



**The Use of Arrest Records
In Pre-Employment Screening
In Franklin County, Ohio**

October 2001

**Community Research Partners
in collaboration with
The Ohio State University
Center for Law, Policy, and Social Science**

This project was funded in part with a grant from the Ohio Commission on African-American Males.

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Principal Researchers:

Community Research Partners

- Roberta F. Garber, Executive Director

The Ohio State University

Center for Law, Policy, and Social Science

- L. Camille Hébert, Director

Community Research Partners is a non-profit organization established in 2000 by United Way of Central Ohio, the City of Columbus and the John Glenn Institute for Public Service and Public Policy to advance human services and community development policy and programs through measurement, evaluation and research.

Community Research Partners
341 S. Third St., Suite 10
Columbus, OH 43215
Phone: 614/224-5917
Fax: 614/224-8132
www.communityresearchpartners.org

Contents

	Page
I. Background and Scope of the Research Project.....	1
II. Summary of Research Findings.....	2
III. Legal Restrictions on Employer Use of Arrest Records.....	3
A. Federal Restrictions on Use of Records of Arrest without Conviction.....	3
B. State Regulation of Use of Records of Arrest without Conviction.....	8
IV. Pre-Employment Screening Practices of Franklin County Employers.....	14
A. Employer Survey.....	14
B. Focus Group of Employment Services Organizations.....	17
V. Arrest Records Data.....	20
A. National and State Data.....	20
B. Franklin County Data.....	21
C. Commercial Background Checking Services.....	22
VI. Implication for Vision Council Activities.....	23
A. Research Findings.....	23
B. Public Opinion on Employer Access to Arrest and Conviction Records.....	24

Appendix:

- A. State Statutes
- B. Employer Survey on Pre-Employment Screening Practices

Tables

1. Summary of State Regulation of Employer Use of Records of Arrests without Convictions in Hiring Decisions.....	13
2. Employer Survey Distribution and Response.....	14
3. Methods Used By Employers to Obtain or Verify Screening Information for Entry-Level Job Applicants.....	15
4. Screening Information Requested from Applicants for Entry-Level Employment.....	15
5. Circumstances under which Employers Seek Screening Information from Outside Sources for Entry-Level Applicants.....	16
6. Extent to Which Employers Seek Information on Arrests and Convictions.....	17
7. Frequency with which Screening Information is used to Disqualify Entry-Level Applicants for Employment.....	17
8. Public Opinion on Employer Access to Arrest and Conviction Records, 2000.....	25

I. Background and Scope of the Research Project

The United Way Employment Vision Council is a collaborative effort of 22 representatives of human services, government and other community organizations concerned with employment issues. The Employment Vision Council identifies programs that provide the social, academic and job skills necessary to success in quality jobs. The goal of the Vision Council is to: *Increase the number of currently unemployed people who get jobs and stay employed.* A target population of the Vision Council is African-American males.

The Arrest Record Project is an initiative addressing both employment and race relations issues. The project was conceived after members of the Vision Council heard anecdotal reports of the use, by some central Ohio employers, of records of arrest without conviction as a pre-employment screening tool. They were concerned that if, in fact, this practice were common, it would have a disproportionate impact on the employment of young African-American men. Results of the project will help to shape future United Way initiatives to overcome barriers to employment for African-American men.

Community Research Partners (CRP), and its consultant, the Center for Law, Policy, and Social Science at The Ohio State University (OSU), conducted the research for the Arrest Record Project. United Way of Central Ohio and the Ohio Commission on African-American Males provided funding for the project.

The research undertaken by CRP and OSU included three components:

- **Legal Research.** The research included a comprehensive review of the legal issues, including case law and state legislation, surrounding the use of records of arrests without convictions in pre-employment screening and the effect of such use on African-American males. This research was conducted by OSU. The complete legal research is contained in the September 2001 interim project report, and is summarized in the final report.
- **Social Research.** Survey and focus group research was conducted to learn more about the pre-employment screening practices used by employers in Franklin County when hiring entry-level employees, and the extent to which records of arrests without convictions are a part of these practices. The final report describes the social research methodology and findings. CRP and OSU collaborated on this component of the project.
- **Arrest Records Data.** CRP and OSU researched national, state and local databases containing records of arrests and convictions, as well as information available from commercial background checking services. The goals of this research were to determine: 1) the accessibility of arrest records to employers who wish to use this information for pre-employment screening; and 2) whether African-American males in Franklin County are more likely than persons from other racial and gender groups to be arrested for a crime, *but not subsequently convicted.* If this were the case, the use of records of arrest without conviction as an employment screening tool would have a disproportionate impact on African-American males.

II. Summary of Research Findings

The United Way Employment Vision Council and the Arrest Records Committee will use the research in this report to guide future activities to remove barriers to employment for African-American males. The following summary of research findings is intended to assist in this discussion:

1. Employers who rely on records of arrest without conviction as a reason to exclude a person in a protected group from employment are likely to have violated Title VII of the Civil Rights Act of 1964.
2. In Ohio, individuals are protected from adverse employment decisions based on arrest records only if these records have been expunged.
3. Compared with other states, Ohio statutes offer individuals a minimal level of protection from employer use of records of arrest without conviction in employment decisions.
4. About half of employers surveyed sometimes seek information about arrest records during pre-employment screening.
5. Employers distinguish between the use of arrest records and conviction records in pre-employment screening, and use conviction records much more frequently for screening purposes.
6. A record of arrest without conviction is less likely to disqualify an applicant from employment than are other types of pre-employment screening information.
7. It is difficult to determine from existing criminal history databases if a person who has been arrested has or has not been convicted.
8. It is possible for an individual with a record of an arrest or conviction to offset this with other positive attributes that are important to employers.

III. Legal Restrictions on Employer Use of Arrest Records

There are a number of different types of restrictions on employer use of records of arrest without conviction in pre-employment screening, particularly as that use impacts on the employment opportunities of African-American males. These restrictions apply both at the state and the federal levels. Although laws of other states do not regulate the actions of Franklin County employers, the regulations adopted by other states may provide a model for dealing with these issues in Ohio. The legal research for the Arrest Records Project examined the following:

- A. Federal restrictions on employer use of arrest records
- B. State regulation of employer use of arrest records

A. Federal Restrictions on Use of Records of Arrest without Conviction

1. Title VII of the Civil Rights Act of 1964

The principal restriction on employer use of records of arrest without conviction imposed by federal law is found in Title VII of the Civil Rights Act of 1964¹ and its prohibition of discrimination on the basis of race in the context of employment. That statute prohibits both intentional discrimination under the disparate treatment theory and even unintentional discrimination under the disparate impact theory.

If an employer relied on records of arrest without conviction as a method to intentionally discriminate against a protected group under the statute, a violation of the disparate treatment theory would result.² Even an employer without such a discriminatory intent would violate Title VII's prohibition against race discrimination if its reliance on arrest records could be shown to have a disproportionately adverse impact on a protected group, such as African-American males, and its use of that practice could not be shown to be related to the requirements of the job at issue or justified by business necessity.³

In order for employer reliance on records of arrest without conviction, and the effect of that practice on African-American males, to be challenged successfully under the disparate impact theory, it is necessary that the plaintiff establish that use of that practice had a disproportionate impact on African-American males as compared to other groups. Once the plaintiff has established a prima facie case of disparate impact, the defendant can avoid liability only by showing that reliance on arrest records is job-related and justified by business necessity.

¹42 U.S.C. §§ 2000e to 2000e-15. A number of states also have anti-discrimination statutes that closely parallel Title VII, and challenges to the use of arrest records under those statutes closely parallel the cases decided under the federal statute. *See, e.g., City of Cairo v. Fair Employment Practices Commission*, 21 Ill. App. 3d 358, 315 N.E.2d 344 (1974) (city's policy of excluding applicants with arrest records from employment found to be racially discriminatory because of its disparate impact on African-Americans). Those various state statutes are not discussed separately in this report.

²*See Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1972) (disparate treatment involves intentional employer action to treat some individuals less favorably than others on basis of protected characteristic); *Willingham v. Runyon*, Appeal No. 01954651 (EEOC 1997) (on appeal from determination of agency that no discrimination on the basis of race occurred in connection with the charging party's termination for arrest, the EEOC sought additional evidence about other employees of the agency who were not terminated after arrests and convictions). *But see Evans v. Runyon*, Appeal No. 01933686 (EEOC 1994) (EEOC on appeal rejected claim of black female complainant that she had been discriminated against on the basis of race after arrest for theft; EEOC found that different treatment of white male employees charged with same offense was justified by mitigating factors and therefore did not establish discrimination on the basis of race).

³*See Griggs v. Duke Power Co.*, 401 U.S. 424, 430-32 (1972); 42 U.S.C. § 2000e-2(k).

- **Equal Employment Opportunity Commission Findings**

The Equal Employment Opportunity Commission (EEOC), the agency charged with the enforcement of Title VII, has taken the position that an employer's blanket reliance on records of arrest without conviction to exclude individuals from employment opportunities will generally violate Title VII.⁴ In its Policy Guidance on the Consideration of Arrest, the EEOC noted that, on a national level, African-Americans are disproportionately subject to arrest, based on data from the FBI's Uniform Crime Reporting Program indicating that, in 1987, 29.5 percent of all arrests were of African-Americans, even though they accounted for between 11.7 (1980 U.S. Census data) and 12.2 (projected for 1987) percent of the national population. The EEOC said that an arrest rate for African-Americans more than twice their representation in the population justified the conclusion of disparate impact.⁵

The EEOC also noted that the fact of arrest alone, without further inquiry into whether the job applicant or employee actually committed the crime for which he or she was arrested and whether that crime was related to the nature of the job sought, could not justify an individual's exclusion from employment. The EEOC's position is that the fact of arrest does no more than raise a suspicion about whether the job applicant engaged in criminal conduct, and that the fact of arrest can be used to exclude an individual from employment only if, after further inquiry and consideration of all the circumstances, the employer "reasonably concludes that the applicant's or employee's conduct is evidence that he or she cannot be trusted to perform the duties of the position in question."⁶

In one case in which it found reasonable cause to believe that the employer violated Title VII by inquiring about records of arrest without conviction, the EEOC noted that because information about arrests is "irrelevant to an applicant's suitability or qualification for employment," "an almost insurmountable burden [is placed] on employers to justify their inquiries about arrests not resulting in prosecution or conviction."⁷ In other cases involving employees or job applicants rejected because of a record of arrests, the EEOC has concluded that the employer's action is unlawful discrimination under the disparate impact theory unless the employer has justified its reliance on a record of arrest by showing that it considered the following factors: "(1) the nature or gravity of the offense; (2) the time elapsed since the arrest(s); (3) the nature of the employment position held or sought; and (4) whether the arrest record reflects the employee's conduct." The EEOC also indicated that the employer is required to give the employee or job applicant an opportunity to explain the record and to conduct a follow-up investigation if the employee denies engaging in the underlying criminal conduct.⁸

⁴EEOC Policy Guidance on the Consideration of Arrest, EEOC Guidance No. N-915-061 (September 7, 1990), EEOC Compliance Manual Volume II (January 29, 1998).

⁵*Id.* n.4.

⁶*Id.*

⁷EEOC Decision No.76-14 (1975).

⁸Rodriguez v. Halter, Hearing No. 280-96-407IX (EEOC 2001) (finding violation of Title VII when employer terminated employee because of arrest, when employee proffered explanation for his conduct leading to arrest, and employer did not make a sufficient inquiry to determine whether employee was guilty of conduct for which he was arrested, when charges were dismissed because of insufficient evidence).

- **Federal Court Decisions**

In a number of cases, the federal courts have found employer use of records of arrest without conviction to violate Title VII under the disparate impact theory. One of the earliest cases to reach this conclusion was *Gregory v. Litton Systems, Inc.*⁹ In that case, the plaintiff, an African-American man, challenged his failure to be hired for the position of sheet metal worker because he had been arrested, but not convicted, on a number of occasions.

The district court in the *Gregory* case found that African-Americans were, on the national level, arrested substantially more frequently than were whites on a proportional basis, noting that while African-Americans comprised only 11 percent of the national population, they accounted for 27 percent of all arrests and 45 percent of arrests reports as “suspicion arrests.” Accordingly, the district court concluded that the policy was discriminatory because “[a] substantial and disproportionately large number of Negroes are excluded from employment opportunities by Defendant’s policy.”¹⁰ The district court went on to find that the employer’s policy was not justified as a matter of business necessity because “[t]here is no evidence to support a claim that persons who have suffered no criminal convictions but have been arrested on a number of occasions can be expected, when employed, to perform less efficiently or less honestly than other employees” and therefore information about a job applicant’s records of arrest without conviction is “irrelevant to his suitability or qualification for employment.”¹¹ This finding was upheld by the United States Court of Appeals for the Ninth Circuit.¹²

In a Columbus case, the United States District Court for the Southern District of Ohio in *Dozier v. Chupka*¹³ considered a claim that reliance on records of arrest without conviction in connection with the selection of firefighter candidates violated Title VII under the disparate impact theory. The district court, after examining demographic data for Columbus, concluded that the employer had used a selection criterion with a discriminatory effect, one favoring white men in Columbus over black men in Columbus. While the court agreed that the information about arrests might have been used to determine predilection for theft, the court noted that the employer was “using tools too crude for their purpose” because there were not safeguards to prevent use of any arrest record in this manner.¹⁴ Therefore, the court found that the employer had violated Title VII and enjoined its continued use of records of arrest without conviction in the selection process.¹⁵

Other courts have reached similar conclusions. In *Reynolds v. Sheet Metal Workers Local 102*, admissions into an apprenticeship program for the local sheet metal union required applicants to provide information about records of arrest without conviction.¹⁶ The

⁹472 F.2d 631 (9th Cir. 1972).

¹⁰*Id.* at 403.

¹¹*Id.* at 402-03. The district court prohibited the employer from continuing to obtain information about arrests, but did allow the employer to collect information about the prosecution and trial of suspects, even if the trial resulted in an acquittal.

¹²472 F.2d 631, 632 (9th Cir. 1970).

¹³395 F. Supp. 836 (S.D. Ohio 1975).

¹⁴*Id.* at 850 & n. 10.

¹⁵*Id.* at 854-55. Sixteen years later, in 1991, the injunction was dissolved, upon a finding that the terms of the injunction had been complied with and its purposes met. The court specifically noted that the parties agreed that the terms of the injunction dealing with use of arrest records had been achieved. *See Dozier v. Chupka*, 763 F. Supp. 1430, 1436 (S.D. Ohio 1991).

¹⁶498 F. Supp. 952 (D. D.C. 1980).

United Court of Appeals for the Eighth Circuit in *Carter v. Gallagher*¹⁷ upheld the district court's conclusion that the employer's reliance on records of arrest without conviction in selecting firefighter candidates constituted unlawful discrimination on the basis of race under the disparate impact theory.¹⁸ Similarly, the district court in *United States v. City of Chicago*¹⁹ found that the police department's reliance on records of arrest without conviction in hiring, which resulted in the disqualification of black candidates at a rate of 2 to 1 that for white candidates, had not been sufficiently justified and therefore would be enjoined.²⁰

Not all courts, however, have found employer use of records of arrest without conviction to violate Title VII, at least not in all circumstances. For example, in *Webster v. Board of Education of the City of Chicago*,²¹ the United States Court of Appeals for the Seventh Circuit found no violation of Title VII under the disparate impact theory based on the plaintiff's claim that he was denied promotion to the position of principal because of an arrest for possession of stolen property that did not result in conviction. The court of appeals noted that the Board of Education had not established a policy or practice of relying on records of arrest without conviction, but merely considered the circumstances giving rise to the arrest and made an individualized determination that the plaintiff was not fit for the position of principal.²²

Similarly, in *Equal Employment Opportunity Commission v. Local 28 of the Sheet Metal Workers' International Ass'n*,²³ the district court rejected the plaintiff's attempt to establish that the defendant union violated Title VII under the disparate impact theory by making inquiries about and relying on arrests and convictions in selecting among applicants to its apprenticeship program. Although the plaintiffs presented both national and local evidence indicating that non-whites are arrested more often than whites, the court found that the plaintiffs had not demonstrated that the union had a policy of rejecting applicants with arrests not resulting in convictions. Because no prima facie case was found, the court held that the union had no duty to justify its practices as job-related.²⁴

¹⁷452 F.2d 315 (8th Cir. 1971), on remand, 1972 U.S. Dist. LEXIS 14309, * 9 (D. Minn. 1972). Although this case was decided under 42 U.S.C. § 1981 and the U.S. Constitution, rather than under Title VII, the court relied on the Supreme Court's articulation of the disparate impact theory in *Griggs v. Duke Power Co.* to invalidate the arrest record requirement. The United States Supreme Court has subsequently made clear that the disparate impact theory is not available as a theory of discrimination under § 1981 or the Constitution.

¹⁸*Id.* at 326. Although the court of appeals agreed with the district court that the employer's use of arrest records was unlawful and had to be enjoined, the court indicated that the employer could rely on convictions records in at least some situations, as long as the existence of a record of conviction was not used as an absolute bar to employment. *Id.* at 326.

See also *Green v. Missouri Pacific Railroad Co.*, 523 F.2d 1290, 1294-99 (8th Cir. 1975) (employer's policy of using conviction record as absolute bar to employment had disparate impact on the basis of race and was not shown to be justified as a matter of business necessity).

¹⁹411 F.2d 218 (N.D. Ill. 1976), *aff'd in part and reversed in part*, 549 F.2d 415 (7th Cir. 1977).

²⁰*Id.* at 235, 248. The court did indicate, however, that the employer could continue to disqualify applicants based on a conviction of a serious criminal offense.

²¹599 F.2d 793 (7th Cir. 1979), cert. denied, 444 U.S. 1039 (1980).

²²*Id.* at 802-03.

²³401 F. Supp. 467 (S.D. N.Y. 1975), *aff'd*, 532 F.2d 821 (2d Cir. 1976).

²⁴*Id.* at 482. The court noted that while the challenged inquiry related to both arrests and convictions, the plaintiffs were only challenging that part of the inquiry relating to arrests. *Id.*

- **Conclusions: Title VII and the Use of Arrest Records**

Employers who rely on records of arrest without conviction as a blanket exclusion from employment are likely to be found to have violated Title VII of the Civil Rights Act of 1964, at least if it can be shown that the practice in fact has a disparate impact on a protected group in the geographic area in which the rule is applied. While a number of courts in the past have been satisfied with national statistical evidence of disparate impact, it seems likely that courts, in light of the statutory requirements of the disparate impact theory, will want to see that the practice has a disparate impact as applied. In addition, while an employer may be able to justify reliance on a particular arrest to justify the rejection of a particular applicant or employee, it is unlikely that they will be able to justify a blanket exclusion based on any record of arrest without conviction.

2. Possible Constitutional Challenges to Use of Records of Arrest without Conviction

Other possible grounds upon which challenges to governmental employer use of records of arrest without conviction, or governmental dissemination of records of arrest without conviction to private sector employers, could be based would be as a violation of the constitutional right to privacy or the constitutional protection against deprivation of liberty without due process of law. It is unlikely, however, that such challenges would be successful, in light of existing authority.

In *Paul v. Davis*,²⁵ the plaintiff claimed that his due process rights and right to privacy had been violated when the local police produced and distributed a flyer of “active shoplifters” on which his name and picture appeared, even though he had been arrested only a single time for shoplifting and that charge had been dismissed. Although the plaintiff received a warning from his employer when the flyer came to the attention of the plaintiff’s supervisor, he did not lose his job.²⁶ The United States Supreme Court rejected the plaintiff’s due process claims, concluding that, his reputational interest, at least in the absence of loss of employment, implicated neither property nor liberty interests protected by the United States Constitution. The Court also rejected the plaintiff’s right to privacy claim on the ground that that constitutional right did not protect the type of reputational interest asserted by the plaintiff.²⁷

Similarly, the federal district court in *Hammons v. Scott*,²⁸ relying on the Supreme Court’s decision in *Paul v. Davis*, rejected the plaintiff’s contention that the federal and state practices of maintaining and disseminating records for arrests not resulting in convictions violated the constitutional right to privacy, due process, and equal protection. The reasoning of these cases makes it very unlikely that an individual could successfully challenge on federal constitutional grounds the action of a governmental employer in relying on an arrest record to exclude one from employment or the action of the government in retaining and disseminating information about arrests that have not resulted in conviction.

²⁵424 U.S. 693 (1976).

²⁶*Id.* at 694-96.

²⁷*Id.* at 697-714.

²⁸423 F. Supp. 625 (N.D. Cal. 1976); 423 F. Supp. 618 (N.D. Cal. 1976).

B. State Regulation of Use of Records of Arrest without Conviction

1. Ohio

Ohio has two statutory provisions relevant to employer use of records of arrest without conviction in connection with employment decisions. The first statute deals with expungement of records of offenses committed by juveniles.²⁹ That statute provides that an individual who has been arrested and charged with being a delinquent child, an unruly child, or a juvenile traffic offender who is found not guilty or for whom the charges are dismissed may apply for expungement of the record in that case. If the court finds that the individual was found not guilty or the charges were dismissed or not filed, the court is required to order that the records be expunged and that “the proceedings in the case be deemed never to have occurred.”³⁰ An individual cannot be questioned in any application for employment about juvenile arrest records that have been expunged, and if an inquiry is made, the individual may respond as if the expunged arrest did not occur and may not be subjected to any adverse action with respect to either the arrest or the response to the improper inquiry.³¹

Ohio has a similar provision dealing with expungement of arrests for adults. That statute provides that any person who is found not guilty of an offense after trial or is the subject of charges that have been dismissed may apply to the court to have the records in the case sealed.³² If the court directs that the records be sealed, the court shall order, “the proceedings in the case be deemed not to have occurred.”³³ An individual may not be questioned on any application for employment about an arrest record that has been sealed and, if an inquiry is made about any such record, the individual may respond as if the arrest did not occur and may not be subject to any adverse action because of the arrest or the response to the application. Disclosure by an employee or the state or its political subdivisions of information about arrests that have been sealed is a misdemeanor.³⁴

2. Other States

A number of states have enacted provisions restricting or otherwise regulating employer inquiries about and reliance on records of arrest without conviction in connection with employment decisions. The states have taken a range of different approaches to this issue, which are summarized in the table at the end of this section. The discussion of other state statutes in this report is not exhaustive, but provides examples of the different approaches taken by the states with respect to records of arrest without conviction. Examples of state statutes are included in Appendix A.

- **States that Directly Restrict Employer Use of Arrest Records**

Wisconsin is one of the states that have explicitly restricted the ability of employers to rely on records of arrest without conviction in connection with employment decisions. The Wisconsin statute states that it is unlawful for an employer to request an applicant or employee to supply information about records of arrest without conviction, other than a pending charge, except when the individual is required to be bonded and might not be bondable because of the arrest record. However, the statute does allow an employer to refuse to hire or to suspend (but apparently not terminate) a current employee based on a pending criminal charge substantially related to the particular job in question.³⁵

²⁹Ohio Rev. Code Ann. § 2151.358.

³⁰Ohio Rev. Stat. Ann. § 2151.358 (F).

³¹Ohio Rev. Stat. Ann. § 2151.358 (I).

³²Ohio Rev. Stat. Ann. § 2953.52 (A).

³³Ohio Rev. Stat. Ann. § 2953.52 (B).

³⁴Ohio Rev. Stat. Ann. § 2953.55.

³⁵Wis. Stat. Ann. § 111.335 (a), (b). The statute also provides that it is permissible to refuse to employ

California's statutory provision also prohibits employers from asking an applicant to disclose information, or from seeking information from any other source, about an arrest that did not result in conviction. This provision also prohibits an employer from using information about an arrest that did not result in conviction in connection with any employment decision. The statute does not prohibit an employer from inquiring about an arrest for which charges are still pending.³⁶ The statute does allow disclosure of arrest information to governmental agencies employing law enforcement officers, but such an agency may only provide paid administrative leave based solely on an arrest report. Such an agency may also use the information contained in an arrest report to conduct its own internal investigation concerning a law enforcement officer.³⁷

New York's unlawful discriminatory practices statute provides that it is unlawful for any employer to make any inquiry about, by way of application or otherwise, or to take any adverse action in connection with employment with respect to "any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual."³⁸ Similarly, Hawaii by statute prohibits public sector employers in the state from using records of arrest without conviction not resulting in a valid conviction in connection with any application for employment with the state or local government.³⁹ Pennsylvania by statute also regulates the use that can be made of "criminal history record information," defined to include records of arrest without conviction collected by criminal justice agencies. That statute provides that an employer can use such information in deciding whether or not to hire an applicant only with respect to convictions that relate to suitability for the particular position for which the individual has applied.⁴⁰

or to terminate from employment an individual who is convicted of a crime substantially related to the particular job in question or who is not bondable as required by law. Wis. Stat. Ann. § 111.335 (c).

In *Wal-Mart Stores, Inc. v. Labor and Industry Review Commission*, 220 Wis. 2d 716, 583 N.W.2d 674 (Wis. App. 1998), the court held that an employee's arrest and conviction for misdemeanor possession of marijuana was not substantially related to her position as a stocker at Wal-Mart, in spite of the contention that she sometimes worked in proximity to dangerous conditions).

³⁶Cal. Lab. Code § 432.7 (a). The California Court of Appeals held in *Pitman v. City of Oakland*, 197 Cal. App. 3d 1037, 243 Cal. Rptr. 306 (1988), that the provision dealing with pending charges only allowed an employer to ask about arrests for which charges were still pending, but did not allow the employer to base disciplinary action solely on the basis of such an arrest. 197 Cal App. 3d at 1044, 243 Cal. Rptr. at 309. On the other hand, the court held that an individual's whose arrest ultimately did results in a conviction was not entitled to the protection of the statute, even if the adverse employment action was taken prior to the applicant's conviction. 197 Cal. App. 3d at 1044, 243 Cal. Rptr. at 309-10.

³⁷Cal. Lab. Code § 432.7 (b). The statute is subject to other narrow exceptions for certain types of arrests and applicants for certain types of positions. Cal. Lab. Code § 432.7 (e), (f).

³⁸N.Y. Exec. Law § 296 (16).

³⁹Hawaii Rev. Stat. § 831-3.1.

⁴⁰18 Pa. Con. Stat. §§ 9102, 9125. Although the statute does not expressly prohibit reliance on arrest records, the statute does provide that an employer may use criminal history record information "only in accordance with this section" and then appears to authorize such use only with respect to certain convictions. While this is an awkward way to prohibit the use of arrest records, it would make little sense to restrict the use of conviction records but allow the use of a record of arrest that did not result in a conviction in connection with an employment decision.

- **States that Restrict Employer Inquiries about Records of Arrest without Conviction**

Other states prohibit employers from inquiring of applicants and employees about records of arrest without conviction, but do not expressly prohibit the employer from relying on records of arrests obtained from other sources. An example of such a state is Rhode Island, which provides that it is an unlawful employment practice for an employer “to include on any application for employment, except applications for law enforcement agency positions, or positions related to them, a question inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been arrested or charged with any crime.”⁴¹ A similar statute exists in Michigan, which prohibits most public and private sector employers from inquiring about the existence of records of arrest without conviction for misdemeanors that did not result in conviction and which allows an individual to fail to acknowledge information about arrests that the person has a right to withhold.⁴²

- **States that Restrict the Dissemination of Records of Arrest without Conviction**

A number of states impose no direct restrictions on general employer use of arrest record information, but attempt to restrict the extent to which such records are disseminated. For example, Washington by statute allows for unrestricted dissemination of conviction records and other criminal records that are still pending, but restricts criminal records, including records of arrest without conviction, that are resolved and that did not result in conviction. Records for crimes that did not result in conviction may be disseminated by a criminal justice agency to another criminal justice agency for law enforcement purposes and in connection with employment of the individual by a criminal justice agency, and for research purposes, subject to certain restrictions.⁴³ Although not expressly stated in the statute, it appears that other dissemination of such records, including their dissemination to private or public sector employers not constituting a “criminal justice agency,” would not be allowed by the statute.

North Dakota restricts the dissemination that can be made of records of arrest without conviction by the state Bureau of Criminal Investigation. The statute appears to allow dissemination to employers other than a criminal justice agency only if the information is of a conviction or another “reportable event,” including an arrest, within one year prior to the request and the information has not been sealed or purged.⁴⁴

⁴¹R.I. Gen. Laws § 28-5-7 (7).

⁴²Mich. Stat. Ann. § 3.548 (205a). This statute prohibits employers and employment agencies, other than law enforcement agencies, from making a request for or maintaining records of information concerning a misdemeanor arrest that did not result in conviction in connection with employment decisions. The statute expressly provides that it does not apply to felony charges prior to conviction or dismissal of the charge.

In discussing the purpose behind this statutory provision, the Michigan Court of Appeals in *Seals v. Henry Ford Hospital*, 123 Mich. App. 329, 333 N.W.2d 272 (1983), noted that “the Legislature was correct in its determination that its goal of promoting the civil rights of disadvantaged persons could be advanced by prohibiting a prospective employer from examining an applicant’s record of arrests without convictions.” 123 Mich. App. at 337-38, 333 N.W.2d at 276.

⁴³Wash. Rev. Code § 10.97.050 (1)-(6).

⁴⁴N.D. Cent. Code §§ 12-60-16.1 to 12-60-16.6.

- **States that Require Notification of the Individual to Disseminate Arrest Records**

In addition to placing restrictions on dissemination of arrest records, some states require that the individual for whom this information is sought be notified, others require signed consent to release the information, and in some cases, provide the individual with an opportunity to respond. For example, the Idaho statute provides that a record of arrest that does not contain a disposition after 12 months from the date of arrest may only be disseminated to the individual who is the subject of the record or to an individual with a signed release from the subject of the record. In addition, the following prominently displayed statement must accompany the release of criminal history data: “An arrest without disposition is not an indication of guilt.”⁴⁵

A Georgia statute also allows dissemination of records of arrest without conviction to private individuals and businesses only with the signed consent of the subject of the record or the submission of the fingerprints of that individual. The statute provides that, if an adverse employment decision is made on the basis of those records, the individual must be informed that the record was obtained from the Georgia Crime Information Center, the specific contents of the record, and the effect that the record had on the adverse employment decision.⁴⁶

Oregon by statute requires that the Department of State Police is authorized to release, to agencies other than law enforcement and criminal justice agencies, only information on convictions and arrest record information less than a year old on which there has been no acquittal or dismissal. Upon receipt of such a request, the Department is to notify the individual who is the subject of the record, providing to that individual the identity of the person or agency making the request, a copy of what will be supplied, and notice of the procedures for challenging inaccurate information, and notice that discrimination by an employer on the basis of records of arrest without conviction alone may violate federal civil rights law.⁴⁷

The Utah statute dealing with records of arrest without conviction also places limits on dissemination of records of arrest without conviction. That statute allows dissemination of such records to “qualifying entities” for use for employment background checks of job applicants and current employees. “Qualifying entities” are private and governmental entities employing individuals who deal with national security interests, the care and custody of children, fiduciary responsibility for money, and health care to children or vulnerable adults. Dissemination is also allowed to criminal justice agencies for employment screening.⁴⁸ Qualifying entities requesting criminal history information are required to obtain a signed waiver from the individual about whom the information is sought, and the individual must also be given an opportunity to review and respond to the information obtained.⁴⁹

⁴⁵Idaho Code § 67-3008.

⁴⁶Ga. Code Ann. § 35-3-34. Certain arrest records of first offenders, when the arrests have not resulted in an adjudication of guilt, are not to be disseminated.

⁴⁷Ore. Rev. Stat. § 181.560.

⁴⁸Utah Code Ann. §§ 53-10-102, 53-10-108 (1)(g).

⁴⁹Utah Code Ann. § 53-10-108 (3).

- **States that Restrict the Use of Expunged Records**

In addition to Ohio, other states, such as West Virginia, simply provide that employees whose records of arrest without conviction have been expunged are not required to disclose the existence of those records on an application for employment.⁵⁰ While this provision might allow the employee to avoid rejection for “falsification” for failure to report, this provision does not appear to restrict the employer’s ability to rely on records of arrest without conviction obtained from another source. Similar provisions exist in Virginia,⁵¹ Maryland,⁵² and Kentucky.⁵³

The Illinois statutory provision also prohibits an employer from inquiring about or relying on a record of arrest that has been expunged or sealed in making employment decisions, although the statute expressly does not prohibit an employer from “obtaining or using other information which indicates that a person actually engaged in the conduct for which he or she was arrested.”⁵⁴ The Massachusetts statute is similar, but goes one step further in requiring that an employer that seeks information concerning prior arrests or convictions include the following statement on the employment application:

“An applicant for employment with a sealed record on file with the commissioner of probation may answer ‘no record’ to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer ‘no record’ with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution.”⁵⁵

⁵⁰W. Va. Code § 61-11-25 (e).

⁵¹This statute provides that an employer may not require an applicant for employment to disclose information about an arrest that has been expunged and an applicant is not required to provide information about arrests that have been expunged in response to an inquiry about arrests that have not resulted in conviction. Va. Code Ann. § 19.2-392.4. This statute does not, however, appear to place any restriction on employer use of arrest records that have not been expunged, even if those arrests did not result in conviction.

⁵²This statute provides that an employer may not in an application or otherwise require an applicant for employment to disclose information about criminal charges that have been expunged; the statute also prohibits an employer from refusing to hire an individual solely because of his or her refusal to disclose information about criminal charges that have been expunged. Md. Ann. Code art. 27, § 740.

⁵³Ky. Stat. Ann. § 431.076 (5).

⁵⁴775 ILCS 5/2-103 (A), (B).

⁵⁵Mass. Ann. Laws ch. 276, § 100A (4).

Table 1
**Summary of State Regulation of
 Employer Use of Records of Arrests without Convictions
 in Making Hiring Decisions**

Type of Regulation	Representative States
<p>1) Direct restriction of employer use of records of arrest without conviction</p> <ul style="list-style-type: none"> • Prohibition on inquiries • Prohibition on taking adverse action on the basis of these records • Permit inquiry about a pending charge directly related to particular job in question • Permit inquiry for law enforcement positions 	California Hawaii New York Pennsylvania Wisconsin
<p>2) Restrictions on inquiries by employers about arrests without convictions</p> <ul style="list-style-type: none"> • Prohibition on inquiries • Do not expressly prohibit employers from relying on information in making employment decisions 	Michigan Rhode Island
<p>3) Restrictions on dissemination of records of arrest without conviction</p> <ul style="list-style-type: none"> • Restrict dissemination of records • Do not directly restrict employer use of records 	North Dakota Washington
<p>4) Require notification of individual to disseminate information on arrest without conviction</p> <ul style="list-style-type: none"> • Require notification of individual by employer • Some require signed consent prior to release • Some provide individual with opportunity to review and challenge accuracy of information 	Georgia Idaho Oregon Utah
<p>5) Restrict use of expunged arrest records</p> <ul style="list-style-type: none"> • Standards for expungement vary from state to state • Generally applicants not required to disclose expunged arrests to employers • Some prohibit employers from considering expunged records when making employment decisions 	Ohio Illinois Kentucky Louisiana Maryland Massachusetts Pennsylvania Virginia West Virginia

IV. Pre-Employment Screening Practices of Franklin County Employers

A goal of the Arrest Record Project was to determine if the anecdotal evidence of use of arrest records by employers to screen prospective employees reflects a widespread pattern among Franklin County employers. This section includes the findings of a mail survey of employers and a focus group of employment services organizations.

A. Employer Survey

A confidential survey was mailed to 500 employers randomly selected from the membership database of the Greater Columbus Chamber of Commerce. The Chamber's database has fewer large employer members (over 500 employees) than smaller employers, so fewer surveys were sent to the larger size cohorts. The survey tool sought information on the types of pre-employment screening practices used by employers when hiring entry-level employees. Included in the survey were questions about the use of arrest records. United Way mailed the survey, with a cover letter from the Vision Council. Surveys were returned anonymously to Community Research Partners and tabulated by OSU. The survey and cover letter can be found in Appendix B.

Table 2
Employer Survey Distribution and Response

Employer Size	Number Distributed	Number Returned	Percent of All Responses	Survey Response Rate
Fewer than 50 employees	139	18	15.4%	12.9%
50-to 100 employees	139	33	28.2%	23.7%
101 to 500 employees	139	44	37.6%	31.7%
501 to 1,000 employees	40	13	11.1%	32.5%
More than 1,000 employees	43	9	7.7%	20.9%
Total	500	117	100.0%	23.4%

• How Employers Obtain Information on Entry-Level Applicants

Employers were asked the methods that were used by their organization to obtain or verify screening information for entry-level applicants. As would be expected, the greatest number used "employment interviews" and "questions on employment applications". The fewest number of employers used "information from the Internet" and "written verification of information provided by the applicant".

Table 3
**Methods Used By Employers to Obtain or Verify Screening Information
 for Entry-Level Job Applicants**

Method to Obtain Information	Yes	No
Employment interviews	96.6% (113)	3.4% (4)
Questions on employment application	86.3% (101)	13.7% (16)
Check references provided by applicant	82.9% (97)	17.1% (20)
Check with other persons who may have knowledge of applicant	59.8% (70)	40.2% (47)
Use commercial service that performs background investigations	41.9% (49)	58.1% (68)
Review public records from governmental sources	26.5% (31)	73.5% (86)
Obtain written verification of information provided by applicant	20.5% (24)	79.5% (93)
Review information available on the Internet	18.8% (22)	81.2% (95)
None of the above	0.9% (1)	99.1% (116)

- **Screening Information Requested from Applicants**

When asked about the type of pre-employment screening information requested from applicants, employers most frequently cited “prior work experience”, “references” and “educational attainment.” The fewest number of respondents request information on “history of arrest” from applicants.

Table 4
Screening Information Requested from Applicants for Entry-Level Employment

Screening Information from Applicant	Yes	No
Prior employment or work experience	97.4% (114)	1.7% (2)
References	89.7% (105)	9.4% (11)
Educational attainment	84.6% (99)	14.5% (17)
Salary history	75.2% (88)	23.9% (28)
History of conviction	64.1% (75)	35.0% (41)
Citizenship status	55.5% (65)	43.6% (51)
Drivers license	50.4% (59)	48.7% (57)
History of arrest	25.6% (30)	73.5% (86)
Other: Drug history, art samples, social security card, military credit, computer skills	6.0% (7)	93.1% (109)

Note: One respondent, representing 0.9% of the total, did not respond to this question.

- **Screening Information Obtained from Outside Sources**

When asked about the type of pre-employment screening information obtained from outside sources (other than the applicant), employers most frequently cited “prior work experience” and “conviction records” as information they obtain routinely for all applicants. Arrest records are obtained routinely for all applicants by 29.9% of all employers, the third highest response. However, when the categories of “routinely for all applicants” and “only for certain positions” are added together, arrest records fall lower on the list. About 36% of respondents use outside sources of information to check arrest records either “routinely” or “only for certain positions”, compared to 65.8% for conviction records.

Table 5
**Circumstances under Which Employers Seek Screening Information
 from Outside Sources for Entry-Level Applicants**

Screening Information From Outside Source (other than from applicant)	Routinely for All Applicants	Only for Certain Positions	Only When Concerns Arise	Never	No Answer
Verification of prior employment	66.7% (78)	9.4% (11)	12.0% (14)	3.4% (4)	8.5% (10)
Conviction records	53.0% (62)	12.8% (15)	11.1% (13)	13.7% (16)	9.4% (11)
Arrest records	29.9% (35)	6.0% (7)	10.3% (12)	33.4% (39)	20.5% (24)
Verification of educational attainment	27.3% (32)	25.7% (30)	17.1% (20)	18.8% (22)	11.1% (13)
Motor vehicle records	20.5% (24)	37.6% (44)	4.3% (5)	20.5% (24)	17.1% (20)
Credit reports	6.0% (7)	16.2% (19)	4.3% (5)	49.6% (58)	23.9% (28)
Workers Compensation history	2.6% (3)	1.7% (2)	8.5% (10)	59.8% (70)	27.4% (32)
Other: Drug screening, skills testing, professional license verification, physical	2.6% (3)	1.7% (2)	1.7% (2)	0.9% (1)	93.1% (109)

- **Extent of Inquiry into Arrest and Conviction Records**

To understand the extent to which employers are actually seeking information on arrests and convictions for entry-level job applicants, further analysis was done on the respondents who indicated that they did not seek this information directly from applicants. Of those who answered “no” to asking applicants for arrest information, 28 indicated that, under some circumstances, they seek this information from outside sources. This results in a total of 58 respondents, or 49.6% of those who completed the survey, seeking information on arrests under some circumstances. At total of 97 employers (82.9% of respondents) indicated that they seek conviction information under some circumstances.

Table 6
Extent to Which Employers Seek Information on Arrests and Convictions

Type of Information	Seek Information Directly from Applicant	Do Not Seek from Applicant Seek Information from Outside Sources			Total Number/ Percent of all Respondents
		Routinely for All Applicants	Only for Certain Positions	Only When Concerns Arise	
Arrest records	30	18	2	8	58 (49.6%)
Conviction records	75	11	5	6	97 (82.9%)

- **Use of Screening Information to Disqualify Applicants**

Employers were asked a range of questions to determine how pre-employment screening information impacted their decision to hire or not hire an entry-level applicant. Conviction records were the most likely reason identified to “always” or “sometimes” disqualify an applicant for employment. Arrest records were fifth on the response list as a reason to always or sometimes disqualify an applicant. Information on convictions, prior employment, motor vehicle records and education were cited more frequently than arrest records. Nearly half of all those answering the question indicated that they never use arrest records to disqualify an applicant.

Table 7
Frequency with Which Screening Information is Used to Disqualify Entry-Level Applicants for Employment

Type of Information	Always	Sometimes	Never	No Answer
Verification of prior employment	22.2% (26)	29.1% (34)	27.4% (32)	21.3% (25)
Conviction records	19.7% (23)	37.6% (44)	28.2% (33)	14.5% (17)
Motor vehicle records	12.8% (15)	24.8% (29)	40.2% (47)	22.2% (26)
Arrest records	11.9% (14)	18.9% (22)	49.5% (58)	20.5% (24)
Verification of educational attainment	6.0% (7)	26.5% (31)	42.7% (50)	19.7% (23)
Credit reports	0.9% (1)	12.8% (15)	69.2% (81)	17.1% (20)
Workers Compensation history	0.0% (0)	5.1% (6)	76.9% (90)	18.0% (21)

B. Focus Group of Employment Services Organizations

On September 17, 2001, a focus group was held to discuss pre-employment screening practices of Franklin County employers. Participants were from organizations that provide employment services for individuals with barriers to employment, including ex-offenders. Participating in the focus group session were: Rick Mosholder, Columbus State Community College; Chad Ketler, Community Connection for Ohio Offenders; Harriet Shea, The Career Center at Jewish Family Services; Lisa Smith and Amiee Bowie, Central Community House; Daniel Herd, Godman Guild Association; Karen Beyer, Alvis House; Steven Burgess, Private Industry Council; Gerri Woodall and Carol Anderson, Friends of the Homeless; and Rich Mason, Columbus Works. The following is a summary of the focus group discussion, which was structured around five questions:

- 1. What methods do employers typically use to obtain pre-employment screening information on entry-level job applicants?**
 - Some employers conduct criminal background checks on all job applicants; others only for those to whom they have decided to extend an offer of employment.
 - Questions are included on the job application about arrests, convictions, and/or imprisonments during specified time periods (such as the last seven years).
 - Criminal background is revealed indirectly on the application or during the interview because of gaps in a work history, with the unaccounted for time being periods of incarceration.
 - Some large employers use a 1-800 number to conduct pre-employment screening.
 - A work history that includes more than one job in a year would raise a red flag.

- 2. How frequently do employers use commercial background checking services for pre-employment screening? Internet research?**
 - Use of commercial background services and the Internet to conduct background investigations, particularly checks for criminal records, is a relatively common practice among employers.
 - Criminal records are readily available from the State of Ohio with either a name or a social security number.
 - Some commercial services that conduct similar searches collect information about arrests as well as convictions.

- 3. What pre-employment screening information do you find to be a significant barrier to employability? Do specific populations face more barriers than others?**
 - Lack of a driver's license
 - Lack of transportation
 - Lack of identification card, particularly for individuals who had recently been released from prison
 - Spotty work history, particularly too many jobs in a short time period.
 - Inability to pass a drug test; a problem for 20-50 percent of the clients of some employment agencies.
 - Employers generally were not disqualifying employees based on a record of arrests without convictions; convictions much more of a barrier.
 - Barriers to employment are more cultural than racial, including issues of personal appearance and fear of entering corporate-type workplaces where they are likely to feel out of place and adjusting to the culture of the workplace difficult for some young workers without a lot of lawful work history.

- 4. What recommendations would you have for job applicants or employment service organizations to improve employability and to remove barriers to employability?**

Recommendations for Applicants

- Develop other skills and talents to offset negative factors in their history, including criminal records.
- Appreciate the importance of good attendance and the proper procedure for calling work to report an absence or being late.
- Become more comfortable discussing their criminal records without becoming defensive. Employers want to have a sense that the individual has taken responsibility for the crime and is not excusing their conduct.

- Obtain documentation of favorable disposition of a criminal charge to provide to an employer.
- Develop references, sometimes through volunteer work; notify references; and confirm contact information.
- Fill out job applications completely; an incomplete application can exclude an individual from consideration.

Recommendations for Employment Services Organizations

- Work with individuals to improve their ability to set goals.
- Provide education, on-the-job training, literacy education services.
- Explore the interests of job applicants, so that individuals are placed in an appropriate job for their interests.
- Drug test applicants before sending them out on a job, so employment services organizations would know whether the individuals would be able to pass a drug test.

5. What recommendations would you have for the United Way Vision Council to improve employability or to remove barriers to employability for entry-level applicants?

- Get information from employers about which specific crimes disqualify an applicant from consideration. Crimes most likely to disqualify a job applicant are theft-related crimes, crimes of violence, and drug-related crimes.
- Address the problems of substance abuse, child care, and transportation, and the mental health issues faced by much of this population.
- Be aware that the barriers to employability are numerous, and that people who have been marginalized rarely have just one problem.
- Understand that arrest and conviction records are not most significant barriers to employability and that individuals with criminal records are generally able to overcome their background if they have other positive factors to balance out negative information. The problem is that the positive factors are often lacking.

V. Arrest Records Data

African-American men are found in the criminal justice system in numbers in excess of their representation in the population. This is the case with regard to not only convictions and incarceration, but also with arrests. A review of national statistics reveals that African-Americans are subject to arrest disproportionately to their representation in the population. Of those arrested nationwide in 1999, 69 percent were white and 29 percent were black, with the remainder being of other races.⁵⁶ In comparison, in 1999, 83.9 percent of the national population was white, while 12.3 percent of the national population was black.⁵⁷

The disproportionate arrest rate for African-Americans is even more pronounced among those under the age of 18. On a nationwide basis, in 1999, 79 percent of the juvenile population was white, 15 percent was black, and 5 percent was composed of other races. However, juvenile arrests for violent crimes involved white juveniles in 57 percent of the cases and black juveniles in 41 percent of the cases. For property crimes, 69 percent of juveniles arrested were white and 27 percent of juveniles arrested were black.⁵⁸

As part of the Arrest Records Project, CRP and OSU researched national, state and local databases of records of arrests and convictions, as well as information from commercial background checking services, to determine: 1) the accessibility of arrest records to employers who wish to use this information for pre-employment screening; and 2) whether African-American males in Franklin County are more likely than persons from other racial and gender groups to be arrested for a crime, *but not subsequently convicted*. If this were the case, it would further substantiate the disproportionately negative impact on African-American males of the use of records of arrest without conviction as a pre-employment screening tool.

A. National and State Databases

Ohio is a participant in the Interstate Identification Index, a system for the exchange of criminal history records, including records of arrest without conviction. Under this program, the Federal Bureau of Investigation maintains an identification index of persons arrested for felonies and serious misdemeanors under state or federal law. As of June 30, 1999, over 21.3 million records held by the states were indexed through the Interstate Identification Index, with another 12.3 million records held by the FBI for the states. Of these 33.6 million records, 21.5 million, or 64 percent, contained information about the disposition of the charges reflected in the records.⁵⁹ Accordingly, information about disposition was not available for 36 percent of those criminal history records, or for over one-third of those records.⁶⁰

⁵⁶United States Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1999* (2000).

⁵⁷United States Statistical Profile, <http://fedstats.gov/qf/states/00000.html>, visited June 27, 2001.

⁵⁸Howard N. Snyder, "Juvenile Arrests 1999," Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Juvenile Justice Bulletin 4* (December 2000).

⁵⁹U.S. Department of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 1999*, at Glossary 1, 8-9, 10 (October 2000).

⁶⁰For criminal history records not indexed through the Interstate Identification Index, the proportion of records containing information about dispositions is substantially smaller. If all of the total criminal history records in the United States are considered, as of the end of 1999, there were 62.4 million criminal history records, 37.1 million of which were available through the Interstate Identification Index. Of those 62.4 million records, only 23.2 million, or 37 percent, included information on dispositions. U.S. Department of Justice, Bureau of Justice Statistics, "Criminal History Records in the United States," <http://www.ojp.usdoj.gov/bjs/chrstat.htm> (visited July 16, 2001). Accordingly, information about disposition was not available for almost two-thirds of the total criminal history records in the United State in 1999.

In addition, Ohio maintains its own criminal history files; as of the end of 1999, there were records on 1,600,000 individual offenders (1,500,000 of which were contained in automated files). Of the total number of arrests in Ohio's database, final dispositions were recorded on 56 percent of those arrests,⁶¹ leaving almost half of those records without information on disposition. Although Ohio reportedly has no backlog on entering arrests into the criminal history record system, with an average of only five days between receipt of arrest data and fingerprints and entry of that information into the criminal history database, the state has a substantial backlog with respect to the entry of information about dispositions into the database, with an average of 365 days between receipt of information on final disposition and entry of that information into the criminal history database. With a backlog of 148,000 disposition records in 1999, it was estimated that 120 person-days would be required to eliminate that backlog.⁶² Ohio does, however, use a number of practices to attempt to encourage fuller reporting of dispositions, including generating lists of arrests with no dispositions and audits.⁶³

B. Franklin County Data

The Franklin County Municipal Court has established an on-line database of all cases filed with the court.⁶⁴ Community Research Partners worked with the Municipal Court's Office of Information Services to access the database for analysis. Anyone can search for individual case records by entering a name or social security number.

CRP received a data run of all Type A and Type B cases (felony cases and criminal misdemeanor cases) with date of birth, gender, race, offense date, jurisdiction, charges and disposition code (case status) for 1998-2000. A total of 174,960 cases were included in the data file. However, because of the data limitations outlined below, CRP found that it was not possible to draw conclusions about the ratio of arrests to convictions for various demographic groups in Franklin County.

- Although cases are initially filed with the Municipal Court, civil and criminal cases are sent to the Court of Common Pleas and the disposition of these cases is not included in the Municipal Court database. The Court of Common Pleas does not have a centralized database on case disposition, and does not report disposition of cases back to the Municipal Court database.
- The Municipal Court database includes all case filings, but not all arrests. The records of local police departments include arrests that, for a variety of reasons, never proceed to court.
- Records that have been expunged are, of course, not included in the Municipal Court database.
- The Municipal Court database uses 134 different disposition codes for criminal and civil cases. It is fairly clear if a person has been found guilty, but the court's Office of Information Services indicated that it is not possible to determine with certainty whether other disposition codes represent a non-conviction or some other outcome.⁶⁵ About 70% of the cases in the Franklin County Municipal Court database for

⁶¹U.S. Department of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 1999, at 15 (October 2000).

⁶²U.S. Department of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 1999, at 37, 39 (October 2000).

⁶³U.S. Department of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 1999, at 42-43 (October 2000).

⁶⁴Franklin County Municipal Court web site, www.fcmcclerk.com

⁶⁵Telephone conversation with Keith Wiley, Manager, Office of Information Services, Franklin County Municipal Court, October 2, 2001.

1998-2000 fell into this category.

- Four race classifications are used in the Municipal Court database: black, white, other and no race. The race or gender of an individual charged with an offense is provided by the local jurisdiction filing the charges and is generally based on the observation of the arresting officer. In some cases this classification may not be accurate.

If employers are accessing the Franklin County Municipal Court on-line database as a source of arrest records for job applicants, in most cases they can only reliably conclude that an individual has had a charge filed against. It would take considerable research to determine the current status of the charge, absent a clear guilty disposition code.

C. Commercial Background Checking Services

Forty-two percent of the Franklin County employers surveyed indicated that they use a commercial service or agency that performs background investigation to obtain or verify screening information for entry-level employees. The representatives of employment services organizations who participated in the focus group also indicated that this practice is common among employers. CRP contacted AAIM Management Association, the national background checking service used by United Way of Central Ohio to screen persons who have accepted a job offer with United Way. This service is also used by some United Way agencies in Franklin County.

AAIM indicated that their researchers obtain information on convictions from county courthouses around the country, but they do not check police blotters or take any other steps to obtain arrest records. It is the policy of AAIM to release only conviction records and to not release arrest records. If a criminal background check includes non-convictions, it is reported to an employer as a “clear record”. The person interviewed at AAIM indicated that she is not aware of an employer specifically seeking information about arrests without convictions.⁶⁶

A scan of the web sites of several other background checking services indicated that the information they provide for criminal background checks is typically limited to conviction and incarceration records. For example, the web site of Agency Records, Inc. includes the following notice for employers:

About Criminal Record Reports...

Criminal record reports, in most areas, show conviction information only (as opposed to arrest records). If you are using criminal records for pre-employment, be cautious of using reports showing arrest (without conviction) entries.⁶⁷

This research, although cursory, provides an indication that within the background checking industry there is an awareness of the potential problems of employer use of records of arrests without convictions as a pre-employment screening tool. While it is possible for an employer to find a background checking service that can provide arrest records, it does not appear that this is a common practice.

⁶⁶ Interview with Jean Roth, supervisor, AAIM Management Association, October 5, 2001

⁶⁷ Agency Records, Inc. web site, www.agencyrecords.com/criminal.htm

VI. Implications for Vision Council Activities

A. Research Findings

The United Way Employment Vision Council and the Arrest Records Committee will use the research in this report to guide future activities to remove barriers to employment for African-American males. The following research findings are intended to assist in this discussion:

- 1. Employers who rely on records of arrest without conviction as a reason to exclude a person in a protected group from employment are likely to have violated Title VII of the Civil Rights Act of 1964.** This conclusion is supported by findings of the Equal Employment Opportunity Commission, as well as a number of decisions by federal courts. However, constitutional challenges to use of records without conviction, such as violation of right to privacy and protection against deprivation of due process, have likely been precluded by the U.S. Supreme Court.
- 2. In Ohio, individuals are protected from adverse employment decisions based on arrest records only if these records have been expunged.** Ohio statute sets forth specific procedures for expungement of juvenile arrest records and adult arrest records in cases where an individual has been found not guilty or a case has been dismissed. Both procedures require a determination by a court. An individual whose records have been expunged may respond to an employer inquiry as if the arrest did not occur.
- 3. Compared with other states, Ohio statutes offer individuals a minimal level of protection from employer use of records of arrest without conviction in employment decisions.** The research identified a number of other states with statutes that specifically restrict the use of arrest records by employers, regulate the dissemination of arrest records by public agencies and require notification of or consent by individuals if records are released to employers. Ohio law does not offer similar protection.
- 4. About half of employers surveyed sometimes seek information about arrest records during pre-employment screening.** Of those employers who completed the survey 49.6% reported seeking information on arrests under some circumstances. Thirty respondents (25.6%) request information on arrests from applicants. Another 28 (24.0%), who reported that they do not directly ask applicants for arrest information, either routinely or in certain instances, seek information on arrests from outside sources.
- 5. Employers distinguish between the use of arrest records and conviction records in pre-employment screening and use conviction records much more frequently for screening purposes.** Of the Franklin County employers surveyed, 64.1% inquired about convictions from applicants, compared with 25.6% for arrests. Similarly, 53% routinely seek information on convictions from outside sources for all applicants, compared with 29.9% seeking information on arrests.
- 6. A record of arrest without conviction is less likely to disqualify an applicant from employment than are other types of pre-employment screening information.** While 30.8% of employers surveyed reported that they used arrest records to “always” or “sometimes” disqualify an applicant for employment, the figures were higher for other types of screening information. These included: conviction records (57.3%); verification of prior employment (51.3%); motor vehicle records (37.6%) and verification of educational attainment (32.5%). Participants in focus groups also indicated that employers were not disqualifying employees based only on a record of arrests. They cited conviction records, inability to pass a drug test, spotty work history and lack of a driver’s license/transportation as

more significant barriers to employment.

7. **It is difficult to determine from existing criminal history databases if a person who has been arrested has or has not been convicted.** It would take considerable research for an employer to determine the current status of a charge filed against a prospective employee, absent a clear “guilty” disposition. Although conviction records are accessible from government databases and court records, it is not possible to determine with certainty whether other disposition codes represent a non-conviction or some other outcome. The final case disposition was not clear for about 70% of the cases examined in the Franklin County Municipal Court database for 1998-2000. Similarly, research by the U.S. Department of Justice on state criminal history files found that in 1999 about half of the arrests in Ohio’s file had no disposition. In addition, companies used by employers to conduct criminal background checks often limit the criminal history information they provide to employers to convictions only.
8. **It is possible for an individual with an arrest or conviction record to offset this with other positive attributes that are important to employers.** Representatives of employment services organization who participated in the focus group identified a number of steps that could be taken by individuals seeking employment to overcome a problematic criminal record. These included: education and skill development, resolving substance abuse problems, good attendance at work, developing employment references, filling out job applications accurately and completely, providing documentation of favorable disposition of a criminal charge, and becoming comfortable discussing criminal history in an honest and non-defensive manner.

B. Public Opinion on Employer Access to Arrest and Conviction Records

A relevant factor in considering the likely success of efforts by the United Way Employment Vision Council to affect Franklin County employer practices in the use of records of arrest without conviction in pre-employment screening is the amount of public support for such practices. In July 2001, the results of a survey were released that sought to measure nationwide public attitudes toward the uses of criminal history information, including the use of records of arrest without conviction. The telephone survey, conducted in February and March 2000, of 1030 adults, was commissioned by The National Consortium for Justice Information and Statistics.⁶⁸

The results of the survey indicate that the public has substantial concern about the maintenance and dissemination of records of arrest without conviction, and that the public is concerned about the role of private commercial entities with respect to such practices, as well as the use of technology to make that information more available. The survey results shown on the following page indicate that the public supports less access to

⁶⁸U.S. Department of Justice, Bureau of Justice Statistics, “Public Attitudes Toward Uses of Criminal History Information: A Privacy, Technology, and Criminal Justice Information Report” (July 2001).

Interestingly, the results of this survey also suggest the disproportionate effect of arrests on African-Americans. Of the 836 White respondents to the survey, only 9 percent indicated that they had even been arrested for other than a traffic violation. However, 16 percent of the 102 African-American respondents to the survey indicated that they had been arrested for other than a traffic violation. *Id.* at 51. Of the 10 percent of respondents who indicated that they had been arrested, 57 percent reported that they had been convicted of the offense for which they were arrested. *Id.* at 21.

African-American respondents to the survey indicated more negative perceptions about the degree to which the criminal justice system protects the civil liberties and constitutional rights of criminal suspects; while 74 percent of Whites said that the system protects those rights “very” or “somewhat well,” only 46 of African-American respondents gave such a response. Twenty-three percent of White respondents and 52 percent of African-American respondents indicated that the system protects those rights “not very” or “not well at all.” *Id.* at 27.

records of arrests without convictions than information about convictions.

The academic advisor for the survey has interpreted the results to mean that “the public is indeed interested in these issues and will support the development of new rules for societal uses of criminal history information in an information-rich age when people are actively seeking more information on one hand, while also being very worried about inappropriate or dangerous uses of information.”⁶⁹

Table 8

Public Opinion on Employer Access to Arrest and Conviction Records, 2000

	Conviction Records	Records of Arrest without Conviction
All employers should have access to information	40%	15%
Employers should be allowed access only for jobs that involve sensitive work	55%	49%
No employer should have access to information	4%	31%
Don't know	1%	5%

⁶⁹*Id.* at 12.

Appendix A:
State Statutes
Regulating the Use of
Records of Arrest without Conviction
In Pre-Employment Screening

Wisconsin Statutes § 111.335 (2000).

Arrest or conviction record; exceptions and special cases.

____(1)

(a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

2. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer.

(cg)

1. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to deny or refuse to renew a license or permit under s. 440.26 to a person who has been convicted of a felony and has not been pardoned for that felony.

2. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke a license or permit under s. 440.26 (6) (b) if the person holding the license or permit has been convicted of a felony and has not been pardoned for that felony.

3. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ a person in a business licensed under s. 440.26 or as an employee specified in s. 440.26 (5) (b) if the person has been convicted of a felony and has not been pardoned for that felony.

(cm) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned.

(cs) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to revoke, suspend or refuse to renew a license or permit under ch. 125 if the person holding or applying for the license or permit has been convicted of one or more of the following:

1. Manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1)

2. Possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m)

3. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. 961.41 (1) or (1m)

4. Possessing, with intent to manufacture, distribute or deliver, or manufacturing, distributing or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. 961.41 (1) or (1m).

Rhode Island General Laws § 28-5-7_(2001).

Unlawful employment practices

___It is an unlawful employment practice:

. . .

___(7)_For any employer to include on any application for employment, except applications for law enforcement agency positions, or positions related to them, a question inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been arrested or charged with any crime; provided, that nothing in this chapter shall prevent an employer from inquiring whether the applicant has ever been convicted of any crime;

North Dakota Century Code § 12-60-16.1 (2001).

§ 12-60-16.1. Definitions

___As used in sections 12-60-16.1 through 12-60-16.10, unless the context otherwise requires:

___1._"Bureau" means the bureau of criminal investigation.

___2._"Court" means the supreme court, district courts, and municipal courts of the North Dakota judicial system.

___3._"Criminal history record information" includes information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.

___4._"Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.

___5._"Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

___a. The transmittal of the information within a criminal justice agency.

___b. The reporting of the information as required by section 12-60-16.2.

___c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

___6._"Noncriminal justice agency" means an entity that is not a criminal justice agency.

___7._"Record subject" means the person who is the primary subject of a criminal history record. The term includes any record representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.

___8._"Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 12-60-16.2. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

North Dakota Century Code § 12-60-16.2 (2001).

Criminal history record information -- Reportable events

___Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 12-60-16.4. The following criminal justice agencies shall perform the duties indicated:

___1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.

___2. The prosecuting attorney shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.

___3._After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the prosecuting attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.

___4._The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:

___a._Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;

___b._Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and

___c._Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.

___5._The North Dakota state penitentiary, pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death must also be furnished.

North Dakota Century Code § 12-60-16.5 (2001).

§ 12-60-16.5. Criminal history record information -- Exchange of information among criminal justice agencies and the courts

___The bureau and other criminal justice agencies shall disclose criminal history record information:

___1._To a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees.

___2._To a court, on request, to aid in a decision concerning sentence, probation, or release pending trial or appeal.

___3._Pursuant to a judicial, legislative, or administrative agency subpoena issued in this state.

___4._As otherwise expressly required by law.

North Dakota Century Code § 12-60-16.6 (2001).

Criminal history record information -- Dissemination to parties not described in section 12-60-16.5

___Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

___1._The information has not been purged or sealed.

___2._The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.

___3._The request is written and contains:

___a._The name of the requester.

___b._The name of the record subject.

_____c. At least two items of information used by the bureau to retrieve criminal history records, including:

_____ (1) The fingerprints of the record subject.

_____ (2) The state identification number assigned to the record subject by the bureau.

_____ (3) The social security number of the record subject.

_____ (4) The date of birth of the record subject.

_____ (5) A specific reportable event identified by date and either agency or court.

___4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

Oregon Revised Statutes § 181.560_(1999).

Procedure when information requested by other than criminal justice agency.

___ (1) When a person or agency, other than a criminal justice agency or a law enforcement agency, pursuant to ORS 181.555 (2), requests from the Department of State Police criminal offender information regarding an individual, if the department's compiled criminal offender information on the individual contains records of any conviction, or of any arrest less than one year old on which there has been no acquittal or dismissal, the department shall respond to the request as follows:

(a) The department shall send prompt written notice of the request to the individual about whom the request has been made. The department shall address the notice to the individual's last address known to the department and to the individual's address, if any, supplied by the person making the request. However, the department has no obligation to insure that the addresses are current. The notice shall state that the department has received a request for information concerning the individual and shall identify the person or agency making the request. Notice to the individual about whom the request is made shall include:

(A) A copy of all information to be supplied to the person or agency making the request;

(B) Notice to the individual of the manner in which the individual may become informed of the procedures adopted under ORS 181.555 (3) for challenging inaccurate criminal offender information; and (C) Notice to the individual of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964, and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(b) Fourteen days after sending notice to the individual about whom the request is made, the department shall deliver to the person or agency making the request the following information if held regarding any convictions and any arrests less than one year old on which the records show no acquittal or dismissal:

(A) Date of arrest.

(B) Offense for which arrest was made.

(C) Arresting agency.

(D) Court of origin.

(E) Disposition, including sentence imposed, date of parole if any and parole revocations if any.

(c) The department shall deliver only the data authorized under paragraph (b) of this subsection.

(d) The department shall inform the person or agency requesting the criminal offender information that the department's response is being furnished only on the basis of similarity of names and description and that identification is not confirmed by fingerprints.

(2) If the department holds no criminal offender information on an individual, or the department's compiled criminal offender information on the individual consists only of nonconviction data, the department shall respond to a request under this section that the individual has no criminal record and shall release no further information.

(3) The department shall keep a record of all persons and agencies making inquiries under ORS 181.555 (2) and shall keep a record of the names of the individuals about whom such persons or agencies are inquiring, regardless of whether the department has compiled any criminal offender information on the individuals. These records shall be public records and shall be available for inspection under ORS 192.410 to 192.505.

(4) Nothing in ORS 181.066, 181.540, 181.555 or this section is intended to prevent the department from charging a reasonable fee, pursuant to ORS 192.440, for responding to a criminal offender information inquiry or for making information available under ORS 181.555 or this section.

Ohio Revised Code Annotated §. 2953.52 (Anderson 2001).

Sealing of official records after not guilty finding, dismissal of proceedings or no bill.

____(A)(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of two years after the date on which the foreman or deputy foreman of the grand jury reports to the court that the grand jury has reported a no bill.

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons he believes justify a denial of the application.

(2) The court shall do each of the following:

(a) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreman or deputy foreman of the grand jury;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

(3) If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the foreman or deputy foreman of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, the court shall issue an order directing that all official records pertaining to the case be sealed and that, except as provided in section 2953.53 of the Revised Code, the proceedings in the case be deemed not to have occurred.

Ohio Revised Code Annotated § 2151.358 (Anderson 2001).

Sealing or expungement of record; judgment does not impose civil disabilities; admission of judgment in other proceedings

(A) As used in this section, "seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records and that is accessible only to the juvenile court. A record that is sealed shall be destroyed by all persons and governmental bodies except the juvenile court.

(F) An person who has been arrested and charged with being a delinquent child or a juvenile traffic offender and who is adjudicated not guilty of the charges in the case or has the charges in the case dismissed may apply to the court for an expungement of the record in the case. The application may be filed at any time after the person is adjudicated not guilty or the charges against the person are dismissed. The court shall give notice to the prosecuting attorney of any hearing on the application. The court may initiate the expungement proceedings on its own motion.

Any person who has been arrested and charged with being an unruly child and who is adjudicated not guilty of the charges in the case or has the charges in the case dismissed may apply to the court for an expungement of the record in the case. The court shall initiate the expungement proceedings on its own motion if an application for expungement is not filed.

If the court upon receipt of an application for expungement or upon its own motion determines that the charges against any person in any case were dismissed or that any person was adjudicated not guilty in any case, the court shall order that the records of the case be expunged and that the proceedings in the case be deemed never to have occurred. If the applicant for the expungement order, with the written consent of the applicant's parents or guardian if the applicant is a minor and with the written approval of the court, waives in writing the applicant's right to bring any civil action based on the arrest for which the expungement order is applied, the court shall order the appropriate persons and governmental agencies to delete all index references to the case; destroy or delete all court records of the case; destroy all copies of any pictures and fingerprints taken of the person pursuant to the expunged arrest; and destroy, erase, or delete any reference to the arrest that is maintained by the state or any political subdivision of the state, except a record of the arrest that is maintained for compiling statistical data and that does not contain any reference to the person.

If the applicant for an expungement order does not waive in writing the right to bring any civil action based on the arrest for which the expungement order is applied, the court, in addition to ordering the deletion, destruction, or erasure of all index references and court records of the case and of all references to the arrest that are maintained by the state or any political subdivision of the state, shall order that a copy of all records of the case, except fingerprints held by the court or a law enforcement agency, be delivered to the court. The court shall seal all of the records delivered to the court in a separate file in which only sealed records are maintained. The sealed records shall be kept by the court until the statute of limitations expires for any civil action based on the arrest, any pending litigation based on the arrest is terminated, or the applicant files a written waiver of the right to bring a civil action based on the arrest. After the expiration of the statute of limitations, the termination of the pending litigation, or the filing of the waiver, the court shall destroy the sealed records.

After the expungement order has been issued, the court shall, and the person may properly, reply that no record of the case with respect to the person exists.

(G)(1) The court shall send notice of the order to expunge or seal to any public office or agency that the court has reason to believe may have a record of the expunged or sealed record. Except as provided in division (K) of this section, an order to seal or expunge under this section applies to every public office or agency that has a record of the prior adjudication or arrest, regardless of whether it receives notice of the hearing on the expungement or sealing of the record or a copy of the order to expunge or seal the record. Except as provided in division (K) of this section, upon the written request of a person whose record has been expunged and the presentation of a copy of the order to expunge, a public office or agency shall destroy its record of the prior adjudication or arrest, except a record of the adjudication or arrest that is maintained for compiling statistical data and that does not contain any reference to the person who is the subject of the order to expunge.

(2) The person, or the public office or agency, that maintains sealed records pertaining to an adjudication of a child as a delinquent child may maintain a manual or computerized index to the sealed records. The index shall contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of

the sealed records, the word "sealed," and the name of the person, or the public office or agency that has custody of the sealed records and shall not contain the name of the delinquent act committed. The person who has custody of the sealed records shall make the index available only for the purposes set forth in divisions (E)(2) and (H) of this section.

(H) The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication and no child shall be charged with or convicted of a crime in any court except as provided by this chapter. The disposition of a child under the judgment rendered or any evidence given in court shall not operate to disqualify a child in any future civil service examination, appointment, or application. Evidence of a judgment rendered and the disposition of a child under the judgment is not admissible to impeach the credibility of the child in any action or proceeding. Otherwise, the disposition of a child under the judgment rendered or any evidence given in court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court as to the matter of sentence or to the granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender, as defined in section 2929.01 of the Revised Code.

(I) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest for which the records were expunged. If an inquiry is made in violation of this division, the person may respond as if the expunged arrest did not occur, and the person shall not be subject to any adverse action because of the arrest or the response.

(J) An officer or employee of the state or any of its political subdivisions who knowingly releases, disseminates, or makes available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, complaint, trial, hearing, adjudication, or correctional supervision, the records of which have been expunged or sealed pursuant to this section and the release, dissemination, or making available of which is not expressly permitted by this section, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(K) Notwithstanding any provision of this section that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code is permitted to maintain records regarding an adjudication that the individual is a delinquent child that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under this section to seal the record of an adjudication that an individual is a delinquent child does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order issued under this section to seal the record of an adjudication that an individual is a delinquent child may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code, any school employee in possession of or having access to the sealed adjudication records of an individual that were the basis of a permanent exclusion of the individual is subject to division (J) of this section.

Appendix B:
Employer Survey
Pre-Employment Screening Practices
for
Entry Level Employees

August 27, 2001

Dear Human Resources Director:

Enclosed you will find a survey on pre-employment screening practices used in hiring entry-level workers in Franklin County. This survey is part of a research project being undertaken by Community Research Partners (CRP) for the Employment Vision Council of United Way of Central Ohio. CRP is a non-profit organization formed in 2000 by United Way, the City of Columbus and the John Glenn Institute at OSU to conduct research on key human services and community development issues in Central Ohio.

This survey of 500 randomly selected Franklin County employers is being conducted on an anonymous basis. ***Responses will not be associated in any way with a respondent or company.*** The research findings will be used by the Vision Council to develop strategies to assist Franklin County residents to remove barriers to employability.

Please return the completed survey in the enclosed self-addressed, postage-paid envelope by Friday, September 14, 2001. The survey may also be faxed to (614) 224-8132. If you are not familiar with the pre-employment practices of your organization, please forward the survey to the appropriate person.

If you have questions about the survey or the research project, or wish to obtain a copy of the survey results, please contact me at 241-3075 or Bobbie Garber, Executive Director, Community Research Partners, at 224-5917, ext. 100. ***Thank you in advance for your participation!***

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Garber', written over a horizontal line.

Director of Employment

**CONFIDENTIAL SURVEY ON
PRE-EMPLOYMENT SCREENING PRACTICES
IN FRANKLIN COUNTY, OHIO**

Please return the completed survey in the enclosed self-addressed, postage-paid envelope by Friday, September 14, 2001. The survey may also be faxed to (614) 224-8132.

If you have questions about the survey, or would like a copy of the survey results, please contact:
Bobbie Garber, Community Research Partners, at (614) 224-5917, ext. 100, or
David Yorcka, United Way Director of Employment, at 241-3075.

Please answer all questions only for facilities or operations in Franklin County, Ohio.

1. Total number of persons employed full-time and part-time: (select one)

- | | |
|--|---|
| <input type="checkbox"/> Fewer than 50 | <input type="checkbox"/> 501 to 1000 |
| <input type="checkbox"/> 50 to 100 | <input type="checkbox"/> More than 1000 |
| <input type="checkbox"/> 101 to 500 | |

2. Primary business classification: (select one)

- | | | |
|--|---|--|
| <input type="checkbox"/> Communications | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Wholesale Trade |
| <input type="checkbox"/> Education | <input type="checkbox"/> Retail Trade | <input type="checkbox"/> Construction |
| <input type="checkbox"/> Finance/Insurance | <input type="checkbox"/> Other Service | <input type="checkbox"/> Technology |
| <input type="checkbox"/> Government | <input type="checkbox"/> Transportation | |
| <input type="checkbox"/> Health Care | <input type="checkbox"/> Utilities | |
| <input type="checkbox"/> Other (please specify): _____ | | |

3. Which methods are used by your organization to obtain or verify screening information for entry-level job applicants? (Check all that apply)

- Questions on employment application
 - Employment interviews
 - Check references provided by applicant
 - Check with other persons who may have knowledge of the applicant's background
 - Obtain written verification of information provided by applicant
 - Review public records from governmental sources
 - Review information available on Internet or other computerized source
 - Use commercial service or agency that performs background investigations
 - None of the above
 - Other (please specify) _____
- _____

4. Which of the following screening information do you request directly from entry-level applicants, (on an application/resume or during the interview process)? (Check all that apply)

- ___ Educational attainment
- ___ Prior employment or work experience
- ___ Salary history
- ___ References
- ___ History of arrest
- ___ History of conviction
- ___ Drivers license
- ___ Citizenship status
- ___ None of the above
- ___ Other (please specify): _____

5. Under what circumstances is the following screening information obtained from outside sources (other than directly from the applicant) for entry-level applicants?

	Routinely for all applicants	Only for applicants for certain positions	Only when concerns arise about a particular applicant	Never
a. Verification of educational attainment				
b. Verification of prior employment or work experience				
c. Motor vehicle records				
d. Credit reports				
e. Records of arrest without conviction				
f. Conviction records				
g. Worker's Compensation history				
h. Other (specify):				
i. Other (specify):				

6. How is verification of educational attainment used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to qualify applicant for employment			
d. Used to disqualify applicant for employment			

7. How is verification of prior employment or work experience used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to qualify applicant for employment			
d. Used to disqualify applicant for employment			

8. How are motor vehicle records used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to qualify applicant for employment			
d. Used to disqualify applicant for employment			

9. How are credit reports used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to disqualify applicant for employment			

10. How are records of arrest without conviction used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to disqualify applicant for employment			

11. How are conviction records used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to disqualify applicant for employment			

12. How is Worker's Compensation history used to screen entry-level applicants?

	Always	Sometimes	Never
a. Used to verify accuracy of information provided by applicant			
b. Used to obtain additional information about applicant			
c. Used to disqualify applicant for employment			

13. Thank you for your participation. Feel free to include on a separate page any other comments with respect to this survey or pre-employment screening practices of employers in Franklin County, Ohio.

Summary of Results
Confidential Survey on Pre-Employment Screening Practices
in Franklin County, Ohio

September, 2001

1. Total Number of Persons Employed Full-Time and Part Time

Number of Employees	Surveys Distributed	Number Returned	Percent of All Responses	Survey Response Rate
Fewer than 50	139	18	15.4 %	12.9%
50 to 100	139	33	28.2 %	23.7%
101 to 500	139	44	37.6 %	31.7%
501 to 1000	40	13	11.1 %	32.5%
More than 1000	43	9	7.7 %	20.9%
Total	500	117	100 %	23.4%

2. Primary Business Classification

Communications	4	3.4 %
Education	4	3.4 %
Finance/Insurance	7	5.9 %
Government	5	4.3 %
Health Care	6	5.2 %
Manufacturing	23	19.6 %
Retail Trade	7	6.0 %
Other Service	5	4.3 %
Transportation	5	4.3 %
Utilities	1	.9 %
Wholesale Trade	2	1.7 %
Construction	7	6.0 %
Technology	9	7.7 %
Other	32	27.3 %
Property Management		
Non-profit Organization		
Legal		
Wholesale Printing		
Religious Charitable		
Distribution/Warehouse		
Metal Finishing		
Temporary Staffing		
Office Services		
Hospitality/Hotels		
Human Services		
Distribution Center		
Humanitarian		
Insurance Brokerage		
Automobile Sales		
Import/Export		
Telecommunication		
Graphic Design		
Publishing		
Information Mgmt.		
Building Services		
Real Estate		
Professional Assn.		
Aircraft Sales/Service		
Environmental Consult.		
Architecture		
Restaurant		
Total	117	100 %

3. Which methods are used by your organization to obtain or verify screening information for entry-level job applicants?

	Yes	No	Total
Questions on employment application	101 86.3 %	16 13.7 %	117 100 %
Employment interviews	113 96.6 %	4 3.4 %	117 100 %
Check references provided by applicant	97 82.9 %	20 17.1 %	117 100 %
Check with other persons who may have knowledge of applicant's background	70 59.8 %	47 40.2 %	117 100 %
Obtain written verification of information provided by applicant	24 20.5 %	93 79.5 %	117 100 %
Review public records from governmental sources	31 26.5 %	86 73.5 %	117 100 %
Review information available on Internet or other computerized source	22 18.8 %	95 81.2 %	117 100 %
Use commercial service or agency that performs background investigations	49 41.9 %	68 58.1 %	117 100 %
None of the above	1 0.9 %	116 99.1 %	117 100 %
Other Testing Preemployment Drug Screening Driver's License Check Portfolio Review Background Checks Ventures Screening for Initial Interview Aptitude and Skills Assessment DMV Reports	8 6.9 %	109 93.1 %	117 100 %

4. Which of the following screening information do you request directly from entry-level applicants (on an application/resume or during the interview process)?

	Yes	No	No answer	Total
Educational attainment	99 84.6 %	17 14.5 %	1 .9 %	117 100 %
Prior employment or work experience	114 97.4 %	2 1.7 %	1 .9 %	117 100 %
Salary history	88 75.2 %	28 23.9 %	1 .9 %	117 100 %
References	105 89.7 %	11 9.4 %	1 .9 %	117 100 %
History of arrest	30 25.6 %	86 73.5 %	1 .9 %	117 100 %
History of conviction	75 64.1 %	41 35.0 %	1 .9 %	117 100 %
Drivers license	59 50.4 %	57 48.7 %	1 .9 %	117 100 %
Citizenship status	65 55.5 %	51 43.6 %	1 .9 %	117 100 %
None of the above	116 99.1 %	0 0 %	1 .9 %	117 100 %
Other Copy of CDL for Truck Drivers Drug History Art Samples Social Security Card Felony Convictions Military Credit Computer Skills and Systems Eligibility to Participate in HC Program	7 6.0 %	109 93.1 %	1 .9 %	117 100 %

5. Under what circumstances is the following screening information obtained from outside sources (other than directly from the applicant) for entry-level applicants?

	Routinely for all applicants	Only for applicants for certain positions	Only when concerns arise about a particular applicant	Never	No answer	Total
Verification of educational attainment	32 27.3 %	30 25.7 %	20 17.1 %	22 18.8%	13 11.1 %	117 100 %
Verification of prior employment or work experience	78 66.7 %	11 9.4 %	14 12.0 %	4 3.4 %	10 8.5 %	117 100 %
Motor vehicle records	24 20.5 %	44 37.6 %	5 4.3 %	24 20.5%	20 17.1 %	117 100 %
Credit reports	7 6.0 %	19 16.2 %	5 4.3 %	58 49.6%	28 23.9 %	117 100 %
Arrest records	35 29.9 %	7 6.0 %	12 10.3 %	39 33.4%	24 20.5 %	117 100 %
Conviction records	62 53.0 %	15 12.8 %	13 11.1 %	16 13.7%	11 9.4 %	117 100 %
Worker's compensation history	3 2.6 %	2 1.7 %	10 8.5 %	70 59.8%	32 27.4 %	117 100 %
Other Drug Screening Skills Testing License Verification Medical License Insurance License Physical	3 2.6 %	2 1.7 %	2 1.7 %	1 .9 %	109 93.1 %	117 100 %

6. How is verification of educational attainment used to screen entry-level applicants?

	Always	Sometimes	Never	No answer	Total
Used to verify accuracy of information provided by applicant	43 36.8 %	26 22.2 %	32 27.4%	16 13.6 %	117 100 %
Used to obtain additional information about applicant	8 6.8 %	28 24.0 %	50 42.7%	31 26.5 %	117 100 %
Use to qualify applicant for employment	27 23.1 %	37 31.6 %	33 28.2%	20 17.1 %	117 100 %
Use to disqualify applicant for employment	7 6.0 %	31 26.5 %	50 42.7%	29 24.8 %	117 100 %

7. How is verification of prior employment or work experience used to screen entry-level applicants?

	Always	Sometimes	Never	No answer	Total
Use to verify accuracy of information provided by applicant	72 61.5 %	32 27.4 %	6 5.1 %	7 6.0 %	117 100 %
Used to obtain additional information about applicant	49 41.9 %	39 33.4 %	13 11.1%	16 13.6 %	117 100 %
Used to qualify applicant for employment	54 46.2 %	31 26.5 %	16 13.6%	16 13.7 %	117 100 %
Use to disqualify applicant for employment	26 22.2 %	34 29.1 %	32 27.4%	25 21.3 %	117 100 %

8. How are motor vehicle reports used to screen entry-level candidates?

	Always	Sometimes	Never	No answer	Total
Used to verify accuracy of information provided by applicant	29 24.8 %	21 17.9 %	44 37.6%	23 19.7 %	117 100 %
Used to obtain additional information about applicant	22 18.8 %	23 19.7 %	50 42.7%	22 18.8 %	117 100 %
Used to qualify applicant for employment	25 21.4 %	36 30.8 %	37 31.6%	19 16.2 %	117 100 %
Used to disqualify applicant for employment	15 12.8 %	29 24.8 %	47 40.2%	26 22.2 %	117 100 %

9. How are credit reports used to screen entry-level applicants?

	Always	Sometimes	Never	No answer	Total
Used to verify accuracy of information provided by applicant	7 6.0 %	7 6.0 %	82 70.1%	21 17.9 %	117 100 %
Used to obtain additional information about applicant	6 5.1 %	11 9.4 %	81 69.2%	19 16.3 %	117 100 %
Used to disqualify applicant from employment	1 .9 %	15 12.8 %	81 69.2%	20 17.1 %	117 100 %

10. How are arrest records used to screen entry-level applicants?

	Always	Sometimes	Never	No answer	Total
Used to verify accuracy of information provided by applicant	24 20.5 %	13 11.1 %	57 48.7%	23 19.7 %	117 100 %
Used to obtain additional information about applicant	20 17.1 %	16 13.7 %	57 48.7%	24 20.5 %	117 100 %
Used to disqualify applicant from employment	14 11.9 %	22 18.9 %	58 49.5%	23 19.7 %	117 100 %

11. How are conviction records used to screen entry-level applicants?

	Always	Sometimes	Never	No answer	Total
Used to verify accuracy of information provided by applicant	51 43.6 %	21 17.9 %	29 24.8%	16 13.7 %	117 100 %
Used to obtain additional information about applicant	34 29.1 %	31 26.5 %	34 29.1%	18 15.3 %	117 100 %
Used to disqualify applicant for employment	23 19.7 %	44 37.6 %	33 28.2%	17 14.5 %	117 100 %

12. How is Worker's Compensation history used to screen entry-level applicants?

	Always	Sometimes	Never	No answer	Total
Used to verify accuracy of information provided by applicant	1 .9 %	6 5.1 %	91 77.8%	19 16.2 %	117 100 %
Used to obtain additional information about applicant	1 .9 %	7 6.0 %	88 75.2%	21 17.9 %	117 100 %
Used to disqualify applicant for employment	0 0 %	6 5.1 %	90 76.9%	21 18.0 %	117 100 %