



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: _____ - _____ -
2. For Civil Service Commission Meeting of: Monday, September 21, 2020
3. Check One: Ratification Agenda
 Consent Agenda
 Regular Agenda
 Human Resources Director's Report X
4. Subject: Annual Report on the City and County of San Francisco Pre-Employment Conviction History Program for Fiscal Year 2019 – 2020
5. Recommendation: Adopt the Report.
6. Report prepared by: Peter Rosel Telephone number: 415-701-5680
7. Notifications: **(Attach a list of the person(s) to be notified in the format described in IV. Commission Report Format -A).**
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: 
Date: 9/1/20
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 ACSC RECEIPT STAMP box to the right using the time-stamp in the CSC Office.

Attachment

CSC RECEIPT STAMP

Notifications

Micki Callahan, Human Resources Director
Department of Human Resources
1 S. Van Ness Ave., 4th Floor
San Francisco, CA 94103

Anna Biasbas
Department of Human Resources
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Peter Rosel
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Anastasia Britt
Department of Human Resources
1 S. Van Ness Ave., 4th Floor
San Francisco, CA 94103



Date: August 30, 2020
To: Honorable Civil Service Commission
Through: Micki Callahan
Human Resources Director
From: Peter Rosel
Operations Supervisor – Conviction History Program
Anna Biasbas
Deputy Director – Employment Services
Subject: **Annual Report on the City and County of San Francisco Pre-Employment Conviction History Program for Fiscal Year 2019 – 2020**

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 Program. The data presented covers fiscal year 2019-20 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 (SHF); service-critical classes at the Municipal Transportation Agency (MTA); public safety classes at the Fire Department (FIR); positions under the Department of Social Services (DSS) Jobs Now Program, and the Department of Emergency Management (DEM) Public Safety Communications Dispatchers.

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: DHR does not disclose any non-nexus conviction history information to the department, thus mitigating opportunities for both conscious and unconscious bias.

Since the program's creation in 2013, it 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 from juvenile courts 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 regardless of when it occurred. However, absent a statutory bar, even these convictions do not automatically preclude a candidate from employment.

The Relevancy Standard

In keeping with the EEOC guidance, AB 1008 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 the candidate 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 predefined broad groups: violence, vehicle, property, drugs, fraud, weapons, and sex offenses. These 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.

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 they 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. Further, although this has always been a part of DHR's conviction history review process, AB 1008 now requires candidates be afforded an opportunity to respond.

Program Updates

Emergency Medical Technician Classifications Enrollment in Subsequent Notification Program

Emergency Medical Technicians (EMT) are exempt from DHR's conviction history review process because, in order to obtain their EMT certificate, they must undergo a criminal background review by the California Emergency Medical Services Authority (EMSA). EMSA reviews each EMT certificate and applicants' conviction history information to ensure that they are not barred from possessing an EMT certificate pursuant to California Code of Regulations Title 22, Division 9, Chapter 6, Article 4, Section 100214.3. However, last year, DHR and the San Francisco Fire Department (FIR) agreed that fingerprinting EMTs post-appointment is necessary in order to enroll them in the CADOJ's subsequent notification program. This change promotes consistency among uniformed classifications at FIR.

DHR and FIR planned to fingerprint the approximately 435 current employees holding EMT certificates in April of 2020. However, this project was delayed due to the Mayor's declaration of a local emergency and City's ongoing response to COVID-19. DHR will reengage with FIR to attempt to coordinate fingerprinting current employees holding EMT certificates in FY 2020-21.

Juvenile Probation Requesting Exemption from DHR's Conviction History Program

The San Francisco Department of Juvenile Probation (JUV) is in the process of requesting exemption from DHR's centralized conviction history review process. This request is the result of a CADOJ audit that revealed that, as a law enforcement agency whose employees have physical access to the California Law Enforcement Telecommunication System (CLETS) equipment or information from the CLETS, JUV is required to fingerprint and conduct a review of its own employees.

Before formally requesting exemption from DHR's Conviction History Program, JUV wants to ensure it has a solid process in place first by creating an internal standard operating procedure (SOP) for their staff prior to submission. However, these efforts are delayed due to changes in leadership at both the executive level and within JUV's Human Resources management team. Additionally, the City's ongoing response to the COVID-19 public health emergency is contributing to the delay. With new department leadership in place, JUV is resuming the process of finalizing its SOP and anticipates to formally request exemption from DHR's Conviction History Program by the end of fiscal year 2020-21.

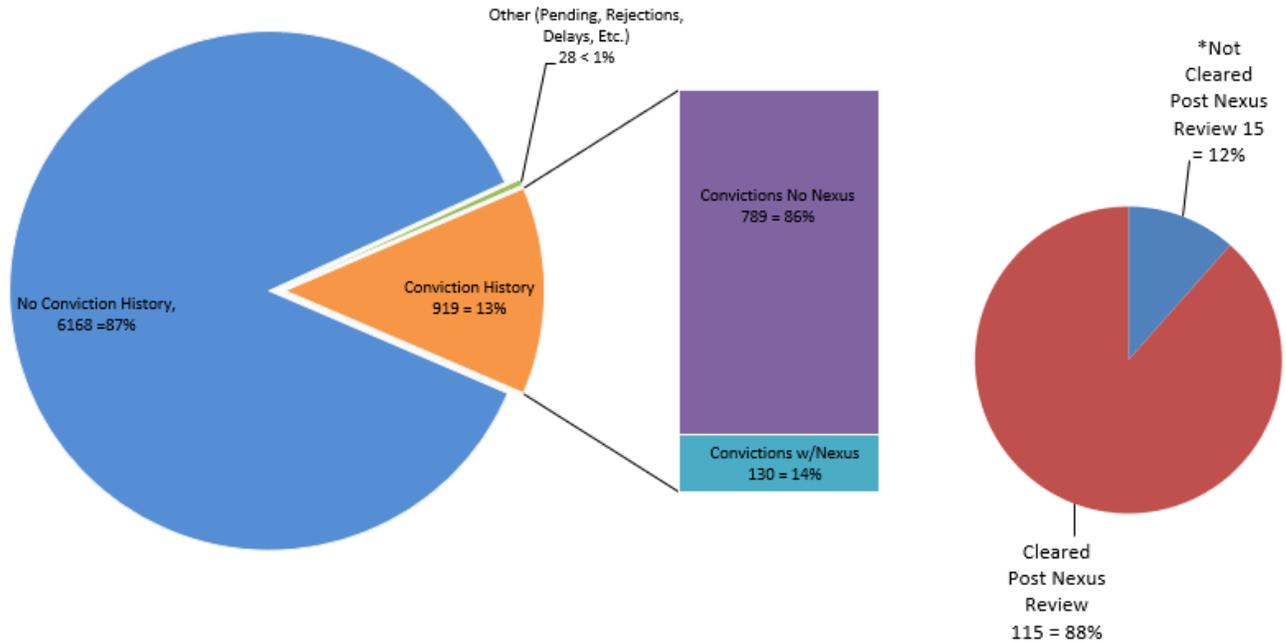
Program Statistics

Between July 2019 and June 2020, DHR conducted conviction history reviews of 7,115 final candidates. DOJ and/or FBI convictions were received for 919 candidates. Of these 919 candidates, 789 were granted clearance, as their conviction histories were determined not to be in conflict with the requirements, duties, and responsibilities of the positions sought. The remaining 130 cases had direct nexuses based on the conviction histories and PSAs of the positions sought. DHR informed candidates of the nexus determination and requested evidence of rehabilitation from them. Based on analysis of evidence of rehabilitation provided by candidates, 115 were cleared for employment. A total of 15 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 19/20. (Exhibit D)

The chart below provides a graphic illustration of these data:

Conviction History Program FY 2019-20

Total Reviews: 7,115



*This figure represents approximately one and a half percent of the total for which conviction history was noted, and approximately .002 percent of the 7,115 total candidates fingerprinted.

Program Accomplishments

COVID-19 Response

DHR's Conviction History Program was an integral part of the City's initial COVID-19 response. Immediately following Mayor Breed's March 17, 2020 order to shelter-in-place, the team was deployed as disaster service workers (DSW) to multiple locations, including Zuckerberg San Francisco General Hospital, the Emergency Operations Center (EOC) at Moscone and our home office at DHR, to expedite nurse hiring and other essential hires. This included conducting fingerprinting and conviction history reviews for medical and miscellaneous volunteers through the Emergency Volunteer Center (EVC), which were also brought on in direct response to COVID-19.

This response alone resulted in the Conviction History Team completing a total of 1,059 reviews, which included 247 Registered Nurses, 428 volunteers, and 384 miscellaneous public health and public safety positions within a three-month period, between late March and June 30, 2020. By collaborating with the departments, the Conviction History Team were able to reduce the time from fingerprinting to clearance from approximately 12 days (this was the average for the first quarter of 2020) to within 48 hours, in most cases.

The standard conviction history process begins with departments being notified that a candidate requires a conviction history review, scheduling the candidate for a fingerprinting appointment, fingerprinting the

candidate, waiting for results from the DOJ and FBI, reviewing those results and issuing a clearance number so that the appointment can be validated. This process can take approximately 12 days. Although rarely requested, departments have the option to expedite clearance, where the candidate is asked to complete a self-disclosure form of their previous convictions so that the team can conduct a nexus review based thereon. If there is conviction with a nexus, the Conviction History Team affords the candidate the opportunity to provide evidence of rehabilitation. Once received, the Conviction History Team will review the documents provided and, if necessary, convene a committee to determine whether to clear the candidate. Ultimately, if the committee is not able to clear the candidate, the team will contact the department's designated conviction history representative to consult with them on the situation, since the department makes the final determination as to whether to clear. This typically adds anywhere from two days to several weeks to the process, depending on how long it takes for the candidate to provide the evidence of rehabilitation and how quickly a decision is made.

The process implemented by the Conviction History Team in response to COVID-19, asked all candidates to complete a self-disclosure form at their fingerprinting appointment. This way, if results from DOJ and/or FBI were not received right away, the team was able to conduct a review based on the self-disclosure, and provide expedited clearance so that our Appointment Processing Team could immediately validate the hire. This process allowed us to complete our review and provide clearance numbers within 48 hours of the candidate's fingerprinting appointment. If there was a nexus, we requested evidence of rehabilitation and consulted directly with the department once it was received since it is ultimately the department's determination whether to proceed with its hires. This eliminated the step of convening a committee, enabling the Conviction History Team to reduce the time taken to make a decision to clear those with a nexus.

As the shelter-in-place order is still in effect, we continue to use this process for all hires deemed essential in direct response to COVID-19.

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:

- Airport Commission:
 - Public Service Trainees (17)
 - Custodians (32)
- Controller's Office: Accountant Interns (44)
- Department of Elections: Clerks (352)
- Department of Emergency Management: Public Safety Communications Dispatchers (24)
- Department of Public Health:
 - Hospital Eligibility Workers (84)
 - Porters (113)
 - Food Service Workers (20)
 - Registered Nurses (296)
 - Patient Care Assistants (29)
 - IS Business Analyst Series (19)
 - Diagnostic Imaging Technologist Series (86)
 - Supervising/Senior Psychiatric Physician Specialists (63)
 - Volunteers (398)

- Fire Department:
 - NERT Volunteers (30)
 - H-8 EMT/Paramedics (21)
- Recreation and Parks: Summer Workrecreation program (213)

A total of 1,443 candidates were processed during these mass hire projects, in addition to conducting the standard amount of conviction history reviews daily. These mass hires represent 18% of the total conviction history reviews conducted for FY 2019-20.

Successful Transition to Appointy

In March of 2020, the Conviction History Program successfully transitioned its fingerprint appointment management from Flash Appointments to Appointy. This transition was necessary due to Flash Appointments becoming obsolete on modern web browsers. Once the Conviction History Program identified Appointy as the best replacement system, it was tested, and training materials were developed. In February 2020, a series of trainings were delivered to departments citywide and the new system was presented at the HR Professionals meeting in order to ensure effective use of the new system and a smooth transition.

Information Sharing with other Jurisdictions and Organizations

Since its inception, the City’s Conviction History Program has been recognized nationally 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 FY2019-20, DHR shared program information with counterparts from Los Angeles County, which is one of the largest government employers in the nation with more than 100,000 employees. The two agencies planned to meet in San Francisco in April 2020 to discuss our program and its policies in detail. Unfortunately, this meeting did not come to fruition due to the COVID-19 pandemic. While there are not currently any plans to meet with our colleagues from Los Angeles County, we look forward to continuing to share information about our program with them and other outside organizations and jurisdictions in the future.

Appeals

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, should candidates’ evidence of rehabilitation be insufficient to mitigate a nexus determination.

There were no appeals filed to the Civil Service Commission during the fiscal year 2019-20.

Plans for FY 2020-2021

For Fiscal Year 2020-2021, the DHR Conviction History Team plans to focus on the following:

- Continued COVID-19 Response Support: The primary focus of DHR’s Conviction History Team for the current fiscal year is to continue to provide support for the expedited hiring essential workers in direct response to the pandemic.

- Cross Training: The DHR Operations Team, which is comprised of the Conviction History, Appointment Processing, Certification/Referral and Employment Information Center (EIC) teams, is relatively small and made up mainly of entry-level classifications. Generally, it has always been important to cross train members of the different teams in order to protect against turnover due to promotions, leaves of absence, etc. However, this need has been compounded by our efforts to shift to remote work on a rotational basis due to the shelter-in-place order so that we can continue to staff those functions that must be done onsite, such as staffing the front counter in DHR's lobby, fingerprinting candidates and printing DSW badges. As a result, we continue to cross train our staff from the various teams to perform the onsite duties, as well as to provide backup support to one another.

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: Annual and Monthly Program Statistics

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

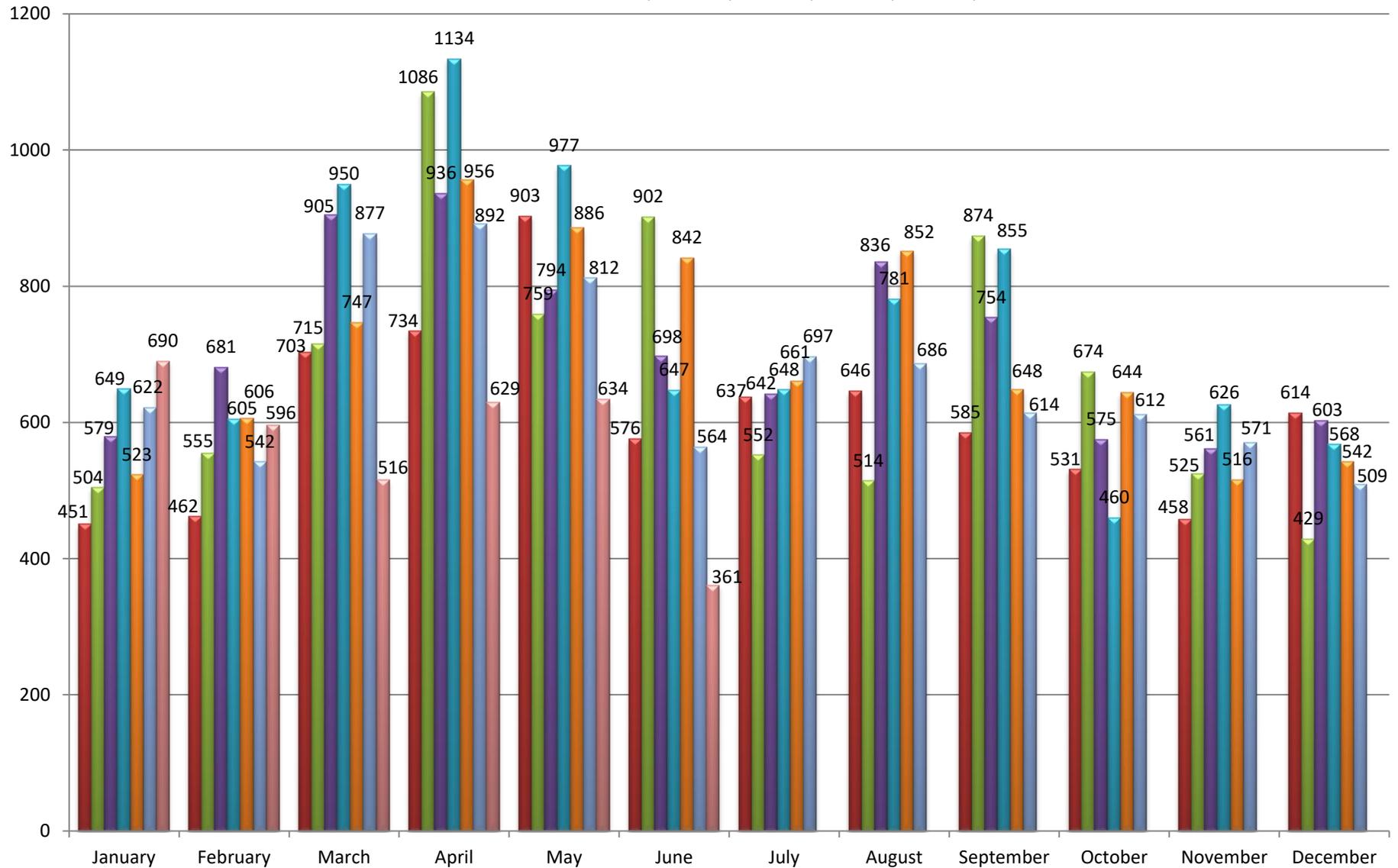
	Vehicle	Violence	Property	Fraud	Sex	Weapon	Drugs	Other
Operate a vehicle	x						x	
Work with or near vulnerable populations		x	x	x	x	x	x	
Work with public		x			x	x		
Work with animals		x						
Sign official documents			x	x				
Process cash, checks, credit Cards, etc...			x	x				
Electronic infrastructure			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								

Last Revised 1/13/2016

Conviction History Review Statistics

Fiscal Years: 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20

Exhibit D



Conviction History Review Statistics

Fiscal Years: 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20

