployment benefits, and your job in prison will not count. This means that unless you worked a significant number of hours in Washington before becoming incarcerated, and will be applying for unemployment benefits during the same year in which you worked those hours, you will not be eligible for benefits.

Even if you are not eligible for unemployment benefits while you are looking for a job immediately after release, you may be eligible for those benefits if you become unemployed after finding your first post-release work. See Section 33 ("If I lose my

↳ how can I get unemployment benefits?") for more discussion of unemployment

29. I DO ANYTHING TO ENCOURAGE AN EMPLOYER TO HIRE SOMEONE WITH A CRIMINAL RECORD?

There are many state and federal programs that provide an employer with benefits if it hires people with criminal records. You may want to tell an employer about these programs when you are explaining your incarceration.

- **Work Opportunity Tax Credit Program:** This program allows employers to save money on their federal income taxes through a tax credit if they hire people who were convicted of a felony within one year after their conviction or after their release from prison. For more information see (1) <http://www.doleta.gov/wotc> and (2) <https://esd.wa.gov/about-employees/WOTC>.
- **Washington Bonding Program:** Washington's Employment Security Department provides an incentive for employers to hire applicants who might not otherwise be hired because they pose a risk to an employer, such as people with criminal backgrounds or recovering substance abusers. Under this program, fidelity bonds (which are a form of insurance, not the same as bail or court bonds) are given to employers at no cost to the employer or the applicant. The bond insurance covers any loss resulting from any form of stealing by employees, including theft, forgery, larceny, and embezzlement. In general, anybody who needs bonding and can't get bonded through a commercial bonding company would qualify for the fidelity bond as long as they are not self-employed. For more information, see ESD's website at www.wa.gov/esd/oes/bond/default.htm.

POST-RELEASE: AFTER OBTAINING EMPLOYMENT

30. WHAT REASONS RELATED TO MY CRIMINAL RECORD CAN GET ME FIRED?

The discussion found in Section 23, above, about how an employer can respond to a conviction also applies when you already have a job. So if an employer asks you about a conviction that relates to the job that you have, and that it is necessary for the business to fire you, it can legally do so, even if the employer did not ask about convictions during the application process.⁴³

Despite this possibility, most employers ask about criminal records before making a hiring decision, and are not likely to fire you for having a criminal record if they were willing to hire you when they already knew about your record. But if the employer asks you about your criminal record during the application process and you do not fully answer the question, the employer will likely fire you for dishonesty if or when it learns the full truth.

31. CAN I BE FIRED FOR AN ARREST THAT DOES NOT RESULT IN A CONVICTION?

An employer cannot fire you solely because you've been arrested, but can legally fire you based on the conduct underlying the arrest if the conduct makes you unfit for the job.⁴⁴ For example, if you were employed as a nurse and were arrested, but not convicted, for illegally selling prescription medication, your employer may see the underlying cause of the arrest as grounds for dismissal, and legally fire you.⁴⁵

32. WHAT IS AN EMPLOYER ALLOWED TO DISCLOSE ABOUT MY CRIMINAL HISTORY TO COWORKERS, FUTURE EMPLOYERS, AND OTHERS?

Because criminal history information is technically a public record, there are no laws prohibiting your employer from disclosing information about your criminal history to coworkers, future employers and others.

However, often the form giving an employer the right to perform a background check on you will contain language limiting the employer's use of the information to evaluating your job application. If the agreement you signed includes that language and your employer later fails to honor it, you may have a claim against your employer. Additionally, if your employer discloses your criminal history for the express purpose of harassing you, you may have other legal claims against your employer. Consult with an attorney or the agencies discussed above in Section 27,

"What can I do, or where can I go, if I'm turned down from employment because of my disability?"

33. IF I LOSE MY JOB, HOW CAN I GET UNEMPLOYMENT BENEFITS?

To obtain unemployment compensation in Washington, you must meet certain eligibility requirements. Specifically, you must have worked at least 680 hours in Washington in the year, have lost your job through no fault of your own, and be trying to find a new job.⁴⁶ To find out how many hours of covered employment you worked in your base year, contact the Employment Security Department at (800) 318-6022.

To file an initial application for unemployment, you should call (800) 318-6022, or visit the Employment Security Department's web site and apply online at <https://secure.esd.wa.gov/home/>. The ESD provides services over the telephone in numerous languages and is available to help guide you through the process.

You will need the following information to complete an application:

- Your Social Security Number;
- Your name, birthdate and contact information (for example, mailing address, phone number and email address);
- Your highest level of education;
- The names and mailing addresses of all your employers during the past 18 months, including part-time, temporary jobs and work-release jobs;
- The dates you worked for all employers in the past 18 months;
- If you get your work through a union, the name and local number of your union;
- If you were in the military during the last 18 months, your discharge information (often form DD-214);
- If you were a federal employee in the past 18 months, your Standard Form 8 (SF8), "Notice To Federal Employees About Unemployment Insurance";
- Your citizenship status (if you're not an U.S. citizen, then your work authorization information); and

- The reason you became unemployed. It is very important that you explain why your job ended, because eligibility for benefits depends on these

After you file your application, ESD has to make a decision about your eligibility for benefits. The agency will get information about the end of your employment from both you and your employer. Both you and your employer then have an opportunity to respond to each other's version of the separation. ESD will then issue a written decision based on the information they gathered.

For more information about unemployment benefits, see the Other Government Benefits chapter of this Guide.

34. **CAN MY CRIMINAL RECORD OR INCARCERATION AFFECT UNEMPLOYMENT BENEFITS?**

If you meet the requirements listed immediately above in Section 33, then your criminal record or incarceration will not affect your unemployment benefits.

35. **WHAT CAN I DO IF I FEEL I WAS WRONGLY DENIED UNEMPLOYMENT BENEFITS?**

If you feel you were wrongly denied unemployment benefits, you can file a "Petition for Review" with a group called an appeal tribunal as long as you do so within 30 days of the date of the decision you are appealing.⁴⁷ You can also appeal the decision of the appeal tribunal to the Commissioner of ESD by filing a Petition for Review with the Commissioner within 30 days of the date of the appeal tribunal's decision.⁴⁸ Instructions on how to appeal these decisions should be included in the letters denying your benefits.

If you appeal and the Commissioner denies you benefits, then you can appeal your case to a state Superior Court for the county where you live, or in Thurston County.⁴⁹ There should be no charge for filing a Petition for Review. For more information, see Washington Law Help's publication "How Do I Appeal the Denial of my Unemployment Benefits to Superior Court," available at www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-

REF JRCES

Documents:

Getting and Reading Criminal History Reports, ACLU of Washington,
www.aclu-wa.org/docs/getting-and-reading-criminal-history-reports-washington.

How Do I Appeal the Denial of my Unemployment Benefits to Superior Court,
Washington Law Help,
[www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-
BF37E9BC9FFA/attachments/392EC278-0370-1E58-A927-D2A62E96750C/7602en.pdf](http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/392EC278-0370-1E58-A927-D2A62E96750C/7602en.pdf).

Resources to help you find jobs or job training:

Employment Security Department Jobs and Training, www.esd.wa.gov/jobs-and-training

Washington State Department of Labor and Industries List of Apprenticeship
Programs:
www.lni.wa.gov/tradeslicensing/apprenticeship/programs/

Washington State Department of Social and Health Services Division of Vocational
Rehabilitation, www.dshs.wa.gov/ra/division-vocational-rehabilitation (job and job
training resources for people with disabilities)

Careeronestop, www.careeronestop.org/

Craigslist, www.craigslist.org/about/sites#US

Goodwill, www.goodwill.org/find-jobs-and-services/find-a-job/

Indeed.com, www.indeed.com/

Monster.com, www.monster.com/

People for People, www.pfp.org/pfp/index.aspx

Resources:

Consider the Consequences of Criminal Records Map, Council of State Governments, <http://niccc.csgjusticecenter.org/map/>. Click Washington and then choose the category “Employment” to see whether your criminal history will disqualify you from certain jobs.

Washington State Department of Social and Health Services Disqualifying List of Crimes and Negative Actions, www.dshs.wa.gov/fsa/background-check-central-unit/disqualifying-list-crimes-and-negative-actions. This is a list of crimes that disqualify you from jobs involving unsupervised access to vulnerable adults, juveniles and children.

If you need to apply for unemployment benefits, contact the **Employment Security Department**:

- Phone: 800-318-6020
- Online Form: <https://secure.esd.wa.gov/home/> – You can apply for unemployment benefits through the Department.

If you think a CRA or an employer broke a law related to background checks, file a complaint with the **Fair Trade Commission (FTC)**:

- FTC Complaint Phone: 1-877-382-4357
- Mailing Address: Consumer Response Center, FTC [600 Pennsylvania Ave NW, Washington DC 20580](https://www.ftccomplaintassistant.gov/GettingStarted#crnt)
- Website: www.ftccomplaintassistant.gov/GettingStarted#crnt

If you have been discriminated against by an employer because of your criminal history, you can file a complaint with the **Federal Equal Employer Opportunity Commission** by calling 1-800-669-4000 within 300 days of the discrimination.

If you work in King County and have been discriminated against by an employer because of your criminal history, you can file a complaint either by calling or emailing the **Office of Civil Rights**:

- Phone: 206-263-2446 (ask to speak to an investigator about a complaint)

• Email: HumanRights.OCR@kingcounty.gov

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If you live in the Seattle area, you can contact the **Office for Human Rights** to file a discrimination claim against an employer and the **Office of Labor Standards** to file a complaint against an employer. Although they are separate offices, the two share an address and contact information.

- Phone: 206-684-4500
- Address: 810 Third Ave, Suite 750, Seattle WA 98104
- Online contact form: <https://seattle-cr.entellitrak.com/etk-seattle-cr-prod/page.request.do?page=page.form.intake.questionnaire>

If you have been discriminated against by an employer because of your criminal history, you can file a complaint with the **Washington State Human Rights Commission** by filling out the online form at www.hum.wa.gov/discrimination-complaint within six months of the discrimination.

Washington State Patrol, www.wsp.wa.gov/crime/chrequests.htm. This website has instructions on how to obtain records related to your conviction.

If the Washington State Patrol has wrong information about you that turned up in a background check, you can use the Request for **Modification of Records Form** to ask the Patrol to correct their records. Visit www.wsp.wa.gov/crime/chupdates.htm.

NOTES

1 RCW 9.96A.020(1), 9.96A.030, 18.20.125(4), 18.330.100.

2 RCW 28A.400.322, 9.96A.020.

3 Answer drawn largely from the Washington State Employment Re-Entry Guide 2010 by the Employment Security Department.

4 Becky Turner, STAR Project (Sep. 5, 2017)

5 Becky Turner, *supra*

7 Beckler, *supra*

8 W 72.09.270.

9 *Id.*

10 RCW 72.09.270(b)(5).

11 Becky Turner, *supra*

12 Workforce Board, *Offender Education*

Program, www.wtb.wa.gov/OffenderEducationProgram_Dir..asp (last accessed March 29, 2017).

13 WAC 162.12.140(3)(d).

14 WAC 162.12.140(3)(b).

15 SMC 14.17.010, 14.17.020(B).

16 RCW 13.50.050(2).

17 RCW 9.94A.640(3).

18 15 U.S.C. 1681a(o).

19 RCW 19.182.020.

20 15 U.S.C. 1681c(a)(2).

21 RCW 19.182.040(2)(c).

22 RCW 19.182.040(1)(e).

23 RCW 19.182.020(2)(d); 15 U.S.C. 1681b(3).

24 RCW 19.182.020(2)(d).

26 RCW 2.110; 15 U.S.C. § 1681m(a).

27 U.S.C. § 1681i(a)(1)(A), (a)(4)-(5), (d).

28 RCW 49.60.180.

29 EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (“EEOC Enforcement Guidance”), created April 25, 2012, available at www.eeoc.gov/laws/guidance/arrest_conviction.cfm#V (last visited March 26, 2017), at § V.

30 *Id.* at § V.B.9.

31 *Id.*

32 SMC 14.17.020(E).

33 SMC 14.17.010.

34 SMC 14.17.020(F).

35 *Id.*

36 WAC 162.12.140(3)(d).

37 *Id.*

38 EEOC Enforcement Guidance at § V.B.2.

39 *Id.*

40 SMC 14.17.020(C-G).

41 RCW 19.182.020(2)(c).

42 Becky Turner, *supra*

47 FEOC Enforcement Guidance at § V.B.9.

48 Enforcement Guidance at § V.B.2.

49 See, e.g., *Turner*, *supra*.

50 RCW 50.04.030, 50.20.010, 50.20.050-060.

51 RCW 50.32.020.

52 RCW 50.32.070.

53 RCW 34.05.518.