

FORDHARRISON FH SOLUTIONS GROUP

# Criminal History Checks & Rap Back: Avoiding Pitfalls, Ensuring Compliance

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# Criminal History Background Checks

The Aviation Industry is highly regulated due to inherent risks for potential misuse. Background checks are crucial to ensure individuals working in sensitive areas, like those with access to aircraft or cargo, are trustworthy and pose no threat to the airline.

The criminal background check involves searching national and international criminal databases to identify convictions, arrests, or pending charges.



# Common Disqualifying Crimes and Factors

- Crew members fall under 49 C.F.R. § 1544.220 - *See* § 1544.229 (d)(26)(v)
- Felony convictions
- Specific crimes involving aircraft piracy, interference with aircraft navigation, improper transportation of hazardous materials, or forgery of certificates.
- Being found not guilty by reason of insanity
- While some offenses may be permanent disqualifiers, the **time elapsed** since the conviction and the nature of the job are also factors considered.

# “Convictions” as defined by the TSA

- Person enters plea of *nolo contendere* or guilty followed by deferred adjudication or suspended imposition of sentence where court places defendant on a period of probation.
- Person enters plea of *nolo contendere* followed by a period of community supervision.
- Person is found guilty by judge or jury followed by deferred adjudication where court places defendant on a period of probation.
- Person is arrested and placed on probation pending a trial. The state revokes probation and prosecutes the person, and there is a finding of guilt.
- Person enters a plea of *nolo contendere* or guilty followed by a withheld adjudication where the court places defendant on a period of probation.

# Rap Back Program

The FBI's "Rap Back" (Record of Arrest and Prosecution Back) program, managed by the Criminal Justice Information Services (CJIS) Division, provides authorized agencies, like airlines with real-time notifications of criminal activity and, in some cases, civil activity, that occurs after an individual's fingerprints are initially processed and retained in the Next Generation Identification (NGI) system.



# Three Objectives

- How to conduct your own investigation in the event you receive a notification
- How to handle leaves during an investigation
- How to defend a termination



# Investigating a charge, plea or conviction



- Employer can conduct their own investigation
- HR should take the lead
- Communicate with detective handling the charge
- Be mindful of state/local laws protecting employee arrest records

# Leaves during an investigation

- Leave can be paid or unpaid
- Be mindful of obligations under a CBA
- If unpaid, employer can pay retroactively after investigation depending on findings
- Difficult to claw back pay after the fact

# Defending a termination

- If not a disqualifying crime, the employer will need to defend the decision
- Will need to meet just-cause standard if there is a CBA
- Should be able to link crime and qualification for the position (e.g. child pornography and flight attendant)
- Is there a past practice that is helpful?
- Should be more recent (10 years is a good standard)



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**Thank you!**



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