

HOUSE BILL NO. 321  
INTRODUCED BY E. GREEF

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A BILL FOR AN ACT ENTITLED: "AN ACT COORDINATING THE TIME LIMITS BETWEEN MONTANA LAW AND FEDERAL LAW REGARDING RETENTION OF ADVERSE INFORMATION IN CONSUMER REPORTS; AND AMENDING SECTION 31-3-112, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-3-112, MCA, is amended to read:

"31-3-112. **Obsolete information.** (1) ~~No~~ Except as provided in subsection (2), a consumer reporting agency may not make any consumer report containing any of the following items of information:

(1)(a) bankruptcies ~~which that~~, from the date of entry for the order for relief or the date of adjudication of the most recent bankruptcy, antedate the report by more than ~~44~~ 10 years;

(2)(b) civil suits, and civil judgments which, and records of arrest that, from the date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3)(c) paid tax liens ~~which that~~, from the date of payment, antedate the report by more than 7 years;

(4)(d) accounts placed for collection or charged to profit and loss ~~which that~~ antedate the report by more than 7 years; or

(5)(e) ~~records of arrest, indictment, or~~ any other adverse item of information, other than a record of a conviction of a crime, which, from date of disposition, release, or parole, antedate that antedates the report by more than 7 years;

~~(6) any other adverse item of information which antedates the report by more than 7 years.~~

(2) A consumer credit report may contain the information for greater periods than those listed in subsection (1) if that information is to be used in connection with:

(a) a credit transaction involving or that may reasonably be expected to involve a principal amount of \$150,000 or more;

(b) the underwriting of life insurance involving or that may reasonably be expected to involve a face amount of \$150,000 or more; or



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 **Montana Statutes**  
 **TITLE 31. CREDIT TRANSACTIONS AND RELATIONSHIPS**  
 **CHAPTER 3. RELATED CREDIT PRACTICES**  
 **Part 1. Consumer Reporting Agencies**

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**31-3-112. Obsolete information.**

No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

(2) suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than 7 years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

(5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years;

(6) any other adverse item of information which antedates the report by more than 7 years.

History: En. 18-505 by Sec. 5, Ch. 547, L. 1975; R.C.M. 1947, 18-505.

Cross References:

Criminal justice policy - rights of convicted, Art. II, sec. 28, Mont. Const.

Tax liens and limitations, Title 15, ch. 16, part 4.

Collateral References:

Credit Reporting Agencies key 3.

15A Am.Jur.2d Collection and Credit Agencies § 39.

## Montana Statutes

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 **Montana Statutes**  
 **TITLE 41. MINORS**  
 **CHAPTER 5. YOUTH COURT ACT**  
 **Part 2. Youth Court — Jurisdiction — Records**

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**41-5-215. Youth court and department records — notification of school.**

(1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the reports referred to under 45-5-624(7);

(j) persons allowed access under 42-3-203; and

(k) persons conducting evaluations as required in 41-5-2003.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or

the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3) (a) may not be given for status offenses.

(c) In addition to the notice requirements in subsection (3) (a), the youth court shall provide notice to the superintendent of a school district for a level 3 sexual offender as provided in 41-5-1513(3).

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987; amd. Sec. 4, Ch. 510, L. 1991; amd. Sec. 7, Ch. 655, L. 1991; amd. Sec. 4, Ch. 466, L. 1995; amd. Sec. 4, Ch. 481, L. 1995; amd. Sec. 1, Ch. 450, L. 1997; amd. Sec. 167, Ch. 480, L. 1997; amd. Sec. 46, Ch. 550, L. 1997; Sec. 41-5-603, MCA 1995; redes. 41-5-215 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 106, L. 1999; amd. Sec. 1, Ch. 564, L. 1999; amd. Sec. 82, Ch. 114, L. 2003; amd. Sec. 2,

## Montana Statutes

 **Montana Statutes**  
 **TITLE 41. MINORS**  
 **CHAPTER 5. YOUTH COURT ACT**  
 **Part 2. Youth Court – Jurisdiction – Records**

**41-5-216. Disposition of youth court, law enforcement, and department records – sharing and access to records.**

(1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose

records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6) (b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7) (a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in

subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003.

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987; amd. Sec. 8, Ch. 251, L. 1995; amd. Sec. 10, Ch. 466, L. 1995; amd. Sec. 5, Ch. 481, L. 1995; amd. Sec. 9, Ch. 528, L. 1995; amd. Sec. 168, Ch. 480, L. 1997; Sec. 41-5-604, MCA 1995; redes. 41-5-216 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 106, L. 1999; amd. Sec. 83, Ch. 114, L. 2003; amd. Sec. 3, Ch. 423, L. 2005; amd. Sec. 1, Ch. 139, L. 2007; amd. Sec. 2, Ch. 483, L. 2007; amd. Sec. 2, Ch. 54, L. 2009; amd. Sec. 27, Ch. 419, L. 2011.

#### Compiler's Comments:

2011 Amendment: Chapter 419 inserted (12) relating to whether an applicant for a registry identification card for medical use of marijuana is under youth court supervision. Amendment effective July 1, 2011.

2009 Amendment: Chapter 54 inserted (11) providing that access to youth court records is not prohibited for purposes of conducting required evaluations. Amendment effective March 23, 2009.

2007 Amendments - Composite Section: Chapter 139 inserted (10) providing that sharing of youth court records with certain facilities is not prohibited upon placement of youth in facility; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 483 in (4) at end after "45-5-624(7)" inserted "or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5"; and made minor changes in style. Amendment effective May 11, 2007.

## State Restrictions on Consumer Reporting Agencies

**California** (Enacted October 1, 2002)

### CA Civil Code (Investigative Consumer Reporting Agencies Act) – 1786 et seq.

Under the federal Fair Credit Reporting Act (FCRA), most of the background screening reports we provide are considered "consumer" reports, while under the California Investigative Consumer Reporting Agencies Act (ICRA), Cal. Civil Code §1786 et seq., they are classified as investigative consumer reports. It should be noted these requirements are placed only on California employers who hire California residents to work in the state of California.

#### 1786.16(2) – Disclosure

If an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigative consumer report, disclosure must be made in advance of ordering the report and should state that an Investigative Consumer Report may be ordered, identifying the permissible purpose for the report. The disclosure must indicate the Investigative Consumer Report may include information on the consumer's character, general reputation, personal characteristics, and mode of living and define the nature and scope of the investigation requested. The name, address, and telephone number of the investigative consumer reporting agency conducting the investigation must be included. The consumer must authorize in writing the procurement of the report on the disclosure form.

#### 1786.16 (5) (b) (1) – Copy of Report

Provide the consumer a means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report that is prepared. If the consumer wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the consumer within three business days of the date that the report is provided to the recipient, who may contract with any other entity to send a copy to the consumer. The notice to request the report may be contained on either the disclosure form, or a separate consent form. The copy of the report shall contain the name, address, and telephone number of the person who issued the report and how to contact them.

#### 1786.18.7 – Conviction Records

A consumer credit reporting agency shall not report records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedates the report by seven years. These items of information shall no longer be reported if it is learned in the case of a conviction that a full pardon has been granted or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result. However, this provision is exempt if the investigative consumer report is to be used in the underwriting of life insurance involving, or that may reasonably be expected to involve, an amount of two hundred fifty thousand dollars (\$250,000) or more OR if the investigative consumer report is to be used by an employer who is explicitly required by a governmental regulatory agency to check for records that are prohibited when the employer is reviewing a consumer's qualification for employment.

#### 1786.29– Cover Sheet to Report

A 12 pt. bold statement on the first page of each investigative consumer report must indicate that the report does not guarantee the accuracy or truthfulness of the information as to the subject of the report but that it is accurately copied from public records, and information generated as a result of identity theft,

including evidence of criminal activity, may be inaccurately associated with the subject of the report. The name, address and telephone number of the CRA must be on the report.

#### **1786.53 – Reports Compiled by Employer**

The same obligation for an employer to furnish a copy of the investigative consumer report exists even when you compile background information without using the services of an investigative consumer reporting agency.

**Colorado** *(Enacted January 1, 1996)*

#### **CRS 12-14.3-105.3**

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$75,000 or more, the 7-year restriction does not apply.

**Kansas** *(Enacted January 1, 1974)*

#### **KS 50-704**

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

**Kentucky** *(Enacted July 15, 1980)*

#### **KRS 367.310**

No consumer reporting agency shall maintain any information in its files relating to any charge in a criminal case, in any court of this Commonwealth, unless the charge has resulted in a conviction.

**Maryland** *(Enacted 1976)*

#### **Code of MD 14-1203**

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

#### **Code MD 19-1907**

Information contained in pre-employment background verifications for adult dependent care providers may not be used for any purpose other than that for which it was disseminated; or be redisseminated.

**Massachusetts** *(Enacted 1974)*

#### **MGL/93-52**

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

**Minnesota** (Enacted 1993)

**M.S. §13C.02**

Employers must provide a check box on the FCRA disclosure that the applicant may return to the employer to receive a copy of the consumer report. The employer is responsible for notifying the consumer reporting agency of the consumer's request and the report must be sent to the consumer by the CRA within 24 hours of providing it to the employer. The report must be accompanied by the statement of the consumer's right to dispute and correct any errors.

**Montana** (Enacted 1975)

**MCA 31-3-112**

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years. No exception for employment purposes.

**Nevada** (Enacted 1993)

**NRS 598C.150**

Reporting agencies are to purge from their files, reports of criminal proceedings which precede the report by more than 7 years.

Note: Definition of "consumer report" is specific to credit reports although definition of "reporting agency" is not limited to credit.

**New Hampshire** (Enacted August 29, 1971)

**HRS 359-B: 5**

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

**New Mexico** (Enacted 1969)

**NM Statute 56-3-6**

"Credit bureaus" cannot report arrests and indictments pending trial, or **convictions** of crimes, after seven years from date of release or parole. Such items cannot be reported if at any time it is learned that after a conviction a full pardon has been granted or after an arrest or indictment a conviction did not result.

Note: "Credit bureau" is defined as "Any business engaged in furnishing credit information about consumers".

**New York** (Enacted 1977)

**FCRA, Article 25 Section 380-j**

Prohibited Information (a) No consumer reporting agency shall report or maintain in the file on a consumer, information relative to an arrest or a criminal charge unless there has been a criminal conviction for such offense, or unless such charges are still pending.

(b) A CRA can report information about a detention of an individual by a retail establishment if the individual has admitted wrongdoing, has received notice that the information will be reported to a CRA and may be further reported to a retail establishment for employment purposes.

(f) No CRA may make any consumer report containing records of convictions which, from date of disposition, release, or parole, antedate the report by more than seven years. Exception: If salary is reasonably expected to be \$25K or more, the 7-year restriction does not apply.

**Oklahoma** (Enacted November 1, 2000)

**24 O.S. § 147**

Prior to requesting a consumer report for employment purposes, the requestor or user of the consumer report shall provide written notice to the person who is the subject of the consumer report that a consumer report will be used and the notice shall contain a box that the consumer may check to receive a copy of the consumer report. If the consumer requests a copy of the report, the user of the consumer report shall request that a copy be provided to the consumer when the user of the consumer report requests its copy from the credit reporting agency. The report sent to the consumer shall be provided at no charge to the consumer.

**Texas** (Enacted October 1, 1997 – Not applicable)

**Business & Commerce Code, Chapter 20, §20.05**

No CRA may report "records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years. Exception: If salary will be equal to \$75,000 or more, the 7-year restriction does not apply.

**Washington** (Enacted 1993)

**RCW 19.182.040**

No CRA may report "records of arrest, indictment, or **conviction** of a crime, which from the date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

## North Dakota Statutes

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**North Dakota Statutes**  
**TITLE 27 JUDICIAL BRANCH OF GOVERNMENT**  
**CHAPTER 27-20 JUVENILE COURT ACT**

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**27-20-51. Inspection of court files and records.**

1. Except as provided in this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are closed to the public. Juvenile court files and records are open to inspection only by:
  - a. The judge and staff of the juvenile court.
  - b. The parties to the proceeding or their counsel or the guardian ad litem of any party.
  - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
  - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who, prior to the criminal case, had been a party to the proceeding in juvenile court.
  - e. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
  - f. A staff member of the division of children and family services of the department of human services or a law enforcement officer when necessary for the performance of that person's duties under section 50-11.1-06.2 or the National Child Protection Act of 1993 [Pub.L. 103-209; 107 Stat. 2490; 42 U.S.C. § 5119 et seq.].
  - g. An employee or agent of the department of human services when necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.
  - h. A criminal justice agency if the juvenile is required to register under section 12.1-32-15.
2. Juvenile court files and records are also open to inspection with

written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:

- a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
  - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act that constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall report the finding to the director of the department of transportation within ten days.
  4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, the juvenile's school principal, chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order. Any other juvenile court files and records of a child may be disclosed to a superintendent or principal of the school in which the child is currently enrolled or in which the child wishes to enroll if the child appears to present a danger to self or to the students or staff of the school.
  5. Following an adjudication of delinquency for an offense that results in the prohibitions included in subsection 1 or 2 of section 62.1-02-01, if requested, a law enforcement officer must be allowed access to the disposition order.
  6. The juvenile court may notify a referring agency of the disposition of a case.
  7. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release upon request of general information not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. Files in the clerk of court's office are open to public inspection if the related hearing was open to the public under section 27-20-24.

**Source:** S.L. 1969, ch. 289, § 1; 1979, ch. 365, § 1; 1983, ch. 415, § 1; 1991, ch. 335, § 1; 1991, ch. 721, § 1; 1993, ch. 135, § 20; 1995, ch. 124, § 16; 1995, ch. 303, § 1; 1995, ch. 304, § 1; 1995, ch. 513, § 3; 1997, ch. 124, § 6; 1999, ch. 283, § 2; 2001, ch. 188, § 3; 2003, ch. 267,

**Wyoming Statutes**  
**TITLE 14 CHILDREN**  
**CHAPTER 6 JUVENILES**  
**ARTICLE 2. JUVENILE JUSTICE ACT**

**14-6-203. Jurisdiction; confidentiality of records.**

(a) Repealed by Laws 1997, ch. 199, § 3.

(b) Coincident with proceedings concerning a minor alleged to be delinquent, the court has jurisdiction to:

(i) Determine questions concerning the right to legal custody of the minor;

(ii) Order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary; or

(iii) Order any party to the proceedings to refrain from any act or conduct the court deems detrimental to the best interest and welfare of the minor or essential to the enforcement of any lawful order of disposition of the minor made by the court.

(c) Except as provided in subsection (d) of this section, the juvenile court has concurrent jurisdiction in all cases, other than status offenses, in which a minor is alleged to have committed a criminal offense or to have violated a municipal ordinance.

(d) The juvenile court has exclusive jurisdiction in all cases, other than status offenses, in which a minor who has not attained the age of thirteen (13) years is alleged to have committed a felony or a misdemeanor punishable by imprisonment for more than six (6) months.

(e) Except as provided in subsection (f) of this section, all cases over which the juvenile court has concurrent jurisdiction shall be originally commenced in the juvenile court but may thereafter be transferred to another court having jurisdiction pursuant to W.S. 14-6-237.

(f) The district attorney shall establish objective criteria, screening and assessment procedures for determining the court for appropriate disposition in cooperation and coordination with each municipality in the jurisdiction of the district court. The district attorney shall serve as the single point of entry for all minors alleged to have committed a crime. Except as otherwise provided in this section, copies of all charging documents, reports or citations for cases provided in this subsection shall be forwarded to the district attorney prior to the filing of the charge, report or citation in municipal or city court. The following cases, excluding status offenses, may be originally commenced either in the juvenile court or in the district court or inferior court

having jurisdiction:

(i) Violations of municipal ordinances, except that if a juvenile is sentenced in a municipal court to a sentence exceeding ten (10) days of jail or detention, the municipal court shall provide to the district attorney in the juvenile's county of residency and the department of education a copy of the judgment and sentence;

(ii) All misdemeanors except:

(A) Those cases within the exclusive jurisdiction of the juvenile court; and

(B) If a juvenile is sentenced in a municipal or circuit court to a sentence exceeding ten (10) days of jail or detention, the municipal or circuit court shall provide to the district attorney in the juvenile's county of residency and the department of education a copy of the judgment and sentence.

(iii) Felony cases in which the minor has attained the age of seventeen (17) years. The prosecuting attorney shall consider those determinative factors set forth in W.S. 14-6-237(b) (i) through (vii) prior to commencing an action in the district court under this paragraph;

(iv) Cases in which the minor has attained the age of fourteen (14) years and is charged with a violent felony as defined by W.S. 6-1-104(a) (xii);

(v) Cases in which a minor who has attained the age of fourteen (14) years is charged with a felony and has previously been adjudicated as a delinquent under two (2) separately filed juvenile petitions for acts which if committed by an adult constitute felonies.

(g) Except as provided by subsection (j) of this section, all information, reports or records made, received or kept by any municipal, county or state officer or employee evidencing any legal or administrative process or disposition resulting from a minor's misconduct are confidential and subject to the provisions of this act. The existence of the information, reports or records or contents thereof shall not be disclosed by any person unless:

(i) Disclosure results from an action brought or authorized by the district attorney in a court of public record;

(ii) The person the records concern is under eighteen (18) years of age and, in conjunction with one (1) of his parents or with the ratification of the court, authorizes the disclosure;

(iii) The person the records concern is eighteen (18) years of age or older and authorizes the disclosure;

(iv) The disclosure results from the information being shared with or

between designated employees of any court, any law enforcement agency, any prosecutor's office, any employee of the victim services division within the office of the attorney general, any probation office or any employee of the department of family services or the minor's past or present school district who has been designated to share the information by the department of family services or by the school district or anyone else designated by the district attorney in determining the appropriate court pursuant to a single point of entry assessment under this section;

(v) The disclosure is made to a victim of a delinquent act constituting a felony, in accordance with W.S. 14-6-501 through 14-6-509; or

(vi) The disclosure is authorized by W.S. 7-19-504.

(h) Nothing contained in this act is construed to deprive the district court of jurisdiction to determine questions of custody, parental rights, guardianship or any other questions involving minors, when the questions are the subject of or incidental to suits or actions commenced in or transferred to the district court as provided by law.

(j) Nothing contained in this act shall be construed to require confidentiality of any matter, legal record, identity or disposition pertaining to a minor charged or processed through any municipal or circuit court.

# BUSINESS

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## **Business risks rise in criminal history discrimination**

**The Equal Employment Opportunity Commission has sent a warning to businesses: Conduct criminal background checks at your own risk**

October 21, 2012 | By Ellen Jean Hirst, Chicago Tribune reporter

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Greene worked at two jobs as cook for a few years each and spent almost a year as an assistant to a disabled stroke patient, who was also a friend. He was fired, unjustly Greene said, from his job as a cook in 2010 when new management came in. Since then, he's applied for many jobs but never hears back.

"If you never get a call back, if you don't know, how can you know you're being discriminated against?" Green asked.

The EEOC guidance could mean he'll start getting calls back, or at least explanations, for why he wasn't hired.

Mike Dombrowski, program director at Illinois Manufacturing Foundation, understands Greene's frustration. He helps run a 600-hour training program at the Sheridan Correctional Center to prepare inmates to get jobs after they've served their time. He teaches the inmates specific machining and vocational skills and requires them to attend counseling.

Dombrowski said the deciding factor in recidivism is whether the ex-offender can find a job.

"You give him an education and a decent living wage, and he can stay out of prison," Dombrowski said.

Some businesses, like Chicago's Lou Malnati's, have been hiring felons for years.

The popular Chicago-style pizza chain runs a program that helps train felons to work at the restaurant, Chief Operating Officer Jim D'Angelo said.

Several of D'Angelo's most loyal employees have come from that program, he said.

"I'd say the success of the program is if the individual is ready to change their life," D'Angelo

said.

Businesses that haven't already will likely begin to revise policies that bar hiring ex-offenders and assess whether convictions have "a nexus to the job," said Nancy Hammer, senior government affairs policy counsel for the Society for Human Resource Management.

Once businesses do that, she said, they can focus on candidates' central qualities.

"The bottom line, too, is what they're really looking at is skills," Hammer said. "Do you have the right skills? Do you have the right experience? All this other stuff is sort of in addition to that."

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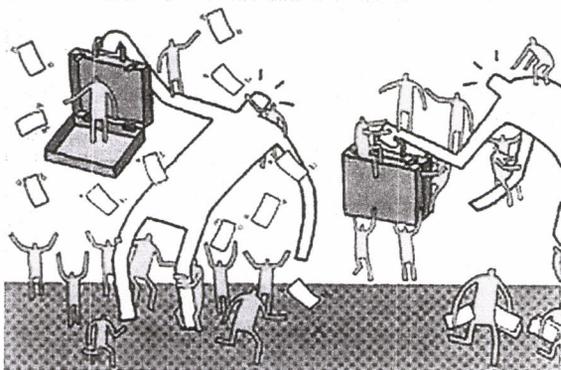
# Perform Criminal Background Checks at Your Peril

*A federal policy intended to help minorities is likely to have the opposite effect.*

By JAMES BOVARD

Should it be a federal crime for businesses to refuse to hire ex-convicts? Yes, according to the Equal Employment Opportunity Commission, which recently released 20,000 convoluted words of regulatory "guidance" to direct businesses to hire more felons and other ex-offenders.

In the late 1970s, the EEOC began stretching Title VII of the 1964 Civil Rights Act to sue businesses for practically any hiring practice that adversely affected minorities. In 1989, the agency sued Carolina Freight Carrier Corp. of Hollywood, Fla., for refusing to hire as a truck driver a Hispanic man who had multiple arrests and had served 18 months in prison for larceny. The EEOC argued that the only legitimate qualification for the job was the ability to operate a tractor trailer.



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U.S. District Judge Jose Alejandro Gonzalez Jr., in ruling against the agency, said: "EEOC's position that minorities should be held to lower standards is an insult to millions of honest Hispanics. Obviously a rule refusing honest employment to convicted applicants is going to have a disparate impact upon thieves."

The EEOC ignored that judicial thrashing and pressed on. Last April, the agency unveiled its "Enforcement Guidance on the Consideration of arrest and Conviction Records in Employment Decisions," declaring that "criminal record exclusions have a disparate impact based on race and national origin."

Though blacks make up only 13% of the U.S. population, more blacks were arrested nationwide for robbery, murder and manslaughter in 2009 than whites, according to the FBI. The imprisonment rate for black men "was nearly 7 times higher than White men and almost 3 times higher than Hispanic men," notes the EEOC. These statistical

disparities inspired the EEOC to rewrite the corporate hiring handbook to level the playing field between "protected groups" and the rest of the workforce.

Most businesses perform criminal background checks on job applicants, but the EEOC guidance frowns on such checks and creates new legal tripwires that could spark federal lawsuits. One EEOC commissioner who opposed the new policy, Constance Barker, warned in April that "the only real impact the new Guidance will have will be to scare business owners from ever conducting criminal background checks. . . . The Guidance tells them that they are taking a tremendous risk if they do."

If a background check discloses a criminal offense, the EEOC expects a company to do an intricate "individualized assessment" that will somehow prove that it has a "business necessity" not to hire the ex-offender (or that his offense disqualifies him for a specific job). Former EEOC General Counsel Donald Livingston, in testimony in December to the U.S. Commission on Civil Rights, warned that employers could be considered guilty of "race discrimination if they choose law abiding applicants over applicants with criminal convictions" unless they conduct a comprehensive analysis of the ex-offender's recent life history.

It is difficult to overstate the EEOC's zealotry on this issue. The agency is demanding that one of Mr. Livingston's clients—the Freeman Companies, a convention and corporate events planner—pay compensation to rejected job applicants who lied about their criminal records.

The biggest bombshell in the new guidelines is that businesses complying with state or local laws that require employee background checks can still be targeted for EEOC lawsuits. This is a key issue in a case the EEOC commenced in 2010 against G4S Secure Solutions after the company refused to hire a twice-convicted Pennsylvania thief as a security guard.

G4S provides guards for nuclear power plants, chemical plants, government buildings and other sensitive sites, and it is prohibited by state law from hiring people with felony convictions as security officers. But, as G4S counsel Julie Payne testified before the U.S. Commission on Civil Rights this past December, the EEOC insists "that state and local laws are pre-empted by Title VII" and is pressuring the company "to defend the use of background checks in every hiring decision we have made over a period of decades."

The EEOC's new regime leaves businesses in a Catch-22. As Todd McCracken of the National Small Business Association recently warned: "State and federal courts will allow potentially devastating tort lawsuits against businesses that hire felons who commit crimes at the workplace or in customers' homes. Yet the EEOC is threatening to launch lawsuits if they do not hire those same felons."

At the same time that the EEOC is practically rewriting the law to add "criminal offender" to the list of protected groups under civil-rights statutes, the agency refuses to disclose whether it uses criminal background checks for its own hiring. When EEOC

Assistant Legal Counsel Carol Miaskoff was challenged on this point in a recent federal case in Maryland, the agency insisted that revealing its hiring policies would violate the "governmental deliberative process privilege."

The EEOC is confident that its guidance will boost minority hiring, but studies published in the University of Chicago Legal Forum and the Journal of Law and Economics have found that businesses are much less likely to hire minority applicants when background checks are banned. As the majority of black and Hispanic job applicants have clean legal records, the new EEOC mandate may harm the very groups it purports to help.

Naturally, the EEOC will have no liability for any workplace trouble that results from its new hiring policy. But Americans can treat ex-offenders humanely without giving them legal advantages over similar individuals without criminal records. The EEOC's new regulatory regime is likely to chill hiring across the board and decrease opportunities for minority applicants.

*Mr. Bovard is the author, most recently, of a new e-book memoir, "Public Policy Hooligan."*

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## EEOC Guidance Threatens Employers Who Conduct Criminal Background Checks

01/24/2012 by Spilman Thomas & Battle, PLLC ([/profile/spilman\\_thomas\\_battle\\_docs/](/profile/spilman_thomas_battle_docs/))



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The United State Equal Employment Opportunity Commission ("EEOC") issued guidance earlier this year regarding the use of criminal records in employment decision-making. The EEOC has long held that although Title VII does not protect individuals with criminal records as a class, an employer's reliance on arrest and conviction records in making hiring or retention decisions may result in illegal discrimination based on race and national origin. The guidance comes on the heels of a public settlement with Pepsi for \$3.13 million related to the company's use of a universal policy excluding individuals with criminal records.

The EEOC is responsible for enforcing Title VII, which prohibits employment discrimination based on protected classes. The EEOC's guidance is rooted in the conclusion that using criminal records to make employment decisions can have a disparate impact against minorities. Statistically, African Americans and Hispanics are arrested and convicted more frequently than Caucasians, and thus, studies have revealed that criminal records have a negative impact on the employability of these groups.

Even if using criminal records has a disparate impact and the plaintiff makes this showing, Title VII shifts the burden of production and persuasion to the employer to "demonstrate that the challenged practice is job related for the position in question and consistent with business necessity." 42 U.S.C. § 2000e-2(k)(1)(A)(i). See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). However, even if the employer makes this showing, a Title VII plaintiff can still prevail if the plaintiff points out an "alternative employment practice" that meets the goals of the employer as effectively as the challenged practice and has less of a disparate impact. 42 U.S.C. § 2000e-2(k)(1)(A)(ii).

The EEOC provides several case illustrations to point out that employers may still use criminal records in employment decisions where it is job-related and consistent with business necessity. For example, in *El v. Southeastern Pa. Transp. Auth.*, 479 F.3d 232 (3d Cir. 2007), the United States Court of Appeals for the Third Circuit found that the position at issue, a bus driver-trainee for disabled persons, involved access to vulnerable adults and required the employer to exercise the utmost care. Accordingly, the termination of an employee after learning of a 40-year old conviction for second degree murder was found to be job-related and consistent with business necessity.

An important distinction in the guidance is records of arrests versus convictions. Clearly, an arrest does not establish that criminal conduct has occurred. There is no proof of criminal conduct in the simple fact of an arrest, and an individual who is charged and prosecuted is presumed innocent unless proven guilty. Accordingly, the EEOC's position is that arrest records are almost always an impermissible basis for employment decisions. However, if the conduct underlying the arrest makes an individual unfit for a particular job, employers can take these facts into account in making employment decisions.

In contrast, records of convictions usually serve as sufficient evidence that an individual engaged in particular conduct. However, due to potential errors in the records, outdated records, or other reasons, the EEOC recommends that employers not use conviction records in hiring decisions. If the employer makes inquiries about an applicant's convictions, the EEOC recommends that such inquiries be "limited to convictions for which exclusion would be job-related for the position in question and consistent with business necessity."

In order for employers to consistently meet this test, the EEOC highlights two possible courses of action. First, the employer can validate the criminal conduct screen for the position in question using the EEOC's Uniform Guidelines on Employee Selection Procedures, which presents its own challenges. Second, the employer may develop a targeted screen considering at least "the nature of the crime, the time elapsed, and the nature of the job," and then provide an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job-related and consistent with business necessity. Not providing an individualized assessment after using a targeted screening would likely constitute a "red flag" for EEOC