

# USE OF CRIMINAL CONVICTIONS IN COLLEGE ADMISSIONS

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## I. Introduction

Applicants and students with criminal convictions can pose difficult questions for the college attorney. The President wants to know whether the college can and should ask applicants to disclose if they have criminal convictions. The admissions officer wants to know how and where to ask for such information. The local newspaper reports that a recently accepted student has plead guilty to assault and the Director of Residence Life needs to know whether to place the student in the dorm. A faculty member hears a rumor, long after the student is admitted, that the student went to jail several years ago, and the faculty member asks whether that is true and how that may affect the student's ability to sit for the nursing licensure exam. The local hospital where your college places student interns wants the college to certify that the college will not refer students who have certain criminal convictions.

The purpose of this paper is to introduce counsel to the important issues regarding access to, and use of, criminal convictions in the admissions process.<sup>1</sup> On the issue of access, this paper discusses whether and, if so, how to ask for criminal convictions information, and how to confirm the accuracy of that information. On the issue of use, this paper identifies the various practical and legal issues that may arise. Leading cases are cited; model forms are proposed; and a selected reading list is attached.

This paper concludes that college counsel should first determine whether their college desires as a matter of policy to request disclosure. Counsel should then check state law to determine what, if any, request for disclosure it allows. If state law permits a request, counsel should then identify the particular interests that the college is looking to protect; design the request and follow-up mechanisms to ensure the college receives accurate information regarding the nature, severity and recency of the conviction; and set a rational relationship standard that admissions officers can apply consistently.

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<sup>1</sup> A closely related issue regards requests for, and use of, an applicant's arrests. Due to page limitations, this paper focusses on convictions, not arrests. Nonetheless, colleges may well have a legitimate interest in knowing of pending or past charges and their respective circumstances. Although the evaluation of conduct with proven guilt (convictions) may be different from evaluation of conduct that is presumed innocent (arrests), many if not all of the policy, practical and legal issues regarding convictions can apply in the context of arrests.

## II. Basic Admissions Law Principles

Courts have traditionally accorded colleges broad discretion in determining who they admit. *Kaplin and Lee, Law of Higher Education, 3d Ed.,* •4.2.1 at 377 (1995); *Bunting, The Admissions Process: New Legal Questions Creep Up the Ivory Tower, 60 Ed. L. Rep. 691* (1990). While colleges cannot exclude applicants for unlawful reasons, *see, i.e., Martin v. Helstad, 699 F.2d 387, 397* (7th Cir. 1983)(concurrency), *citing University of California Regents v. Bakke, 438 U.S. 265* (1978), the values of academic freedom and the need for professional academic judgments broadly empower colleges to select and apply their criteria for admission. *Bakke, 438 U.S. at 312, quoting Sweezy v. New Hampshire, 354 U.S. 234, 263* (1957)(Frankfurter, J., concurring); *Martin, 699 F.2d at 397; Martin v. Helstad, 578 F.Supp. 1473, 1482* (W.D. Wisc. 1983); *Rosenstock v. Board of Governors of U.N.C., 423 F.Supp. 1321* (M.D. N.C. 1976). Working from these basic principles, one's analysis must first distinguish denial of admission from revocation of admission.

### A. Denying Admission

Pursuit of education is not a fundamental right or liberty for purposes of substantive due process. *San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35-37* (1973); *Tobin v. University of Maine, 59 F.Supp. 87, 90* (D.Me. 1999). Applicants for admission do not have • a legitimate claim of entitlement • to post-secondary or graduate school admission and, therefore, do not generally have either a property or a liberty interest in their application. *Tobin, 59 F.Supp. at 90, 92; Phelps v. Washburn University of Topeka, 632 F. Supp. 455, 459* (D. Kan. 1986); *Martin, 578 F. Supp. at 1480; Selman v. Harvard Medical School, 494 F.Supp. 603, 619* (S.D.N.Y. 1980), *aff•d. 636 F.2d 1204* (2nd Cir. 1980); *Ramos v. Texas Tech. University, 441 F. Supp. 1050, 1055* (N.D. Tex. 1977), *aff•d. 566 F.2d 573* (5th Cir. 1977); *Szejner v. University of Alaska, 944 P.2d 481, 486* (Alaska 1997). *But see also Grove v. Ohio State University, 424 F.Supp.377* (S.D. Ohio 1976)(graduate school applicant has a liberty interest in pursuing an occupation). Indeed, to the extent that either interest has been discussed by courts in higher education admissions cases, those courts have assumed rather than found such interests to exist for applicants. *Regents of University of Michigan v. Ewing, 474 U.S. 214, 223* (1985); *Board of Curators, University of Missouri v. Horowitz, 435 U.S. 78, 84-5* (1975); *Tobin, 59 F.Supp. at 90; Martin, 699 F.2d at 390; Amelunxen v. University of Puerto Rico, 637 F.Supp. 426, 430* (D.P.R. 1986), *aff•d. 815 F.2d 691* (1st Cir. 1987).

Absent a property or liberty interest, applicants do not have a procedural due process right in their application, and thus have no right to a hearing to prove their admission. *Martin, 578 F.Supp. at 1480; Brookins v. Bonnell, 362 F.Supp. 379, 383-84* (E.D. Pa. 1973). Indeed, at least one court has analogized denial of admission to an academic dismissal which, unlike a disciplinary dismissal, requires no hearing and even greater judicial deference. *Martin, 699 F.2d at 391*. Nonetheless, applicants to both public and private colleges appear to have one protection: colleges must be able to provide a reasonable explanation for their decisions. *Kaplin and Lee,*

•4.2.2 at 378-80, discussing, as public institutions, *Arizona Board of Regents v. Wilson*, 539 P.2d 943, 946 (Ariz. Ct.App. 1975); *Lesser v. Board of Education*, 239 N.Y.S.2d 776, 779 (N.Y.App.Div. 1963); and, as private institutions, *In re Press*, 45 U.S.L.W. 2238 (N.Y.Supp.Ct. 1976); *Paulsen v. Golden Gate University*, 159 Cal.Rptr. 858 (Cal. 1979).

## B. Revoking Admission

Once either a public or private institution offers admission and the applicant accepts, the student may have a contract right to enforce. See, i.e., *Eden v. Board of Trustees of the State University*, 374 N.Y.S.2d 686 (N.Y.App.Div. 1975), discussed, inter alia, in *Kaplin and Lee*, •4.6.2 at 380-82. Students at public institutions may also have expectations that give rise to both property and liberty interests. *Martin*, 578 F.Supp. at 1481, citing *Zitser v. Walsh*, 352 F.Supp. 438, 443 (D.Conn. 1972); *Gagne v. Trustees of Indiana University*, 692 N.E.2d 489, 493 (Ind. App. 1998)(explored in *Stoner and Detar, Disciplinary and Academic Decisions Pertaining to students in Higher Education*, 26 J.C.U.L. 273 (1999); *Reilly v. Daly*, 666 N.E.2d 439, 444 (Ind. App. 1996). Although such interests are less substantial than those of students who have matriculated and attended for some period of time, *Martin*, 578 F.Supp. at 1480; *Doe v. New York University*, 666 F.2d 761, 773 (2d Cir. 1981), a public institution cannot deprive the student of that interest without due process. *Martin*, 578 F.Supp. at 1481; *Gagne*, 692 N.E.2d at 493.

Due process is a •flexible• concept that requires only •such procedural protections as the particular situation demands.• *Martin*, 578 F.Supp. at 1482 quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). A public institution must provide adequate notice and a meaningful opportunity to •respond, explain and defend• although that opportunity need not necessarily include a personal meeting. *Martin*, 578 F.Supp. at 1481-85; *Martin*, 699 F.2d at 391; *Gagne*, 692 N.E.2d at 493.

One important exception to this otherwise applicable due process requirement is if the initial offer is fraudulently induced. A public college may argue that an applicant who intentionally or unintentionally deceives a college cannot have a •legitimate claim of entitlement• or •legitimate expectation• and, therefore, no property or liberty interest, in attending. *Martin*, 699 F.2d at 395-96; *Martin*, 578 F.Supp. at 1481, citing *Jago v. Van Curen*, 454 U.S. 14, 23 (1981)(concurrency). Both public and private colleges that were deceived may also argue that they reached no •mutually explicit understanding• with such an applicant and, therefore, there was no valid contract. *Id.*; see also, *North v. West Virginia Board of Regents*, 332 S.E.2d 141, 145 (W.Va. 1985). Consequently, the college may void the transaction. *Accord, United States v. 1557.28 Acres of Land*, 486 F.2d 445,449 (10th Cir. 1973); *Restatement Contracts* • 476.

Once due process is accorded, the institution must demonstrate a reasonable and substantiated basis for its deprivation -- that its decision was not arbitrary, unreasonable or capricious. *Gagne*, 692 N.E.2d at 493; *Reilly*, 666 N.E.2d at 445. Common law may require the same showing of private colleges. *Levine v. George*

*Washington University; Paulsen v. Golden Gate University*. If an institution can make such a showing, the institution may then revoke its offer of acceptance and deny admission. *Martin*, 578 F.Supp. at 1485; *Martin*, 699 F.2d at 392; *Gagne*, 692 N.E.2d at 496.

### **C. Denying or Revoking Admission Because of Criminal Conviction**

The few nationally reported opinions directly on point hold that, absent state statutory provisions to the contrary, colleges may either deny or revoke admission because of an applicant's prior criminal conviction. *Martin*, 578 F.Supp. at 1485; *Martin*, 699 F.2d at 392; *Gagne*, 692 N.E.2d at 496. See also, *Stokes and Groves, Rescinding Offers of Admissions When Prior Criminality is Revealed*, 105 Ed. L. Rep 855 (1996) (discussing other instances at Harvard, Seton Hall and George Washington Universities). Such denial or revocation typically occurs for two reasons: because the conviction is incompatible with values of the institution or the course of study sought; and/or because the applicant failed when requested to disclose the conviction fully, accurately or at all. *Martin*, 578 F.Supp. at 1485; *Martin*, 699 F.2d at 392; *Gagne*, 692 N.E.2d at 496.

In either instance, the test for an institution is one of reasonableness; whether the college's decision is not arbitrary, unreasonable or capricious; and whether it is consistent with standards of professional judgment. *Id.*; *Ewing*, 474 U.S. at 225. This may be shown by demonstrating a mere rational relationship between the nature, severity, recency of the crime; the truthfulness of the applicant; and the interests of the college.

## **III. Access to Criminal Convictions**

### **A. Whether to Ask**

Colleges vary in whether to request disclosure of criminal convictions from applicants. There are both legal and policy reasons that persuade colleges to ask or not to ask. See generally, 105 Ed. L. Rep at 855. Whatever the decision, the preferred time for debate is not in response to the challenging application of one student, but at a less pressured time when the implications of the decision can be fully explored. *Langhauser, Campus Security: Students Who Threaten the College Community*, NACUA Conference (Fall 1998), published in 7 Hghr. Ed. L. Bull. No. 2 at 2 (1998).

#### **1. Yes, Ask**

Those colleges that request disclosure of criminal convictions do so for several reasons.

First, state law permits the college to ask because the college has an interest

in, and responsibility to, evaluate the character, maturity and responsibility of its applicants. *Martin*, 578 F.Supp. at 1485; *Martin*, 699 F.2d at 392; *Gagne*, 692 N.E.2d at 496. Second, the college has a desire to further a safe environment for the members of its community and their property. *Compare, for example, Nero v. Kansas State University*, 861 P.2d 768 (Kan. 1993); *Eiseman v. State of New York*, 518 N.Y.S.2d 608 (Ct.App. 1987); and see 105 Ed. L. Rep. at 855.<sup>2</sup> Third, the college needs to determine whether a student may be appropriately placed in college housing. *Id.* Fourth, the college can better academically advise students of the difficulties that they will face in obtaining internships or licensure in occupations that, by law or policy, exclude people with certain convictions. *Martin*, 699 F.2d at 392; *Seminole, Determining Who is Qualified to Study Nursing, National Council of State Boards of Nursing, 1998 Conference at 154, 163-64 (hereinafter Seminole)(citing Kansas law, K.S.A. 65-1120, governing nursing licensure); NACUANET Posting of 9-8-98 (practice of University of Arizona Health Sciences Center)*. Finally, disclosure helps a college comply with the recent federal law that bars financial aid to students with certain drug-related convictions. *1998 Amendment of Higher Education Act of 1965; Attachment D (available at <http://fafsaws7.fafsa.ed.gov/fotw0001/q28wksht.pdf>)*.

For colleges that ask, the existence of a conviction does not necessarily mean denial of admission to the college, its programs and/or its housing. Instead, each case is evaluated on its facts. *Martin*, 578 F.Supp. at 1485; *Martin*, 699 F.2d at 392; *Gagne*, 692 N.E.2d at 496; 105 Ed. L. Rep. at 866; *Seminole*, at 164. Generally speaking, the rational relationship of the nature, severity, recency of the crime to the interests and needs of the College is assessed, and the responsibility and repentance of the person convicted is carefully considered and weighed. *Id.*

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<sup>2</sup> Concern for college safety may also arise from a student's arrest even though the arrest is just an allegation. Colleges that have actual knowledge of an arrest for a serious offense may consider interim action until the judicial process runs its course. For example, a college could establish for the student a probationary status -- with terms like a bail order -- pending final judicial resolution of the charge.

## 2. No, Don't Ask

Those colleges that do not request disclosure of criminal convictions do so for a variety of reasons.

First, state law may limit the right to request or compel certain disclosures. *See, for example, Va. Code •19.2-392.4 (colleges cannot require applicant to disclose arrest or expunged record); 105 Ed. L. Rep 855 (stating that Massachusetts protects juvenile records from disclosure).* Even if there is no such limit, complete and therefore reliable information is not always available because such records are sealed, expunged or simply not centrally maintained. *7 Hghr. Ed. L. Bull. No. 2 at 3.* Moreover, even if the records can be requested and located, the underlying criminal conduct is often effectively disguised by the inevitable process of plea bargain. *Seminole, at 161.*

Second, some regard such inquiries as trending towards eliciting arrest data that either violates the presumption of innocence and/or has a disproportionate impact on minorities. *Compare, for example, Gregory v. Litton, 472 F.2d 631 (9th Cir. 1972) (employer request for arrest records of job applicants violates Title VII because of a disproportionate impact on minorities).*

Third, colleges regard the request as an unfair penalty for applicants who have already paid their assigned debt to society. *Eiseman, 518 N.Y.S.2d at 616; 105 Ed. L. Rep at 868-70; Seminole, at 164.* This is particularly true for applicants who committed juvenile offenses prior to their now more mature development. *Seminole, at 161-62.*

Fourth, college officials regard their community as one built on values of trust and honor, and it undermines those values for the institution to question the applicant's commitment to those values on the application, which is the applicant's first formal exposure to the college. *105. L. Rep. at 875.* Moreover, even if it were appropriate, it simply may not be administratively possible for the college to do criminal background checks on all its applicants or those who disclose.

Finally, and perhaps most importantly for college counsel, current state law may not impose a legal duty on the college to inquire, and the college should not assume a duty that it could be held to breach. Whether colleges do or should have such a duty regarding negligent admissions is the subject of an extensive debate that I can only reference here. *See, for example, 105 Ed. L. Rep. at 862; Schulze and Martinez, Into the Snakepit, 104 Ed. L. Rep. 539 (1995); Snow and Thro, Redefining the Contours of University Liability: The Potential Implications of Nero, 90 Ed. L. Rep. 989 (1994); Case Comment, Eiseman v. State of New York: The Duty of a College to Protect Its Students*

*From the Harm By Other Students Admitted Under Special Programs, 14 J.C.U.L. 591 (1988); and related references cited in Attachment •C•.*

### **3. Even If You Don't Ask**

Even if a college does not expressly request disclosure, a college may still acquire notice of a student's conviction or arrest from local news reports, rumor or other sources. *7 Hghr Ed. L. Bull. No. 2 at 2*. Such notice is invariably incomplete, inaccurate, outdated or otherwise unreliable. Nonetheless, it may be sufficient to foresee a danger and, therefore, trigger either a duty or an interest to inquire further. *Id.*

#### **B. Where to Ask**

Colleges that request disclosure typically do so in one of three places. First, as part of the general admissions application. *See Sample Form •A• attached*. Second, as part of the specific admissions application for certain programs -- such as early childhood education or nursing -- where internship or professional licensure issues will arise. *See Sample Form •B• attached*. Third, as part of an application for college residency. Finally, as part of an application for financial aid. *Compare FAFSA Form •D• attached*.

#### **C. What to Ask**

Colleges that request disclosure must consider carefully the form and content of the question(s). In all instances, the request for disclosure should be as precise as possible in its definitions and instructions so to avoid applicant confusion, inaccurate responses and any subsequent vagueness challenge. *Martin, 699 F.2d at 391, citing Soglin v. Kaufman, 418 F.2d 163, 168 (7th Cir. 1969)*.

What information is specifically requested depends, of course, on the reasons why one asks. Information that is important to the nursing program may be different from information that is important to the Resident Life Director. Generally speaking, the following disclosures may be important:

1. Any instance in any state or country where the applicant has plead guilty or was found to be guilty by a judge or jury to charges that s/he committed a crime other than minor traffic offenses;
  - a. This includes any plea of •no contest• or •nolo contendre•; juvenile offense; offense whose records have since been expunged;<sup>3</sup> and any

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<sup>3</sup> An expungement erases a conviction from a personal criminal record. *Black's Law Dictionary, 7th Ed. at 603 (West 1999)*. State law may permit persons with expunged records to

- conviction that the applicant is currently appealing;
- b. This does not include any instance where the applicant was arrested but not charged; arrested and charged but the charges were dropped; arrested and charged but found not guilty by a judge or jury; arrested, found guilty by a judge or jury but the conviction was overturned on appeal; or where s/he received an executive pardon.
2. Year(s) committed;
  3. Name and location(s) of court(s);
  4. Terms or conditions of any plea, penalty, punishment, sentence, probation or parole; and
  5. Any and all details regarding the offense.

*See sample Form •A• attached; accord, Vakas v. Kansas Board of Healing Arts, 808 P.2d 1355 (Kan. 1991).*

Colleges that ask for these disclosures may also impose a continuing duty to disclose. This duty may have two parts. First, a duty to notify the college immediately of any inaccuracies in, or corrections to, the information initially disclosed. *See Sample Form •A• attached.* Second, a continuing duty to notify the college of any arrest or conviction during the time that the student is enrolled at the college. *Id.*; *see also NACUANET Posting of 5-15-97(discussing practice of University of Tulsa).*

#### **IV. Use of Criminal Convictions**

Once a college decides whether, where and how to ask for criminal convictions, the issue turns to how the information is used. The first task may be to verify or amplify the disclosure.

##### **A. Verifying or Amplifying the Disclosure**

There are several sources to verify or amplify disclosure of a conviction. Counsel must note, however, that these sources have their limitations.

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lawfully answer •no• to questions regarding convictions. *See, i.e., Va. Code •19.2-392.4(B).* The law may also protect disclosure of the expungement itself. *Id.* (*protects against disclosure of expungement*).

Conviction records are often kept by the State Police and are accessible upon written request and payment of a nominal fee. These records can reveal a criminal history, but they can also be incomplete; limited to convictions occurring in that state; and take weeks to receive. A department of corrections or its division of probation and parole can also be used to confirm sentencing and whether a student is complying with the terms and conditions of bail. Access to corrections records is, however, usually prescribed by statute, and the student's written consent to disclosure may be required. *See generally, 7 Hghr Ed. L. Bull. No. 2 at 2.*

Police (municipal, county, state, game wardens and FBI) and prosecutors (district, state and United States attorneys) also retain certain records, but public access to their files is often limited by statute. Police reports are generally accessible upon written request, and both police and prosecutors can withhold records if either determines that disclosure would jeopardize an investigation or pending prosecution. Nonetheless, each may also informally share information that they will not formally disclose. To this end, counsel would do well to develop relationships with local police and prosecutors. *Id.*

A final source is the courts. Court filings are almost always publicly accessible, and they can help confirm the exact terms of a charge, plea, bail or sentence. *Id.*

Finally, there are several records of criminal convictions that statutes make difficult, if not impossible, to obtain. They are records of juvenile convictions; records that have been expunged; records of convictions that have been pardoned by a governor; and records under court seal. *Id.; Seminoe, at 161.* Nonetheless, a student's consent may make some, if not all, of these records available to the college. *7 Hghr Ed. L. Bull. No. 2 at 2.*

## **B. Weighing the Information Received**

Once reliable information is obtained, the tasks are to identify the material facts of the case; identify the particular interest(s) of the college; and weigh those facts against those interests. The material facts of the case are as follows:

1. Date of the crime. How recently was the conduct committed; and whether the applicant was a juvenile or adult at the time;
2. Nature of the conduct. Whether the conduct was against a person or property; violent or passive; intentional, reckless or grossly negligent;
3. Severity of the harm. Whether the harm was serious or minor; permanent or temporary;
4. Responsibility assumed. Whether the applicant acknowledged (plea) or contested (trial and appeals) his or her responsibility; and
5. Punishment imposed and served. What punishment was imposed; whether that punishment was satisfactorily completed; whether the applicant is on

bail, probation or parole and, if so, the terms and conditions thereof; and the perceived degree to which the applicant is •rehabilitated. •

*Accord, Vakas, 808 P.2d 1355; Arrocha v. Board of Education, 677 N.Y.S.2d 584, 586-87 (1998).* Weighed against these facts are the college•s interests: safety for the members of the college community and their property; an interest in the character, maturity and responsibility of its applicants; the appropriateness of placement in college housing; and, finally, an interest in academically advising students of the difficulties that may arise in the student•s effort to obtain an internship or licensure in occupations that, by law or policy, exclude people with certain convictions.

### **C. A Concern For Safety**

To survive judicial scrutiny, an institution•s adverse action against a student based upon the above factors should be rationally related to a legitimate interest of the college. If the issue is safety, care should be taken not to presume an imminent threat of harm. Unfounded presumptions may be found to be arbitrary or capricious. If the college has a rational basis for its concern, the college can consult with local probation officers or mental health experts, and perhaps refer the student to a psychiatric counselor for an evaluation. But even such experts have difficulty predicting with a meaningful degree of certainty a person•s potential for violence, even a person without criminal convictions. *105 Ed. L. Rep. at 875.*

### **D. Sharing the Decision**

There is frequently a question, and then always a debate, regarding whether the college community should be notified of a student•s prior criminal conviction. *105 Ed. L. Rep. at 871-75; Nero, 861 P.2d 768; Eiseman, 518 N.Y.S.2d at 616. See also Tarasoff v. Regents of University of California, 551 P.2d 334(Cal. 1976).* Increasingly, states are passing laws requiring community notification of certain criminal residents. *105 Ed. L. Rep. at 873.* Counsel may take the view that such information is a confidential educational record under the Family Educational Rights and Privacy Act (FERPA), *20 U.S.C. •1232g(A)(4)(A)&(B).* Under FERPA, such disclosures could not be shared generally with students and faculty, but can be shared with certain college officials for legitimate educational or security purposes. *Id. at 1232g(b).*

## **V. Conclusion**

The values and interests of a college as related to criminal convictions span general admissions, program admissions, residence halls, security, reputation and financial aid. As with all issues, college counsel need here to be cognizant of both the law and the academic

and operational interests of the college.

To these ends, college counsel should first determine whether their college desires as a matter of policy to request disclosure. Counsel may then check state law to determine what, if any, request for disclosure is allowed. Counsel should then determine if reliable records can be accessed. If such records are accessible, counsel may then identify the particular interests that the college is looking to protect; design a specific request and effective follow-up mechanisms to ensure that the college receives accurate information regarding the nature, severity and recency of the conviction; and set a rational relationship standard that admissions officers can apply consistently in evaluating disclosures.

Every case will require balancing the college's diverse interests against the applicant's personal desire for education and redemption, but the college's interests and values demand strict attention. It is there that college counsel owes his or her first responsibility.

**Student Disclosure of Criminal Convictions  
and  
Consent to Obtain Additional Information**

**Requirement to Disclose**

As part of its admission process, the College requires you to complete this form and disclose information regarding any criminal convictions that you may have.

**Reasons for Requirement**

The College has this requirement for several reasons. First, the College has a responsibility to ensure a safe environment for all members of our community and their property. Second, the College has an interest in evaluating the character, maturity and responsibility of its applicants. Third, the College needs to determine whether a student may be appropriately placed in College housing. Finally, the College can better academically advise students of difficulties that may arise in the course of the student's efforts to obtain internship placements, professional licensure or other job placement. This is because certain internship sites and professional licensing boards are required by law and/or policy to exclude people who have certain convictions.

**College Use of the Information Disclosed**

The existence of a conviction does not necessarily mean that a student will be denied admission to the College, its programs and/ or its housing. Each case will be evaluated on its facts. Generally speaking, the rational relationship of the nature, severity, recency of the crime to the interests and needs of the College will be assessed, and the responsibility and repentance of the person convicted will be carefully considered and weighed.

**Full Disclosure Required**

You must complete this form to the best of your ability. This means that your answers must be truthful, accurate and complete. If you know of certain information yet are unsure whether to disclose it, you must disclose the information. The College will later determine whether the disclosure was required and, if so, whether the information is material. By your signature below, you certify that understand and agree to these requirements.

**Consequence of Failure to Disclose**

By your signature below, you certify that you understand and agree that your failure to disclose material information in response to this form may result in immediate suspension or expulsion from a course, program, housing and/or the College.

**Continuing Duty to Disclose**

By your signature below, you certify that you understand and agree that you will notify the College immediately of any inaccuracies in, or corrections to, the information you disclose here. You also certify that you understand and agree that you have a continuing duty to notify the College of any arrest or conviction during the time that you are enrolled at the College.

**Definition of Criminal Conviction**

For purposes of this form, a •criminal conviction• has the following meaning.

You must disclose any instance in any state or country where you have plead guilty or were found to be guilty by a judge or jury to charges that you committed a crime other than minor traffic offenses.

This includes any 1) plea of •no contest• or •nolo contendere•; 2) juvenile offense; and 3) any conviction that you are currently appealing.

You need not disclose any instance where you 1) were arrested but not charged; 2) arrested and charged but the charges were dropped; 3) arrested and charged but found not guilty by a judge or jury; 4) arrested, found guilty by a judge or jury but the conviction was overturned on appeal; or 5) where you received an executive pardon.



**STATEMENT  
STUDENT'S DISCLOSURE AND CONSENT  
EARLY CHILDHOOD EDUCATION PROGRAM**

I, \_\_\_\_\_, understand that it is my responsibility to complete this form truthfully and accurately to the best of my ability. I further agree to notify immediately the College of any incidences or circumstances that may violate the criteria listed below. I further understand that failure to do so may result in immediate suspension or expulsion from a course, the Program and/or the College.

- A. Convictions for sexual or violent crimes involving adults or activities that could have resulted in convictions for such crimes if prosecuted.
- B. Any crimes involving children or activities that could have resulted in convictions for such crimes if prosecuted.
- C. Admission to a substance abuse treatment facility, or conviction within the past five (5) years of OUI or for any other activity that involves substance abuse.
- D. Any serious physical or mental health problems that have required admission to a hospital or other in-patient facility.
- E. Whether or not Child Protective Services has ever investigated you for allegations of child abuse or neglect.
- F. Any prior conditional license, license suspension, fine or revocation regarding a children's or adult care license or approval issued to you;
- G. The removal of children from your care or custody by court order.
- H. Any other information regarding your circumstances or treatment of children that is relevant to the concerns expressed by these criteria.

Check one:

- I represent that I have not engaged in any of the conduct described herein.
- I represent that I have engaged in the following conduct (please explain):

I further consent by my signature below to the College obtaining information from appropriate persons to validate or otherwise learn more about the above-referenced conduct in order to make appropriate education-related decisions.

Student Signature:

Date:

The following summarizes selected readings on related topics.

**A. Use of Criminal Conviction Data For Student Admissions, Residence and Employment:**

There are frequently substantive messages on NACUANET regarding requests for and use of criminal conviction data for student admissions, residence and employment. To access these messages, search NACUANET Archives, available through NACUANET's web page, using some or all of the following search terms: *Crimes; Criminal Convictions/Background Checks/Records/Charges/History; Felon/Felony.*

**B. Guidance on Creating a Safe Campus:**

Nichols, David. •Creating a Safe Campus: Guide For College and University Administrators (1997)•; Gibbs, Annette: Book Review, 24 The Journal of College & University Law, 695 (Spring 1998).

**C. Campus Crime-Related Issues:**

Joel Epstein, Higher Education Center for Alcohol and Other Drug Prevention Education Development Center, Inc., Newton, MA, •Responding to Campus Crime•; presented at the 19th Annual National Conference on Law and Higher Education, Stetson University (1998).

**D. Double Jeopardy of College Discipline and Criminal Prosecution:**

Pavela, Gary. •Disciplinary and Academic Decisions Pertaining to Students: A Review of 1996 Judicial Decisions•, 24 The Journal of College & University Law, 222-24 (Fall 1997); Thomas E. Kelly, Jr. •Double Prosecution of the State University Student•, 1 The Journal of College & University Attorneys, 269 (Spring 1974).

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