




CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: _____
2. For Civil Service Commission Meeting of: September 18, 2023
3. Check One: Ratification Agenda
 Consent Agenda X
 Regular Agenda
 Human Resources Director's Report
4. Subject: Annual Report on the City and County of San Francisco Pre-Employment Conviction History Program for Fiscal Year July 1, 2022 to June 30, 2023
5. Recommendation: Adopt the report.
6. Report prepared by: Christopher Lee, Conviction History Supervisor
Telephone number: (415) 557-4996
7. Notifications: **(Attach a list of the person(s) to be notified in the format described in Civil Service Commission Procedure Number Two.)**
8. Reviewed and approved for Civil Service Commission Agenda:
Human Resources Director: Carol Isen 
Date: 9/5/23
9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

**Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102**

10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

Attachment

CSC-22 (11/97)

CSC RECEIPT STAMP

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Notification List

Annual Report on the City and County of San Francisco Pre-Employment Conviction History Program for the period of July 1, 2022 to June 30, 2023.

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DATE: September 7, 2023
TO: Honorable Civil Service Commission
THROUGH: Carol Isen
Human Resources Director
FROM: Shawn Sherburne, Assistant Director, Employment Services
Christopher Lee, Conviction History Supervisor
SUBJECT: Annual Report on the City and County of San Francisco Pre-Employment
Conviction History Program for Fiscal Year 2022 – 2023

Executive Summary

This is an annual report requested by the Civil Service Commission. This report provides an update on the City and County of San Francisco’s (City) Conviction History Program for the fiscal year (FY) 2022-23.

Background

The City and County of San Francisco’s comprehensive centralized Conviction History Program is part of the employment vetting process for selected candidates for City positions. The Conviction History Program has undergone various enhancements as detailed in the historical timeline (Attachment A). The program was designed to be consistent with the expanded authority of Board of Supervisors Resolution 84-12 and *the Federal Equal Employment Opportunity Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Attachment B). The program incorporates the following key constructs:

- **Centralized, confidential review of conviction history information:** Review and analysis of the selected candidates’ conviction history information is centralized at DHR.
- **Employment vetting:** Collection, review and analysis of conviction history information obtained from the CADOJ and FBI.
- **Self-disclosure elimination:** Selected candidates’ conviction history information is obtained from the California Department of Justice (CADOJ) and Federal Bureau of Investigations (FBI). Self-disclosures are used only in very limited circumstances when there are delays with receiving conviction history records.
- **Position-based nexus determinations:** Conviction history information is analyzed centrally at DHR to determine whether a nexus between the specific attributes of the position and the selected candidates’ conviction history exists.

- Limited need-to-know disclosures: DHR does not disclose any non-nexus conviction information to the department during the employment vetting, thus mitigating opportunities for both conscious and unconscious bias. The only limited disclosures shared are through the expedited clearance and sub notifications process.

Since the program's 2013 creation, DHR and the City have received national recognition with the program serving as a model for other public agencies around the country.

Authority/Standards

The Commission's Policy on Disclosure and Review of Criminal History Records (adopted on January 17, 2006) states, in relevant part, that:

Persons with a criminal record are not barred from employment with the City and County of San Francisco generally, although a criminal history may bar employment in a particular City classification or position depending on the specific criminal history and/or state and federal legal restrictions related to that classification or position.

The City and County of San Francisco shall review and consider criminal history as allowed by law in determining a candidate's qualifications, suitability, and merit for employment in the City and County classification and position for which they have applied.

Criminal history records from juvenile courts shall not be considered in employment decisions except when expressly authorized or required by law.

In reviewing a candidate's criminal history information, the City and County of San Francisco shall evaluate the information on a case-by-case basis, with due consideration given to the following factors:

- 1) The nature and gravity of the offense;
- 2) The degree to which the conviction is related to the duties and responsibilities of the classification and position for which the individual has applied;
- 3) The time elapsed since the conviction;
- 4) The age of the candidate at conviction;
- 5) Frequency of convictions;
- 6) Evidence of rehabilitation; and,
- 7) Any other mitigating circumstances.

Criminal history records for a current City and County of San Francisco employee, including offenses occurring after the start of their employment, may be examined and used as allowed by law as a basis for disciplinary action, including termination, when that information is material to the employee's employment.

Program Standards

The Recency Standard

According to the *Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, as amended, employer policies typically specify the duration of criminal conduct exclusion. The EEOC guidance states that courts have recognized the importance of the amount of time that has passed since the candidate's criminal conduct occurred in determining how much of a risk the individual poses in the position in question. DHR established the following "look-back" criteria for review of a candidate's conviction history:

- Felonies: The look-back for the majority of felony convictions is limited to 13 years from the date of conviction to the date of employment vetting for the City position.
- Misdemeanors: The look-back for all misdemeanors is limited to seven years from the date of conviction to the date of employment vetting for the City position.

DHR established a "forever look-back" for certain types of serious convictions: murder, attempted murder, mayhem, arson, and sex-related convictions requiring registry. If a conviction(s) appears on the DOJ or FBI records, it is reviewed regardless of when it occurred. However, absent a statutory bar, even these convictions do not automatically preclude a candidate from employment.

The Relevancy Standard

In keeping with the EEOC guidance, AB 1008 and Commission policy, DHR evaluates the conviction history of a selected candidate in relation to the position specific attributes (PSAs) of the position for which they are being considered. PSAs are a pre-defined group of actions performed or carried out in the normal operations of the position. The PSAs describe aspects of the position in which certain convictions may pose a risk. Hiring departments must identify PSAs for every position at the beginning of the hiring process when the department submits their position request to DHR.

Those PSAs are:

- PSA-1: Drive a personal or City vehicle or operate heavy machinery in the performance of duties of the position.
- PSA-2: Work in a setting with or near vulnerable populations.
- PSA-3: Will have face-to-face contact with the public.
- PSA-4: Have contact with animals.
- PSA-5: Sign official documents approving applications for permits, benefits, or similar.
- PSA-6: Process, manage, or have access to cash, checks, credit cards, electronic transfers, other payments, employee payroll or reimbursement.
- PSA-7: Have access to confidential or privileged information.
- PSA-8: Have access to sensitive IT infrastructure in which damage or hacking would significantly compromise Departmental or CCSF functioning.
- PSA-9: Have means of entry to living spaces or secured areas.

- PSA-10: Have access to pharmaceuticals, and/or maintain drug inventories.
- PSA-11: Have or provide access to a select agent or toxin as defined by the Centers of Disease Control (CDC).
- PSA-12: Have the use of, or access to, weapons or explosives.
- PSA-13: Have unsupervised responsibility for or access to tools, equipment, supplies or other City property with a value in excess of \$100.
- PSA-14: Involve access to electromechanical voting systems or electronic vote tabulating equipment.
- PSA-15: Other duties associated with the position that the Appointing Officer believes would make conviction history pertinent to the position or applicable laws requiring a conviction history review.

Next, DHR evaluates convictions by categorizing them into seven predefined broad groups: violence, vehicle, property, drugs, fraud, weapons, and sex offenses. These categories are linked to the predefined list of PSAs. For example, a conviction in the vehicle category may conflict with PSA-1. The application of the relevancy standard begins with an initial identification of convictions that could conflict with the duties and responsibilities of the position. The Nexus Determination Matrix was established to assist in identifying potential conflicts (Attachment C).

An individualized assessment is conducted when a conflict, or nexus, exists between a candidate's conviction history and the PSAs.

The Rehabilitation Standard

Following identification of a potential nexus between the conviction history and the position's PSAs, DHR carefully reviews any evidence of rehabilitation submitted by, or on behalf of, the candidate, to determine if it mitigates the nexus. Evidence of rehabilitation may mitigate but will not eliminate the nexus determination. Evidence of rehabilitation is used as a factor in assessing the risk the candidate would repeat the behavior in the position if hired.

Candidates with an initial nexus determination are contacted in writing and asked to submit evidence of rehabilitation. The DHR request for evidence of rehabilitation letter includes examples of rehabilitation actions that could prove helpful and provides information to guide candidates through the process.

Program Updates

Emergency Medical Technician Classifications Enrollment in Subsequent Notification Program

Emergency Medical Technicians (EMT) are exempt from DHR's conviction history review process as they must undergo a criminal background review by the California Emergency Medical Services Authority (EMSA) to obtain their EMT certificate. EMSA reviews each EMT applicant's conviction history information to ensure that they are not barred from possessing an EMT certificate pursuant to California Code of Regulations Title 22, Division 9, Chapter 6, Article 4, Section 100214.3. DHR and the San Francisco Fire Department (FIR) agreed that

fingerprinting EMTs post-appointment is necessary to enroll them in the CADOJ's subsequent notification program. This promotes consistency among uniformed classifications at FIR.

DHR and FIR planned to fingerprint the approximately 435 employees holding EMT certificates in April 2020, but the project was delayed due to the Mayor's declaration of a local emergency and City's response to COVID-19. Now that the local emergency ended, DHR and FIR successfully started the project this fiscal year. DHR cross referenced the original 435 names with the Conviction History Data Base (CHDB) and determined that only 269 current EMTs required fingerprinting. In May and June of 2023, 94 EMTs were fingerprinted at DHR with additional staff deployed to Station 49 in the coming months to fingerprint the final 166 EMTs. We anticipate completing this project in the first half of FY 23-24.

Juvenile Probation Requesting Exemption from DHR's Conviction History Program

The San Francisco Department of Juvenile Probation (JUV) is in the process of requesting exemption from DHR's centralized conviction history review process for its employees with access to California Law Enforcement Telecommunication System (CLETS). This request is the result of a CADOJ audit which revealed that, as a law enforcement agency whose employees have physical access to CLETS equipment or information, JUV is required to conduct a more comprehensive background review of those employees.

Over the last year, JUV has continued to finalize their internal standard operating procedure (SOP) to ensure that data security measures follow DOJ standards, and that appropriate systems and policies are in place. Once this is complete, JUV plans to formally request exemption from DHR's Conviction History Program.

Program Statistics

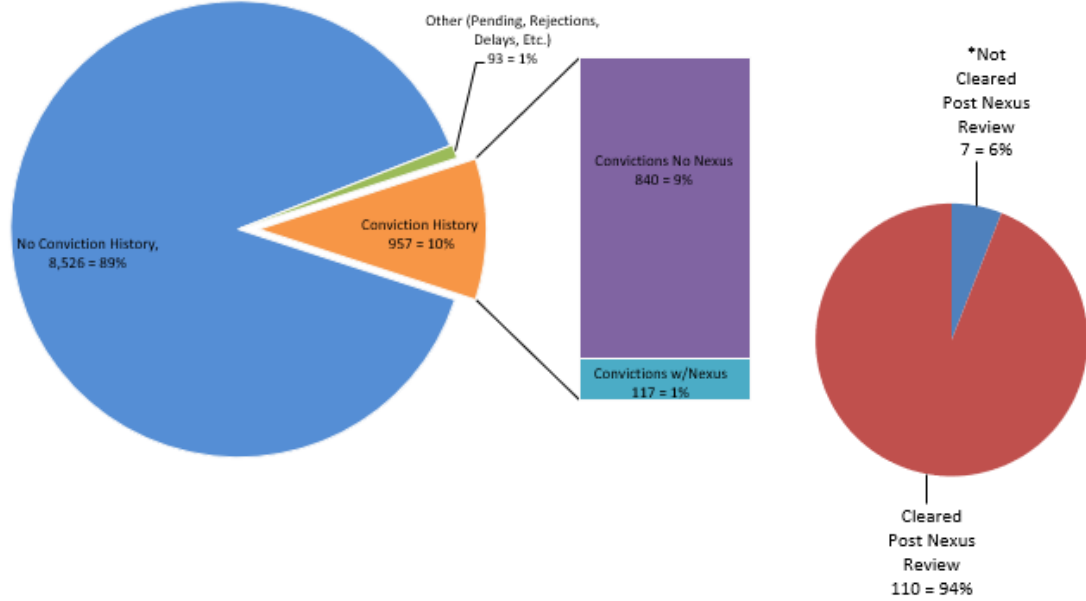
Between July 1, 2022, and June 30, 2023, DHR conducted conviction history reviews of 9,576 selected candidates. This is a 23% increase or 1,800 additional reviews from the previous fiscal year total of 7,776. DHR received DOJ and/or FBI conviction information for 957 of these selected candidates. Of these 957 candidates, 840 were immediately granted clearance, as their conviction histories were determined not to have a nexus with the requirements, duties, and responsibilities of the positions sought. The remaining 117 cases had direct nexuses between the conviction histories and PSAs of the positions sought. DHR informed candidates of the nexus determination and afforded these candidates the opportunity to submit evidence of rehabilitation. Based on analysis of any evidence of rehabilitation provided by candidates, 110 were cleared for employment. A total of seven (7) candidates were disqualified from employment in the specific jobs for which they applied. Of those seven (7) candidates, five (5) were disqualified due to a statutory bar.

Annual chart displays conviction history review trends and statistics for FY 16/17 through FY 22/23 (Attachment D).

The chart below provides a graphic illustration of these data for FY 22/23:

Conviction History Program FY 2022-23

Total Reviews: 9,576



*This figure represents 0.731% of the 957 total candidates with convictions, and 0.073% of the 9,576 total candidates reviewed.

Program Accomplishments

Time-to-Hire Improvement

In FY 22-23 DHR's Conviction History Team was challenged to identify and implement a time-to-hire improvement. The improvement identified allows departments to run the Conviction History Review (CHR) and Appointment Validation processes simultaneously for current City employees who require fingerprinting and are taking a position that is not subject to a statutory bar. DHR developed new processes, procedures, and forms to expedite qualifying current City employee appointments. DHR officially launched the CHR program changes on January 18, 2023, during a HR Professional's meeting. Since the implementation of the new time-to-hire improvement in January 2023 through June 30, 2023, 681 employees were able to have their new appointments processed before coming in for fingerprinting.

Mass Hiring Projects

The Conviction History Team partnered with City departments in support of numerous mass hire projects including many directly related to the City's local emergency declaration. A total of 1,947 candidates were processed via these mass hire projects, which represent 20.3% of the total conviction history reviews conducted for FY 2022-23.

The team processed fingerprints and/or conducted conviction history reviews for each of the following mass hire projects:

- Adult Probation Department:
 - Contractors (11)
- Airport Commission:
 - Custodian (44)
 - Electrician (14)
 - Public Service Trainee (24)
 - Student Design Trainee I, Architecture, Engineering, & Planning (19)
- City Planning Commission:
 - Intern (14)
- Controller's Office:
 - Accountant Intern (37)
- Child Support Services:
 - All Staff (55) – Re-enrollment for compliance with IRS Publication 1075
- Department of Elections:
 - Clerk (7)
 - Junior Clerk (50)
- Department of Emergency Management:
 - Dispatcher (17)
- Department of Public Health:
 - Patient Care Assistant (36)
 - Porter (12)
- Department of Public Works:
 - General Laborer (7)
 - General Labor Supervisor (10)
 - Public Service Aide – Public Works (27)
 - Environmental Service Worker (31)
 - Street Inspector (19)
- Department of Social Services:
 - Human Services Agency Senior Eligibility Worker (93)
 - Public Service Trainee/Aide (86) – JobsNow!
- Fine Arts Museum:
 - Security Guard (16)
- Fire Department:
 - H-2 (124)
 - H-3 (43)
 - Public Service Trainee (22)
 - H-3 Subsequent Notification Enrollment (78)
- Department of Human Resources
 - Analyst Trainee (44)
- Juvenile Probation Department
 - Supervising Probation Officer (22)
- Library:

- Library Page (42)
- Volunteers (205)
- Librarian (19)
- Municipal Transportation Authority:
 - Pre-Apprentice Automotive Mechanic and Machinist (9)
- Recreation and Parks:
 - Summer Workrecreation Program (672)
 - Camp Assistant (143)
 - Public Service Trainee (417)
 - Recreation Leader (112)
 - Gardener (34)

Recognition and Information Sharing with other Jurisdictions and Organizations

The City’s Conviction History Program has been recognized nationally by various organizations including the Association for California Governmental Human Resource Professionals and the California Public Employers Labor Relations Association.

DHR receives requests from other public agencies to share information about the program’s operations and methodologies. During FY 2022-23, DHR held several information-sharing meetings with LA Metro to streamline their conviction history review process. Specifically, interpreting DOJ reports, conducting nexus reviews, and establishing processing timelines.

Program Administration

Candidates have the right to protest the determination of the Human Resources Director to the Civil Service Commission in accordance with Commission Policy on Disclosure and Review of Criminal History Records, should candidates’ evidence of rehabilitation be insufficient to mitigate a nexus determination.

As a result of DHR’s fair and consistent administration of this program, there were no appeals filed to the Civil Service Commission during FY 2022-23.

Plans for FY 2023-24

For FY 2023-24, the DHR Conviction History Team plans to focus on the following:

- Continued Support of City’s Hiring Efforts: DHR Conviction History Team’s primary focus for the current fiscal year remains providing support to departments citywide in their efforts to fill critical positions.
- Juvenile Probation Exemption Request: Continue to partner with JUV to help ensure the success of their new program for all employees with CLETS access.
- Enrollment of EMTs in Subsequent Notification Program: DHR will continue to work with FIR to fingerprint all employees holding EMT certificates.
- Fair Chance Ordinance: Ongoing partnership and discussion with the Reentry Council of the City and County of San Francisco related to the City’s Fair Chance Ordinance.

- Compliance: Regulations around criminal history programs are evolving at an ever-increasing pace. Accordingly, ensuring our program's continued compliance with all federal, state, and local regulations will remain a priority for this fiscal year.

Recommendation

Adopt the report.

Attachments

Attachment A: Conviction History Program Background Timeline

Attachment B: Board of Supervisors passed Resolution Number 84-12

Attachment C: Nexus Determination Matrix

Attachment D: Annual Program Statistics

HISTORICAL TIMELINE OF THE CONVICITION HISTORY PROGRAM

January 2006: The Civil Service Commission (Commission) delegated the authority to establish procedures for the collection, review, evaluation, and security of criminal history information and records to the Human Resources Director on January 17, 2006. The sole purpose of collecting and evaluating this information is to determine a candidate's suitability for employment in the City and County of San Francisco (City) position for which he or she applied.

March 2012: The Board of Supervisors passed Resolution Number 84-12, which expanded the City's authority to access national conviction history information. Given this, conviction history information is now obtained by transmitting selected candidates fingerprint images and related information to both the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). The Department of Human Resources (DHR) engaged with advocacy groups All of Us or None and Legal Services for Prisoners with Children to gain support for the expansion of the conviction history data obtained by the City. As a result of these discussions, the City discontinued the requirement for all candidates to self-disclose their conviction history information to the hiring department(s) as part of the final selection process.

August 2013: The Department of Human Resources (DHR), under the delegated authority of the Civil Service Commission, developed and successfully implemented a comprehensive centralized Conviction History Review Program as part of the pre-employment vetting process for candidates selected by hiring departments. The processes were designed to be consistent with the *Federal Equal Employment Opportunity Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*.

January 2018: The Department of Human Resources (DHR) established policies and procedures to meet the new requirements of State law AB1008 to require a conditional offer of employment to the selected candidates prior to collecting conviction history information.

January 2023: The Department of Human Resources (DHR) implemented a new policy and program for fingerprinting and conviction history reviews for existing city employees. Instead of requiring fingerprinting and complete conviction history reviews prior to appointment, existing City employees (with some statutory exceptions) may be fingerprinted and have conviction history reviews completed post-appointment. This reduced candidate vetting times and expedited hiring timelines for current City employees moving to new appointments.

FILE NO. 110983

RESOLUTION NO. 84-12

1 [Employment Policies and Procedures Regarding Criminal History]

2

3 **Resolution authorizing the City and County of San Francisco to access state and**
4 **federal level criminal history information by transmitting fingerprint images and related**
5 **information to the Department of Justice to be transmitted to the Federal Bureau of**
6 **Investigation.**

7

8 WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities,
9 counties, districts and joint powers authorities to access state and local summary criminal
10 history information for employment, licensing or certification purposes; and

11 WHEREAS, Penal Code Section 11105(b)(11) authorizes cities, counties, districts and
12 joint powers authorities to access federal level criminal history information by transmitting
13 fingerprint images and related information to the Department of Justice to be transmitted to
14 the Federal Bureau of Investigation; and,

15 WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be
16 a requirement or exclusion from employment, licensing, or certification based on specific
17 criminal conduct on the part of the subject of the record; and,

18 WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city
19 council, board of supervisors, governing body of a city, county or district or joint powers
20 authority to specifically authorize access to summary criminal history information for
21 employment, licensing, or certification purposes; now, therefore, be it

22 **RESOLVED**, That the City and County of San Francisco is hereby authorized to
23 access state and federal level summary criminal history information for employment (including
24 volunteers and contract employees) purposes and may not disseminate the information to a
25 private entity.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110983

Date Passed: March 13, 2012

Resolution authorizing the City and County of San Francisco to access state and federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.


March 01, 2012 Public Safety Committee - RECOMMENDED

March 13, 2012 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

File No. 110983

I hereby certify that the foregoing Resolution was ADOPTED on 3/13/2012 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved



Conviction History Nexus Determination Matrix

	Vehicle	Violence	Property	Fraud	Sex	Weapon	Drugs	Other
PSA-1 Operate a vehicle	X						X	
PSA-2 Work with or near vulnerable population		X	X	X	X	X	X	
PSA-3 Work with the public		X			X	X		
PSA-4 Work with animals		X						
PSA-5 Sign official documents			X	X				
PSA-6 Process cash, checks, credit cards, etc.			X	X				
PSA-7 Confidential or privileged information		X	X	X	X			
PSA-8 Electronic infrastructure			X	X				
PSA-9 Access to living spaces or secured areas		X	X	X	X	X	X	
PSA-10 Work with or near pharmaceuticals			X	X			X	
PSA-11 Work with or near CDC toxins		X	X	X			X	
PSA-12 Access to or handle weapons		X				X		
PSA-13 Access to or use tools over \$100			X	X				
PSA-14 Access to vote tabulating equipment				X				
PSA-15 Other								

Conviction History Review Statistics

Attachment D

Fiscal Years: 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23

