

KNOW YOUR RIGHTS

What You Should Know About Correcting Background Check Errors

1. How can hospital employers, government employers, and government licensing agencies find out about my criminal record?

Some hospital employers, government employers, and government licensing agencies can fingerprint you and can obtain your criminal record, or “RAP sheet,” from the New York State Division of Criminal Justice Services (“DCJS”) or the Federal Bureau of Investigation (“FBI”).

2. Should I find out what is on my DCJS RAP sheet and my FBI RAP sheet?

Yes, so you can make sure there are no errors. You can request your “unsuppressed” DCJS RAP sheet, which has information that is only available to you and a small number of employers, or your “suppressed” DCJS RAP sheet, which is the RAP sheet that most hospital and government employers have access to. You should never give your unsuppressed DCJS RAP sheet to an employer or licensing agency. To request your DCJS RAP sheet, follow the instructions at <http://www.criminaljustice.ny.gov/ojis/recordreview.htm>; you can request a fee waiver. To request your FBI RAP sheet, follow the instructions at <https://www.fbi.gov/services/cjis/identityhistory-summary-checks>; FBI RAP sheets cost \$18.

3. What are some common errors on DCJS RAP sheets?

DCJS RAP sheets sometimes list closed cases as still pending, and they sometimes list cases that should be “sealed” as not sealed.

Some examples of cases that are supposed to be sealed are: (1) Most arrests that did not lead to conviction (for example, cases dismissed after an adjournment in contemplation of dismissal (“ACD”)); (2) Most arrests that led to noncriminal convictions (for example, “disorderly conduct” violations), after you complete the sentence; (3) Convictions that have been vacated; (4) Youthful offender adjudications; (5) Juvenile delinquency proceedings and adjudications.

4. How do I fix errors on DCJS RAP sheets?

Go to the courthouse where you were sentenced and request the “certificate of disposition” for the case you believe DCJS is reporting inaccurately. Certificates of disposition cost \$10, but the courthouse may waive the fee if you receive public assistance. If the certificate of disposition is correct, send the original certificate to DCJS and request that DCJS fix its error.

If the certificate of disposition is incorrect (for example, if the certificate of disposition does not include a “SEALED” stamp even though the case should be sealed), ask the courthouse clerk to correct the certificate, and then send the corrected certificate of disposition to DCJS along with a request that DCJS fix its error.

5. How can private employers find out about my criminal record?

To find out about your criminal record, private employers can pay \$65 to the New York State Office of Court Administration. However, most private employers get your criminal record from private background screening companies. The Fair Credit Reporting Act (“FCRA”) requires employers to get your written authorization before they ask a private background screening company to run a background check on you.

6. If a private employer wants to deny me a job because of my background report, is the employer required to give me a copy of my background report?

Yes. Under the FCRA, before an employer denies you a job because of the results of a background check, the employer must give you a copy of the background report it received. You can also get the background report by requesting it from the background screening company within 60 days of when you were denied the job. You should review the background report for errors, dispute any errors with the background screening company, and tell the employer if the background report has errors. You also have additional rights under the New York City Fair Chance Act.

For more information on the Fair Chance Act, see The Legal Aid Society’s pamphlet, “*Know Your Rights: What You Should Know About Employment Discrimination Based on Arrest and Conviction Records.*”

7. Are there certain types of cases that background screening companies are not allowed to report to employers?

Yes. Under New York law, background screening companies are not allowed to report non-criminal violations/infractions or sealed cases. Also, if you are applying to a job that pays less than \$25,000 annually, background screening companies are not allowed to report convictions for which you were sentenced or released from incarceration more than seven years ago.

8. Can I find out what background screening companies are reporting about me before I get denied a job?

Yes. You are entitled to a free copy of your background report every 12 months. To get your report, you should request your annual “free full file disclosure” from the background screening companies. Although there are more than 500 background screening companies, some of the companies that employers are most likely to use are ADP, First Advantage, General Information Services, HireRight, Intellicorp, and Sterling. You can find contact information for these companies at: http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf.

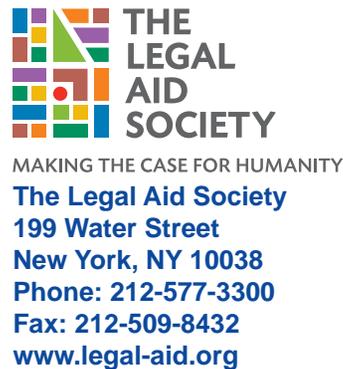
9. How do I fix errors on a background report?

You should dispute any errors by sending the background screening company a written explanation of what they need to fix along with evidence that supports your dispute, such as a photocopy of the “certificate of disposition” for the relevant criminal case.

10. A criminal case against me was sealed, and I’m worried that background screening companies will still report the case to employers. What can I do?

You can request your background report from background screening companies and dispute any errors. The Expungement Clearinghouse also offers to contact over 500 background screening companies and inform them that a case against you has been sealed. To use the Expungement Clearinghouse, mail an original certificate of disposition with the “SEALED” stamp to the Foundation for Continuing Justice, along with a completed copy of this form: <http://www.continuingjustice.org/wp-content/uploads/2011/02/CDU-Form.pdf>. The Expungement Clearinghouse is a free service.

For more information, contact The Legal Aid Society’s Access to Benefits Helpline by calling 888-663-6880.



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