

**HELPING JUSTICE-INVOLVED INDIVIDUALS WITH
SUBSTANCE USE AND/OR MENTAL HEALTH DISORDERS:
UNDERSTANDING HOW LAWS, REGULATIONS, &
POLICIES AFFECT THEIR OPPORTUNITIES**

UTAH



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UTAH

This section summarizes Utah state laws, policies and practices that promote or hinder successful re-entry for justice-involved Utah residents, particularly those with substance use or mental health disorders. Re-entry service providers, such as peer-support coaches, mentors and outreach workers, will find that if they understand these laws and policies, they will be better equipped to help individuals successfully re-enter their communities.

Providers also should read [Section I](#) of this guide, which summarizes federal barriers to jobs, housing, and higher education for people with criminal records. Section I also summarizes federal legal protections and initiatives to help people overcome these barriers.

EMPLOYMENT

A broad range of Utah laws and policies restrict the ability of justice-involved individuals to work in specific jobs and industries. [Section I](#) highlighted the federal laws that limit employment in health care, commercial transportation, insurance, financial and others. Utah state law also imposes criminal record restrictions on jobs and occupational licensure. There are nearly 200 occupational licenses with approximately 60 categories of licensure that are administered by the Division of Occupational and Professional Licensing.ⁱ Background checks are part of the application process for jobs and occupational licenses. Utah is considered a closed state, meaning only authorized agencies and entities are given direct access to Bureau of Criminal Identification records without authorization from the subject.

- **Utah Industry-Specific Restrictions on Employment**

The DOPL is charged with assessing the “good moral character, unlawful conduct, unprofessional conduct, or other mental or physical condition” of applicants or licensees. During a background screening, the agency must consider if the applicants has “history that reflects negatively on their moral character, including past unlawful or unprofessional conduct or has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.”ⁱⁱⁱ DOPL is required to consider the following factors in its decisions:

- a) aggravating circumstances;
- b) mitigating circumstances;
- c) the degree of risk to the public health, safety or welfare;
- d) the degree of risk that conduct will be repeated;
- e) the degree of risk that a condition will continue;
- f) the magnitude of the conduct or condition as it relates to the harm or potential harm;
- g) the length of time since the last conduct or condition has occurred;

- h) the current criminal probationary or parole status of the applicant or licensee;
- i) the current administrative status of the applicant or licensee;
- j) results of previously submitted applications, for any regulated profession or occupation;
- k) results of any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;
- l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;
- m) psychological evaluations; or
- n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.ⁱⁱⁱ

Utah law requires a background check for certain occupations and also specifies certain disqualifying criminal convictions. For example, individuals applying for a license to be a barber, cosmetologist/barber, esthetician, electrologist, or nail technician may be disqualified for:

- criminal conviction for a sex offense;
- crimes against a person;
- crimes against property;
- any offense involving controlled dangerous substances; or
- conspiracy to commit or any attempt to commit any of the above offenses.

Disqualification periods are specific to the type of offense an applicant has been convicted of and range from three to seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later. Individuals convicted for a felony crime of violence may be considered ineligible for licensure for a period of seven years, for a felony involving a controlled substance five years, or for any misdemeanor crime of violence or the use of a controlled substance three years.^{iv} Individuals applying for dental hygienist,^v substance use disorder counselors,^{vi} or massage therapists,^{vii} on the other hand, are simply required to meet a “good moral character” standing.

- **Background Screens**

The Utah Department of Public Safety, Bureau of Criminal Identification (BCI) maintains criminal history information for activities in the state of Utah. Individuals may request a copy of their own records and have incomplete or incorrect information modified.^{viii} The state restricts access to BCI records to only certain entities for employment purposes, but expressly allows agencies to obtain records for the purposes of determining the care, custody or control of children, fiduciary trusts, national security interests and the care of vulnerable adults.^{ix} Criminal penalties and civil liability may be imposed if individuals or agencies unlawfully receive or redistribute BCI records.^x BCI records distributed for employment purposes in most instances will not include criminal charges:

- That have been declined for prosecution;
- That have been dismissed; or
- Of which a person has been acquitted.^{xi}

In general, any agency or individual may request BCI reports for purposes authorized by statute, executive order, court rule, court order, or local ordinance.^{xii} Certain employers, known under the law as qualifying entities, may request BCI reports for employment background checks.^{xiii} However, the employer may only obtain these records with written authorization (signed waiver) from the prospective employee. The waiver must notify the signee:

- That a criminal history background check will be conducted;
- Who will see the information; and
- How the information will be used.^{xiv}

Further, the criminal record information should only be available to persons involved in the hiring or background investigation of the employee and used for the purpose of assisting in making an employment or promotion decision.^{xv} Employers must provide the employee or employment applicant an opportunity to review and respond to the information received.^{xvi}

Individuals who have expunged records are permitted to deny that the record ever existed.^{xvii} The Utah Labor Commission's Anti-discrimination Division encourages employers to only inquire about felony convictions if the nature of the convictions disqualify the individual from the position or are related to the position's job responsibilities.^{xviii}

However, licensed educators, volunteers, non-licensed employees, and Charter School Governing Board Members in the public education system must disclose convictions, including pleas in abeyance and diversion agreements and any arrests for alleged sex offenses, drug-related offenses, alcohol-related offenses, or offenses against the person (*e.g.*, assault and related offenses, criminal homicide, kidnapping, human trafficking and sexual offenses).^{xix}

Legal Protections for Job-Seekers and Workers

- **Utah Employment Laws**

As noted above, the Utah Labor Commission, through its online publication, "[Pre-Employment Guide](#)," encourages employers to only ask applicants about felony convictions that are related to the duties of the job or those that would disqualify an applicant from the job. Utah's Administrative Code used to expressly note that employers could not ask applicants about arrest records and advised them to ask about convictions related to the job. However, the Code provision was repealed in 2011.^{xx} In Utah, therefore, the federal laws discussed in [Section I](#) provide the only legal protections for applicants who believe they were rejected based on criminal records.

Resources

See the Utah Labor Commission Anti-discrimination Division [Pre-Employment Guide](https://laborcommission.utah.gov/media/pdfs/uald/pubs/LC_preEmployment_Guide), available at https://laborcommission.utah.gov/media/pdfs/uald/pubs/LC_preEmployment_Guide

[\(Online\).pdf](#), for information about what employers should and should not ask applicants during the hiring process.

- **Expungement of Records**

Utah permits criminal records involving arrests or charges that did not lead to conviction to be expunged.^{xxi} Expunged records are sealed from the public but are not destroyed.^{xxii} Most convictions may be eligible for expungement after a specified waiting period. Exceptions include convictions of: capital felony, first degree felony or violent felony, automobile homicide, felony driving under the influence, or a registerable sex offense.^{xxiii} The waiting period to apply for expungement varies based upon the seriousness of the conviction.

Felony	7 years (5 years for drug offenses)
Class A misdemeanor	5 Years
Class B misdemeanor	4 years
Class C misdemeanor or infraction	3 years
Misdemeanor DUI	10 years ^{xxiv}

In order for records to be expunged, all fines and fees must be paid in full and the applicant cannot have any pending charges. Applicants for expungement must first complete and obtain a [Certificate of Eligibility from the BCI](#) in order to file a petition at the court.^{xxv}

Resources

The Utah Courts provide extensive information about the state’s expungement law, rules, process, and forms. Visit [Utah Courts](#) at <https://www.utcourts.gov/howto/expunge/> for more information.

How Providers Can Help Job Seekers and Workers

- **Advise clients to get copies of arrest and conviction records – “RAP sheets”—when possible.** It is critical for job seekers to know exactly what is on their RAP sheet so they can describe their criminal record accurately, when asked. People with criminal histories usually do not know the disposition of certain charges or have forgotten some arrests. Finding out the details will enable them to present their criminal record to employers in the most accurate and straightforward way possible. They also may need to correct errors, which are common, *before* the employer sees them.

See Bureau of Criminal Identification (BCI): [Obtaining Utah Criminal History Records](#) available at <https://bci.utah.gov/criminal-records/>.

- **Help clients gather evidence of rehabilitation.** Useful suggestions for how to do this are in the Legal Action Center’s How to Gather Evidence of Rehabilitation,” available at <https://lac.org/wp-content/uploads/2016/04/How-to-Gather-Evidence-of-Rehabilitation-3.30.16.pdf>.
- **Fair Credit Reporting Act**

As described in [Section I](#), commercial background screening companies and the private-sector employers who use them must follow the federal Fair Credit Reporting Act (FCRA). FCRA requires procedures to ensure accuracy as well as timely communication with employees being screened.

HOUSING

People with criminal records in Utah confront a wide variety of restrictions to housing. Some of the greatest hurdles are federal statutes that apply to public and federally-assisted housing; they are described in [Section I](#). These federal laws give the Department of Housing and Urban Development (HUD), public housing authorities (PHAs), and private landlords broad discretion to deny housing to people with criminal histories and their families.

As is the case across the country, PHAs and private landlords are able to set their own screening criteria. Many have flat bans against leasing to individuals convicted of a felony or other offense, and do not consider evidence of rehabilitation or individually assess a housing applicant’s risk or threat to others’ safety.

Utah’s law against discrimination in housing does not prohibit discrimination against people with criminal records. However, it does protect prospective renters or buyers based on other factors such as race, ethnicity, and other qualities as described in the federal Fair Housing Act.

In 2016, a new law was enacted to amend the “Good Landlord” policy to forbid almost all cities in Utah (except Salt Lake City, West Valley City and Ogden City) from operating “Good Landlord” incentive programs that force landlords to deny housing to otherwise qualified tenants based on their criminal history.^{xxvi} Such programs can still offer tax breaks and other incentives to landlords who participate. Through these programs, cities can still require landlords to attend trainings, run background checks, improve lighting, use fair application processes, and other such activities. However, they cannot make discrimination against people with criminal histories a requirement for participation.

Private landlords are still able to decide, for themselves, to not rent to someone with a criminal history. But participating landlords have more flexibility to accept a tenant with a criminal history, without being kicked out of the program.

How Providers Can Help People Find Housing

When it comes to housing, those providing support to the formerly incarcerated and other justice-involved individuals should:

Advise clients to get copies of arrest and conviction records – “RAP sheets”—whenever possible. See Bureau of Criminal Identification (BCI): [Obtaining Utah Criminal History Records](https://bci.utah.gov/criminal-history-records/) available at <https://bci.utah.gov/criminal-records/> and help individuals review their credit reports.

- **Help clients gather evidence of rehabilitation.** Useful suggestions for how to do this are in the Legal Action Center’s How to Gather Evidence of Rehabilitation.

EDUCATION

Educational institutions are authorized to ask applicants about criminal history and may refuse admissions on that basis. Applicants do not have to reveal expunged records and educational institutions are prohibited from asking about them.

Utah State University requires all undergraduate applicants to disclose if they have ever been convicted of a criminal offense other than a minor traffic violation, or if there are any pending charges against them. Applicants who have a criminal history are required to complete a background questionnaire for each offense.^{xxvii}

ⁱ See UTAH DIVISION OF OCCUPATION AND PROF. LICENSING, *Select Occupation/Profession*, <http://dopl.utah.gov/licensing/index.html>.

ⁱⁱ UTAH ADMIN. CODE r. 156-1-302 (2016).

ⁱⁱⁱ UTAH ADMIN. CODE r. 156-1-302 (2017).

^{iv} UTAH ADMIN. CODE r. 156-11a-302 (2017).

^v UTAH CODE ANN. § 58-69-302 (West 2015).

^{vi} UTAH CODE ANN. § 58-60-506 (West 2015).

^{vii} UTAH CODE ANN. § 58-47b-302 (3) (West 2009).

^{viii} Available at <https://bci.utah.gov/criminal-records/criminal-records-forms/>.

^{ix} UTAH CODE ANN. §§ 53-10-102 (19) (West 2011), 53-10-108 (2) (g) (West 2015).

^x UTAH CODE ANN. § 53-10-108 (4), (12) (West 2015).

^{xi} UTAH CODE ANN. § 53-10-108 (6) (West 2015).

^{xii} UTAH CODE ANN. § 53-10-108 (2)(b) (West 2015).

^{xiii} UTAH CODE ANN. § 53-10-108 (2)(g) (West 2015).

^{xiv} UTAH CODE ANN. § 53-10-108 (4) (West 2015).

^{xv} *Id.*

^{xvi} *Id.*

^{xvii} UTAH CODE ANN. § 77-40-108 (2) (West 2013).

^{xviii} UTAH LAB. COMMISSION, ANTI-DISCRIMINATION DIVISION, PRE-EMP. GUIDE 4 (2014), [https://laborcommission.utah.gov/media/pdfs/uald/pubs/LC%20preEmployment%20Guide%20\(Online\).pdf](https://laborcommission.utah.gov/media/pdfs/uald/pubs/LC%20preEmployment%20Guide%20(Online).pdf).

^{xix} UTAH ADMIN. CODE r. 277-516 -3 (2016); UTAH ADMIN. CODE r. 277-516 -5 (2016) .

^{xx} UTAH ADMIN. CODE r. 606-2 (2011) (repealed).

^{xxi} UTAH CODE ANN. §77-40-104 (West 2010).

^{xxii} See UTAH CODE ANN. § 77-40-108 (7).

^{xxiii} UTAH CODE ANN. §77-40-105 (West 2012).

^{xxiv} *Id.*

^{xxv} See UTAH DEP'T OF PUB. SAFETY, BUREAU OF CRIM. IDENTIFICATION, CRITERIA FOR A CERTIFICATE OF ELIGIBILITY, <http://bci.utah.gov/wp-content/uploads/sites/15/2015/01/Criteria-for-a-Certificate-of-Eligibility-012715.pdf>.

^{xxvi} See UTAH CODE ANN. § 10-1-203.5, also *see* HB 178 at <https://le.utah.gov/~2017/bills/static/HB0178.html>.

^{xxvii} See UTAH STATE UNIVERSITY, CRIMINAL HISTORY DISCLOSURE REQUIREMENT, available at <http://catalog.usu.edu/content.php?catoid=12&navoid=3795#Criminal%20History%20Disclosure%20Requirement>.