

# Criminal History Individualized Assessment Factors

In California, employers with 5 or more employees may inquire into/consider an applicant's criminal history only after making a conditional employment offer. Moreover, before denying the job/position, employers must make an individualized assessment to determine whether an individual's conviction history has a "direct and adverse relationship" with the specific duties of the job which would justify denying employment and/or the position. The assessment must be a reasoned, evidence-based determination, specific to the particular individual. Below are the factors for consideration.

***As a reminder:*** Never consider arrests not resulting in a conviction; referrals to pre-trial/post trial diversion programs; juvenile records; non-felony marijuana convictions that are more than two years old; and convictions that are sealed, dismissed, expunged or removed by statute.

## Factors for Consideration:

### 1. Nature and gravity of the offense or conduct, which includes evaluating:

- The specific personal conduct of the applicant that resulted in the conviction;
- Whether the harm was to property or people;
- The degree of harm (e.g., amount of loss in theft);
- The permanence of the harm;
- The context in which the offense occurred;
- Whether a disability, including but not limited to a past drug addiction or mental impairment, contributed to the offense or conduct, and if so, whether the likelihood of harm arising from similar conduct could be sufficiently mitigated or eliminated by a reasonable accommodation, or whether the disability has been mitigated or eliminated by treatment or otherwise;
- Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or other similar factors contributed to the offense and/or conduct;
- The age of the applicant when the offense and/or conduct occurred.

### 2. The time that has passed since the offense or conduct and/or completion of the sentence, which includes evaluating:

- The amount of time that has passed since the conduct underlying the conviction, which may significantly predate the conviction itself;
- When the conviction led to incarceration, the amount of time that has passed since the applicant's release from incarceration.

### **3. The nature of the job sought or held, which includes evaluating:**

- The specific duties of the job;
- Whether the context in which the conviction occurred is likely to arise in the workplace;
- Whether the type or degree of harm that resulted from the conviction is likely to occur in the workplace.

### **Evidence of Mitigating Circumstances/Rehabilitation (if provided):**

If provided, evidence of mitigating circumstances and/or rehabilitation must also be considered as part of the initial individualized assessment. This is voluntary – do not require applicants to provide this information.

*Some* examples of this evidence includes: employment history, circumstances surrounding conduct, trauma that contributed to the offense, disability, including past drug addiction or mental impairment, successful completion of probation, if conviction led to incarceration, participation in work and educational or rehabilitative programming, employment history since the conviction or sentence completion, community service and engagement since conviction or sentence completion, any other rehabilitative efforts or mitigating factors.