

REVISED LEGISLATIVE DIGEST
(Amended in Committee November 28, 2018)

[Police Code - Prohibiting Criminal History Inquiries in Private College Admissions]

Ordinance amending the Police Code to prohibit private post-secondary educational institutions from using an application form that contains questions about an applicant's criminal history, or asking U.S. applicants ~~an applicant~~ about criminal history for the purpose of deciding whether to offer admission; requiring educational institutions to retain relevant records for three years authorizing the Office of Labor Standards Enforcement to investigate possible violations and impose penalties; and providing for a private right of action.

Existing Law

The City has no current laws regarding the use of criminal history information in college admissions. There are, however, City ordinances relating to the use of criminal history and salary history in other contexts:

- Article 49 of the Police Code prohibits the use of prohibits employers and housing providers from inquiring about, or considering, criminal history until after a conditional offer of employment or housing; and
- Article 33J of the Police Code prohibits employers from inquiring about, or considering, an applicant's salary history in determining whether to offer employment or what salary to offer.

Amendments to Current Law

The proposed ordinance would apply a similar restriction in the college admissions context. It would prohibit private post-secondary educational institutions located in San Francisco from inquiring about criminal history in two ways.

First, a college may not make available to the potential applicants, or the general public, application forms that ask any questions about the applicant's criminal history. That prohibition applies to third-party applications, such as the Common Application. A college who violates this provision would be subject to a \$250 administrative penalty for each day the violation occurred or continued.

Second, a college may not directly or indirectly inquire into the criminal history of anyone who has either applied for admission or inquired about admissions. A college may not ask an applicant in an interview, a phone call, or any other context, about the applicant's criminal history. That includes directing the applicant to an application that asks the question.

After an applicant has accepted an offer of admission, the proposed ordinance allows colleges to inquire about and consider criminal history, but strongly encourages them to make such inquiries solely for the purpose of offering counseling or support services and making decisions about activities, housing, or financial aid.

Colleges may, however, ask about criminal history at any time for two purposes:

- To advise an applicant, who seeks admission to a program in a field in which federal or state licensing requirements restrict persons with criminal history from employment or licensing, that their criminal history may limit their ability to participate in educational requirements or obtain employment or licensing.
- To decide whether to admit a foreign applicant who will require the college to sponsor a visa in order to enroll.

The proposed ordinance would require colleges to retain applications and related files for a period of three years. The Office of Labor Standards Enforcement is authorized to investigate possible violations and impose penalties. The City Attorney's Office may bring a civil action, and a person or association with a direct interest in compliance may join the litigation, or initiate his or her own action if the City declines to do so.

Background Information

The proposed ordinance is intended to improve access to post-secondary education among persons with a criminal record. It is driven by research showing that application questions about criminal history discourage people with criminal records—even old or minor crimes—from applying in the first place. The City has an interest in encouraging education among this population because the attainment of higher education is linked with a reduction in recidivism.

Several postsecondary educational institutions have voluntarily removed questions about criminal history from their admissions procedures, and The Common Application, Inc., has announced that it will soon allow its member institutions to omit criminal history questions from their applications.