

A QUICK REFERENCE GUIDE FOR JUSTICE IMPACTED STUDENTS

An estimated 70 million adults in the United States have some kind of arrest or conviction on their record. Many of these individuals will face difficulties in various areas of their lives as a result of their criminal records. This guide is designed to help justice impacted students in areas in which they are likely to face issues or have questions.

EMPLOYMENT

Nevada law has recently changed on the topic of employment and prior convictions. As of January 1, 2018, public employers (state, city, county entities, but not federal) must give a fair chance to applicants who have a criminal history. UNLV is considered a public employer. More specifically, government employers cannot consider criminal history until the final interview or until a conditional offer of employment is made. This means that public employers should not ask an applicant if they have been convicted of a crime or have a criminal background as part of an initial application. However, there are some government jobs (both state and federal) which specifically exclude persons with criminal records by law. When applying for these positions, these changes to Nevada law do not apply. In addition, a public employer cannot consider the following and they need not be disclosed:

- Arrests which did not result in a conviction
- A record of conviction that was dismissed, expunged, or sealed
- An infraction or misdemeanor whose sentence did not include imprisonment in a county jail

If a conditional offer of employment is extended by a governmental entity, it can be rescinded if the applicant has been convicted of a criminal offense or has charges filed against them within the last six months, only after considering the following factors:

- Whether the responsibilities of the position are directly related to the criminal offense. For example, an individual charged with embezzlement may be rejected for a position which is responsible for handling funds. While this same person should not be rejected for a position which does not involve handling money.
- The nature and severity of the criminal offense or charges.
- The person's age which the criminal act occurred.
- How much time has passed between the conviction, criminal act, or charge and the date of application for employment.
- Any factors, information, or documentation, which demonstrate the person's rehabilitation.

¹ This guide is intended to orient prospective students only and in no way constitutes individual legal advice. This guide does not constitute any kind of employee client relationship between the reader, Kevin Johnson, Esq. or Cohen Johnson Parker Edwards. Students should discuss their respective situation with their own legal counsel.

If an offer is rescinded based upon criminal history by a public employer, they must:

- Rescind the offer in writing.
- Indicate that the offer was rescinded because of the applicant's criminal history.
- Provide an opportunity to discuss the basis for the rescission with the human resources department.

If a public employer with whom you have applied violates any of these provisions, you may file a complaint with the Nevada Equal Rights Commission, and may be able to file a private lawsuit. These provisions do not apply to private employers, peace officers, firefighters, and positions that involve access to crime data. However, even with these employers, if you believe that a potential employer is not hiring you because of your race, gender, national origin, or any other protected class, and using your criminal history as a pretext, you may have reason to file a complaint with the Nevada Equal Rights Commission and/or a private civil law suit.

FINANCIAL AID

Your eligibility for federal financial aid may be affected by prior convictions and records. Most financial aid is not affected, however, if your conviction was for a drug offense or subject to involuntary civil commitment for a sexual offense, your eligibility for aid may be affected. If either of these events occurred while you were receiving federal student aid, (grants, loans, or other work study programs), you may not be eligible for continued aid. If you fall into this category, you will be provided additional forms with your FAFSA paperwork which will help you determine your eligibility.

If you lose your eligibility for financial aid due to a drug conviction, you can regain this aid by completing an approved drug rehabilitation program or by passing two unannounced drug tests administered by an approved drug rehabilitation program. **If you are eligible for financial aid, then become ineligible due to a drug conviction, you may have to repay any financial aid you receive after you became ineligible.**

If you have been convicted of a sexual offense and subject to civil commitment due to this offense, you cannot receive a federal pell grant.

ADMISSIONS

UNLV does not ask about prior convictions in its applications for new students. However, specific programs within the university may consider any criminal record when evaluating applications. Professional organizations, such as the Nevada State Bar or the Medical Examiners Board have wide discretion to accept or reject justice impacted applicants. Accordingly, programs which feed students into such organizations may choose to consider criminal records and reject justice impacted applicants if the program feels the person's record will cause them to be rejected by the professional organization. Many programs do not inquire into applicant's criminal histories at all. Students should inquire with programs they are interested in before applying about that program's policy. If you believe that your conviction is being used as a pretense to not admit you for another reason, such as your race, religion, gender, or any other protected class, you may have grounds for a complaint to the Nevada Equal Rights Commission or a civil law suit.

INTERNSHIPS

Organizations, public and private, have wide discretion in determining who they accept for internships, externships, or other non-paid positions. Many governmental agencies may require background checks for such positions. However, if you believe that a criminal record is being used as a pretext to deny you an opportunity on the basis of your race, gender, religion, or any other protected class, you may have grounds for a complaint to the Nevada Equal Rights Commission or a civil law suit.

HOUSING

The Fair Housing Act prohibits discrimination in the sale, rental, or financing of housing and in other housing related activities on the basis of race, color, religion, gender, disability, familial status or national origin. Justice impacted persons are not specifically protected by this law. As a result, a landlord may choose not to rent to you based upon a criminal record which is disclosed or discovered as part of a background check. However, in so doing, the landlord may still run afoul of this law. Under guidance published by the U.S. Department of Housing and Urban Development, if a landlord has a policy to reject all justice impacted students, this practice may have a discriminatory effect in one of the above categories, even if this wasn't the landlord's intent. Accordingly, if you are refused housing because of your record you may have grounds for a complaint or civil suit.

A NOTE ON SEALED RECORDS

You may be able to seal your criminal record if certain conditions are met. However, contrary to popular belief, sealing your record does not erase your criminal record. It will still be viable to various licensing boards, the district attorney's office, and other agencies who regularly work with criminal records. However, it should not be visible to employers. After your record is sealed, you may legally indicate that you do not have a criminal record or prior convictions. However, if you are specifically asked if your records have been sealed, you must answer yes.