



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

- 1. Civil Service Commission Register Number: N/A
2. For Civil Service Commission Meeting of: Oct. 1, 2018
3. Check One: Ratification Agenda, Consent Agenda, Regular Agenda X, Human Resources Director's Report
4. Subject: Department of Human Resources report on the City and County of San Francisco Pre-Employment Conviction History Program
5. Recommendation: Adopt the report.
6. Report prepared by: Kim Walden Telephone number: (415) 557-4951
7. Notifications: (Attach a list of the person(s) to be notified in the format described in Civil Service Commission Procedure Number Two).
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: [Signature] FOR NICKI CAUSAAN

Date: Sept. 20, 2018

- 9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

Executive Officer, Civil Service Commission
25 Van Ness Avenue, Suite 720, San Francisco, CA 94102

- 10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

CSC RECEIPT STAMP box

Attachment

THIS DOCUMENT SUPPORTS... 8

NOTIFICATIONS

Micki Callahan, Human Resources Director
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Kate Howard, Managing Deputy Director
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One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103



Date: September 20, 2018
To: Honorable Civil Service Commission
Through: Micki Callahan
Human Resources Director
Kate Howard
Managing Deputy Director
From: Nathaniel Cleveland
Operations Analyst - Conviction History Program
Anna Biasbas
Division Director – Conviction History Program
Subject: **Annual Report on the City and County of San Francisco Pre-Employment Conviction History Program for Fiscal Year 2017 – 2018**

This report provides the Civil Service Commission (Commission) with an update on the operation of the City and County of San Francisco's (City) pre-employment Conviction History Review Program. The data presented covers fiscal year 2017-18 of the Department of Human Resources (DHR) centralized program, and includes program updates, statistics, and accomplishments. This report does not include data for the following exempt departments: the Community College District (CCD); Unified School District (SFUSD); District Attorney's Office (DAT); San Francisco Police Department (POL); San Francisco Sheriff's Department (SHR); service-critical classes at the Municipal Transportation Agency (MTA); public safety classes at the Fire Department (FIR); and positions under the Department of Social Services (DSS) Jobs Now Program.

Background

DHR's comprehensive centralized Conviction History Program is part of the pre-employment vetting process for selected candidates who have applied for positions with the City. The Conviction History Program has undergone various enhancements as detailed in the historical timeline. (Exhibit A) The program was designed to be consistent with the expanded authority of Board of Supervisors Resolution 84-12 and *the Federal Equal Employment Opportunity Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*. (Exhibit B) The program incorporates the following key constructs:

- Centralized, confidential review of conviction history information: Review and analysis of the selected candidates' conviction history information is centralized at DHR.
- Elimination of self-disclosure: Selected candidates' conviction history information is obtained from the California Department of Justice (CADOJ) and Federal Bureau of Investigations (FBI) only during the pre-employment vetting process. Self-disclosures are used only in very limited circumstances when there are delays with receiving conviction history records.

- Pre-employment assessment: Collection, review and analysis of conviction history information obtained from the CADOJ and FBI is conducted only after a conditional offer of employment; except for current City employees, positions in law enforcement agencies and positions where it is required by law for candidates to undergo a conviction history review.
- Position-based nexus determinations: Conviction history information is analyzed centrally at DHR to determine whether a nexus between the specific attributes of the position and the selected candidates' conviction history exists.
- Limited need-to-know disclosures to hiring managers: DHR does not disclose any non-nexus conviction history information to the hiring manager(s), thus mitigating opportunities for both conscious and unconscious bias.

Over the past five years, the program has received national recognition and now serves as a model for other public agencies in the country.

Authority/Standards

The Commission's Policy on Disclosure and Review of Criminal History Records states:

Persons with a criminal record are not barred from employment with the City and County of San Francisco generally, although a criminal history may bar employment in a particular City classification or position depending on the specific criminal history and/or state and federal legal restrictions related to that classification or position.

The City and County of San Francisco shall review and consider criminal history as allowed by law in determining a candidate's qualifications, suitability and merit for employment in the City and County classification and position for which he or she has applied.

Criminal history records of the candidate as a juvenile shall not be considered in employment decisions except when expressly authorized or required by law.

In reviewing a candidate's criminal history information, the City and County of San Francisco shall evaluate the information on a case-by-case basis, with due consideration given to the following factors:

- 1) The nature and gravity of the offense;
- 2) The degree to which the conviction is related to the duties and responsibilities of the classification and position for which the individual has applied;
- 3) The time elapsed since the conviction;
- 4) The age of the candidate at conviction;
- 5) Frequency of convictions;
- 6) Evidence of rehabilitation; and,
- 7) Any other mitigating circumstances.

Criminal history records for a current City and County of San Francisco employee, including offenses occurring after the start of their employment, may be examined and used as allowed by law as a basis for disciplinary action, including termination, when that information is material to the employee's employment.

Program Standards

The Recency Standard

According to the *Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, as amended, employer policies typically specify the duration of criminal conduct exclusion. The EEOC guidance states that courts have recognized the importance of the amount of time that passed since the candidate's criminal conduct occurred in determining how much of a risk the individual poses in the position in question. To that end, DHR has established the following "look-back" criteria for review of a candidate's conviction history:

- Felonies: The look-back for the majority of felony convictions is limited to 13 years from the date of conviction to the date of pre-employment vetting for the City position.
- Misdemeanors: The look-back for all misdemeanors is limited to seven years from the date of conviction to the date of pre-employment vetting for the City position.

DHR established a "forever look-back" for certain types of serious convictions: murder, attempted murder, mayhem, arson, and sex-related convictions requiring registry. If one of these convictions appears on the records obtained from the DOJ and FBI, it is reviewed no matter when it occurred. However, even these convictions do not automatically preclude a candidate from employment.

The Relevancy Standard

In keeping with the EEOC guidance and Commission policy, DHR evaluates the conviction history of a selected candidate in relation to the position specific attributes (PSAs) of the job for which he or she has applied. PSAs are a pre-defined group of actions performed or carried out in the normal operations of the job. The PSAs describe aspects of the position in which certain convictions may pose a risk. Hiring departments must identify PSAs for every position at the beginning of the hiring process, when the request to hire is submitted to DHR.

Those PSAs are:

- PSA-1: Drive a personal or City vehicle, or operate heavy machinery in the performance of duties of the position.
- PSA-2: Work in a setting with or near vulnerable populations.
- PSA-3: Will have face to face contact with public.
- PSA-4: Have contact with animals.
- PSA-5: Sign official documents approving applications for permits, benefits, or similar.
- PSA-6: Process, manage, or have access to cash, checks, credit cards, electronic transfers, other payments, employee payroll or reimbursement.
- PSA-7: Have access to confidential or privileged information.
- PSA-8: Have access to sensitive IT infrastructure in which damage or hacking would significantly compromise Departmental or CCSF functioning.
- PSA-9: Have means of entry to living spaces or secured areas.
- PSA-10: Have access to pharmaceuticals, and/or maintain drug inventories.
- PSA-11: Have or provide access to a select agent or toxin as defined by the Centers of Disease Control (CDC).

- PSA-12: Have the use of, or access to, weapons or explosives.
- PSA-13: Have unsupervised responsibility for or access to tools, equipment, supplies or other City property with a value in excess of \$100.
- PSA-14: Involve access to electromechanical voting systems or electronic vote tabulating equipment.
- PSA-15: Other duties associated with the position that the Appointing Officer believes would make conviction history pertinent to the position or applicable laws requiring a conviction history review.

Convictions are categorized into seven pre-defined broad groupings: violence, vehicle, property, drugs, fraud, weapons, and sex offenses. These conviction categories are linked to the predefined list of PSAs. For example, a conviction in the vehicle category may conflict with PSA-1. The application of the relevance standard begins with an initial identification of convictions that could conflict with the duties and responsibilities of the position. The Nexus Determination Matrix was established to assist in identifying potential conflicts. (Exhibit C)

An individualized assessment is conducted when a conflict, or nexus, exists between a candidate's conviction history and the PSAs of the position.

The Rehabilitation Standard

Following identification of a potential nexus between the conviction history and the PSAs of the position, DHR carefully reviews any evidence of rehabilitation submitted by, or on behalf of the candidate, to determine if it mitigates the nexus. Evidence of rehabilitation may mitigate, but will not eliminate the nexus determination. Evidence of rehabilitation is used as a determinant of the candidate's effort to refrain from behavior that increases the risk he or she would repeat the behavior in the position being sought.

To that end, candidates with an initial nexus determination are contacted in writing and asked to submit evidence of rehabilitation. The DHR request for evidence of rehabilitation letter includes examples of rehabilitation actions that could prove helpful, and provides information to guide candidates through the process.

Program Updates:

Implementation of State Law AB 1008

Assembly Bill (AB) 1008 is a new state law that took effect on January 1, 2018. The City was already in close alignment with the majority of AB 1008's requirements. However, it did require the City to change the way it processes and considers conviction history information when making hiring decisions. Specifically, AB 1008 makes it unlawful for an employer to inquire or consider the conviction history of a candidate before extending a conditional offer of employment. Therefore, the City changed its pre-employment vetting process to include that a conditional offer of employment is given to each selected candidate prior to fingerprinting and their Conviction History Review. There are a few instances in which this law does not apply. DHR, in collaboration with the City Attorney's Office (CAT), determined there are three scenarios in which a conditional offer of employment is not required. They are:

1. Current City employees being appointed to a new position.
2. Positions in criminal justice agencies. (Criminal justice agencies are agencies whose principal functions relate to either "apprehension, prosecution, adjudication, incarceration, and correction of

criminal offenders” or “collection, storage, dissemination or usage of criminal offender record information.”)

3. Positions where it is required by law for the candidate to undergo a conviction history review.

DHR also worked closely with the CAT to establish policies and procedures that ensured alignment with the new law. Additionally, the Conviction History Review Electronic Service Request was revised to support the new process, the frequently asked questions section on the DHR website was updated, and the new policies and procedures were introduced to the City’s HR professionals during the HR Professionals Group Meeting on January 17, 2018. (Exhibit D) Finally, a memorandum regarding the implementation of AB 1008 was sent to all Departmental Personnel Officers by DHR’s Chief of Policy on December 28, 2017. (Exhibit E) As of January 1, 2018, the City has been in full compliance with state law AB 1008.

New Conviction History Lookback Policy

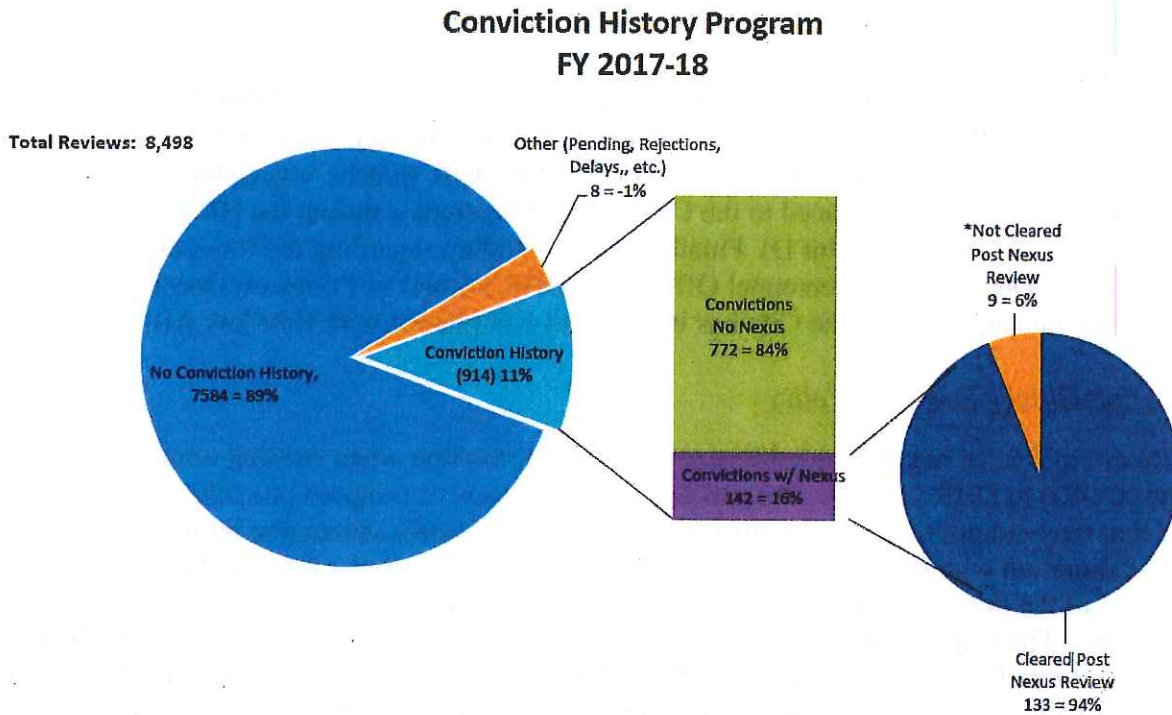
The Department of Justice began withholding sentencing information when sending criminal offender record information (CORI) to DHR in 2016,. As part of a routine review of program procedures, the DOJ discovered that they did not have the statutory authority to disseminate sentencing information in the first place. In collaboration with the CAT, the Human Resources Director sent a letter to the DOJ urging the reconsideration of the decision to withhold sentencing information because it had direct impact on the City’s look-back policy. The response from the DOJ concluded that the request was considered, but the specific directive in California Penal Code section 11105, subdivisions (k)-(p), controls the general definition of CORI, and they would not resume sending sentencing information unless they received statutory authority. (Exhibits F&G)

As a result of not receiving sentencing information, DHR conducted research on the average sentence length and redefined the City’s recency standard by changing the look-back period to date of conviction, instead of the completion of sentence. The City’s previous look-back period was five years from the completion of sentence for misdemeanors, and 10 years from completion of sentence for felonies. However, research within DHR’s database showed the average sentence lengths are 2.43 years for misdemeanors and 3.49 years for felonies. Based on these figures, DHR added the average length of sentencing to the original look-back periods to come up with a new look-back period. The revised look-back period is now seven years from the date of conviction for misdemeanors, and 13 years from the date of conviction for felonies.

Program Statistics

Between July 2017 and June 2018, DHR conducted conviction history reviews on 8,498 final candidates. DOJ and/or FBI convictions were received for 914 candidates. Of these 914 candidates, 772 were granted clearance as their conviction histories were determined to not be in conflict with the requirements, duties, and responsibilities of the positions. In the remaining 142 cases, direct nexus were found based on the conviction histories and PSAs of the positions they were seeking. DHR informed each candidate of the nexus determination and requested they submit evidence of rehabilitation. DHR staff analyzed the evidence of rehabilitation from candidates and 133 were cleared for employment. A total of 9 candidates were disqualified from employment in the specific jobs for which they applied. Annual and monthly charts display Conviction History Review trends and statistics for FY 13/14 through FY 17/18. (Exhibit H)

The chart below provides a graphic illustration of these data:



*This figure represents less than one percent of the total for which conviction history was noted, and less than .002 percent of the 8,498 total candidates fingerprinted.

Program Accomplishments

Mass Hiring Projects

The Conviction History Team worked very closely with department counterparts to support their mass hire projects during the last fiscal year. The team processed fingerprints and/or conducted conviction history reviews for each project. Departments with the largest projects included:

- Asian Art Museum: Museum Guards
- Controller's Office: Accountant Interns
- Department of Emergency Management: Public Safety Communications Dispatchers
- Fine Art Museum: Security Guards and Museum Guards
- Fire Department: H-2 Firefighter Academy
- Public Library: Library Pages
- Recreation and Parks: Summer Workcreation program

A total of 1,039 candidates were processed during these mass hire projects, in addition to conducting the standard amount of conviction history reviews daily. These mass hires represent 12% of the total conviction history reviews conducted for FY 2017-18.

Federal Bureau of Investigations Audit

In September of 2017, the FBI's Criminal Justice Information Services (CJIS) division conducted a National Identity Services Audit of DHR. The process consisted of an audit of approximately 30 randomly selected

candidate reviews previously submitted by the Conviction History Team to ensure compliance with the DOJ's standards. It also included pre-audit activities which involved researching, gathering and submitting fingerprinting information required for the successful execution of the audit. Finally, it ended with a CJIS representative conducting an on-site evaluation to determine the City's compliance with applicable policy requirements associated with access to and use of CJIS systems and data. Those policies are as follows:

- Authorized use of Conviction History Record Information (CHRI)
- Reason Fingerprinted and Purpose Code Usage
- Dissemination of CHRI
- Candidate Notification and Record Challenge
- User Fee

We are proud to report that the FBI found DHR and the City's Conviction History Program to be in full compliance with all policies considered during the National Identity Services Audit.

Mandatory Encryption of Data

The FBI's CJIS Security Policy established new requirements in June of 2017. Per the revised policy, "when CJI is transmitted outside the boundary of the physically secure location, the data shall be immediately protected via encryption". The City's CJI resides on a server that is located off of DHR premises at the Department of Technology. The server itself had already been encrypted in 2014 to ensure only authorized DHR representatives have access to data being stored. In September of 2017, the DHR Information Systems Team took additional measures to enhance the Conviction History Database by safeguarding the CJI as it travels to the server. To accomplish this, they implemented Secure Sockets Layer (SSL) encryption on all connections with CJI traveling through them. As a result, the City's practices for handling CJI are now fully in compliance with section 5.10.1.2.1 - Encryption for CJI in Transit of the CJIS Security Policy. (Exhibit I)

Human Resources eLibrary

In December of 2017, DHR launched the Human Resources eLibrary. The HR eLibrary is a website that was created by HR professionals from around the City and was designed to host all DHR policies, forms, and learning materials. As a result, all Conviction History Program forms, informational documents and training tools were reviewed, updated and posted to the HR eLibrary. This has enabled departmental human resources professionals to have immediate access to important and valuable resources when conducting pre-employment vetting.

Information Sharing with other Jurisdictions and Organizations

Since its inception, the City's Conviction History Program has been nationally recognized by various organizations. As a result, DHR continues to receive requests from other public agencies to share information about the program's operations and methodologies. During FY2017-18, DHR shared program information with counterparts from the following public agencies:

- County of Napa
- County of Montgomery
- County of San Diego

Based on recent and continuous feedback from these agencies, DHR was pleased to learn that many of them have actually adopted some of the City's practices.

Appeals

No appeals were made to the Commission during the fiscal year 2017-18. However, we note that should candidates' evidence of rehabilitation be insufficient to mitigate a nexus determination, candidates have the right to protest the determination of the Human Resources Director to the Commission in accordance with Commission Policy on Disclosure and Review of Criminal History Records.

Plans for FY 2018-2019

For Fiscal Year 2018-2019, the DHR Conviction History Program Team plans to focus on the following:

- Training and Forum: A quarterly in-person Conviction History Program Training and Forum will be launched on September 27, 2018 and will be offered to departmental HR operations staff. The purpose of the training is to offer new HR Personnel an opportunity to learn about the program policies and procedures along with offering a refresher training for existing HR personnel. It will also offer a forum-like setting to openly discuss matters related to conviction history processes, standards and overall requirements.
- Internal Revenue Service (IRS) Publication 1075: The Tax Information Security Guidelines for Federal, State and Local Agencies section of IRS Pub. 1075, requires that individuals who have access to Federal Tax Information (FTI) must undergo a background investigation prior to being permitted access to FTI. The background investigation includes a conviction history screening and citizenship/residency validation. As a result of this new law, DHR in close coordination with the City Attorney's Office and affected departments, is currently working on developing policies and procedures to ensure the City is in compliance.

Recommendation

The DHR Conviction History Team appreciates the opportunity to present this report and respectfully recommends that it be adopted as submitted.

Exhibits:

Exhibit A: Conviction History Program Background Timeline

Exhibit B: Board of Supervisors passed Resolution Number 84-12

Exhibit C: Nexus Determination Matrix

Exhibit D: Conviction History Frequently Asked Questions

Exhibit E: Memorandum: Changes to the City's Conviction History Review Program

Exhibit F: Department of Justice's Response to the Request to Reconsider Release of Sentencing Information

Exhibit G: California Penal Code Section 11105, subdivision (k)-(p)

Exhibit H: Annual and Monthly Program Statistics

Exhibit I: Encryption for CJIS in Transit of the CJIS Security Policy

HISTORICAL TIMELINE OF THE CONVICITION HISTORY PROGRAM

- January 2006: The Civil Service Commission (Commission) delegated the authority to establish procedures for the collection, review, evaluation, and security of criminal history information and records to the Human Resources Director on January 17, 2006. The sole purpose of collecting and evaluating this information is to determine a candidate's suitability for employment in the City and County of San Francisco (City) position for which he or she applied.
- March 2012: The Board of Supervisors passed Resolution Number 84-12, which expanded the City's authority to access national conviction history information. Given this, conviction history information is now obtained by transmitting selected candidates fingerprint images and related information to both the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). The Department of Human Resources (DHR) engaged with advocacy groups All of Us or None and Legal Services for Prisoners with Children to gain support for the expansion of the conviction history data obtained by the City. As a result of these discussions, the City discontinued the requirement for all candidates to self-disclose their conviction history information to the hiring department(s) as part of the final selection process.
- August 2013: The Department of Human Resources (DHR), under the delegated authority of the Civil Service Commission, developed and successfully implemented a comprehensive centralized Conviction History Review Program as part of the pre-employment vetting process for candidates selected by hiring departments. The processes were designed to be consistent with the *Federal Equal Employment Opportunity Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*.
- January 2018: The Department of Human Resources established policies and procedures to meet the new requirements of State law AB1008 to require a conditional offer of employment to the selected candidates prior to collecting conviction history information.

FILE NO. 110983

RESOLUTION NO. 84-12

1 [Employment Policies and Procedures Regarding Criminal History]

2
3 **Resolution authorizing the City and County of San Francisco to access state and**
4 **federal level criminal history information by transmitting fingerprint images and related**
5 **information to the Department of Justice to be transmitted to the Federal Bureau of**
6 **Investigation.**

7
8 WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities,
9 counties, districts and joint powers authorities to access state and local summary criminal
10 history information for employment, licensing or certification purposes; and

11 WHEREAS, Penal Code Section 11105(b)(11) authorizes cities, counties, districts and
12 joint powers authorities to access federal level criminal history information by transmitting
13 fingerprint images and related information to the Department of Justice to be transmitted to
14 the Federal Bureau of Investigation; and,

15 WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be
16 a requirement or exclusion from employment, licensing, or certification based on specific
17 criminal conduct on the part of the subject of the record; and,

18 WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city
19 council, board of supervisors, governing body of a city, county or district or joint powers
20 authority to specifically authorize access to summary criminal history information for
21 employment, licensing, or certification purposes; now, therefore, be it

22 RESOLVED, That the City and County of San Francisco is hereby authorized to
23 access state and federal level summary criminal history information for employment (including
24 volunteers and contract employees) purposes and may not disseminate the information to a
25 private entity.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110983

Date Passed: March 13, 2012

Resolution authorizing the City and County of San Francisco to access state and federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

March 01, 2012 Public Safety Committee - RECOMMENDED

March 13, 2012 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

File No. 110983

I hereby certify that the foregoing Resolution was ADOPTED on 3/13/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor
Date Approved

Conviction History Nexus Determination Matrix

	Vehicle	Violence	Property	Fraud	Sex	Weapon	Drugs	Other
Operate a vehicle	X						X	
Work with or near vulnerable populations		X	X	X	X	X	X	
Work with public		X			X	X		
Work with animals		X						
Sign official documents			X	X				
Process cash, checks, credit Cards, etc...			X	X				
Electronic infrastructure			X	X				
Confidential information		X	X	X	X			
Have keys to living spaces or secured areas		X	X	X	X	X	X	
Work with or near pharmaceuticals			X	X			X	
Work with or near CDC toxins		X	X	X			X	
Handle weapons		X				X		
Use tools over \$100			X	X				
Vote tabulating equipment				X				
Other								

Conviction History Review Frequently Asked Questions

Why do I need to go through a conviction history review?

State and local laws require the City and County of San Francisco (the City) to consider each selected candidate's conviction history to determine whether the nature of their conviction (or arrest, in limited circumstances) conflicts with the specific duties and responsibilities of the position for which they have applied. For some City positions, State or Federal law may also require a background check based on a statutory bar.

If I have an arrest or conviction history, does that automatically bar me from City employment?

An arrest or conviction history does not automatically prohibit a candidate from City employment generally. The City looks at conviction history on a case-by-case basis and evaluates several factors related to the conviction (or arrest, in limited circumstances) in determining a candidate's suitability for the position. Those factors include the following:

- i) The nature and gravity of the offense.
- ii) The degree to which the arrest or conviction is related to the duties and responsibilities of the position.
- iii) The age when arrested or convicted.
- iv) The time elapsed since the arrest or conviction.
- v) The evidence of rehabilitation.
- vi) Any other mitigating circumstances.

For some City positions, State or Federal law may bar individuals with certain convictions from working in those positions depending on the nature of the work and the work location. If a candidate has a conviction history that makes it illegal to work in a certain classification or position, then they may not work in that particular position. However, it does not automatically bar them from City employment in other classifications or positions.

What arrests and convictions affect employment decisions?

a) Arrests

- i) In general, arrests are not considered in determining a candidate's qualifications for employment. However, arrests may affect employment decisions, as permitted by law, for specific positions such as peace officers.
- ii) If you are applying for a position with regular access to patients at a health care facility (as defined in Health and Safety Code Section 1250), you are required to disclose an arrest under any section as specified in Penal Code Section 290; or

iii) If you are applying for a position with access to drugs and medication at a health facility (as defined in Health and Safety Code Section 1250), you are required to disclose an arrest under any section specified in Health and Safety Code Section 11590.

b) Convictions

Any conviction(s) determined to be in conflict with the duties and responsibilities of the position for which you applied. Such determinations are made on a case-by-case basis and are specific to the position for which you applied.

Note: candidates for positions as peace officers or for positions with a criminal justice agency (as defined in Penal Code Section 13101) are subject to disclosure requirements.

Are there any arrests or convictions that are not considered during a conviction history review?

a) Arrests

Any arrest or detention that did not result in a conviction is not considered during a conviction history review, unless the position is with a criminal justice agency or subject to Health and Safety Code Section 1250.

b) Convictions

The following convictions are not considered during conviction history reviews:

- i) Any conviction regarding a referral to or participation in any pretrial or post trial diversion program;
- ii) Any conviction where you have successfully completed a deferred entry of judgment program.
- iii) Any conviction where the Court has ordered the record sealed, expunged or statutorily eradicated;
- iv) Any conviction for a traffic offense where the fine was less than \$400;
- v) Any misdemeanor conviction for which probation was successfully completed or otherwise discharged and the case has been judicially dismissed under Penal Code Section 1203.4;
- vi) Any conviction while a juvenile (under 18 years old), unless the job announcement identifies particular convictions that relate to that particular classification or position, regardless of age when convicted.

How will the City use my arrest and conviction information?

As a selected candidate for a position, the City will conduct a centralized individual review of your conviction history to determine whether the nature of your conviction (or arrest, in limited circumstances) conflicts with the specific duties and responsibilities of the position for which you have applied. Generally, the City will not hire an individual until the conviction history

review process has been completed. Furthermore, the City limits disclosure of your conviction history to hiring departments on a need to know basis.

What if I am not selected because of my arrest or conviction history?

If it has been determined that you are not eligible for a position based on your conviction history, the determination only pertains to the position for which you applied; you are not automatically excluded from any other position with the City and County of San Francisco. Additionally, you may appeal the decision to the Civil Service Commission (Commission). Individuals who are not eligible for a position based on conviction history will receive specific instruction on how to file an appeal. You may also visit the Commission website for instructions on how to file an appeal at <https://sfgov.org/civilservice/appeals>. Appeals must be received in writing within five business days following the date of the notice of rejection.

How can I have an arrest or conviction history removed from my record?

The San Francisco Public Defender's Office helps people with convictions in San Francisco to have them dismissed through the Clean Slate Program. For more information about the program, please contact the San Francisco Public Defender's Office at (415) 553-9337 or visit their website at sfpublicdefender.org/services/clean-slate/.

City and County of San Francisco
Micki Callahan
Human Resources Director




Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

MEMORANDUM

DHR No. 03-2017

DATE: Dec. 28, 2017

TO: Departmental Personnel Officers, DHR Client Services, DHR Selection & Hiring Resources Team

FROM: Susan Gard 
Human Resources Chief of Policy

SUBJECT: Changes to the City's Conviction History Review Program

A new state law, which affects the way the City and County of San Francisco (City) conducts its conviction history reviews, becomes effective Jan. 1, 2018. The main change required by this law ([AB 1008](#), McCarty. Employment discrimination: conviction history) is that an applicant for employment must receive a conditional job offer before the City can inquire about or consider that applicant's conviction history. The requirement for conditional offers only applies to new employees or re-hires. It is not necessary to extend conditional offers to active current employees who may be transferring, promoting, etc.

The City is already in alignment with most of what AB 1008 requires thanks to its national leadership on this issue. Appropriately providing candidates with conditional job offers prior to fingerprinting and review will ensure complete compliance. To that end, the Department of Human Resources (DHR) has created three conditional job offer templates—one each for PCS, PEX, and TEX positions—which are included in this email. Departments are encouraged to customize and use these templates when extending conditional offers to new employees. We have also updated the Conviction History Review Electronic Service Request (CHR-ESR) to reflect the need for conditional offers, and have included it for your review.

Providing conditional job offers means that departments may only send one finalist at a time through fingerprinting. Except for temporary exempt (TEX) multiple headcount positions, each candidate must have his or her own CHR-ESR. A single CHR-ESR may be used for up to three TEX candidates. This information is also detailed on the CHR-ESR.

Conditional Offers Needed for Candidates Already Scheduled to be Fingerprinted/Reviewed in January

Finalists who would be new or re-hired employees, and who are scheduled for fingerprinting in January, must receive conditional job offers before DHR can conduct the conviction history reviews. Contact your Client Services Consultant or Selection & Hiring Resources (SHR) Operations Manager Kimberlee Walden at kimberlee.walden@sfgov.org if you have questions about this.

There are some exemptions from the requirement to provide conditional job offers, in addition to current active employees. Those exemptions include:

- Positions for which federal, state, or local law mandates a background check, or restricts employment based on conviction history. For example, the Transportation Security Administration (TSA) requires background checks for certain positions.

- Positions with criminal justice agencies, as defined in Section 13101 of the Penal Code¹. The following departments are exempt based on this clause:
 - San Francisco Police Department (POL)
 - San Francisco Sheriff's Department (SHF)
 - Juvenile Probation (JUV)
 - Adult Probation (APD)
 - District Attorney's Office (DAT)
 - Public Defender's Office (PDR)

Other Program Changes

DHR is making an additional program change, which is not related to the change in state law, and requires no action from departments. That is, we are defining a new recency standard by changing the look-back period to date of conviction, instead of the completion of sentence. The City's existing look-back period is five years from the completion of sentence for misdemeanors, and 10 years from completion of sentence for felonies. However, the state Department of Justice (DOJ) recently found it unlawful to provide non-law enforcement agencies with sentencing information. As a result, the only date DHR now receives is the conviction date.

Statistics show the average sentence lengths are 2.43 years for misdemeanors and 3.49 years for felonies. Based on these figures, the look-back periods have been revised to seven years from the date of conviction for misdemeanors, and 13 years from the date of conviction for felonies.

These changes also become effective January 1.

Please contact SHR Director Anna Biasbas at anna.biasbas@sfgov.org or SHR Operations Manager Kimberlee Walden at kimberlee.walden@sfgov.org if you have any questions about this additional program change.

We appreciate your patience as we implement this new law. DHR will create and disseminate new informational materials as questions are raised and answered.

¹ **13101.** As used in this chapter, "criminal justice agencies" are those agencies at all levels of government which perform as their principal functions, activities which either:

(a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or
(b) Relate to the collection, storage, dissemination or usage of criminal offender record information.

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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September 13, 2017

Micki Callahan
Human Resources Director
City and County of San Francisco
One South Van Ness Avenue
4th Floor
San Francisco, CA 94103-5413

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RECEIVED
OFFICE OF THE ATTORNEY GENERAL
DEPT. OF JUSTICE
SAN FRANCISCO

Re: Request to Reconsider Release of Sentencing Information

Dear Ms. Callahan:

This letter is in response to your letter urging the reconsideration of a decision the Department of Justice (DOJ) made regarding the practice of releasing sentencing information, previously made available to the City and County of San Francisco for employment-related criminal history checks.

The decision to stop providing sentencing information was not an arbitrary decision. As a matter of practice the program's processes and procedures are routinely reviewed to ensure compliance and consistency with the law. A review could also be triggered due to questions from an outside agency, enactment of a new statutory requirement, or revision to dissemination criteria. In this instance, a routine review of program procedures brought the release of sentencing information to light. Once it was determined that the DOJ does not have the statutory authority to disseminate sentencing information as a component of a conviction, the practice was stopped.

As the agency charged with administering the criminal history system, the DOJ has authority to interpret and apply the relevant Penal Code provisions, and any previous interpretation it may have adopted is not binding. Although criminal offender record information (CORI) is generally defined to include "sentencing" information (Pen. Code, §§ 13102, 10175), Penal Code section 11105, subdivisions (k)-(p), specifically direct the DOJ to disseminate particular types of CORI depending on the requestor, and these provisions do not authorize dissemination of sentencing information. Penal Code section 11105, subdivisions (k)-(p) each contain what appears to be an exhaustive list of the types of information that must be

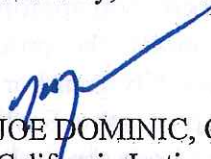
Micki Callahan
September 13, 2017
Page 2

disseminated by the DOJ, depending on the agency making the request; therefore, it would be inappropriate to imply that sentencing information is also included in those lists.

The DOJ recognizes it has an obligation to provide the statutorily mandated information as a part of the pre-employment screen process, as well as its past practice of providing sentencing information. Although the DOJ may have disseminated sentencing information in the past as a component of a conviction, we have since revisited and concluded that the specific directive in section 11105 controls the general definition of CORI. (Pen. Code, §§ 13102, 10175.)

Senate Bill 420, introduced by Senator Bill Monning, and Assembly Bill 1418, introduced by Assembly Member Patrick O'Donnell, earlier this year, address the dissemination of sentencing information. Should one or both of these bills chapter, it will give the DOJ the statutory authority to include the information in the employment-related criminal history check response, if the information is present in the department's records at the time of the response.

Sincerely,



JOE DOMINIC, Chief
California Justice Information Services Division

For XAVIER BECERRA
Attorney General

cc: Xavier Becerra, Attorney General
Sean McCluskie, Chief Deputy Attorney General

**California Penal Code Section 11105,
subdivision (k)-(p)**

Exhibit G

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision,

a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(I) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

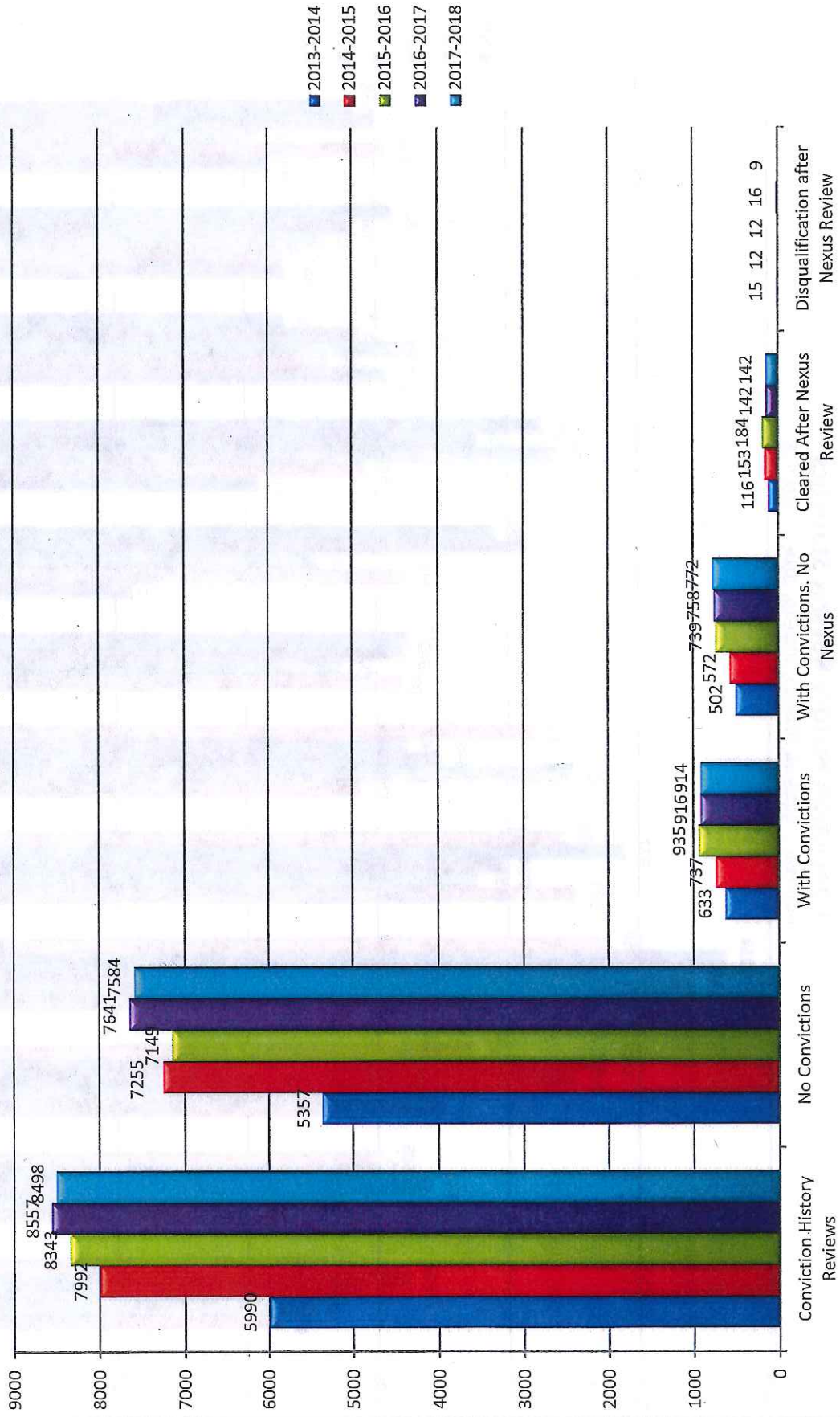
(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(Amended by Stats. 2017, Ch. 680, Sec. 7.3. (SB 393) Effective January 1, 2018.)

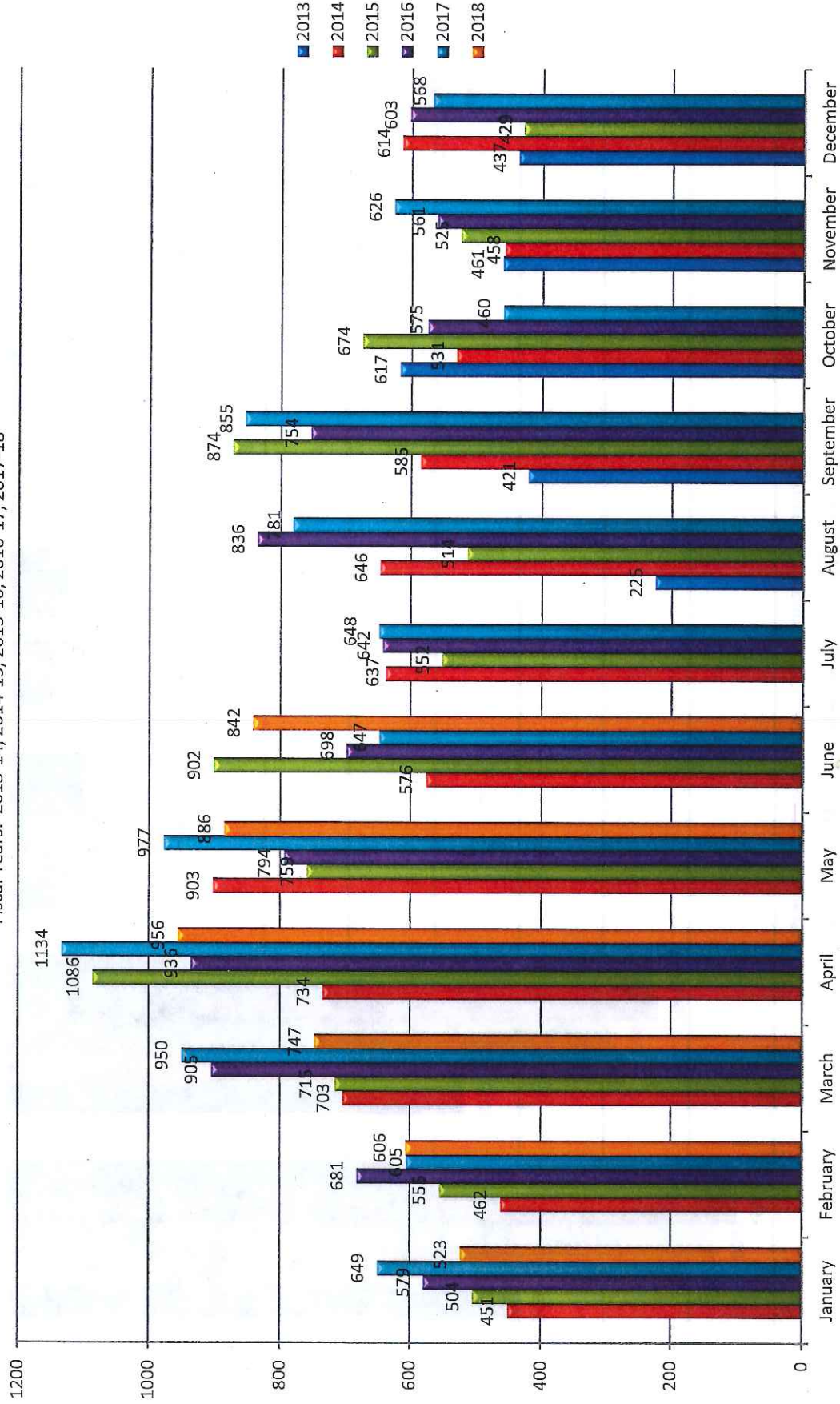
Conviction History Review Statistics

Fiscal Years: 2013-14, 2014-15, 2015-16, 2016-17, 2017-18



Conviction History Review Statistics

Fiscal Years: 2013-14, 2014-15, 2015-16, 2016-17, 2017-18



Encryption for CJI in Transit of the CJIS Security

6. Allocate publicly accessible information system components (e.g. public Web servers) to separate sub networks with separate, network interfaces. Publicly accessible information systems residing on a virtual host shall follow the guidance in Section 5.10.3.2 to achieve separation.

5.10.1.2 Encryption

Encryption is a form of cryptology that applies a cryptographic operation to provide confidentiality of (sensitive) information. Decryption is the reversing of the cryptographic operation to convert the information back into a plaintext (readable) format. There are two main types of encryption: symmetric encryption and asymmetric encryption (also known as public key encryption). Hybrid encryption solutions do exist and use both asymmetric encryption for client/server certificate exchange – session integrity and symmetric encryption for bulk data encryption – data confidentiality.

5.10.1.2.1 Encryption for CJI in Transit

When CJI is transmitted outside the boundary of the physically secure location, the data shall be immediately protected via encryption. When encryption is employed, the cryptographic module used shall be FIPS 140-2 certified and use a symmetric cipher key strength of at least 128 bit strength to protect CJI.

NOTE: Subsequent versions of approved cryptographic modules that are under current review for FIPS 140-2 compliancy can be used in the interim until certification is complete.

EXCEPTIONS:

- a) See Sections 5.13.1.2.2 and 5.10.2.
- b) Encryption shall not be required if the transmission medium meets all of the following requirements:
 - i. The agency owns, operates, manages, or protects the medium.
 - ii. Medium terminates within physically secure locations at both ends with no interconnections between.
 - iii. Physical access to the medium is controlled by the agency using the requirements in Sections 5.9.1 and 5.12.
 - iv. Protection includes safeguards (e.g., acoustic, electric, electromagnetic, and physical) and if feasible countermeasures (e.g., alarms, notifications) to permit its use for the transmission of unencrypted information through an area of lesser classification or control.
 - v. With prior approval of the CSO.

Examples:

- A campus is completely owned and controlled by a criminal justice agency (CJA)
– If line-of-sight between buildings exists where a cable is buried, encryption is not required.

- A multi-story building is completely owned and controlled by a CJA – If floors are physically secure or cable runs through non-secure areas are protected, encryption is not required.
- A multi-story building is occupied by a mix of CJAs and non-CJAs – If floors are physically secure or cable runs through the non-secure areas are protected, encryption is not required.

5.10.1.2.2 Encryption for CJI at Rest

When CJI is at rest (i.e. stored digitally) outside the boundary of the physically secure location, the data shall be protected via encryption. When encryption is employed, agencies shall either encrypt CJI in accordance with the standard in Section 5.10.1.2.1 above, or use a symmetric cipher that is FIPS 197 certified (AES) and at least 256 bit strength.

- a) When agencies implement encryption on CJI at rest, the passphrase used to unlock the cipher shall meet the following requirements:
 - i. Be at least 10 characters
 - ii. Not be a dictionary word.
 - iii. Include at least one (1) upper case letter, one (1) lower case letter, one (1) number, and one (1) special character.
 - iv. Be changed when previously authorized personnel no longer require access.
- b) Multiple files maintained in the same unencrypted folder shall have separate and distinct passphrases. A single passphrase may be used to encrypt an entire folder or disk containing multiple files. All audit requirements found in Section 5.4.1 Auditable Events and Content (Information Systems) shall be applied.

NOTE: Commonly available encryption tools often use a key to unlock the cipher to allow data access; this key is called a passphrase. While similar to a password, a passphrase is not used for user authentication. Additionally, the passphrase contains stringent character requirements making it more secure and thus providing a higher level of confidence that the passphrase will not be compromised.

5.10.1.2.3 Public Key Infrastructure (PKI) Technology

For agencies using public key infrastructure (PKI) technology, the agency shall develop and implement a certificate policy and certification practice statement for the issuance of public key certificates used in the information system. Registration to receive a public key certificate shall:

- a) Include authorization by a supervisor or a responsible official.
- b) Be accomplished by a secure process that verifies the identity of the certificate holder.
- c) Ensure the certificate is issued to the intended party.