



To: Chief Executive Officers
Presidents of Boards of Trustees
Community College Attorneys
Chief Human Resources Officers
Chief Instructional Officers
Academic Senate Presidents
Equal Employment Opportunity & Diversity Committee Chairs
Student Financial Aid Administrators
Other Interested Parties

Date: February 8, 2019

Re: (Revised) California Community Colleges Fair Chance Hiring Best Practices

I. INTRODUCTION

This Education Services and Support Division Policy Guidance (“Guidance”) is issued in conjunction with the Chancellor’s Office of General Counsel Legal Advisory (“Legal Advisory”) dated December 31, 2018, which describes the federal and state laws regulating the use of criminal records in employment decisions and suggests an approach to hiring that will help ensure community colleges make employment decisions based upon individualized assessments of job-related qualifications and of business necessity, as the law requires.

California’s community colleges and districts need to hire and retain the most qualified employees. This Policy Guidance affirms the colleges’ and districts’ broad discretion to determine who the most qualified applicant is, and to hire that person. The Guidance sets forth recommended policies and practices to help California’s community colleges implement applicable laws relating to employment opportunities for qualified applicants with criminal records in faculty, staff and student positions. It incorporates recommendations from human resource staff and administrators working in the California community college system.

The Chancellor recognizes that these are complex and challenging issues that involve balancing the campus safety and security concerns with the goals of ensuring equity, diversity and opportunity that are core to the mission of the state’s community college system. With this Guidance and the Legal Advisory issued by the Office of General Counsel, the Chancellor seeks to clarify the policies and practices supported by law and research that effectively balance these critical interests. By implementing a thoughtful hiring policy premised on individualized candidate assessments, community colleges and districts will be better positioned to expand their applicant pools and compete effectively for talented, qualified and motivated employees.

Roughly one in three adults in California has an arrest or conviction record.¹ While the criminal justice system touches all communities across the state, it has had an especially severe impact on communities of color.² Thus, expanding our hiring is a matter of equity and this Guidance helps promote diversity in hiring, promotion and retention by community colleges and districts.

The Chancellor also believes that the policies outlined below will bolster several key goals set forth in the Vision for Success by affording “opportunities

¹ National Employment Law Project, “Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions” (November 2018), at page 28.

² While African Americans in California represent six percent of the population, they account for 18.5 percent of all felony arrests in the state, 15.3 percent of all misdemeanor arrests, and 28.9 percent of all those incarcerated in the State. Thus, for every non-Latino white Californian who is arrested for a felony, nearly four African Americans and one and half of Latinos are arrested for that level of charge. The ratio of felony arrests for African Americans in California compared to non-Latino whites (3.9:1) means that in 2013 alone, nearly 60,000 more African Americans were arrested for felonies than would have been arrested if they were arrested at the same rate as non-Latino whites. See Letter of Bendick and Egan Economic Consultants to the California Fair Employment and Housing Council in Support of the Proposed Criminal Background Check Regulations (dated March 25, 2016).

for all who seek them,”³ increasing the completion rates of African American students thereby narrowing the achievement gap, and providing special resources for high-need populations.⁴ The Guidance is also consistent with the public policy direction of the State to reduce over-reliance on incarceration and create pathways to employment and opportunity for qualified people with criminal records, which California’s community colleges are uniquely positioned to promote. With the support of the Chancellor’s Currently and Formerly Incarcerated Education Unit, the community colleges have already made significant strides promoting education opportunities for people with criminal records which will have a measurable impact on public safety in our communities.⁵

This Guidance outlines a step-by-step guide to hiring people with criminal records. It is grounded in the best practices advanced by federal and state Equal Employment Opportunity (EEO) law and policies, and in the criminal history background check process in California’s new Fair Chance Act.

II. LEGAL ADVISORY HIGHLIGHTS

As the accompanying Legal Advisory clarifies, the community colleges and districts retain broad discretion to hire and promote people with criminal records consistent with federal and state laws regulating the consideration of criminal records in employment decisions.

Recognizing the disparate impact that employment decisions based on criminal records can have on people of color, federal and state civil rights laws disfavor blanket restrictions against hiring people with criminal records.

³ California Community Colleges Chancellor’s Office, “Vision for Success: Strengthening California Community Colleges to Meet California’s Need,” at page 1. [Vision for Success](https://californiacommunitycolleges.cccco.edu/Portals/0/Reports/vision-for-success.pdf)
<https://californiacommunitycolleges.cccco.edu/Portals/0/Reports/vision-for-success.pdf>

⁴ *Id.*, at pages 12-13, 31.

⁵ For example, having a job reduces the odds of re-arrest by 62 percent three months after release from prison. Nathan W. Link & Catherine G. Roman, “Longitudinal Associations Among Child Support Debt, Employment and Recidivism After Prison,” 58 Soc. Q. 140 (2017).

Instead, the laws require community colleges and districts to take into account rehabilitation and other mitigating factors when making employment decisions.

A number of important concepts are emphasized in the Legal Advisory:

- ❖ Community colleges and districts retain broad discretion to make individualized suitability determinations based on an applicant’s prior conviction history;
- ❖ Community colleges must consider evidence of rehabilitation even if the applicant would otherwise be disqualified by the California Education Code’s specific restrictions against hiring people who have been convicted of specified sex and drug offenses;
- ❖ The Fair Chance Act, which applies to students seeking employment in non-instructional positions, requires employers to delay the criminal history checks until after conditional offers have been made;
- ❖ Students seeking employment in non-instructional positions are not subject to the Education Code’s restrictions against hiring people with sex and drug offenses; and
- ❖ Community colleges and districts must provide copies of criminal history records so that applicants may verify their accuracy in adverse determination cases.

III. RELEVANT RESEARCH

In developing this Guidance, the Chancellor relied on the following empirical research, including several new studies that reinforce the critical value of fair chance hiring policies.

- ❖ Applicants who have obtained a higher education are less likely to recidivate. Education programming in prison has proven to be one of the primary indicators of success when people are released from prison back to their communities. According to a leading study, individuals who participate in college programs while in prison are 51 percent less likely to re-offend than those who do not.⁶

⁶ Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders, Jeremy N. V. Miles, “Evaluating the Effectiveness of Correctional Education A Meta-Analysis of Programs That Provide Education to Incarcerated Adults” (Rand Corporation, 2013), at page 34.

- ❖ Formerly incarcerated individuals are known to be dependable employees. A growing body of empirical and survey research documents the favorable experience of employers who have hired people with a criminal record. According to a recent survey of human resources professionals and managers, the quality of their hires of people with a criminal record was equal to or better than the quality of individuals hired without a record.⁷ Employees with a criminal record are also less likely to leave the job voluntarily, more likely to have a longer tenure, and they are no more likely than people without records to be terminated involuntarily.⁸ By employing qualified people with criminal records, even in temporary or work-study positions, our community colleges are setting these individuals up for success in seeking future employment opportunities by helping them build their resume and work history.⁹

⁷ Society for Human Resources Management, Charles Koch Institute, “Workers with Criminal Records: A Survey by the Society for Human Resources Management and the Charles Koch Institute” (2018), at Q20, Q21. The survey found that 82 percent of managers ranked the “quality of hire” of workers with a criminal record the same, better or much better than individuals without a criminal record, as did 67 percent of HR professionals.

⁸ Dylan Minor, Nicola Persico, and Deborah M. Weiss, “Criminal Background and Job Performance,” (2017), at pages 12-14 (<http://bit.ly/2vJT5jR>). Although not specific to the experience of private sector employers, a comprehensive study of people with a felony record who served in the U.S. military found that they were promoted more quickly and to higher ranks than others, and were no more likely than people without records to be discharged for negative reasons. Jennifer Lundquist, Devah Pager, and Eiko Strader, “Does a Criminal Past Predict Worker Performance? Evidence from American’s Largest Employer,” Working Paper (2016).

⁹ Supra, footnote 7, at Q46. The survey found that 76 percent of managers were more willing to hire person with a record who had a consistent work history, as did 70 percent of human resources professionals.

- ❖ The likelihood of a formerly incarcerated individual re-committing a crime matches that of someone without a criminal record after the passage of time. A leading study found that three to seven years after offending, nearly all people who have been convicted of a felony are no more at risk of being arrested for a new offense than anyone in the general population.¹⁰ The “desistance”¹¹ period varies depending on the offense. In the states studied, the period was four to seven years for someone previously arrested or convicted of a violent felony, four years for someone previously arrested or convicted of drug felony, and three to four years for someone previously arrested or convicted of a felony property crime.¹²

IV. FAIR CHANCE HIRING BEST PRACTICES

Without compromising safety and security on community college campuses, this Guidance emphasizes the individualized assessment approach toward hiring, promotion and retention. Individualized assessment is a key feature of federal and state civil rights laws regulating the use of criminal records in employment decisions and model policies endorsed by the U.S. Equal

¹⁰ Alfred Blumstein and Kiminori Nakamura, “Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences, submitted to the Nat’l Institute of Justice (November 2012), at page 89.

¹¹ This Guidance focuses on “desistance” because a desistance framework “allows for degrees of success even if there are occasional setbacks,” while the term “recidivism” is a “binary frame: People either succeed or they fail.” See Jeffrey A. Butts & Vincent Schiraldi, Harvard Kennedy School Program in Criminal Justice Policy and Management, Papers from the Executive Sessions on Community Corrections, “Recidivism Reconsidered: Preserving the Community Justice Mission of Community Corrections,” at page 9 (2018). “Focusing on desistance instead of recidivism,” can help policy makers “reorient their operations and measurements of success.”

¹² Supra, footnote 10.

Employment Opportunity Commission (EEOC).¹³

While the requirements of the California Fair Chance Act (FCA) do not extend beyond students seeking employment in non-instructional positions, the Chancellor's office urges the community colleges and districts to apply the following policies and practices to all hiring decisions. These policies and practices are consistent with the FCA and implementing regulations and harmonize with federal civil rights laws. To that end, the recommended hiring policies are organized into five sequential steps, as set out in the attached flow chart (Appendix A, "Fair Chance Hiring Steps Recommended for All Employees").

As detailed below, the five steps are:

1. Delay the criminal background check until after the conditional offer of employment ("ban the box").
2. Narrowly tailor employment disqualifications to job-related offenses ("Green" factors).
3. If the criminal record is determined to be job-related, provide a preliminary written notice revoking the conditional job offer.
4. Conduct an individualized assessment evaluating the applicant's evidence of rehabilitation and any challenges to the accuracy of the criminal record.
5. If the applicant has demonstrated rehabilitation, proceed with the hire. If the applicant's challenge to the preliminary determination **was not** successful, provide a written notice explaining the final determination and the individual's rights.

¹³ Interpreting Title VII of the Civil Rights Act of 1964, in 2012, the EEOC issued a detailed guidance regulating the use of arrest and convictions information in employment decisions, which also set forth best practices for employers to follow. U.S. Equal Employment Opportunity Commission Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act, as amended (42 U.S.C. §§ 2000e *et seq.*) (April 25, 2012). [EEOC Enforcement Guidance](https://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf)
https://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf.

STEP 1: DELAY THE CRIMINAL BACKGROUND CHECK UNTIL AFTER THE CONDITIONAL OFFER OF EMPLOYMENT (“BAN THE BOX”).

The Chancellor urges the community colleges and districts to follow the best practices identified by the EEOC and California’s new Fair Chance Act (FCA), which both endorse delaying the inquiry into an applicant’s criminal record until after the individual has been extended a conditional offer of employment.

This means removing the question about an applicant’s criminal record from the job application and delaying the criminal background check until after a conditional offer is made. Doing so helps focus the hiring process on what matters most: finding the best individual for the job in terms of skills, experience, and likelihood of success. It also spares allocating unnecessary effort and expense on applicants who are not the best fit for the job. Moreover, it minimizes the chilling effect that can result from having a question on the application. If your district or college decides to keep questions related to criminal records on job applications, keep in mind that it may not ask such questions on student employment applications. Appendix B includes a sample conditional offer letter to help employers implement the standards adopted by the FCA.

The Chancellor also urges the community colleges and districts to eliminate any requirement that the applicant “self-disclose” his or her criminal history before the background check has been performed. The rationale for requiring self-disclosed information may be rooted in the belief that applicants should be forthcoming about their past as an indicator of taking responsibility or that their candor or veracity can be tested by comparing the self-disclosed information with the full criminal background check report. However, processing in the criminal justice system is often confusing, and individuals are not always able to respond with precision or have been advised that they are not obliged to reveal certain offenses. Not accurately remembering or recording an offense on his or her record should not be associated with an intentional omission on the part of the applicant. Penalizing applicants for failing to accurately report an offense on a job application can lead to overlooking qualified applicants.

Instead, after extending the conditional offer of employment, community colleges and districts should rely in the first instance on the official background check report generated by the California Department of Justice (DOJ).

Compared to many commercial background checks, which can often be incomplete or inaccurate,¹⁴ the records generated by DOJ are generally the most reliable source of criminal history information. Indeed, as required by California law,¹⁵ DOJ expends significant resources verifying the accuracy of the records it disseminates for employment and licensing purposes.¹⁶ At a minimum, if the community college or district continues to request criminal history information from the applicant after the conditional offer stage of the hiring process, it should limit the inquiry to convictions that are clearly “job-related,” as described in Step 2 below.¹⁷

STEP 2: NARROWLY TAILOR EMPLOYMENT DISQUALIFICATIONS TO JOB-RELATED OFFENSES (“GREEN” FACTORS).

As described in the Chancellor’s Legal Advisory (Section II.A.), the seminal federal appeals court decision, *Green v. Missouri Pacific Railroad*,¹⁸ set out the factors an employer must consider when evaluating the relevance of an applicant’s criminal record. These factors have been codified into California civil rights law and regulations.

Like most employers, community colleges and districts are prohibited from applying blanket restrictions against hiring people with criminal records. This includes eliminating language requiring “no felonies” or “a clean record.” Instead, community colleges and districts must narrowly tailor criminal history

¹⁴ National Consumer Law Center, “Broken Records: How Errors by Criminal Background Check Companies Hurt Workers and Businesses” (April 2012).

¹⁵ Cal. Penal Code § 11105(k)-(m).

¹⁶ National Employment Law Project, “Wanted: Accurate FBI Background Checks for Employment” (July 2013), at page 24.

¹⁷ According to the EEOC Guidance (at page 25), “[w]hen asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.”

¹⁸ 523 F.2d 1290, 1293 (8th Cir. 1975).

inquiries to the “Green” factors that focus on whether the individual’s offense is job related. These factors include:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense or conduct and/or completion of the sentence; and
- The nature of the job held or sought.

A. Defining “Job Related”: California’s regulations implementing the state’s civil rights law (the Fair Employment and Housing Act)¹⁹ provide a helpful standard for employers to apply the “Green” factors and evaluate which criminal records are indeed job related, and which fall outside the scope of what employers should consider a disqualifying offense. According to the regulations, the “criminal conviction consideration policy or practice needs to bear a demonstrable relationship to successful performance on the job and in the workplace and measure the person’s fitness for the specific position(s), not merely to evaluate the person in the abstract.” (Cal. Code Regs, tit. 2, § 111017.1(f)(1) (emphasis added)).

B. Eliminating Non-Convictions and Older Offenses: Taking into account the “Green” factors requires limiting from consideration certain types of criminal records as well as paying attention to the amount of time that has passed since the conviction.

Colleges and districts should start by eliminating from consideration those offenses that are the least probative of actual criminal conduct. This means not taking into account arrests that did not lead to a conviction (this is a requirement under California law unless the case is still actively pending).²⁰ In addition, the community colleges and districts should not consider juvenile adjudications, sealed records, a record related to participation in a diversion program, or dismissed or expunged records.

The Chancellor also urges community colleges and districts to limit consideration of older convictions, which is strongly supported by the research referenced in Section III. The Chancellor recommends that the community

¹⁹ CA Gov’t Code, §§ 12940-12952.

²⁰ Legal Advisory, at page 13.

colleges and districts generally only take into account convictions that are less than seven years old (a “washout” policy). Such a policy mirrors the seven-year washout period required under the California law regulating commercial background screen companies, and mirrors the washout period adopted by the California State University (CSU) system. This is also an approach that has been adopted in other employment contexts.²¹

C. Establishing the Nexus to the Job: Once the expunged, sealed, juvenile, arrest, and older records are eliminated from consideration, the inquiry should focus more specifically on the “nature of the job held or sought,” which state civil rights regulations interpret to mean a “direct and adverse relationship with the specific duties of the job.” (Cal. Code Regs, tit. 2, § 111017.1(f)(2)). As the EEOC Guidance explains, this requires an analysis of the essential and specific functions of the job and the circumstances under which the job is performed, including the level of supervision or oversight as well as interaction with other workers, children, the elderly or other vulnerable populations.²²

To determine the nexus to the job it is first necessary to review the particular duties of the position. This is the case even for positions that require a background check, such as some safety sensitive positions including law enforcement, some positions in recreation, and positions involving direct contact with minor children. Generally, however, the laws requiring background checks do not list specific disqualifying offenses, which means that the community colleges and districts must still review the criminal history and determine whether the prior conviction has a direct and adverse relationship to the specific duties of the job.

Where the position involves higher levels of supervision and oversight of the employee, as can be the case with students employed in work-study positions, most conviction records will be far less relevant or predictive of successful

²¹ For example, the federal law requiring FBI background checks of port workers directs the Transportation Security Agency to disqualify a worker from employment in a secured area of a maritime port based on felony convictions dating back seven years or when the individual “has been released from incarceration within the preceding 5-year period for committing a felony” (42 U.S.C. §70105(c)(1)(D)(ii).

²² EEOC Guidance, at page 16.

performance on the job. Notably, work-study students are often employed in temporary and part-time positions, which may also militate against imposing undue criminal record restrictions. By comparison, the community colleges and districts may give greater weight to convictions that have a direct adverse relationship to the job in situations where the employee has significant independent authority. For example, serious property offenses raise concerns for people seeking employment in positions involving finance or financial aid matters, as do serious crimes involving violence against another person when individuals are being hired for positions involving the direct care or supervision of children or other vulnerable individuals.

Ultimately, human resources and financial aid staff should rely on their experience and expertise to evaluate the criminal history information, pose clarifying questions of the candidate, and examine references and other independent sources of information. Just as with any other fact about a potential employee -- whether it be length of prior positions, reason for leaving prior positions, or the way in which the applicant presents him- or herself during the interview -- human resources professionals can and should evaluate the facts, including what the applicant has done since the conviction (including programming while in prison), gaps in education or work history, and evidence of timeliness and responsibility.

It should be noted that for non-student workers, the California Education Code (Section 87405(a)) expressly designates convictions for most sex and drug offenses as disqualifying. This may be understood as the Education Code declaring that most sex and drug convictions are job related for non-student workers in community colleges and districts. However and importantly, as described below, the Education Code also permits such individuals to be hired if the community colleges and districts determine those applicants have been rehabilitated.

STEP 3: IF THE CRIMINAL RECORD IS DETERMINED TO BE JOB-RELATED, PROVIDE A PRELIMINARY WRITTEN NOTICE REVOKING THE CONDITIONAL JOB OFFER.

In addition to following the Fair Chance Act for students seeking employment in non-instructional position, as required by the law, the Chancellor recommends that the community colleges and districts adopt the following standards for all individuals applying for academic and classified positions:

- Inform each job applicant when he or she has a potentially disqualifying job-related prior criminal conviction by providing a written notice of the relevant offense(s);
- Provide the applicant with a copy of the background check report; and
- Create an opportunity for the job-seeker to challenge the accuracy of the record and present evidence of rehabilitation.

As provided in the sample forms in Appendix B, the Chancellor's Office urges the community colleges and districts to include an explanation in the written preliminary notice detailing how the disqualifying offense is job-related. The notice must also notify the recipient of the right to provide mitigating evidence of rehabilitation to challenge the preliminary determination.

If the determination to conditionally revoke the offer has been made because of a sex or drug conviction, as set out in the California Education Code, the notice should encourage individuals to avail themselves of the opportunity to provide evidence of rehabilitation, as detailed in the sample Notice of Preliminary Decision to Revoke Job Offer, found in Appendix B. Also in Appendix B is a sample Cover Sheet Challenging Preliminary Conviction History Decision for the applicant to submit to the community college or district, which lists the various acceptable and persuasive forms of evidence of rehabilitation to support the individual's challenge to the preliminary determination.

The Chancellor also urges the community colleges and districts to provide the applicant least 14 business days to ensure that he or she is afforded a full and fair opportunity to exercise their due process.²³ (Appendix B, Sample Employer Notice of Preliminary Decision to Revoke Job Offer).

Like the Fair Chance Act, laws regulating state and commercial background checks require that the applicant receive a copy of the DOJ record when an adverse determination is being made based on the individual's criminal record.

²³ The FCA requires that the individual be provided at least five business days to challenge the accuracy of the record (and five additional days after notifying the employer of its intention to do so) or produce evidence of mitigating information. However, the Chancellor urges the community colleges to provide 14 days to better ensure that the applicant has sufficient time to fully and adequately prepare the necessary information.

This basic consumer protection ensures that the applicant is provided an opportunity to review the criminal background report and challenge its accuracy.

STEP 4: CONDUCT AN INDIVIDUALIZED ASSESSMENT EVALUATING THE APPLICANT’S EVIDENCE OF REHABILITATION AND ANY DISPUTES REGARDING THE ACCURACY OF THE CRIMINAL RECORD.

If the applicant has responded to the preliminary notice revoking the job offer and produced mitigating evidence of rehabilitation and/or challenged the accuracy of the record, the community college or district should conduct what the EEOC describes as an “individualized assessment” review taking into account the information provided by the applicant.²⁴ Both the FCA and the state civil rights regulations governing the use of criminal history information by employers similarly include this critical reassessment element as part of a fair chance hiring policy.²⁵ While such a process can require time, it will ensure districts and colleges do not overlook qualified applicants.

A. Mitigating Factors and Evidence of Rehabilitation: The community colleges and districts should consider a broad range of mitigating evidence in determining whether the individual’s disqualify conviction should be set aside or waived. Consistent with the EEOC Guidance and other helpful resources,²⁶ at a minimum, the community college or district should take into account the following factors:

- the facts or circumstances relating to the offense, including mitigating circumstances;
- the number of offenses for which the individual was convicted;

²⁴ As summarized by the EEOC Guidance: “Individualized assessment generally means that an employer informs the individual that he may be excluded because of past criminal conduct; provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual’s additional information shows that the policy as applied is not job related and consistent with business necessity.” EEOC Guidance, at page 18.

²⁵ Legal Advisory, at page 7.

²⁶ EEOC Guidance, at page 18.

- the age of the individual when the individual committed the offense;
- the period of time that has elapsed since the individual committed the offense;
- evidence of work history, particularly any training or work experience related to the position or occupation;
- completion of, or active participation in, rehabilitative drug or alcohol treatment;
- additional evidence of educational, training or work activities that the individual has participated in, including during any period of incarceration;
- letters of reference by persons who know the individual either during a period of incarceration or since the individual was released from any correctional institution, including previous work supervisors, faculty, probation officers or parole agents; and
- additional rehabilitation efforts, including employment or character references, bonding under a federal, state, or local bonding program, and or certificates of rehabilitation. However, it is important to note that a showing of rehabilitation does not require a certificate of rehabilitation, as certificates of rehabilitation are quite rare in California and the number of applicants who will be able to show rehabilitation greatly outweighs the number of applications with a certificate of rehabilitation.

B. Rehabilitation Determination for Education Code Disqualifications: As set out above, Section 87405(a) of the California Education Code can be interpreted to mean that prior sex and drug convictions are job-related for all non-student positions, thus triggering the Conditional Offer Revocation. However, Section 87405(c) of the Education Code expressly states that the individual can be hired if s/he has met one of three conditions:

- 1) The court has dismissed the conviction under California Penal Code Section 1203.4. Similar to the expungement process available in other states, a 1203.4 dismissal is California’s record clearing or “clean slate” remedy commonly available to people who were not sentenced to state prison and have completed their sentence.²⁷

²⁷ For more information, see Margaret Stevenson, “Expungement: A Gateway to Work,” *Clearinghouse Rev.* (March 2015).

- 2) The individual has received or applied for a pardon and a certificate of rehabilitation. A certificate of rehabilitation is a prerequisite to receiving a pardon, and pardons are granted only on a limited basis in California. In most cases, an applicant is likely to present rehabilitation evidence, rather than a 1203.4 dismissal or a pardon.
- 3) The individual has been rehabilitated for a period of five years. The five-year period should cover the five years prior to the date on which the individual applies for the position. If it has been less than five years since the disqualifying conviction, the community college or district may not employ the individual. However, if more than five years passed between the date of the disqualifying conviction and the date on which the individual applies for the position, the conditional offer should be reinstated and the individual should be hired if he or she has shown rehabilitation.

Given the significant number of people who have been arrested for drug offenses in California over the past decade,²⁸ and the disproportionate impact of drug enforcement activities on communities of color,²⁹ the Chancellor urges the community colleges and districts to adopt robust policies implementing this critical feature of the Education Code requiring a rehabilitation determination for individuals convicted of sex or drug offenses. When making the rehabilitation determination, the community college or district should take into account all the relevant activities described above (Step 4, Section A), including programming that may have taken place while the individual was incarcerated and any drug treatment activities.

As described in the Legal Advisory (Section III.A.), community college or district staff can make the final rehabilitation determination, provided the Governing Board of the district has delegated its authority to do so. This is the case

²⁸ California's Department of Justice does not report conviction rates by offense, but it does report arrests rates by offense. In 2008, arrests for felony drug offenses represented 26 percent of all arrests, thus exceeding the other major categories crimes other than property offenses. Over the ten-year period from 2008 to 2017, there have been nearly one million arrests (993,128) for felony drug offenses in California. (See Crime Statistics <https://openjustice.doj.ca.gov/crime-statistics/>.)

²⁹ Jaime Fellner, "Race, Drugs, and Law Enforcement in the United States," *20 Stanford Law & Policy Rev.* 257 (June 2009).

whether the applicant's initial disqualification stemmed from a sex or drug conviction under the Education Code, or whether it was any other prior conviction. If the Governing Board retains the authority to make rehabilitation determination, however, the Chancellor recommends that the college or district staff develop a process for presenting a packet of complete information, including all pertinent evidence of rehabilitation regarding applicants to the Governing Board so it can make an informed determination. Some community colleges and districts develop a narrative of the applicant that presents a full picture of the applicant's qualifications and explains the circumstances of the criminal history.

Finally, the Education Code disqualification also references individuals who are already employed by the college or district. The Chancellor cautions that the five-year rehabilitation determination should not be employed as a measure to continuously reevaluate an individual's suitability and fitness once he or she has been employed by the community college or district. After the determination is made that the individual has been rehabilitated and is suitable to begin working, colleges and districts should not revisit the decision in subsequent years absent special circumstances.

STEP 5: PROVIDE WRITTEN NOTICE EITHER REINSTATING THE CONDITIONAL OFFER OR EXPLAINING THE FINAL DETERMINATION TO REVOKE THE OFFER.

If the community college or district sets aside the disqualifying conviction based on evidence of rehabilitation or a finding that the record provided the applicant was inaccurate, the applicant should expeditiously be informed in writing of the favorable determination.

If the community college or district does not find that the disqualifying offense should be set aside, then it should provide a written notice describing the final determination, including an explanation responding to the mitigating information produced by the applicant. So as not to discourage the applicant from applying for other jobs in the college or district for which she or he may be qualified, the Chancellor encourages written notices to include language indicating that while the person has been deemed unqualified for the particular position, his or her conviction is not disqualifying for all college or district positions.

If the job opening is for a classified or academic staff position, and the disqualification was due to a sex or drug conviction that is less than five years old, the final determination should notify the applicant that he or she must wait five years from the date of conviction before applying for another non-student position. Appendix B includes a Sample Notice of Final Decision for use by the community colleges and districts.

V. PROTECT PRIVACY, ENSURE CONSISTENT DECISION MAKING AND FOSTER PUBLIC CONFIDENCE IN THE PROCESS

The Chancellor urges the community colleges and districts to adopt the following policies and protocols regulating the criminal records review process. Requesting and reviewing criminal records provided by government and private sources involves a high degree of technical expertise and clear protocols to protect privacy and confidentiality and ensure quality and consistent background check determinations. The background check policy should also be transparent to ensure that everyone has full confidence in the decision-making process.

A. Centralize the background check process and maintain confidentiality.

As required by the laws regulating the use of DOJ criminal records and commercial background check reports (Legal Advisory, at page 12.), community colleges and districts must ensure that only designated and trained human resources staff conduct the background checks and have access to the specific records.

DOJ imposes strict confidentiality mandates on the individual designated by the community college and districts as the “records custodian,” indicating that the records may only be accessible to the records custodian or the hiring authority charged with making the suitability determination.³⁰ The Custodian of Record must complete and submit to the DOJ an Application for

³⁰ California Department of Justice, Bureau of Criminal Information and Analysis, “Application for Authorization Pursuant to State Statute (Private/Public Schools, Government Agencies, Federal Agencies, Financial Institutions, Public Utilities & All Other Applicant Agencies),” at page 12 (Applicant Fingerprint Response Subscriber Agreement).

Confirmation

<https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/custodian/bcia-8374.pdf> anyone other than the designated records custodian who reviews background checks is required by DOJ to sign an employee statement attesting to an understanding of penalties imposed by the state confidentiality laws.³¹ Thus, there should be a firewall between the centralized, authorized, and designated human resources staff member who reviews the criminal record and all other campus officials involved in the hiring process.

In addition, as required by the subscriber agreement entered into between the community college or district and DOJ, the staff with access to the criminal record information should be fully trained in the handling of the criminal record information, which includes signing a statement acknowledging the penalties imposed by state law related to the misuse of the criminal record information. Finally, as recommended by DOJ, the criminal records should be destroyed immediately after the decision is made to employ the individual who is the subject of the record.³²

Unless a campus law enforcement official is the legally designated custodian to receive the DOJ criminal records for employment background check purposes, the check may not be shared with campus police. However, campus police can play a key role as a resource assisting human resources staff in providing the training and technical understanding necessary to accurately read and interpret DOJ records. In addition, DOJ is available to help the designated record custodian with technical questions related to criminal record information disseminated in individual cases.³³

B. Establish written policies and training protocols/collect and report data on compliance.

In addition to centralizing the background check process and maintaining confidentiality of the criminal records, the community colleges and districts should have in place written policies, training protocols and reporting requirements that ensure the background check processes and decision-

³¹ Id., at page 20.

³³ For technical questions regarding the DOJ criminal history report, email appagencyquestions@doj.ca.gov.

making will be implemented consistently in full compliance with federal and state laws.

Written Policies/Training: The EEOC Guidance provides a helpful checklist of best practices, which includes developing a “narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct,” and “train[ing] managers, hiring officials and decision-makers on how to implement the policy and procedures consistent with Title VII.”³⁴ The Chancellor urges the community colleges and districts to record their criminal background check policies into writing by incorporating the five-step process described in Section III of this Guidance. This will ensure consistency that survives turnover in leadership. In collaboration with the EEO officers, human resource managers should also develop and implement a training protocol on the written policy and the applicable federal and state laws for human resources personnel and other appropriate parties.

Record-Keeping: Record keeping to document and monitor compliance with the background check policy is a critical component of a robust fair chance hiring policy. The Chancellor recommends that the community colleges and districts collect and maintain data to help track the process, such as data on the number of:

- people with a criminal record who received a conditional job offer, and preliminary notice revoking the offer and a final determination;
- people whose challenges were resolved in their favor (broken down by cases establishing rehabilitation and cases challenging the accuracy of the record).
- people whose background check report included a sex versus drug conviction that raised a disqualification issue under Section 87405(a) of the Education Code;
- people with a potentially disqualifying sex or drug conviction who were exempted from disqualification under Sections 87405(a) or (c) of the Education Code.

The tracking and reporting of relevant data may be facilitated by the use of automated applicant tracking systems that are employed by many of the

³⁴ EEOC Guidance, at page 25.

community colleges and districts.³⁵

Goals/Benchmarks: Employing the data collected, the community colleges and districts should establish clear goals and benchmarks to measure the impact of the policy on the rates of: conditional job offers extended to applicants with a criminal record; employees hired with a criminal record; applicants who submitted mitigating evidence; and applicants with potentially disqualifying convictions who were found suitable to work based on mitigating evidence.

C. Be transparent about the criminal background check policy and procedures.

To inspire confidence in the fairness of the hiring process, it is important that the community colleges and districts prominently feature the relevant written policies and procedures on their website and in other public venues, and expressly encourage qualified people with records to seek employment in the community college system (means by which to do so are described more fully in Appendix C). Applicants with a criminal record are often discouraged from applying for jobs that they are fully qualified for, either because of prior rejections due to their record or because they are intimidated by the prospect of seeking work due to the stigma of a criminal record. When made aware of them, the fair chance hiring policies and practices in this Guidance encourage qualified applicants with records to seek employment in California's community colleges and districts.

VI. BUILDING A CAMPUS-WIDE FAIR CHANCE HIRING ENVIRONMENT

To fulfill the mission of the California Community Colleges and further equity and diversity, the Chancellor urges community colleges and districts to consider ways in which they can actively support fair chance hiring beyond adopting the individualized assessment policies described here.

As described in more detail in Appendix C, creating a campus-wide fair chance hiring environment could include:

³⁵ For example, many community colleges and districts employ the applicant tracking systems developed by NeoGov <https://www.neogov.com/> or Green Tree Systems <http://www.greentreesystems.com/>.

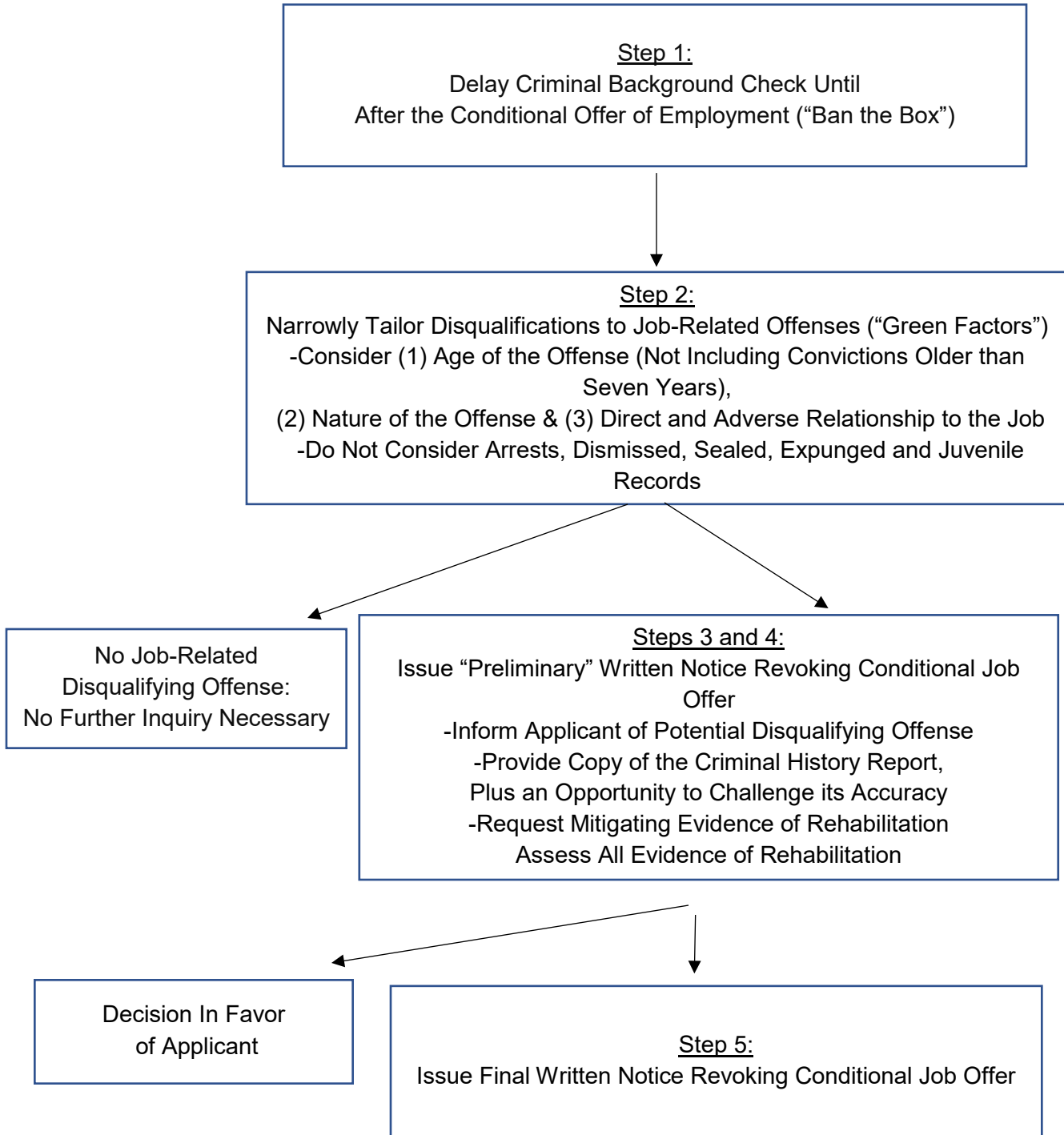
- communicating at the leadership level the core goals and vision of fair chance hiring to the campus community;
- cultivating a fair chance hiring culture that forges relationships with directly impacted communities and destigmatizes people with criminal records;
- making critical investments in people with criminal records and promoting employment opportunities at all levels of responsibility; and
- leveraging the community college's contracts with vendors and other relationships to create employment opportunities for people with criminal records.

APPENDICES

- A. Fair Chance Hiring Steps Recommended for All Employees
- B. Sample Forms and Notices
 - Conditional Offer Letter
 - Employer Notice of Preliminary Decision to Revoke Job Offer
 - Cover Sheet Challenging Preliminary Conviction History Decision
 - Employer Notice of Final Decision to Revoke Job Offer
- C. Four Elements of a Campus-Wide Fair Chance Hiring Environment

APPENDIX A

Fair Chance Hiring Steps Recommended for All Employees



APPENDIX B

Sample Forms and Notices

CALIFORNIA COMMUNITY COLLEGE
SAMPLE CONDITIONAL OFFER LETTER

[DATE]

**Re: Conditional Offer of Employment and Notice of Conviction
Background Check**

Dear [APPLICANT NAME]:

Thank you for your interest in employment with [INSERT NAME OF COLLEGE OR DISTRICT].

Congratulations, we are writing to make you a **conditional offer of employment** for the position of [INSERT POSITION]. The job offer is conditional because we must review your conviction history (as described in the attached instructions) before we can make a final job offer.

After reviewing your conviction history report, we will either:

- a) Notify you that this conditional job offer has become final; or
- b) Notify you in writing that we intend to revoke (take back) this job offer because of your conviction history.

As prohibited by California law, we will not consider any of the following criminal history information:

- ✘ Arrest not followed by conviction (unless the case is still actively open);
- ✘ Referral to or participation in a pretrial or post-trial diversion program;
- or
- ✘ Convictions that have been sealed, dismissed, expunged, or pardoned.

According to our hiring policy (and as required by California's Fair Chance Act in cases involving students seeking non-instructional positions), we will only consider convictions that are directly related to the duties of the job we have offered you. While reviewing an individual's conviction history, we will pay special attention to the following factors:

- ✓ The nature and seriousness of the offense
- ✓ The amount of time since the offense
- ✓ The nature of the job you have applied for

However, under California law, we must consider most drug and sex offenses for all classified and academic positions.

If you have a conviction record of particular concern to us, we will notify you in writing if we plan to revoke (take back) this job offer. **That decision will be preliminary, which means you will have an opportunity to respond before it becomes final.** You will be allowed to challenge the accuracy of the criminal record report that we will provide you and encouraged to present information establishing that you have been rehabilitated.

If you have any questions about the process, please feel free to contact [INSERT NAME AND CONTACT INFORMATION].

Sincerely,
[EMPLOYER CONTACT NAME AND POSITION]

**CALIFORNIA COMMUNITY COLLEGE:
SAMPLE EMPLOYER NOTICE OF PRELIMINARY DECISION
TO REVOKE JOB OFFER BECAUSE OF CONVICTION HISTORY**

[DATE]

Re: Notice of Preliminary Decision to Revoke Job Offer Because of Conviction History

Dear [APPLICANT NAME]:

Thank you for your interest in employment with [INSERT NAME OF COLLEGE OR DISTRICT]. We are writing regarding the conditional offer of employment that was described in our letter to you dated [INSERT DATE].

After reviewing the results of your conviction history background check, **we have made a preliminary (non-final) decision to revoke (take back) our previous job offer for the position of [INSERT POSITION] because of the following conviction(s):**

- [LIST CONVICTION(S), INCLUDING THE COURT AND THE DATE OF THE DISPOSITION]
- _____
- _____

In making this decision, we paid special attention to several factors, including the nature and seriousness of the offense, the amount of time since the offense, and the nature of the job you have applied for. [IF APPROPRIATE, INSERT: “In your case, we have made the preliminary decision to revoke the job offer based on your [INSERT “DRUG” OR “SEX”, WHICHEVER IS APPLICABLE] conviction, as required by the California law [Education Code, Section 87405(a)] that restricts employment of people with drug and sex convictions from working for a community college in an academic or classified position.”]

As required by California law, we have enclosed a copy of your conviction history report for your review in order to verify the accuracy of the convictions listed above. In the “Individualized Assessment” section below, we have provided additional information describing the basis for our decision.

Your Right to Challenge the Preliminary Determination:

You are encouraged to respond to this letter with additional information that we will be sure to consider before we render a final decision regarding the job offer. Within **14 business days** from when you received this notice, you may send us:

- Evidence of rehabilitation or other mitigating circumstances that we should take into account related to the conviction listed above; or
- Information challenging the accuracy of the conviction history listed above.

Please fill out the attached cover sheet and send it to [INSERT NAME AND MAILING ADDRESS OR EMAIL] with the supplemental information. **If you do not respond within 14 days of when you received this notice, the decision to revoke your conditional job offer will become final.**

Here are some examples of information you are encouraged to send to help us in making a final decision:

- ✓ The facts or circumstances surrounding the offense listed above, which will help us understand whether there were important mitigating factors we should consider;
- ✓ Your age at the time of the offense;
- ✓ The time that has passed since the conduct that led to your conviction or since your release from incarceration;
- ✓ Evidence of work history, particularly any training or work experience related to the position or occupation;
- ✓ Completion of, or active participation in, rehabilitative drug or alcohol treatment;
- ✓ Additional evidence of education, training or worker activities that you have participated in, including during any periods of incarceration;
- ✓ Letters of reference by persons who know you individually either during a period of incarceration or since you were released from any correctional institution, including previous work supervisors, faculty, probation officers or parole agents;

- ✓ Additional rehabilitation efforts, including character references, or bonding under a federal, state or local bonding program;
- ✓ Evidence that you applied for or received a pardon or a certificate of rehabilitation.

[IF APPROPRIATE, INSERT: “Because your case involves a conviction for a [INSERT “DRUG” OR “SEX”, WHICHEVER IS APPLICABLE] offense, we are required by California law (Education Code, Sections 87405(b), and (c)) to consider evidence of rehabilitation, **but only if at least five years have passed since the date of your conviction and the date when you applied for the position, which was [INSERT DATE OF APPLICATION]**. Regardless of when you applied for the position, if you applied for or received a pardon for the offense or a certificate of rehabilitation, or the offense was dismissed by the court (as authorized by Penal Code, Section 1203.4)), please provide us with that information and it will be taken into account before we make a final decision.

We will review the information you submit and make another individualized assessment of whether to hire you or revoke the job offer. ***We will notify you in writing if we make a final decision to revoke the job offer.***

Our Individualized Assessment:

We have individually assessed whether your conviction history is directly related to the duties of the job we offered you, taking into account the following factors:

- ✓ **The nature and seriousness of the of the conduct that led to your conviction(s), which we assessed as follows:**

[DESCRIBE WHY THE OFFENSE IS CONSIDERED SERIOUS]

- ✓ **How long ago the conduct occurred that led to your conviction, which was: [INSERT AMOUNT OF TIME PASSED] and how long ago you completed your sentence, which was: [INSERT AMOUNT OF TIME PASSED].**

- ✓ **The specific duties and responsibilities of the position of [INSERT POSITION], which are:**
[LIST JOB DUTIES]

We believe your conviction record lessens your fitness/ability to perform the job duties because:

If you have any questions about the your rights to respond to the preliminary decision to revoke the conditional job offer based on your conviction record, please contact us immediately at [INSERT NAME AND CONTACT INFORMATION]. Thank you.

Sincerely,
[EMPLOYER CONTACT NAME AND POSITION]

Enclosure: Copy of Conviction History Report
Cover Sheet to Challenge Preliminary Determination

**SAMPLE COVER SHEET FOR APPLICANTS
CHALLENGING THE PRELIMINARY CONVICTION HISTORY DECISION**

**COVER SHEET CHALLENGING PRELIMINARY CONVICTION HISTORY
DECISION**

My name is _____, and I am responding to the preliminary decision of [INSERT COMMUNITY COLLEGE DISTRICT NAME] dated _____ revoking the conditional offer of employment based on a conviction record.

I am challenging the preliminary conviction history decision for the following reasons (please check the relevant boxes):

- The criminal history record provided me was inaccurate or incomplete (please explain the reason, and submit court records and other documents, if available):

- The conviction listed in the preliminary decision is accurate, but the following mitigating information should be considered, which shows that I have been rehabilitated (please check the appropriate boxes, and if possible submit documents that support the reasons checked below):

- There were mitigating factors related to the offense.
- My age at the time of the offense, which was (please insert age) _____.
- Time that has passed since my conviction and or since my release from incarceration.
- My work history, particularly training or work experience related to the position.
- Completion of, or active participation in, rehabilitative drug or alcohol treatment.

- Additional evidence of education, training or work activities (which may include activities during periods of incarceration).
- Letters of reference from previous work supervisors, faculty, probation officers, parole agents (letters may be provided by people who you knew in prison, such as instructors).
- Bonding under federal, state or local bonding programs.
- Evidence of applying for or receiving a pardon, a certificate of rehabilitation, or dismissal of the conviction based on Penal Code 1203.4.
- Other evidence, including (please list the additional information): _____

Signature: _____

Date: _____

Please mail this cover sheet and your documents to:
 [INSERT MAILING INFORMATION]

**CALIFORNIA COMMUNITY COLLEGE
SAMPLE EMPLOYER NOTICE OF FINAL DECISION
TO REVOKE JOB OFFER BECAUSE OF CONVICTION HISTORY**

[DATE]

Re: Final Decision to Revoke Job Offer Because of Conviction History

Dear [APPLICANT NAME]:

We are following up about our letter dated [DATE OF PRELIMINARY NOTICE], which notified you of our preliminary decision to revoke (take back) the conditional job offer for the position of [INSERT TITLE OF THE POSITION] because of your conviction record.

(CHECK ONE)

- Because we did not receive a timely response from you after sending the preliminary determination letter, our decision to revoke the job offer is now final.
- We made a final decision to revoke the job offer after considering the information you submitted, which included:
[LIST INFORMATION SUBMITTED]

After reviewing the information you submitted, we have determined that:

(CHECK ONE OR BOTH)

- There was not an error in the criminal history information related to the conviction for [INSERT NAME OF OFFENSE] dated [INSERT DATE].
- For the reasons described below, the evidence of rehabilitation and other mitigating information that you provided related to the conviction for [INSERT NAME OF OFFENSE] dated [INSERT DATE] was not sufficient to change our preliminary determination revoking the job offer.

Our Individualized Assessment:

We have individually reassessed whether your conviction history is directly related to the duties of the job we offered you, taking into account the following factors:

- ✓ **The nature and seriousness of the of the conduct that led to your conviction(s), which we assessed as follows:**

[DESCRIBE WHY THE OFFENSE IS SERIOUS]

- ✓ **How long ago the conduct occurred that led to your conviction, which was [INSERT AMOUNT OF TIME PASSED] and how long ago you completed your sentence, which was [INSERT AMOUNT OF TIME PASSED].**

- ✓ **The specific duties and responsibilities of the position of [INSERT POSITION], which are: [LIST JOB DUTIES]**

- ✓ **The evidence of rehabilitation and other mitigating information provided, including:**

[SUMMARIZE THE MITIGATION INFORMATION PROVIDED BY THE APPLICANT, IF ANY]

We believe your conviction record lessens your fitness/ability to perform the job duties and have made a final decision to revoke the job offer because [NOTE: Respond specifically to the mitigating information provided by the applicant, if any]:

We greatly appreciate your interest in employment with [INSERT NAME OF EMPLOYER], and we encourage you to re-apply for additional positions that you may qualify for with your conviction record. Each position requires a unique determination of whether an individual’s conviction record is directly related to the job. In addition, for jobs that become available in the future, we will take into account new mitigating information and evidence of rehabilitation.

[INSERT, IF APPLICABLE: “If you were convicted of a drug or sex offense, and we were not allowed to consider evidence of rehabilitation because five years have not yet passed since the date of the conviction and the date when you applied for the position, once the required five years have passed, you are eligible to reapply for the similar positions, and we will take consider evidence of rehabilitation or mitigation, which could result in a different decision.”]

If you have any questions about this final notice, please contact [INSERT NAME AND CONTACT INFORMATION]. Thank you.

Sincerely,

[EMPLOYER CONTACT NAME AND POSITION]

* * *

[NOTE: IF THE APPLICANT IS A STUDENT SEEKING A NON-INSTRUCTIONAL POSITION, THEN THE CALIFORNIA FAIR CHANCE ACT APPLIES AND THE INDIVIDUAL SHOULD BE NOTIFIED OF THE RIGHT TO FILE A COMPLAINT WITH

THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AS
FOLLOWS:]

Your Right to File a Complaint:

If you believe your rights under the California Fair Chance Act have been violated during this job application process, you have the right to file a complaint with the California Department of Fair Employment and Housing (DFEH). There are several ways to file a complaint:

- ✓ File a complaint online at California Department of Fair Employment and Housing <https://ccrs.dfeh.ca.gov>
- ✓ Download an intake form Filing a Complaint by Mail <https://www.dfeh.ca.gov/complaint-process/file-a-complaint/filing-a-complaint-by-mail-2> and email it to contact.center@dfeh.gov or mail it to 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758.
- ✓ Visit a DFEH office Office Locations <https://www.dfeh.ca.gov/contact-us/office-locations>

For more information, visit Complaint Process <https://www.dfeh.ca.gov/complaint-process> or call (800) 884-1684.

APPENDIX C

Four Elements of a Campus-Wide Fair Chance Hiring Environment

1. Communicate at the leadership level the core goals and vision of fair chance hiring.

Advancing successful fair chance hiring policies and practices requires active and informed engagement at all levels of leadership, from the district Chancellor to the community college President and to senior human resources, student services and other administrators.

The Chancellor urges the community colleges and districts to adopt and prominently communicate formal policy statements expressing the core goals and values of a fair chance strategy. These policy statements set a tone that not only promotes compliance with policies and practices but also reinforces the critical support of district and campus leaders. Ensuring that the institution's leadership and appropriate human resources staff receive training on the new policies and practices, which is linked to broader EEO efforts promoting diversity, equity and inclusion, is another critical component of a successful fair chance strategy.

2. Cultivate a fair chance hiring culture that forges relationships with directly impacted communities and destigmatizes people with criminal records.

Community college and districts leaders should actively engage individuals, offices, and student clubs in the campus community that are most directly impacted by the criminal justice system. By forging relationships with on-campus formal and informal groups that support students with criminal records and with community-based organizations staffed by people with lived experiences interacting with the criminal justice system, community college leadership can build trust with the community, develop greater expertise and sensitivity to the core issues facing the community and enhance the strategic direction and design of the fair chance hiring policies and other policies that expand educational and employment opportunities. Formerly incarcerated students and community groups can also play a key role in dispelling stereotypes, responding to fears, and training stakeholders within the campus college community.

The language used by the community colleges and districts in referring to those people who have been directly impacted by the criminal justice system can have a powerful impact on the success of the fair chance hiring policies. Dominant narratives of people with criminal records often define people by their past mistakes rather than by their skills, talents and potential. This plays out most directly in the use of deficit-based language, like “ex-offender” or “ex-felon” that can perpetuate negative and racialized stereotypes and undermine core goals of fair chance hiring. Adopting more humanizing language in referring to people who have been directly impacted by the criminal justice system can ensure that the fair chance hiring policy is woven into the fabric of the institution and reorient staff assumptions about jobseekers and employees with criminal records.

The Chancellor urges the community colleges and districts to follow the lead of other major institutions³⁶ that are eliminating the use of stigmatizing terms and instead using “people first” or “person-first” language, such as “formerly incarcerated people,” or “people with arrest or conviction records.” This is consistent with EEO best practices, which refer to “people” with disabilities and other protected groups,³⁷ and with recent research documenting that “crime-first” language negatively impacts the perceptions of the public toward

³⁶ For example, a *New York Times* editorial entitled, “Labels Like Felon are an Unfair Sentence” (May 7, 2016), describes the 2016 policy adopted by the U.S. Department of Justice Office of Justice Programs (OJP) under Attorney General Eric Holder. Karol Mason, the Assistant Attorney General and former head of OJP stated: “This new [U.S. Department of Justice] policy statement replaces unnecessary disparaging labels with terms like ‘person who committed a crime’ and ‘individual who was incarcerated,’ decoupling past actions from the person being described and anticipating the contributions we expect them to make they return. We will be using the new terminology in speeches, solicitations, website content, and social media posts, and I am hopeful that other agencies and organizations will consider doing the same.”

³⁷ U.S. Department of Homeland Security, “A Guide to Interacting with People Who Have Disabilities: A Resource Guide for DHS Personnel, Contractors, and Grantees from the Office for Civil Rights and Civil Liberties,” at page 3 (“Putting the person first in our communications is not ‘political correctness,’ it is showing respect for the dignity of the individual.”)

people with records.³⁸ The community colleges and districts should review existing internal and public-facing materials – including job descriptions, newsletters, websites, and social media – and commit staff time to editing those documents, while also encouraging leadership and staff to use this humanizing language in all publications and communications.

3. Make critical investments in people with criminal records and promote employment opportunities at all levels of responsibility.

By clearing the path to employment for qualified people with records, the community colleges and districts will be positioned to tap into a large and diverse pool of talent that can contribute significantly to the core mission.

The Chancellor urges the community colleges and districts to maximize the opportunity to recruit, hire and retain people with records at all levels of responsibility, including in leadership positions. To implement this strategy, it is helpful to include affirmative language in jobs announcements expressing the institution’s commitment to hiring qualified people with criminal records.³⁹ In addition, the community colleges and districts should make a concerted effort to identify positions, such as counseling staff and other employees for

³⁸ According to a recent study on the issue, “the use of crime-first language (i.e., “convicted criminals”) causes a significant increase in the public’s estimates of the likelihood that individuals with violent convictions will commit new crimes in the future.” Megan Denver, Justin Pickett, Shawn Bushway, “The Language of Stigmatization and the Mark of Violence: Experimental Evidence on the Social Construction and Use of Criminal Record Stigma,” 55 *Criminology* 664 (August 2017).

³⁹ For example, the Vera Institute, which is a major research institution, has adopted the following job announcement language: “Vera is an equal opportunity/affirmative action employer. All qualified applicants will be considered for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, military status, prior record of arrest or conviction, citizen status, current employment status, or caregiver status.” (Emphasis added). See Executives’ Alliance for Boys and Men of Color, Formerly Incarcerated, Convicted People & Families Movement, National Employment Law Project, “Fair-Chance Hiring in Philanthropy: A Step-by-Step Guide” (2016), at page 16.

campus initiatives and offices supporting formerly incarcerated students, where the lived experience of formerly incarcerated people contributes special skills or expertise.

As set forth in the Vision for Success, the California Community Colleges strive to provide special resources to high-need populations,⁴⁰ including the formerly incarcerated and people with records. In furtherance of this objective, the Chancellor urges the community colleges and districts to make referrals to community-based organizations providing record clearance services to students with records and employees to help them seal, expunge, or correct mistakes on their records. The community colleges can also help educate students or link them to community-based organizations that provide education about their rights to obtain occupational licenses and certifications that include criminal background check requirements. In addition, the community colleges and districts could create partnerships with key stakeholders in the community to fund education and training programs tailored to the needs of the formerly incarcerated.

4. Leverage the community college’s contracts with vendors and other relationships to create employment opportunities for people with criminal records.

Lastly, the Chancellor recommends that the community colleges and districts review the bidder requirements regulating their vendors, contractors and consultants, and, where possible, incorporate the fair chance hiring best practices set forth in this Guidance into those contracts. The community colleges and districts are often in a position to leverage these and other relationships to create employment opportunities for people with criminal records.

⁴⁰ California Community Colleges Chancellor’s Office, “Vision for Success: Strengthening California Community Colleges to Meet California’s Need,” at page 31.