

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title XXI** LABOR AND INDUSTRIES

**Chapter 151B** UNLAWFUL DISCRIMINATION BECAUSE OF RACE, COLOR,  
RELIGIOUS CREED, NATIONAL ORIGIN, ANCESTRY OR SEX

**Section 4** UNLAWFUL PRACTICES

Section 4. It shall be an unlawful practice:



---

9. For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within 3 years immediately preceding the date of such application for employment or such request for information, or (iv) a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records.

91/2. For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.



## MCAD Fact Sheet Criminal Offender Record Information Administrative Procedure Reforms

November 2010

On August 6, 2010, Governor Deval Patrick signed into law Chapter 256 of the Acts of 2010, "An Act Reforming the Administrative Procedures Relative to Criminal Offender Record Information and Pre- and Post-Trial Supervised Release" ("CORI Reform"). Effective November 4, 2010, the Act prevents employers from seeking disclosure of job applicants' criminal record information prior to the interview stage of the hiring process.<sup>1</sup> This law is subject to two limited exceptions discussed below. The law, codified at G.L. c. 151B, § 4(9½) ([www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter256](http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter256)), is enforced by the Massachusetts Commission Against Discrimination (MCAD).

In addition to this new subsection, the MCAD will continue to retain enforcement authority over the existing Massachusetts Criminal Records Statute, G.L. c. 151B, § 4(9), which prohibits employers from asking prospective or current employees to furnish certain criminal information on a written application or in response to an oral inquiry. Moreover, Section 4(9) prohibits an employer from taking an adverse employment action against an applicant or employee because of criminal history information the employer obtained unlawfully ([www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151B/Section4](http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151B/Section4)).

\*\*\*

Under the newly revised criminal offender record laws, an employer may not:

Prior to the interview, ask a job applicant to provide any information about his/her criminal history on a written application unless the employer or the position falls within a statutory exception. G.L. c. 151B, § 4(9½).

Prior to the interview, ask an applicant whether he or she has been convicted of a felony or a misdemeanor on a written application, unless the employer or the position falls within a statutory exception. G.L. c. 151B, § 4(9½).<sup>2</sup>

Ask an applicant to obtain a copy of his or her CORI record for the employer. G.L. c. 6, § 172;<sup>3</sup>

---

<sup>1</sup> This Fact Sheet applies only to those sections of the CORI Reform law that go into effect on November 4, 2010 and are enforced by the MCAD.

<sup>2</sup> This is a departure from existing law that allowed an employer to ask about felony and certain misdemeanor convictions.

Ask an applicant or current employee, in writing or orally, about a prior arrest, detention, or disposition that did not result in a conviction. G.L. c. 151B, § 4(9);

Ask an applicant or current employee, in writing or orally, about a prior first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace. G.L. c. 151B, § 4(9);

Ask an applicant or current employee, in writing or orally, about a conviction of a misdemeanor where the date of the conviction predates the inquiry by more than 5 years. G.L. c. 151B, § 4(9);

Ask an applicant or current employee, in writing or orally, about sealed records or juvenile offenses.<sup>4</sup>

## **Frequently Asked Questions**

**Q1. *What employers are affected by the CORI laws?***

A1. Employers who employ six or more persons are subject to the provisions of G.L. c. 151B. Public employers are included regardless of the number of people employed.

**Q2. *Does this law apply to temporary employment agencies?***

A2. If the employer and the temporary employment agency are found to be “joint employers,” the temporary employment agency as well as the employer are subject to the provisions of G.L. c. 151B, §§ 4(9), (9½). See *Burlamachi v. Dupont Merck*, 22 MDLR 35, 39 (2000), *aff’d*, 24 MDLR 9 (2002); *Angela Stanley v. The Gillette Co.*, 2 MDLR 1203 (1980).

**Q3. *When an employer uses workers placed by a temporary agency, who are later converted to regular full-time positions with the employer, will an employment application provided by the employer upon the conversion to regular full-time status be considered an “initial” written application?***

A3. The temporary employee is “applying” for permanent placement with the employer. Therefore, all written applications for that employment must be in compliance with G.L. c. 151B, §§ 4(9), 4(9½).

---

<sup>3</sup> This law is enforced by the Criminal History Systems Board (CHSB), which could sanction employers for any violations. G.L. c. 6, §168. However, a violation of G.L. c. 6, §168, could be used as evidence in a case involving a violation of G.L. c. 151B, §§4(9) or (9 ½).

<sup>4</sup> *MCAD and Hanson v. Mass. Dep’t of Social Services*, 28 MDLR 42, 43 (2006) (Full Commission decision affirming that juvenile offenses fall within the scope of G.L. c. 151B, § 4(9)).

Q4. *Are the prohibitions set forth in G.L. c. 151B, §§ 4(9) and 4(9½) applicable to in-state employers only?*

A4. Any employer that does business in Massachusetts and takes applications in Massachusetts is subject to G.L. c. 151B, §§ 4(9), 4(9½). The Commission will consider other scenarios on a case-by-case basis.

Q5. *Can a national or international employer use a standard application with a disclaimer for Massachusetts applicants?*

A5. National and international employers may use standard application forms if the form contains explicit instructions that the employer is prohibited from obtaining criminal history information from the employee (unless one of the exceptions set forth in G.L. c. 151B, § 4(9½) applies) and the employer properly disclaims. The employer's disclaimer must be clear and unambiguous, in boldface type and placed and printed to attract the reader's attention. For example:

**MASSACHUSETTS APPLICANTS ONLY:**

**Under Massachusetts law, an employer is prohibited from making written, pre-employment inquiries of an applicant about his or her criminal history.**

**MASSACHUSETTS APPLICANTS SHOULD NOT RESPOND TO ANY OF THE QUESTIONS SEEKING CRIMINAL RECORD INFORMATION.**

Q6. *May an employer inquire orally about the applicant's criminal history during the interview?*

A6. This depends on the specific information the employer seeks from the applicant. G.L. c. 151B, § 4(9½) prohibits employers from seeking criminal history information by written application, and therefore does not apply. G.L. c. 151B, § 4(9), however, restricts employers from making certain written and oral inquiries directly to an applicant or employee. Specifically, G.L. c. 151B, § 4(9) prohibits employers from asking orally or in writing about:

An arrest that did not result in a conviction;

A criminal detention or disposition that did not result in a conviction;

A first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;

A conviction for a misdemeanor where the date of the conviction predates the inquiry by more than 5 years; and

Sealed records and juvenile offenses.

During an interview or thereafter, an employer can ask about convictions so long as *the employer does not ask about any offenses set forth in G.L. c. 151B, § 4(9)*. (See above).

**Q7. *Are any employers excepted from compliance with G.L. c. 151B, § 4(9½)?***

**A7.** There are two exceptions to the blanket prohibition against asking an applicant or employee for criminal history information on a written application. An employer may ask about criminal convictions if:

1. The applicant is applying for a position where federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses, or
2. The employer or an affiliate is subject by federal or state law or regulation not to employ persons in 1 or more positions who have been convicted of 1 or more types of criminal offenses.

A “regulation” will only create a mandatory or presumptive disqualification if it was promulgated in accordance with G.L. c. 30A, for state regulations, and 5 U.S.C. §§ 551 *et seq.*, for federal regulations. The Commission considers an employer to be mandatorily disqualified if a properly promulgated statute or regulation specifically bars the employer from hiring an applicant with a particular criminal conviction. For example, if a properly promulgated regulation specifically prohibits an employer from hiring an employee convicted of a felony, the employer falls into the first exception, and may make a pre-interview inquiry in writing about a felony conviction. By way of further example, the Executive Offices of Health and Human Services’ (“EOHHS”) CORI regulations, 101 CMR 15.00 *et seq.*, do not create mandatory or presumptive disqualifications. While the EOHHS Secretary or agency Commissioner or their designees have five days to disapprove a hiring authority’s decision to hire a candidate who has been convicted of or has any pending Table A crimes, there is no mandatory or presumptive disqualification. See 101 CMR 15.09(3)(a).

The second exception would apply, for example, to banks, their parents and subsidiaries, which are required by federal law to make inquiries about whether a job applicant has been convicted of a crime that involves dishonesty, breach of trust or money laundering. 12 U.S.C. §1829. Covered institutions are exempted from G.L. c. 151B, § 4(9½) for inquiring about these types of criminal offenses.

The MCAD will assess each fact pattern on a case-by-case basis. It is advisable to seek legal counsel as to whether a specific employer falls into one of the two exceptions, or to contact the applicable governmental entity that enforces the statute or regulation.

**Q8. *What kinds of pre-employment forms fall within the scope of G.L. c. 151B, § 4(9½)?***

**A8.** Consistent with the legislative intent behind CORI Reform<sup>5</sup>, the MCAD will presume that a written application or form requesting criminal background information prior to an interview is part of the “initial written application.”

---

<sup>5</sup> In promulgating this law, the Massachusetts Legislature intended to give prospective employees the opportunity to meet employers before disclosing their criminal histories, thereby reducing barriers to employment applicants with a criminal history face. See Summary of Conference Committee Final Report, S. 220 and H. 4712 (July 30, 2010).

- Q9. *How does the new law, G.L. c. 151B, § 4(9½), affect an applicant with disability whose disability renders him or her unable to complete a written application?*
- A9. Where an applicant self-identifies as disabled and seeks a modification to the application process such that the application will be completed orally rather than in writing, employers should refrain from seeking criminal background information until the time of the interview. Unless the employer falls into one of the two statutory exceptions, the MCAD will consider any inquiry (including an oral one) prior to the interview that seeks prohibited criminal record information in the modified or adjusted application process to be in violation of G.L. c. 151B, § 4(9½) and/or G.L. c. 151B, § 4(16).
- Q10. *Will the Commission consider cases based on the theory that consideration of criminal records disparately impacts a particular protected class?*
- A10. In appropriate cases, the Commission may review whether the use and consideration of criminal records as a criterion for hiring has a discriminatory impact on a particular protected class.
- Q11. *How do G.L. c. 151B, §§ 4(9) and 4(9½) affect employers who participate in the Work Opportunity Tax Credit (WOTC) program?*
- A11. In appropriate cases, the MCAD may decline to authorize an investigation against a valid participant of the WOTC program. If an employer is a participant in the WOTC program and is named in a criminal offender records claim, the employer should provide the MCAD with a copy of the employer's IRS Form 8850 ("Pre-Screening Notice and Certification Requirement for the Work Opportunity Credit").



## Menu



Mass.gov

Search Mass.gov

SEARCH

[\(1\) > Office of the Attorney General \(/orgs/office-of-the-attorney-general\)](#) > [Protecting Civil Rights \(/protecting-civil-rights\)](#)

# Guide to Criminal Records in Employment and Housing

People in Massachusetts with criminal records often face unique challenges when re-entering society, including barriers to securing employment and housing.

## TABLE OF CONTENTS

[File a complaint \(#-file-a-complaint-\)](#)

[Employment \(#-employment-\)](#)

[Housing \(#-housing-\)](#)

[Further resources \(#-further-resources-\)](#)

## File a complaint

If you believe that your rights have been violated, file a complaint with the Attorney General's Civil Rights Division. You can [file a complaint online \(/forms/criminal-history-civil-rights-complaint\)](#) or call us at (617) 963-2917. You can also file a complaint in person by visiting the Civil Rights Division on the 11th floor of 100 Cambridge Street in Boston Monday through Friday between the hours of 9:30 AM and 4:30 PM.

Because the Civil Rights Division receives many complaints, the time it takes to review each complaint can vary. We will do our best to contact you within one week of receiving your complaint. If you have already filed a complaint with the Civil Rights Division and wish to check on the status of your complaint, call (617) 963-2917.

## KEY ORGANIZATIONS

## Attorney General's Civil Rights Division

### Phone

Civil Rights (617) 963-2917 (tel:+16179632917)

Mass relay dial 7-1-1 and connect via main number.

## Employment

There are a number of protections available to individuals with criminal records when applying for a job. This guide answers some frequently asked questions about these rules.

### Can an employer ask me about my criminal history on a job application?

Probably not. Under the “Ban the Box” law, most employers in Massachusetts are not allowed to ask you about your criminal record on a job application. There are a few limited exceptions for certain types of jobs in specific industries (for example, jobs at day cares and certain financial institutions) where employers can ask about criminal records on job applications because they are legally prohibited from hiring people with criminal records for those jobs.

### Can an employer ask me to provide a copy of my own criminal record?

No. Employers are never allowed to ask you to provide a copy of your own criminal offender record information (CORI) or arrest records.

### What types of criminal records can an employer ask me about during the hiring process?

As a general matter, employers are permitted to ask you about felony convictions and some misdemeanor convictions during the hiring process (after the initial job application). However, most employers are not allowed to ask you about any of the following at any point during the hiring process:

- Criminal cases that did not end in a conviction (including CWOFS);
- An arrest or detention (*e.g.*, being held at a police station) that did not end in a conviction;
- A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;
- Misdemeanor convictions where the date of the conviction or the release from incarceration was 3 or more years ago (unless there were subsequent convictions within the 3-year time period);
- Juvenile court records; or
- Sealed or expunged criminal records.

### My conviction is sealed. Do I have to tell my employer about it if I am asked about prior convictions?

No. A job applicant whose criminal record is sealed or expunged does not have to provide an employer with any information about the sealed or expunged case. In response to any questions about prior convictions, a job applicant with no convictions other than a sealed or expunged case may answer that he or she has “No Record.”

### Is my employer allowed to conduct criminal background check on me as part of the hiring process?

Yes, but employers must obtain your written permission before accessing your CORI records through the state system. Employers must follow additional steps if they use a private consumer reporting agency, rather than the state, to conduct criminal background checks.

## Can an employer refuse to hire me because of my criminal records?

Employers may refuse to hire you based on your criminal record if there is some relationship between your criminal record and the work to be performed. However, employers cannot refuse to hire you based on your criminal record without first notifying you, giving you a copy of your CORI or criminal history information, and providing information to you about how to correct an inaccurate criminal record.

In addition, employers that automatically reject all applicants with criminal records may be violating state and federal civil rights laws because using criminal records in this way can have a disproportionate effect on protected groups, including racial minority groups. To avoid potential liability for civil rights violations, employers should conduct an individualized assessment before determining that a particular criminal record disqualifies an applicant for a particular job. Relevant considerations generally should include:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;
- Rehabilitation efforts, e.g., education/training; and
- Employment or character references and any other information regarding fitness for the particular position.

## Additional Resources

### AGO Guide for Employers That Use Criminal Records In Hiring

<https://www.mass.gov/doc/ago-campbells-brief-guide-for-employers-that-use-criminal-records-in-hiring/download>

### AGO Know Your Rights Guide on Criminal Records - A Guide to Rights in Employment and Housing

<https://www.mass.gov/doc/ago-campbells-know-your-rights-guide-on-criminal-records-a-guide-to-rights-in-employment-and-housing-english/download>

### AGO Conozca Sus Derechos Antecedentes Penales - Una Guía Sobre los Derechos en Asuntos de Empleo y

#### Vivienda

<https://www.mass.gov/doc/ago-know-your-rights-guide-on-criminal-records-a-guide-to-rights-in-employment-and-housing-spn/download>

## Housing

There are fewer rules for housing providers than for employers, but housing applicants still have important protections. This guide highlights a few of those protections.

### Can a housing provider ask me to provide a copy of my own CORI as part of the rental application process?

No. Housing providers are not permitted to ask you to provide a copy of your own criminal offender record information (CORI) or arrest records. However, a public housing authority may ask you to obtain and provide copies of your “docket sheets” from the court.

### Is a housing provider allowed to conduct a criminal background check on me as part of the rental application process?

Yes, although housing providers must first obtain your written permission before accessing your CORI records through the state system. Housing providers must follow additional steps if they use a private consumer reporting agency, rather than the state, to conduct criminal background checks.

### **Can a housing provider refuse to rent to me because of my CORI?**

Housing providers may refuse to rent to persons with criminal records. However, housing providers that automatically reject all applicants with criminal records may be violating state and federal civil rights laws because using criminal records in this way can have a disproportionate effect on protected groups, including racial minority groups.

In most cases, housing providers should conduct an individualized assessment before determining that a particular criminal record disqualifies an applicant for housing. Relevant considerations generally should include:

- The nature and severity of a conviction;
- The amount of time that has passed since the criminal conduct occurred;
- That facts or circumstances surrounding the offense or conduct;
- The age of the individual at the time of the conduct;
- Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and
- Evidence of rehabilitation efforts.

### **Can I be admitted to a federally- or state-funded housing project even though I have a criminal record?**

It depends on the criminal offense. Individuals who have been convicted of (1) sexual offenses and subjected to a lifetime sexual offender registration requirement, or (2) drug-related criminal activity involving the manufacture or production of methamphetamine on the premises of federally-assisted housing, can never be admitted to federally-assisted housing developments and can only be admitted to state-funded housing developments if they can show why they should be admitted despite the criminal record. Beyond these offenses, public housing authorities can consider other types of criminal offenses involving drug-related activity, violence-related activity, and other activity that may pose a risk to the safety or well-being of other tenants.

## **Further resources**

**[Greater Boston Legal Service's CORI & Re-Entry Project](https://www.gbls.org/our-work/cori-and-re-entry-project)** (<https://www.gbls.org/our-work/cori-and-re-entry-project>)

**[Massachusetts Legal Help](http://www.masslegalhelp.org/cori)** (<http://www.masslegalhelp.org/cori>)

**[Request a copy of your CORI](#)** ([/criminal-record-check-services---unpublished](#))

**[Massachusetts Commission Against Discrimination Criminal Offender Record Procedure Fact Sheet](#)** ([/doc/criminal-offender-record-procedure-reforms/download](#))

**[Massachusetts Commission Against Discrimination Regulations](#)** ([/doc/804-cmr-300-employment-discrimination/download](#))



All  
Topics (</topics/massachusetts-topics>)

Site  
Policies (</massgov-site-policies>)

Public Records  
Requests (</topics/public-records-requests>)

# FILING A CLAIM

- To file a claim for violation of criminal record discrimination > MCAD.
- To file a claim for violation of other types of discrimination (e.g., race, national origin) > MCAD or EEOC.
- Claims may be brought into court, but must first be filed at the agency level.
- Information about filing claims on the websites of the MCAD and EEOC.