



Criminal Records Relief: Getting a Second Chance

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What we need to know:

Know the Criminal History

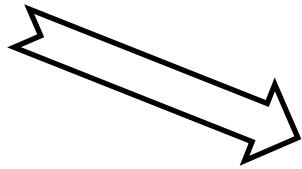
Know the Options

Know the Legal Rights

Know What to Say

The Creation of Criminal Records

POLICE
RECORDS



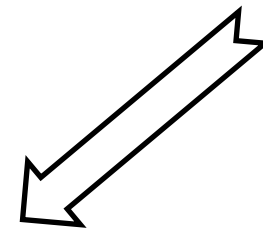
Arrested or
Complaint Filed

Released without
Charging

Charged in Court

Acquittal or
Dismissal

Found Guilty



COURT
RECORDS

Conviction

Non-Conviction
Sentence

Know the Criminal History



Chicago Police Rap Sheet

Access and Review, 3510 S. Michigan Ave.

Open Monday through Friday from 8 a.m. to 12 p.m.

Costs \$16, Requires 2 Trips

Typically Takes 7 days

Know the Criminal History



Pursuant to Illinois Administrative Rule Title 20 Chapter II Part 1210, effective July 1, 2015, an individual may retain a copy of their Illinois criminal history record obtained through the right of Access and Review Process.

Or any law enforcement agency!!!

ISP Statewide Background Check

Access and Review, 3510 S. Michigan Ave.

Open Monday through Friday from 8 a.m. to 12 p.m.

Costs \$16, Requires 2 Trips

Typically Takes 7-10 days

CGLA

Know the Criminal History

Know the Criminal History

Convictions

Jail or Prison

Probation

Conditional Discharge

Time Considered Served

Fines

Non-Convictions

**Dismissals, Acquittals,
RWOC**

Supervision

710-1410 Probation

TASC Probation

**Intensive or Second
Chance Probation**

Know the Options

Eligible Non-Convictions and Convictions

Expunge

Seal

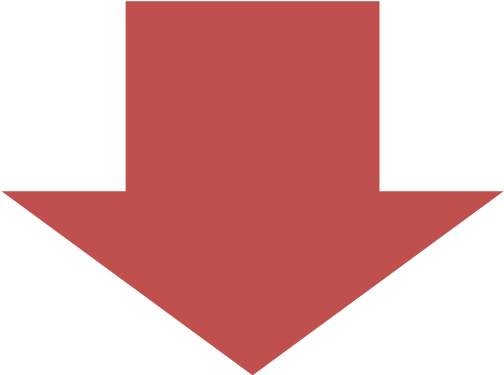
Ineligible Convictions

Executive Clemency


Health Care Waiver

Certificates of Rehabilitation

Expungement & Sealing Eligibility



Expungement is only for those who have *never* been convicted – at any point – anywhere in the world.



Sealing is available for those with minor misdemeanor convictions and a limited number of felony convictions.

The Difference = Access

Expunged Records

- Physically Destroyed by Law Enforcement
- Five year waiting period offenses only “sealed”

Sealed Misdemeanors

- Only available to law enforcement
- No employer or private entity has access to the records

Sealed Felony Convictions

- Available to Law Enforcement
- Available to any employer authorized or mandated by law to conduct fingerprint based background checks
- No private entities have access

Expungement & Sealing Eligibility

When

The law defines when a record can be expunged or sealed.

A person with a pending case (i.e., serving a sentence or pending a hearing) cannot file a petition.

The law imposes waiting period to expunge or seal.

What

The law defines which offenses can be expunged or sealed.

If no convictions, most cases can be expunged.

If convictions, most misdemeanors can be sealed, but only a few felonies can be sealed.

effective 1/1/16
The sealing wait period was reduced from 4 years to 3 years

effective 1/1/16
No wait period to seal eligible offenses if certificate/ degree earned while serving sentence

Ineligible Misdemeanors

Crimes of Violence

- Domestic battery, violations of order of protection.

Sex Crimes Under Article 11

- Solicitation of Prostitute, Patronizing a Prostitute, Public Indecency, and many others that are less common. NOT PROSTITUTION!

Other offenses against public morals

- DUIs & reckless driving*, dog fighting, animal cruelty.
- *Except youthful offenders defined under 20 ILCS 2630/5.2(a)(3)(A).



What

9 Felony Convictions are Eligible for Sealing

POSSESSION OF CONTROLLED SUBSTANCE (CLASS 4)

PROSTITUTION (CLASS 4)

POSSESSION OF CANNABIS (CLASS 4)

FORGERY (CLASS 3&4) ★

DECEPTIVE PRACTICE (CLASS 3&4) ★

THEFT (CLASS 3&4) ★

RETAIL THEFT (CLASS 3&4) ★

POSSESSION WITH INTENT TO DELIVER UNDER 401 (CLASS 3) ★

POSSESSION OF BURGLARY TOOLS (CLASS 4) ★



Waiting Period to Seal

Relief after a finding of guilt is **NEVER** immediate:

Supervision
– *Sealing*

- **2 years** from completion of sentence (effective 1/1/16)

Convictions
and
Qualified
Probations
– *Sealing*

- **3 years** from completion of **LAST** sentence (effective 1/1/16)

Waiting Period to Seal

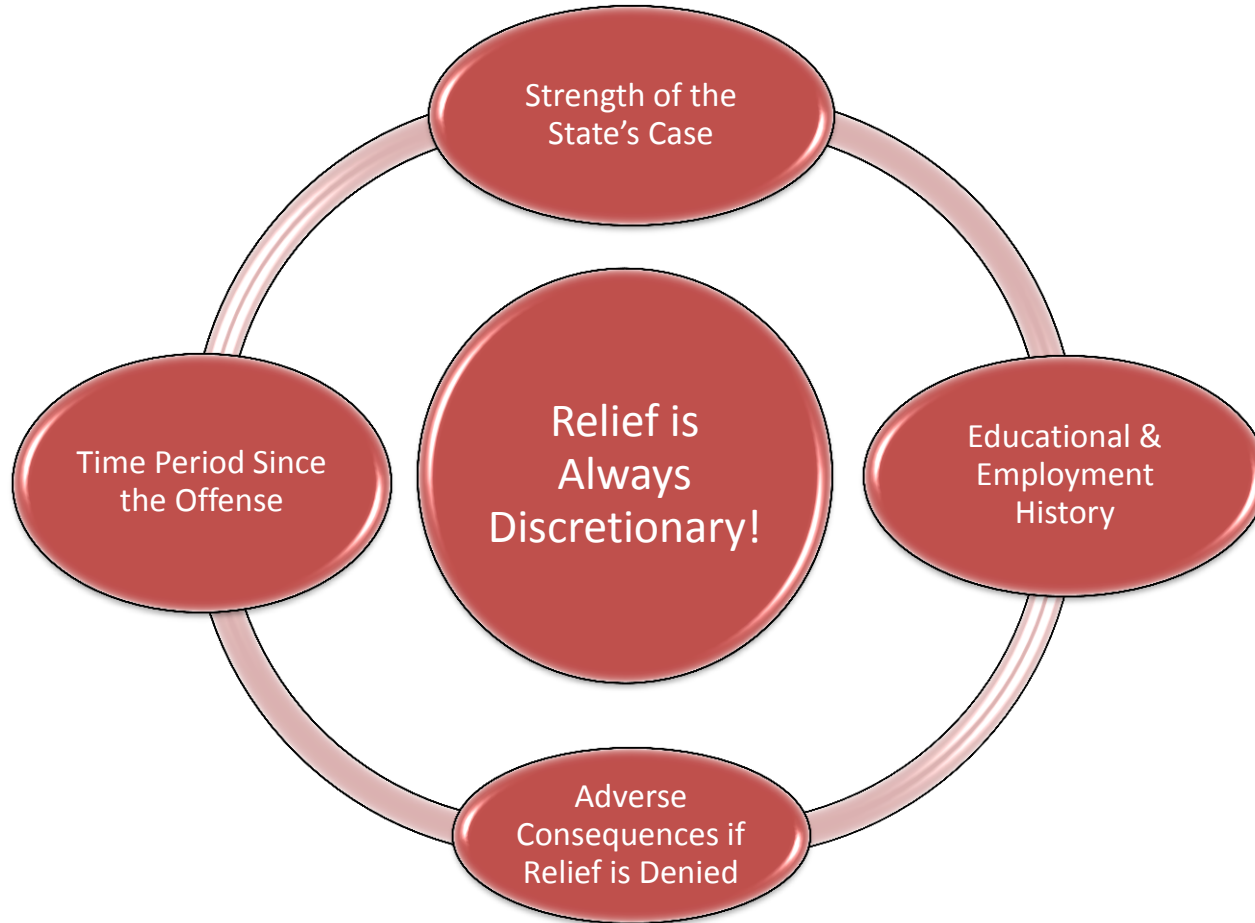
When



Effective January 2016

No waiting period to seal eligible offenses if the individual earns a high school diploma, associate's degree, career certificate, vocational technical certification, bachelor's degree, or GED while serving the sentence, or during aftercare release or mandatory supervised release for that offense.

What the Court Considers



WHO HAS POTENTIAL LEGAL ACCESS TO JUVENILE RECORDS?

44-10330 POLICE DEPARTMENT
Identification Section
JUVENILE SUMMARY REPORT

0463100000

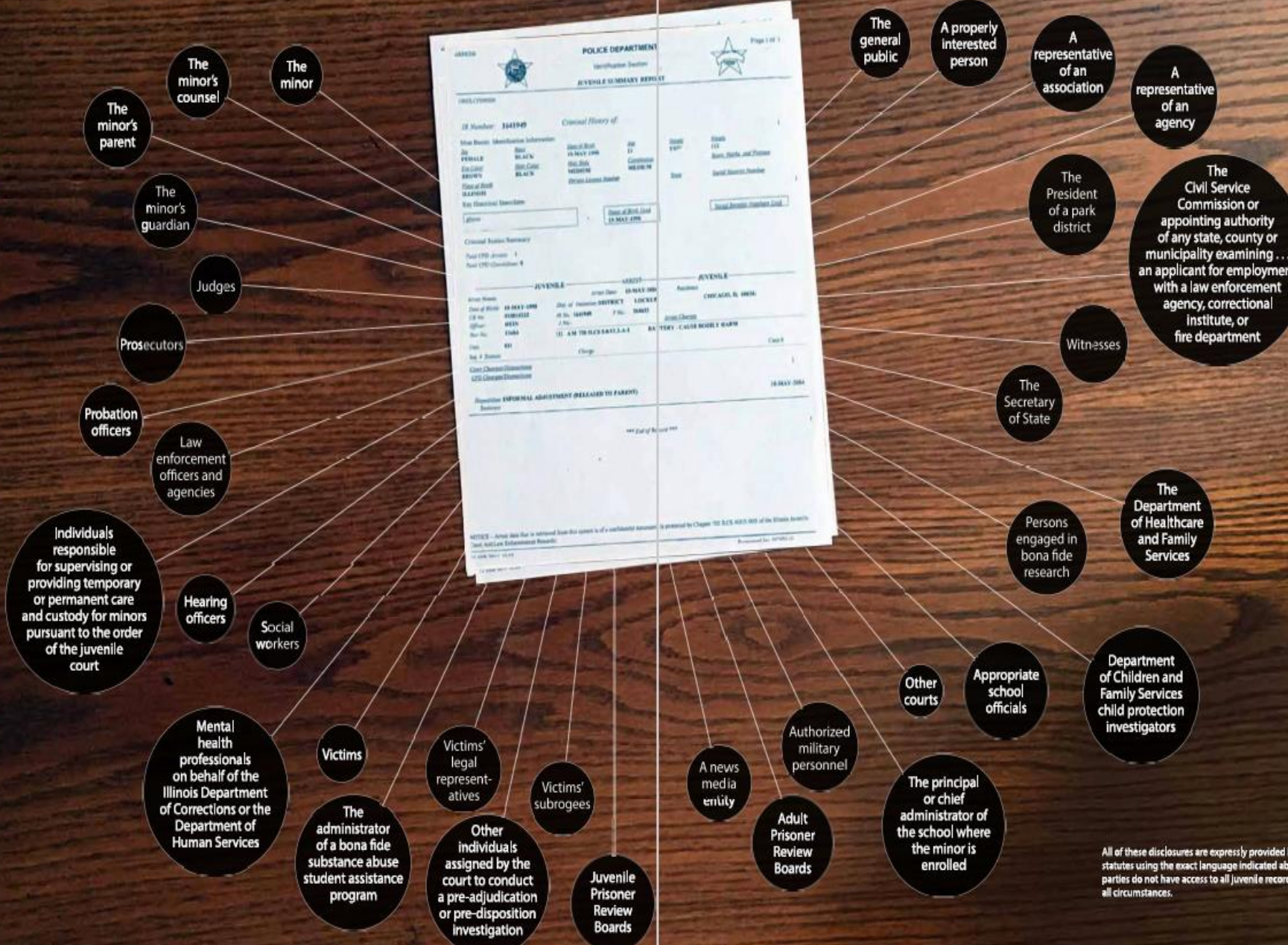
Case Number: 344190 Criminal History of:

State Basic Identification Information	DOB: 05-11-1994	DOB: 05-11-1994	DOB: 05-11-1994
Sex: M	Race: W	Height: 5'00"	Weight: 110
Eye Color: BRN	Hair Color: BLK	Build: S	Complexion: MEDIUM
City of Birth: CHICAGO	State of Birth: IL	City of Arrest: CHICAGO, IL	County of Arrest: COOK

Arrest Date: 05-11-2004

Charge: BATTERY - CAUSE NOBODY HARM

Disposition: INFORMAL AGREEMENT (RELEASED TO PARENT)



All of these disclosures are expressly provided by Illinois statutes using the exact language indicated above. All parties do not have access to all juvenile records under all circumstances.

Juvenile Expungement Eligibility

Dismissed cases, satisfactorily completed supervisions, and findings of guilt on minor cases.

- Age 18, no pending cases.

Findings of guilt on class A misdemeanors and felonies (no first-degree murder or felony sex offenses)

- Age 21, 5 years waiting period, no adult convictions.

Know the Options

Petitions for Executive Clemency

- Ultimate form of relief from a conviction.
- If a pardon is granted by the Governor, with specific authorization, conviction can be expunged.
- Extraordinary remedy!
- Can take up to four or more years for a decision.

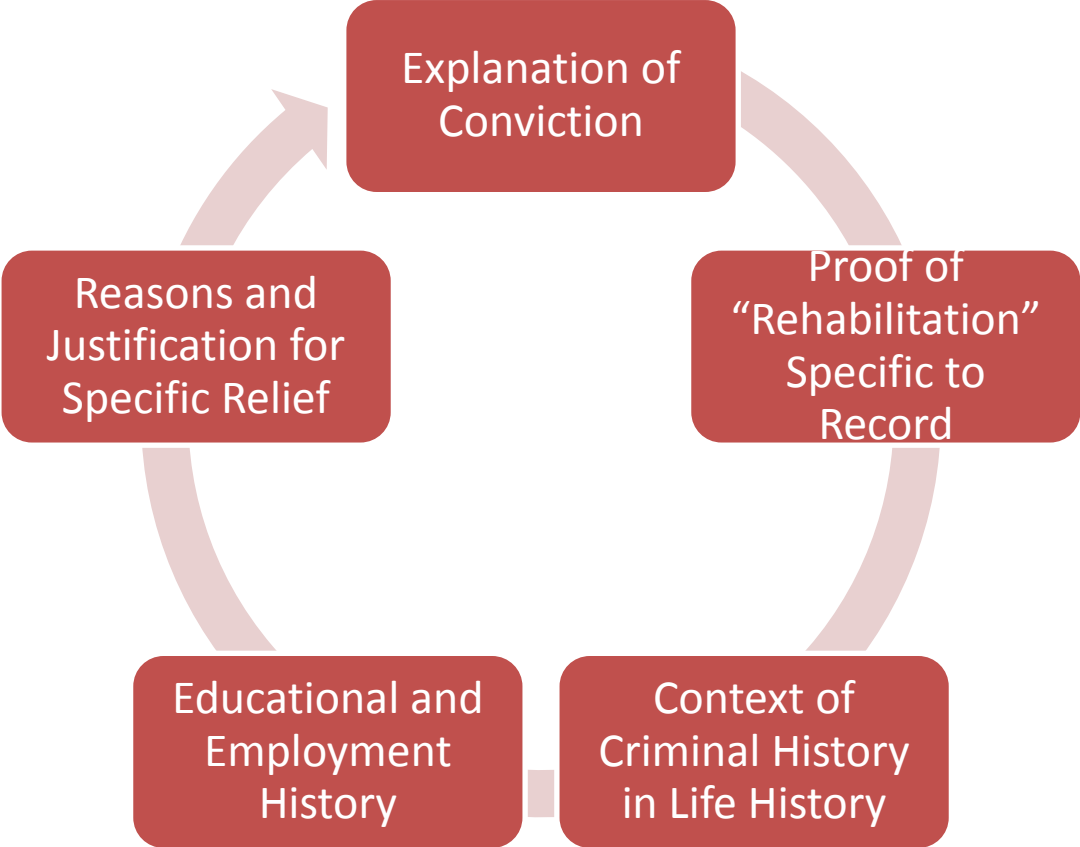
Health Care Waivers

- Removes statutory barriers to working in health care facilities.
- Available for non-licensed health care workers and any other employee with “access” to patients.
- Granted by the Illinois Dept. of Public Health.

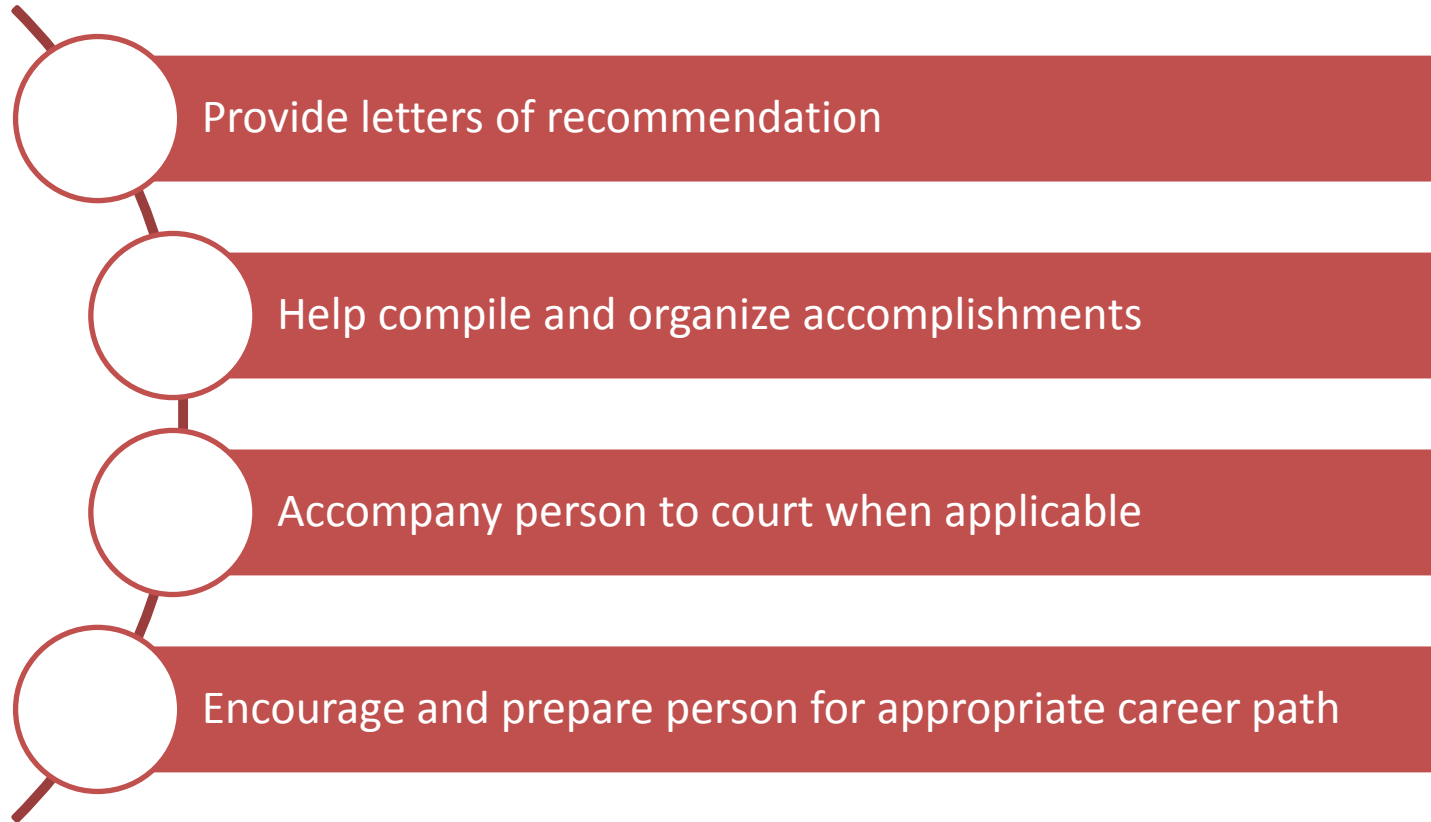
Certificates of Rehabilitation

- Granted by the courts after a “rehabilitation hearing.”
- Can remove specific statutory employment barriers or discretionary licensing barriers.
- Can be used to aid in job searches, provides immunity from negligent hiring.

Similarities Between Forms of Relief



How You Can Help in the Process

- 
- Provide letters of recommendation
 - Help compile and organize accomplishments
 - Accompany person to court when applicable
 - Encourage and prepare person for appropriate career path

Petitions for Executive Clemency

Petition Submitted

- Type-written petition submitted to the Prisoner Review Board (PRB).

Hearing Held before PRB

- Hearings are held four times a year (twice in Chicago and twice in Springfield).

Governor has Sole Authority to Render Decision

- PRB makes non-binding recommendation, Governor has no time frames, and it takes years for a decision.

Health Care Waivers

The Healthcare Worker Background Check Act

- Prohibits healthcare employers from employing persons with “disqualifying convictions.”

Not every conviction is disqualifying!!!

- Waiver is only needed for those listed by statute. Complete list of disqualifying convictions at:
<http://www.idph.state.il.us/nar/disconvictions.htm>

Time Frames for Applying

- Waiting periods apply based on # of convictions. Waiting period starts from conviction date (as opposed to from end of sentence).

Process for Healthcare Waivers

Deceptively
SIMPLE!

- Complete application and compile supporting documentation.
- Mail to the Healthcare Worker Registry.

Preparing Waiver
Application

Receipt by Registry &
Need for Fingerprints

- Applicant will receive letter requiring fingerprints to be taken through Illinois State Police.
- Letter is received ~3 weeks after receipt by Registry.
- If documents are needed, letter will ask for those (i.e. proof of completion of sentence).

- After receipt of all documents and Livescan fingerprints, a decision is made ~3-6 weeks later.
- Registry meets every three weeks to make decisions.
- Letter is mailed to applicant and registry reflects decision.

Decision by
Healthcare Worker
Registry

Process typically takes 6-8 weeks

Certificates of Good Conduct/ Relief from Disabilities

Benefits of Certificates

Provides Incentive

- Immunity from negligent hiring claims is provided to Certificate holders

Removes Barriers

- Certificates can remove statutory barriers to employment that historically have no waiver process built in the statute

Differentiates

- With the hundreds of thousands men and women with criminal records, let's a person be more than a "YES" on the application

Certificates of “Rehabilitation”

Available through the court of conviction for all convictions except:

Aggravated DUI or
Aggravated
Domestic Battery

Convictions
requiring
registration (sex
offender, murder,
arson, etc.)

effective 1/1/2016
Expanded eligibility for
Certificates to includes
class x felonies and
forcible felonies
resulting in great bodily
harm

Know the Legal Rights

People with criminal records have rights!

Illinois Job Opportunities for Qualified Applicants Act (Ban the Box)

Illinois Human Rights Act

Fair Credit Reporting Act

Know the Legal Rights



*Have you
ever been
convicted?*

The Illinois Job Opportunities for Qualified Applicants Act

Who

- Employers of more than 15 people in the current or prior year
- Employers that are NOT regulated by state or federal law

What

- Cannot ask about convictions until after a conditional offer of employment or selected for an interview
- If regulated by law, must state which convictions disqualify employment

How

- Complaints filed with the IL Department of Labor – no private right of action.
- Graduated penalty scale, starting with a warning and increasing to \$1500 by the third violation of failure to remedy

Filing Complaints for Violation of State Law

Illinois | Bruce Rauner, Governor | Hugo Chaviano, Director | About | Contact | File A Complaint

Search



Fairness. Safety. Equality.

Employees

Employers

Public Safety

Laws and Rules

About

IDOL > Laws and Rules > Fair Labor Standards Division > Ban The Box Complaint Form

Ban The Box Complaint Form

First Name	<input type="text"/>
Last Name	<input type="text"/>
Address	<input type="text"/>
City	<input type="text"/>
State	IL ▼
ZIP Code	<input type="text"/>
Phone	<input type="text"/>
Email	<input type="text"/>

CHILD LABOR LAW

DAY AND TEMPORARY
LABOR SERVICES ACT

DAY AND TEMPORARY
LABOR SERVICES ACT
AMENDMENTS

DAY & TEMPORARY
LABOR SERVICE AGENCY
REGISTRATION

EMPLOYMENT
CERTIFICATES FOR
MINORS

FAIR LABOR STANDARDS
ACT (FLSA) EXEMPTIONS

HOURLY MINIMUM WAGE

<https://www.illinois.gov/idol/Laws-Rules/FLS/Pages/Ban-The-Box-Complaint-Form.aspx>

Prospective Employer

Prospective Employer Address

Prospective Employer City

Prospective Employer ST

Prospective Employer ZIP Code

Prospective Employer Contact Name

Prospective Employer Contact Phone

15 Or More Employees

Does the Employer have 15 or more employees in the current or preceding calendar year?

Position Applied For

Disclosure Before Interview

Have you been asked to disclose your criminal record or criminal history before being notified that you were selected for an interview?

Disclosure Before Conditional Offer

Have you been asked to disclose your criminal record or criminal history before a conditional offer of employment?

Bond Required

Is a bond required for the

HOURLY MINIMUM WAGE RATES BY YEAR

MINIMUM WAGE LAW

ONE DAY REST IN SEVEN ACT (ODRISA)

SCHOOL VISITATION RIGHTS ACT

WAGE PAYMENT AND COLLECTION ACT

WAGE PAYMENT AND COLLECTION ACT PENALTIES

CHILD LABOR LAW COMPLIANCE

OVERTIME EXEMPTIONS IN ILLINOIS

WAGE PAYMENT HEARING DATES

BAN THE BOX COMPLAINT FORM

JOB OPPORTUNITIES FOR QUALIFIED APPLICANTS ACT

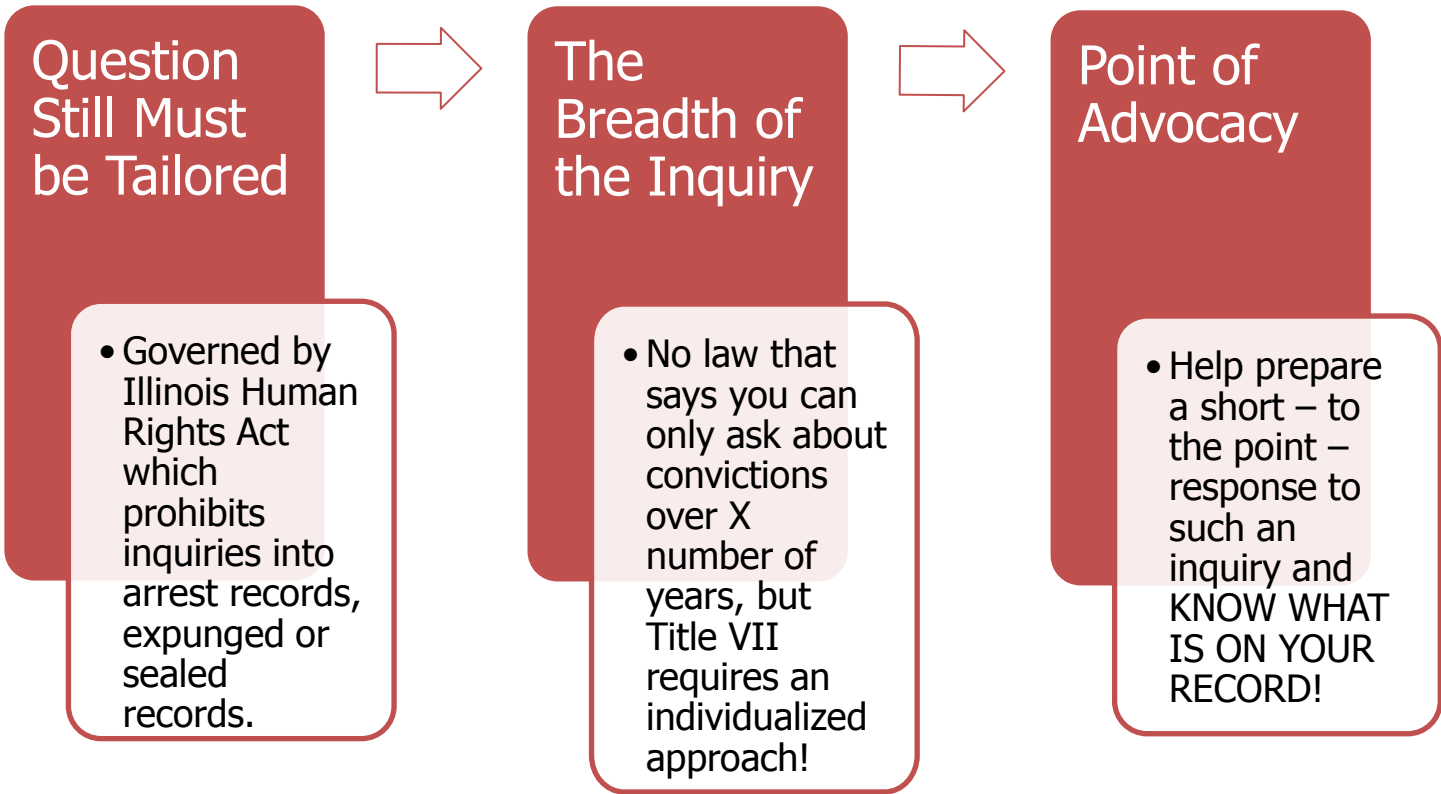
Know the Legal Rights

The Dreaded Question & Ban the Box

City of Chicago's Ban the Box Ordinance

Who	What	How
<ul style="list-style-type: none">• All employers in the City of Chicago, <u>no requirement on number of employees</u>.• Employers that are NOT regulated by state or federal law (same as state law).	<ul style="list-style-type: none">• Cannot ask about convictions until after a conditional offer of employment or selected for an interview• If regulated by law, must state which convictions disqualify employment	<ul style="list-style-type: none">• Complaints filed with the Chicago Commission of Human Rights.• Penalties ranging from \$100 to \$1000.

But the Question Will Still Come!



Know the Legal Rights



What Can Be Asked About

What is the Illinois Human Rights Act?

Employers cannot:

- Refuse to hire or promote based on “mere arrests.”
- Ask questions about arrests, expunged or sealed records, in writing or orally.
- Can only ask about convictions but may consider cases where there was a finding of guilt or independent information they learn about from sources other than the background check.

Know the Legal Rights

Obtaining a Background Check



What is the Fair Credit Reporting Act?

- The FCRA regulates background checks obtained from third-party consumer reporting agencies.
- The FCRA imposes requirements on employers before they obtain a pre-employment background check and before and after they take any adverse action based on the report.
- Requires employer to provide a written and clear disclosure on separate piece of paper and obtain consent.

Common Problems of Background Checks

Inaccurate or
Incomplete

Common
Names

Expunged
and Sealed
Records Still
Released

Duplicative

Amendments
or Reducers
Not Reflected

Know the Legal Rights

- Things background check companies must do:
 - They have to use “fresh” information.
 - They have to correct inaccurate information.
 - They have to inform applicants of a process to dispute and correct inaccurate information.
 - They have to give applicants a free copy of their background check report if they ask for it within 60 days of receiving notice that they were not hired.

Know the Legal Rights

• Things employer must do:

- They must give applicants a copy of the background check report before they deny them a job or promotion.
 - If the applicant applied online, the employer has 3 days to give them the name and contact info for the reporting agency.
- They cannot deny applicants a job or promotion because of their criminal background without giving them notice (“pre-adverse action notice”).
- In Illinois, they have to wait *at least 7* days before they actually take adverse action.

Know the Legal Rights

Can Never Start with No – Opportunity for Correction and Mitigation

Title VII Balancing Test

- Initial Balancing Test of Job Requirements and Criminal Record
- Consideration of Statutory Barriers and Governing Laws

Pre-Adverse Action Letter

- Must include copy of background check obtained
- Provide “reasonable” opportunity for correction – *remember the common errors!*

Know What to Say

Remember: An employer can only ask about convictions, and only under certain circumstances.

Also keep in mind that:

- The interview is not a re-trial. This is not the time to assert innocence.
- **Applicant should:**
 - Own it.*
 - Be ready to explain what happened.*
 - “Just the facts, ma’am.”*

Is Relief Available in Other States?

<https://www.nacdl.org/rightsrestoration/>

Find your jurisdiction

Click on a jurisdiction to view the summary, access the full profile document, and link to the comparison charts.



Knowing the Barriers

<http://www.abacollateralconsequences.org/>

NATIONAL INVENTORY OF THE COLLATERAL CONSEQUENCES OF CONVICTION

The collateral consequences of a criminal conviction—legal sanctions and restrictions imposed upon people because of their criminal record—are hard to find and harder to understand. Now it will be easier to do both. Congress directed the National Institute of Justice to collect and study collateral consequences in all U.S. jurisdictions, and NIJ selected the ABA Criminal Justice Section to perform the necessary research and analysis. The results are now being made available through this interactive tool.



Legal Aid Help In Different States

http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lsc_reentry_projects.authcheckdam.pdf



Legal Aid Reentry Projects for people with criminal records and other significant barriers to employment.

This chart identifies both Legal Services Corporation (LSC) and non-LSC funded legal aid programs that recently reported offering reentry-related legal services. The list is not meant to be comprehensive. There may be other active reentry legal services projects, and other local legal aid and pro bono programs or projects willing to develop a reentry pro bono program and/or partner with other reentry social service providers interested in collaborating on federal reentry grant applications such as those listed [here](#).

This chart was created by Cheryl Nolan, Program Counsel, Office of Program Performance, Legal Services Corporation. To add your reentry project to the chart, please contact Ms. Nolan at nolancc@lsc.gov or (202) 295-1561.

Program Information	Client Services and Data	Client Stories	Services Tied to Employment
ARKANSAS			
<p>Legal Aid of Arkansas 714 South Main Street Jonesboro AR 72401 870 972-9224 http://www.arlegalservices.org/</p> <p>Contact: Lee Richardson Executive Director lrichardson@arlegalaid.org 870-972-9224 ext. 6305</p> <p>Arkansas Expungement Document Assembly Interview LAA developed its interview module with a 2006 TIG project, located at: http://bit.ly/qg35oE</p>	<p>In the last 18 months: 190 clients with a direct benefit to 508 household members with expungement/clarification issues. 114 received counsel/advice or brief service; 76 received extended services/representation; LAA obtained expungements for 69 clients with direct benefit to 174 household members.</p>		<p>LAA uses comprehensive advocacy tools to assist people where the ability to obtain or maintain a job is threatened. Includes child support, driver's license, and expungement.</p>
CALIFORNIA			
<p>BayLegal 1735 Telegraph Ave Oakland, CA 94612 510-663-4755 http://www.baylegal.org</p>		<p>BayLegal is currently serving formerly incarcerated individuals in the following areas:</p> <p>Alameda Alameda's Youth Justice Project provides skill level courses to youths</p>	<p>San Francisco Legal Barriers to Employment Project: assists clients with driver's or professional license issues.</p>

What Advocates Can Do

- Know what is on the criminal record
- Know records mitigation options
- Know rights under state and federal law
- Know how to answer the “question”
- Prepare a mitigation packet
- Pursue legal relief when eligible

What Advocates Can Do

- Illinois Legal Aid Online
- CGLA Help Desks
- Office of the State Appellate Defender