



## **Report of the AACP Criminal Background Check Advisory Panel**

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All information contained in this paper is for informational purposes only and is not legal advice. Institutional, state legislature, state board, and experiential site requirements vary widely and may evolve over time. Individuals with questions or a situation requiring advice should contact an attorney or appropriate expert.

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## INTRODUCTION

A growing number of national healthcare organizations, institutions, and state legislatures require pharmacy degree students to complete a criminal background check (CBC) at least once during their educational career. Background checks are commonly required for hospital staff, as well as individuals, such as teachers, coaches, child care providers, social workers, and home health care providers, who work or volunteer with children or other vulnerable populations. Pharmacy students may be subject to criminal background checks earlier in their educational career and more often than medical school students due to the use of early experiential educational experiences required at the beginning of the curriculum versus at the end of the didactic program. Facilities requiring pharmacy students to complete a CBC include Veteran Affairs, long-term care facilities, state and Federal Bureau of Prisons, psychiatric facilities, pharmaceutical companies, and hospitals. A background check may use a myriad of resources to verify or report one or more of the following: social security number, employment history, credit history, education, professional licensure, driver's license, addresses, criminal convictions, civil lawsuits, and motor vehicle records.<sup>1</sup>

AACP organized an adhoc Criminal Background Check Advisory Panel in May 2006 to identify common problems and possible strategies to assist members with this rapidly evolving issue. The resulting paper is to introduce pharmacy colleges and schools to the important issues regarding access to, and use of, criminal records of pharmacy students.

Pharmacy colleges and schools may require criminal background checks for students in response to external pressures. Of the 61 U.S. pharmacy degree institutions and 2 Canadian institutions who responded to an AACP survey in August 2006, the majority (63 percent) implemented a criminal background check policy due to the requirements imposed by experiential education sites. AACP does not encourage the use of criminal background checks for student pharmacists; but recognizes that legal, legislative, and organizational demands may force some member institutions to adopt a CBC process.

There are reasons a criminal background check may be advantageous to students, institutions, and patients. The Association of American Medical Colleges (AAMC) Criminal Background Check Advisory Committee identified four reasons for completing criminal background checks on applicants accepted to medical school. The rationale could also be applied to pharmacy.

- To bolster the public's continuing trust in the [pharmacy] profession
- To enhance the safety and well-being of patients
- To ascertain the ability of accepted applicants and enrolled [pharmacy] students to eventually become licensed as [pharmacists], and
- To minimize the liability of [pharmacy] schools and their affiliated clinical facilities.<sup>2</sup>

### **ACPE Requirement**

Sixty-three percent of the 2006 AACP survey respondents currently have a criminal background check policy for professional pharmacy degree students, 29 percent do not, and 8 percent selected "not sure". The Accreditation Council for Pharmacy Education (ACPE) 2007 *Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree* requires pharmacy schools to publish a criminal background check policy. ACPE Guideline 17.4 states, "Criminal and other activities that may restrict the student's

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<sup>1</sup> Alley NM, Marrs J, Schreiner B, Nurses' Promise to Safeguard the Public: Is It Time for Nationally Mandated Background Checks. *JONA's Healthcare, Law, Ethics, and Regulation*. 2005;7:119.

<sup>2</sup> Report of the AAMC Criminal Background Check Advisory Committee. Association of American Medical Colleges. 2006. Available at: [http://www.aamc.org/members/gsa/cbc\\_final\\_report.pdf](http://www.aamc.org/members/gsa/cbc_final_report.pdf)  
Accessed on September 12, 2006.

ability to access experiential sites or potentially affect the student's eligibility for future licensure, by reason of state statutes or regulations, should be identified. Policies and procedures in accord with those of the university should be in place and available, under which students will be advised of the types of disclosures they may be required to make prior to admission and during the professional degree program, what background checks they may be subject to prior to admission and during the professional degree program, and the potential adverse consequences resulting from these disclosures or background checks." Pharmacy colleges and schools that do not yet have a statement or policy on criminal background checks must develop one by July 2007 to be in compliance with the Standards.<sup>3</sup>

## **JCAHO**

The Joint Commission for the Accreditation of Health Care Organizations (JCAHO) does not require accredited organizations to conduct criminal background checks. If a health care organization chooses to require a record search, then it must be in compliance with state and organizational policies to become or remain accredited. Organizations may interpret the JCAHO standard to mean that checks are required for accreditation recognition and implement a record search requirement for all employees, volunteers, and students using the same set of policies regardless of their applicability to a particular group. As a result, a growing number of pharmacy institutions are confronting criminal background check requirements for those students assigned to a clinical facility for education and training. Experiential learning sites do not comply uniformly with the laws and regulations governing criminal background checks. Colleges and schools of pharmacy entering into agreements with experiential learning sites must cope with different types of record search and drug testing requirements at different institutions. Most pharmacy schools who responded to the survey cited experiential sites as the catalyst for the development of a CBC policy for students.<sup>4</sup>

## **Pharmacist Licensure**

Based on the results of an AACP survey in September 2006, criminal background checks vary significantly from state to state. The majority of State Boards of Pharmacy only ask questions relevant to the candidate's criminal convictions and drug history. The National Association of Boards of Pharmacy (NABP) does not currently track the criminal background check policies of state boards of pharmacy.

Article III of the January 2006 Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy specifies the requirements for initial licensure of pharmacists. Qualifications for licensure require the applicant to "be of good moral character"; however, they allow the board to refuse to issue, revoke, suspend, etc the license of someone guilty of a felony. In addition, the Model Rules do not address the use of a criminal background check.<sup>5</sup>

Ten state boards of pharmacy reported to AACP in September 2006 that they require candidates to complete a criminal background check as part of the licensure application process: Arkansas, California, Mississippi, Missouri, New Jersey, Oregon, Texas, Utah, Washington, and Wyoming. Thirty-six states do not currently require a criminal background check and 4 states did not respond to the survey. Several of the states that do not currently have a criminal background check policy in place indicated they may require criminal background checks in the future. The

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<sup>3</sup> Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree. Accreditation Council for Pharmacy Education. July 2007.

<sup>4</sup> Requirements for Criminal Background Checks. Joint Commission on Accreditation of Healthcare Organizations. Available at: <http://www.jointcommission.org/AccreditationPrograms/AmbulatoryCare/Standards/FAQs/Manage+Human+Res/Planning/background.htm>. Accessed on August 1, 2006.

<sup>5</sup> Model State Pharmacy Act and Model Rules. National Association of Boards of Pharmacy. January 2006.

initial review of the reported offense may go through one board administrator, an established review committee, or the full state board.

Selected state boards may require pharmacists to undergo criminal background check once licensure is granted. Seven states (Nevada, Oklahoma, South Carolina, West Virginia, Wisconsin, Wyoming, and Texas) require a criminal background check during the renewal process or if an offense is noted. Four states (Colorado, Michigan, North Dakota, and Oregon) request background checks of licensed pharmacists on a random basis or at the request of the employer.

State boards of pharmacy review and evaluate criminal records and self-reported offenses differently. Some states review offenses on a case-by-case basis. Other state boards have published explicit criteria regarding who is eligible to practice pharmacy. Arkansas, for example, states the following:

“No person shall be eligible to receive or hold an intern or pharmacist license or a pharmacy technician registration issued by the Board if that person has pleaded guilty or nolo contendere to, or has been found guilty of any of the following offenses, regardless of whether an adjudication of guilt or sentencing or imposition of sentence is withheld, by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court (collectively “conviction”): (1) Any felony; (2) Any of the following:

- Theft
- Forgery and Fraudulent Practices
- Fraud Against Government
- Fraudulent Issuance of Warrants
- Employer, Employee liens
- Obtaining Information by Fraudulent Representation
- Insurance Holding Companies
- False Reports, Motor Fuel Taxes
- Fraudulent Applications
- Uniform Controlled Substances Act”

An Arkansas licensure applicant who has a criminal conviction may seek to have the conviction waived and application approved at which time the state board may consider relevant data such as references, age at the time of the offense, etc. Pharmacy colleges and schools should review the state board requirements and policies for licensure applicants with criminal records.<sup>6</sup>

## TYPES OF BACKGROUND CHECKS

Commercial background check firms can access only three original sources of criminal history, according to Lester S. Rosen, president of Employment Screening Resources (ESR), and Carl R. Ernst, CEO of Ernst Publishing Company.

1. Court records containing local, state, or federal contain incidents of arraignment, trial, and disposition of case.
2. Law enforcement agency records containing incidents of complaint, investigation, arrest, and indictment.
3. Corrections agency records containing information about probation, parole, and incarceration.

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<sup>6</sup> Arkansas State Board of Pharmacy Regulations: Regulation 11 (2004). Available at: <http://www.arkansas.gov/asbp/lawbook.html>. Accessed on September 4, 2006.

<sup>7</sup> Ernst CR, Rosen R. National Criminal History Databases: Issues and Opportunities in Pre-employment Screen. *BRB Publications, Inc.* November 26, 2002. Available at: <http://www.brbbpub.com/articles.asp>. Accessed on September 12, 2006.

To obtain these records, commercial CBC companies must visit the courts or government offices; contact the office via email, mail, or phone; or remotely access the official online database of the office. In 2005 sixty-five percent of public records remained offline. Of the 35 percent online, many contain no personal identifying information. Therefore, search firms must often visit many of the more than 3,100 county court offices in person in order to access their records. Pharmacy institutions should not use a commercial vendor that relies solely on online databases for record searches. For more information about different types of searches and common terms, see Appendix A.

State boards of pharmacy and pharmacy degree institutions may use state police agencies to conduct criminal background checks. State police agencies have access to private government databases that are not open to commercial firms, but may be limited to offenses in the state and the National Crime Information Center (NCIC) database. State police may also not verify past residencies and criminal offenses in other states may be omitted from an individual's record.<sup>8</sup>

## **National**

A defensible criminal background search process must be comprised of multiple types of checks. There is no national criminal history database that is available to the public or private data firms. Instead, search firms use or create proprietary databases by retrieving information from county, state, and federal repositories.

Some firms use a privately-owned national service, known as the National Criminal File (NCF) which includes as many as 133 million records. Critics claim that the NCF contains minimal information from state repositories or county criminal courts, the data is not updated frequently, and it is often lacking personal identifiers (e.g., date of birth) beyond name needed for identity verification.<sup>9</sup>

There are numerous reasons why any nationwide criminal record databases are not yet reliable or comprehensive. In some states, the counties report their data to a state law enforcement agency, such as the Texas' Department of Public Safety. In other cases, as in California, counties sell their data individually to private firms. Other counties refuse to sell the data entirely or participate in their state repository systems which feed information into the national databases. Some states only provide parole and probation information (state prison records) to national databases and omit county court records. The frequency with which states report data to national databases varies significantly by state. National criminal databases also do not include federal or sexual offender convictions. On the positive side, a national check may reveal a criminal offense committed outside the individual's county or state of residency.<sup>10</sup>

## **State**

State-based repositories of criminal records have similar limitations to the national databases. These databases may not report all criminal convictions within the state and do not include federal court records. Each county is instructed to send records to the state on a scheduled basis. Some counties comply with state reporting requirements, while other counties send records to the state on a delayed or sporadic basis, and some counties do not send any information to the state.

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<sup>8</sup> Tyburski G. The art of public records research. *The CyberSkeptic's Guide to Internet Research*. Nov/Dec 2005. Available at: [http://www.virtualchase.com/articles/public\\_records\\_research.html](http://www.virtualchase.com/articles/public_records_research.html). Accessed on August 12, 2006

<sup>9</sup> Peterson L. Not all checks are created equal. 2005. Available at: [http://www.virtualchase.com/articles/criminal\\_checks.html](http://www.virtualchase.com/articles/criminal_checks.html) . Accessed on August 11, 2006

<sup>10</sup> Sullivan B. Criminal background checks incomplete: How convicted felons can slip through safety net. *MSNBC*. Updated: 5:06 p.m. ET April 12, 2005. Available at: <http://www.msnbc.msn.com/id/7467732/> Accessed on August 11, 2006.

The records may not provide adequate detail about the offense or subsequent information, such as a pardon.

According to the U.S. Department of Justice, Bureau of Justice, 24 states reported that only 57 percent of dispositions (final court decisions) were received by the state criminal history repositories and 19 states indicated they had a significant backlog for entering court data into the criminal records database. Due to the lag time in reporting from the county to the state level, more recent offenses may be missed if only a state record search is conducted. Therefore, a statewide record check alone may result in an incomplete or inaccurate criminal history.<sup>11</sup>

## **County**

Counties are generally selected based on the individual's residence history, work history and institutional enrollment. Case details may include offense, pleading or finding, disposition, and docket number. Researchers may access county criminal record searches via "walk-in" searches or external databases. Some county records are only available via on-site searches. County checks are widely regarded as the most accurate; however, they only provide a record of incidents for that particular county. If students do not provide a complete residency history or if they have records outside their place of residency, then the county search may not reveal all past offenses. A county search done in conjunction with a state, national, and federal court search is more likely to reveal a criminal history.<sup>12</sup>

## **Federal Bureau of Investigations**

Following the events of September 11, a greater number of employers conducted criminal background checks on employees. Companies and institutions may require students to go through the Federal Bureau of Investigations (FBI) in attempt to obtain a more complete criminal record. Twenty percent of the pharmacy school survey respondents require students to complete an FBI check.

The FBI search utilizes the National Crime Information Center (NCIC). NCIC is a central database for tracking crime-related information maintained by the FBI's Criminal Justice Information Services Division (CJIS). Most data is received from federal, state and local law enforcement agencies, as well as tribal law enforcement agencies and non law enforcement agencies such as state and federal motor vehicle registration and licensing authorities. The data is only available to governmental agencies, such as the state police and Veteran Affairs (VA) hospitals. NCIC is not open to privately-owned research firms.<sup>13</sup>

Although FBI checks are generally considered more reliable than privately-managed checks, the FBI files are not comprehensive and can take up to 8 weeks to process. Some police departments do not report to the FBI. The FBI database relies on state repositories which may not be comprehensive or current, and it may not contain misdemeanor data.<sup>14</sup>

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<sup>11</sup> Survey of State Criminal History Information Systems, Bureau of Justice Statistics. 2003. Available at: <http://www.ojp.usdoj.gov/bjs/abstract/sschis03.htm>. Accessed on September 15, 2006.

<sup>12</sup> Sullivan B.

<sup>13</sup> Federal Bureau of Investigation, Criminal Justice Services Information System, National Crime Information Center. Available at: <http://www.fbi.gov/hq/cjisd/ncic.htm>. Accessed on August 2, 2006.

<sup>14</sup> Scalet SD. Bad Checks. *CSO Magazine*. August 2004. Available at: <http://www.csoonline.com/read/080104/>. Accessed on August 30, 2006.



## **SPECIAL CONSIDERATIONS: CHECKS AND OFFENSES**

### ***HCA Check Levels***

The Hospital Corporation of America (HCA) defines three levels of criminal background checks. The three levels include all offenses extending over a 7 year history. The types of checks included in a Level I, II, and III check may vary among HCA sites as well as among other health care organizations that use the same terminology. Some institutions, such as Nova Southeastern University Health Professions Division, have adopted this terminology in their school policies.

#### **Level I**

- Social Security Number trace (verification)
- Employment Verification including reason for separation and eligibility for re-employment for each employer
- Violent Sex Offender and Predator Registry search
- Office of Inspector General (OIG) list of excluded individuals/entities
- General Services Administration (GSA) list of parties excluded from federal programs.
- U.S. Treasury, Office of Foreign Assets Control, List of Specially Designated Nationals (SDN)
- Applicable State Exclusion list

#### **Level II**

An HCA Level II background check includes all of the Level 1 checks, plus

- Education Verification
- Professional License Verification
- Certification & Designation check
- Professional Disciplinary Action Search

A Level II check may also include

- Department of Motor Vehicle Driving History, or
- Consumer Credit Report

#### **Level III**

In addition to level I and II searches, a Level III search includes:

- Newspaper Articles & Clippings
- Bankruptcy and Federal District Court Search

Some of the HCA background checks were adopted primarily for employment purposes and may not be relevant to students. For instance, pharmacy schools may wish to dispute the need for employment verification of students who have little or no work experience, or who are under the age of 21.<sup>15</sup>

### ***Classification of Offenses***

Institutions may determine the seriousness of an offense partially by its legal classification. Each jurisdiction may have slightly different definitions for various crimes. A felony in one state may be a gross misdemeanor in another. Pharmacy schools, experiential sites, and licensing boards

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<sup>15</sup> HCA Policies and Procedures, HR.102 – Background Investigations. Hospital Corporation of America. July 1, 2006. Available at: <http://ec.hcahealthcare.com/CustomPage.asp?PageName=PHR>. Accessed on October 5, 2006.



should take both the type of offense and its classification into consideration during a review process.

The most recent official version of the United States Code made available by the US House of Representatives states that an offense that is not specifically designated is classified by the maximum term of imprisonment authorized.

(1) Class A felony	- life imprisonment, or if the maximum penalty is death
(2) Class B felony	- twenty-five years or more
(3) Class C felony	- less than twenty-five years but ten or more years
(4) Class D felony	- less than ten years but five or more years
(5) Class E felony	- less than five years but more than one year
(6) Class A misdemeanor	- one year or less but more than six months
(7) Class B misdemeanor	- six months or less but more than thirty days
(8) Class C misdemeanor	- thirty days or less but more than five days
(9) Infraction	- five days or less, or if no imprisonment is authorized

A “serious violent felony” is defined in the U.S. code as a Federal or state offense of murder; manslaughter (other than involuntary manslaughter); assault with intent to commit murder; assault with intent to commit rape; aggravated sexual abuse and sexual abuse; abusive sexual contact; kidnapping; aircraft piracy; carjacking; extortion; arson; firearms use; firearms possession; or attempt, conspiracy, or solicitation to commit any of the above offenses.<sup>16</sup>

## **Minor Traffic Violations**

Minor traffic violations may be revealed in the criminal background check process. The pharmacy institution, experiential site, and state licensure boards may require the individual to disclose these offenses. There is no common definition for a “minor traffic violation”. Definitions vary by state, city, and institution. It is commonly defined as a non-moving violation or as a traffic offense in which only a citation was written. Any traffic violations involving drugs or alcohol are not generally considered minor offenses and should be disclosed by the applicant. Examples of violations not generally considered minor traffic violations include those involving substance abuse such as Driving While Intoxicated, (DWI), Driving Under the Influence (DUI), Driving While License is Suspended (DWLS), Failure to Appear (FTA), Reckless Driving, Open Container and Assault with a Motor Vehicle. See Appendix B for examples of traffic violations that may be considered minor in nature. Each institution should establish its own inventory of minor traffic violations.<sup>17 18</sup>

## **International Students**

The pharmacy school should provide criminal background check policy information for students enrolled under F-1 or J-1 visas. The U.S. Department of State visa application process includes a background check process, as stated in their informational materials.

“Your information is submitted and checked in the world’s foremost security database, which includes comprehensive information drawn from both U.S. and foreign law enforcement agencies worldwide. If your name or a close variation indicates security concerns, the

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<sup>16</sup> United States Code. Title 18, Part II, Chapter 227 Subchapter A, 3559, Sentencing classification of offenses. Available at: [http://www4.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00003559----000-.html](http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00003559----000-.html) and <http://uscode.house.gov/download/download.shtml> . Accessed on September 10, 2006.

<sup>17</sup> Texas Department of Criminal Justice. Examples of Minor Traffic Violations (PD 27). Available at: <http://www.tdcj.state.tx.us/vacancy/hr-policy/pd-27a.pdf> . Accessed on August 26, 2006.

<sup>18</sup> Encyclopedia of Everyday Law. Traffic Violations. Available at: <http://law.enotes.com/everyday-law-encyclopedia/traffic-violations> . Accessed on September 10, 2006.

process will be delayed. Additional steps will vary from requests for additional interviews and information to official registration and fingerprinting. This may add at least 4–6 weeks to the processing time. Registration upon arrival in the United States is mandatory in many cases but registration can be required in any case regardless of country of origin.”<sup>19</sup>

Before the events of September 11 the U.S. Department of State would submit an applicant's information to the FBI or CIA for a background check. If no response was received, the government would still approve the visa. The consul must now receive a positive response from the agency to be able to issue the visa.

The U.S. State Department would not respond to specific questions about the types of checks conducted on student visa applicants. According to David Ware, an immigration lawyer for the firm David Ware & Associate, there are 2 background checks in place for student visa applications: the Mantis and Condor. Visa applicants whose work in an occupation in the “Technology Alert List” may be subject to the Mantis background check. The Technology Alert List identifies fields of study or work that could be used against the U.S. in an act of terrorism, or transferred to rogue nations. It includes pharmacy related fields, such as pharmacology, toxicology, biochemistry, and pharmaceutical production technology. Individuals engaged in graduate-level studies and teaching, as well as other activities, may be ineligible for visa status if the check reveals any previous offenses.<sup>20</sup>

Ware states that the Mantis search focuses on individuals from specific nationalities more than others, and the consulate decides whether to order one or both checks. For instance, a biomedical engineer from a “friendly” country such as France is less likely to be subject to a Mantis search in contrast to a Syrian national in the same field.

The state department added another background check called the “List of 27” security check, also known as Condor. It is performed on males between the ages of 17 and 60 from certain countries including Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, possibly Turkey, United Arab Emirates, and Yemen.

If the student has lived in the United States for any period of time, the pharmacy school may wish to consider requiring the applicant to undergo a U.S. background check in addition to the checks performed during the visa process. If the student has only lived outside the U.S., the institution must decide if the visa application will likely satisfy the criminal background check requirements for the experiential sites, institution, and state board of pharmacy.<sup>21</sup>

## ADMISSIONS

Pharmacy school applications commonly include a question regarding past criminal offenses. Of the approximately 14,000 applicants who applied through the Pharmacy College Application Service (PharmCAS) in the 2005-06 admissions cycle, 19 self-reported a felony conviction. If the institutional legal counsel approves and the state legislature permits it, schools may choose to ask questions related to misdemeanors and arrests.

Pharmacy application questions regarding past arrests or convictions should specify exactly what types of records the applicant must disclose and whether any positive response would result in an automatic denial of admission. If an applicant does not fully disclose a past offense as required by

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<sup>19</sup> United States Department of State. Obtaining a U.S. Visa: A step-by-step outline of today's U.S. visa application procedures. Available at: <http://www.unitedstatesvisas.gov/pdfs/gettingavisa.02.03.pdf>. Accessed on September 20, 2006.

<sup>20</sup> U.S. Department of State, Bureau of Administration. Foreign Affairs Manual. 2006: Vol. 9, 40.31 Exhibit I. June 13, 2006. Available at <http://foia.state.gov/masterdocs/09fam/0940031X1.pdf>. Accessed on September 15, 2006.

<sup>21</sup> Ware D. The student visa “crapshoot”. *Business Week*. March 17, 2005. Available at [http://www.businessweek.com/bschools/content/mar2005/bs20050317\\_7896.htm](http://www.businessweek.com/bschools/content/mar2005/bs20050317_7896.htm).

the institution (regardless of its category or severity), the institution may revoke the applicant's offer of admission based on the falsification of application documents.

Pharmacy school polices may wish to indicate whether the applicant should reveal the following types of records on their application.

- a plea of "no contest" or "nolo contendere";
- a juvenile offense;
- an offense whose records have since been expunged;
- any conviction that the applicant is currently appealing;
- 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
- received an executive pardon.

The institution may want to request additional information as part of the application, such as the terms or conditions of any plea, penalty, punishment, sentence, probation or parole; details regarding the offense; and the applicant's reflections on the experience.<sup>22</sup>

The PharmCAS application only requests information on felony convictions since not all states allow institutions to consider misdemeanors, arrests, or other criminal records in the admissions process. The 2006-07 PharmCAS application includes the following related questions and instructions.

#### **"Have You Ever Been Convicted of a Felony?"**

If you answer "Yes", please provide an explanation in the box provided. If you fail to provide accurate information when answering this question, you may jeopardize your application. Applicants who are convicted of a felony after submission of their completed PharmCAS application must inform their designated pharmacy colleges and schools that an action has occurred.

Pharmacy schools may require criminal background checks and/or drug tests in order to verify an individual's suitability to participate in experiential education rotations, to confirm a student's eligibility for pharmacy licensure, and to ensure patient safety. Contact your designated pharmacy schools directly for specific policies. Contact the National Association of Boards of Pharmacy (NABP) to determine if a felony conviction will prevent you from obtaining a license to practice pharmacy in a particular state. NABP, 1600 Feehanville Drive, Mount Prospect, IL Tel: 847.391.4406, Fax: 847.391-4402, <http://www.nabp.net/>

#### **Explanation - Felony**

If you answered "yes" to the previous question, enter a brief explanation in the box provided. In your explanation, include 1) a brief description of the incident and/or arrest, 2) specific charge made, 3) consequence, and 4) a reflection on the incident and how the incident has impacted your life."

### ***Possible State Restrictions on Use of CBCs in Admissions***

Pharmacy schools should research state law to determine what information may be requested on the pharmacy school application and any limitations on how that data may be used in the pharmacy admissions process. For example, language in Section 2 of Massachusetts Law 151C, "Unfair Practices" limits the type of information one can request of an applicant to a Massachusetts school.

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<sup>22</sup> Langhauser D. Use of criminal convictions in college admissions. National Association of College and University Attorneys (NACUA) Annual Conference 2000. Available on the AACP site at: <http://www.aacp.org/site/page.asp?TRACKID=&VID=1&CID=1185&DID=6830>

“It shall be an unfair educational practice for an educational institution:

(f) To request any information, to make or keep a record of such information, to use any form of application or application blank which requests information or to exclude or limit or otherwise discriminate against any person by reason of his or her failure to furnish information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of the law in which no conviction resulted or in which a conviction has been vacated, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace, or (iii) any conviction of a misdemeanor where such conviction occurred more than five years prior to the date of such application for admission, unless the applicant was sentenced to imprisonment upon conviction of such misdemeanor, or such individual has been convicted of any offense within the five years' period.”

The Ad Hoc Committee on Criminal Background Checks for the Boston University School of Medicine (BUSM) interpreted this statute to mean the institution can not directly ask applicants about arrests or certain misdemeanor convictions on an application for admission to BUSM, but it is permissible for the school to receive such information via a criminal background check performed by an outside entity. Pharmacy schools should consult legal counsel to interpret applicable state laws.<sup>23</sup>

### ***Checks for Accepted Applicants Only***

The AACP Panel agrees with an AAMC recommendation that institutions should only conduct criminal background checks on accepted applicants so that the results of the criminal background check are not a factor in the initial admission decision process. Background checks on all applicants who apply would be financially and administratively burdensome for the schools and applicants.

A school may wish to characterize any offer of admission as conditional based on the applicant's completion of a criminal background check with satisfactory results, as defined by the institution. Other conditions may include verification of immunization records, health insurance, drug testing, and completion of any outstanding course prerequisites. According to David Aronofsky, the University of Montana General Counsel, an institution that decides to revoke an offer of admission based on the results of a background check and after the appropriate due process should be prepared to provide the student with a reasonable explanation for the decision based on pre-determined criteria.<sup>24</sup>

### ***What Should A Policy Include?***

Pharmacy institutions may want to address the following issues in their institutional criminal background check policy. These items were identified from multiple policies established by pharmacy and other health profession institutions and are not presented in any particular order.

- **Purpose** – Describe the reason the criminal background check is or may be required.
- **Applicability** – Describe to whom the policy applies and any exemptions.

<sup>23</sup> Boston University School of Medicine. Ad Hoc Committee on Criminal Background Checks Report to the Dean. March 15, 2006. Available at: [http://www.bumc.bu.edu/www/busm/ood/images/Committee\\_Reports/CommExecSumFinal.doc](http://www.bumc.bu.edu/www/busm/ood/images/Committee_Reports/CommExecSumFinal.doc) . Accessed on September 5, 2006.

<sup>24</sup> Aronofsky D, March H, Morris M, Bell K. The University of Montana employee criminal background check policy: legal issues. NACUA National Conference 2005. Available on the AACP site at: <http://www.aacp.org/site/page.asp?TRACKID=&VID=1&CID=1185&DID=6830>

- **List of Criminal Background Checks Required** - There are numerous types of criminal background checks. The institutional policy should clearly define all of the checks required and any additional checks that may be required for selected students (e.g., international).
- **Initial Check** - If students are involved in early experiential education experiences during the first professional (P1) year, then the criminal background check process should be implemented prior to such experience. Establish a timeframe for initiating and completing the CBC process.
- **Frequency** - Determine how recent the check must be and how long it is effective. Will it need to be repeated if a student returns after a leave of absence from the program? In the AACP CBC survey, most pharmacy students completed a check once during the professional degree program, but the frequency could vary significantly depending on the requirements of experiential sites.<sup>25</sup>
- **Procedure** – Describe how records will be collected and reported.
- **Committee Review Standards** – Define the standards the dean, student affairs office, or appropriate committee will use to evaluate any offenses reported.
- **Confidentiality and Recordkeeping** – Describe how the institution will maintain the student's CBC history, if stored by the institution.
- **Authorization / Disclosure / Release Form** – Develop an authorization form that gives the defined units or individuals within the institution authorization to view the results of the checks.
- **School Disclaimer** - The criminal background check policy or student handbook may include a disclaimer which conveys that a criminal background check process does not guarantee the safety of students, patients, faculty, or staff. The pharmacy school disclaimer may also state that an acceptable criminal background check, as defined by the school, state, or experiential site; does not guarantee the student will be eligible to complete the program or obtain a license to practice pharmacy upon graduation. The experiential site and state board of pharmacy may interpret a student's criminal record more severely or uncover new information not revealed in previous record searches.
- **Fair Credit Reporting Act** - If an employer hires an outside individual or firm to conduct a criminal background check, the employer is subject to the Fair Credit Reporting Act (FCRA). Although FCRA does not explicitly include educational institutions, the applicability to colleges and schools of pharmacy may depend on legal interpretation and circumstances. Under FCRA, employers must obtain permission of an employee (or applicant) before obtaining reports through a CBC vendor and to disclose any possible actions or activities related to obtaining these reports. Pharmacy schools should provide a link to or a copy of an individual's rights under the federal Fair Credit Report Act (FCRA) 15 U.S.C. § 1681 et seq. A copy of the FCRA is available online at <http://www.ftc.gov/bcp/online/pubs/credit/fcrasummary.pdf>

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<sup>25</sup> Alley NM, Marrs JA, Schreiner B. Nurses promise to safeguard the public: Is it time for nationally mandated background checks? *JONA'S Healthcare Law, Ethics, and Regulation*. 2005; 7:4B.

- **Payment Process** - According to the 2006 AACP survey, 49 percent of the pharmacy institutions arrange for students to pay the CBC search provider directly, rather than through the college or school. The school policy should provide the anticipated or average fee amount and to whom it should be paid.
- **Student Refuses Background Check** - The institutional CBC policy should address the issue of students who refuse to participate in the criminal background check process at the time it is required. The school may decide to rescind an offer of admission or dismiss a student from the pharmacy degree program. Consult institutional legal counsel for guidance.

## ASSESSMENT OF CBC RECORDS

CBS News reported that as many as 1 out of 7 Americans have some form of criminal record. As a result pharmacy schools may see a growing number of students with some type of record apply to their programs. Pharmacy institutions must be prepared to evaluate those results in a consistent and equitable way.<sup>26</sup>

At some institutions, students present the results of the background checks to all practice sites in which they will complete experiential education during their academic training. Each practice site determines whether the student may participate at that site. In these cases, the decision is independent from any determination made by the college or school.

Other pharmacy degree programs receive an original copy or a summary of the background report in order to determine whether the student's record may prevent them from participating on rotations or obtaining a license. Unless the state law prohibits it, court opinions generally support an institution's right to deny or revoke an offer of admission because of an applicant's prior criminal history. Schools most often deny or revoke an offer of admission because the conviction is incompatible with values of the institution; or the applicant did not disclose the offense on the application, refuses to undergo a background check, or would be unable to fulfill the requirements of the program related to experiential education and licensure.<sup>27</sup>

### Evaluation Criteria

If the pharmacy school will make decisions in response to the background check report, it should establish criteria to use in the evaluation of a criminal record. The criteria should reflect the experiential site requirements, licensure restrictions, and the need for campus and patient safety. The evaluation criteria should be consistent to ensure that any institutional actions made on the basis of a criminal offense are not unreasonable, arbitrary, or capricious.<sup>28</sup>

Boston University School of Medicine (BUSM) identified five main areas that provide a context for reviewing criminal background information, or represent considerations against which an applicant or student's criminal history can be judged:

- (1) Applicant/student may pose a threat to the institution or to the community at large
- (2) Applicant/student may pose a threat to individual patients
- (3) Applicant/student may not be allowed to complete certain clinical rotations
- (4) Applicant/student may not be eligible for licensure
- (5) Applicant/student may not be an appropriate member of the profession

<sup>26</sup> Yuska G. Expungement: The answer to an employment background check in this era of heightened security. Stark & Stark. FindLaw.com. Available at: <http://library.findlaw.com/2003/Jun/5/132788.html> . Accessed on September 15, 2006.

<sup>27</sup> Aronofsky.

<sup>28</sup> Langhauser.



BUSM authors added that, "...individual licensure boards act in an entirely independent manner and standards are likely to be state specific and to evolve over time, making it impossible to anticipate the impact of criminal history information on any individual's prospects for licensure." The same philosophy also applies to state boards of pharmacy. Pharmacy institutions may charge a review committee to make judgments on each offense.<sup>29</sup>

## ***Approach to the Evaluation of Offenses***

The pharmacy school policy should develop or adopt a list of factors the institution will consider during the CBC report review process. Boston University School of Medicine and the Association of American Medical Colleges identified several issues for administrators to consider.

- Nature and seriousness of the offense.
- Circumstances under which the offense occurred.
- Age of the person when the offense was committed.
- Number of offenses.
- Length of time that has passed since the offense was committed.
- Evidence of successful rehabilitation.
- Accuracy of the information provided by the applicant on the application.
- Evidence of a pending offense that has not been finally adjudicated, in which case, the individual might be found innocent.
- Experiential site and state board licensure policies.<sup>30</sup>

## ***School-defined List of Serious Offenses***

Institutions may compile a list of offenses that may automatically disqualify an individual from enrolling in the pharmacy degree program due to institutional, state, experiential site, or state board of pharmacy policies. Institutions that identify serious offenses in advance strive to standardize their criteria and help students self-determine whether a particular offense is likely to prevent them from completing the pharmacy degree program or obtaining a license in the future. An experiential site may not accept students who were convicted of felonies such as assault with a deadly weapon, rape, sexual assault, murder, workplace violence, armed robbery, or other crimes deemed violent. Individuals with such a history may be seen as posing an unacceptable risk to the safety of students, patients, faculty, and staff.

The University of Tennessee Health Science policy states, "A student whose CBC shows negative findings, including the following, may be excluded by the healthcare facility from a clinical placement program:

- History of any felony conviction within the last seven years.
- History of class "A" misdemeanor conviction within the last seven years.
- History of class "B" misdemeanor conviction within the last seven years.
- Listing on the registry maintained by the Department of Health pursuant to T.C.A. Section 68-11-1004.
- Listing on any of the following registries: HHS/OIG list of excluded individuals, GSA list of Parties Excluded from Federal Programs, U.S. Treasury, Office of Foreign Assets Control (OFAC), List of Specialty Designated Nationals (SDN)
- An encumbered license (current or prior) in a health-related field."<sup>31</sup>

<sup>29</sup> Boston University School of Medicine Ad Hoc Committee on Criminal Background Checks Report to the dean: executive summary. March 15, 2006. Available at: [http://www.bumc.bu.edu/www/busm/ood/images/Committee\\_Reports/CommExecSumFinal.doc](http://www.bumc.bu.edu/www/busm/ood/images/Committee_Reports/CommExecSumFinal.doc) Accessed on August 20, 2006.

<sup>30</sup> Sabalis R. Criminal background checks: Meeting the expectations of the public and the needs of the profession. *The Advisor: Journal of the National Association of Advisors for the Health Professions (NAAHP)*. 2006;26,2: 5-8.



Colleges and schools of pharmacy in the state of Virginia are prohibited from enrolling students who have been convicted of any “Barrier Crimes”, a specific and extensive list of serious offenses defined by the state legislature (Appendix C).

Similarly, the Medical University of South Carolina College of Nursing categorizes each offense based on its “moral turpitude” defined as the “disregard for established standards of right and wrong in the commission of a crime, above and beyond the crime itself”. According to the policy, crimes that involve moral turpitude include arson, assault and battery, possession of a controlled substance with intent to distribute, and forgery. Crimes that may involve moral turpitude include offenses such as contempt of court and misconduct in an office. Crimes that do not involve moral turpitude include disorderly conduct, pointing a firearm, manslaughter, and others. (Appendix D).<sup>32</sup>

In contrast, AAMC recommends that medical institutions not establish a list of prohibited offenses and that they holistically evaluate each offense on a case-by-case basis. Pharmacy colleges and schools must work with their legal counsel to determine which approach is most appropriate.

## Minority Students

There are a disproportionate number of African-Americans and Latinos in U.S. jails and prisons. Disagreement persists in the criminal justice community as to the extent to which race plays in the likelihood an individual will be arrested and the subsequent judicial decisions. Minorities may be more vulnerable due to racially biased law enforcement practices and judicial systems, or due to indirect societal and socioeconomic forces.<sup>33 34</sup>

Prospective minority students may be less likely to apply to a pharmacy degree program if they have any concerns about a past offense on their record, regardless of whether it would ultimately prohibit them from completing the program or obtaining a license. To avoid the use of race as a factor, pharmacy schools may choose to blind all criminal background check reports reviewed after offers of admission are made.<sup>35</sup>

If the pharmacy school chooses to give special consideration to the race and ethnicity of a student during the criminal history review, then it should carefully review the criteria with legal counsel to ensure the practice is legally defensible in this new era of race conscious admissions following Supreme Court’s decision in the Michigan Affirmative Action cases. The U.S. Supreme Court ruled in 2003 that colleges and schools may use race in admissions decisions to support the recruitment of a diverse student body; however, the policy must be “narrowly tailored” to serve the compelling interest in diversity. Institutions must not provide separate admissions tracks or quotas for minorities, and should pursue race-neutral and ethnicity-neutral alternatives.<sup>36</sup>

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<sup>31</sup> University of Tennessee Health Science Center (UTHSC) Policy on Criminal Background Check. 2005. Available at: [http://www.utm.edu/policies/w932\\_document\\_show.php?p=418](http://www.utm.edu/policies/w932_document_show.php?p=418). Accessed on September 6, 2006.

<sup>32</sup> Medical University of South Carolina College of Nursing. Student Handbook: 2005-06. Available at:

[http://www.musc.edu/nursing/departments/student-services/documents/hb\\_intro\\_overview.pdf](http://www.musc.edu/nursing/departments/student-services/documents/hb_intro_overview.pdf). Accessed on August 30, 2006.

<sup>33</sup> Pager D. The mark of a criminal record. *American Journal of Sociology*. 2003; 108, 5: 937–75.

<sup>34</sup> D'Alessio SJ. Race and the probability of arrest. *Social Forces*. June 2003; 81, 4:1381-1397.

<sup>35</sup> Boyd C. The criminal background check requirement for medical school admission: keeping minority applicants and the criminal justice system in close perspective. *The Advisor: Journal of the National Association of Advisors for the Health Professions*. 2006; 26,2:9-14.

<sup>36</sup> AAMC. Assessing medical-school admissions policies: Implications of the U.S. Supreme Court’s affirmative-action decisions. September 2003. Available at [https://services.aamc.org/Publications/index.cfm?fuseaction=Product.displayForm&prd\\_id=75&prv\\_id=65](https://services.aamc.org/Publications/index.cfm?fuseaction=Product.displayForm&prd_id=75&prv_id=65). Accessed on November 1, 2006.

## **Arrest Records**

The institutional policy should state whether the applicant should reveal any arrest records, in addition to convictions, to the pharmacy institution as part of the application. Use of arrest data in screening processes for employment has been adjudicated as a discriminatory practice and is therefore barred under Title VII of the US Civil Rights Act of 1964. There is no federal law that prohibits the use of arrest records in the academic admissions process, but individual states may not allow it. Schools that review arrest records may be limited to using the data to identify pending court dispositions.<sup>37</sup>

## **Misdemeanors**

State laws and organizational policy may dictate whether schools, sites, and licensure boards may take misdemeanor offenses into account when making a decision. Pharmacy schools must research these policies to determine whether they may take misdemeanors into consideration.

The National Council of State Boards of Nursing developed the "Uniform Core Licensure Requirements" which included general guidance on how state boards should assess different types of offenses.

"A felony conviction is a significant event. With the common use of plea bargains, the behavior of underlying a misdemeanor should also be scrutinized on behalf of the vulnerable persons who are recipients of nursing care. It is the responsibility of the board of nursing to use the conviction history (including plea agreements) in decision making."<sup>38</sup>

## **Juvenile Records**

The pharmacy institution should also review state laws to determine if they may receive or review juvenile criminal records. For instance, Texas state law prohibits colleges and universities from considering the records of minors. AACP supports the AAMC Criminal Background Check Advisory Panel recommendation that a student's background check not include "any offense committed as a juvenile, except for offenses for which a juvenile was tried as an adult."<sup>39</sup>

## **Expunged Records**

An expungement is a legal procedure that removes a criminal record from the files and computer systems of the court, police department and other law enforcement agencies. Individuals who believe their records have been "expunged" will likely answer "no" to the question asking whether they have been arrested or convicted of a crime. Students may discover as a result of the CBC process that the records were not removed or sealed due to a court clerical oversight, attorney error, payment problem, or other reason. Not all convictions can be expunged and reportable offenses vary by state.<sup>40</sup>

In 2003, the U.S. Department of Justice reported that 26 states, the District of Columbia, Puerto Rico, and the Virgin Islands have statutes that provide for the expungement of felony convictions. In 10 states, Puerto Rico, and the Virgin Islands, the record is destroyed by the state criminal history repository. In 12 states and the District of Columbia, the record is retained with the action

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<sup>37</sup> Patterson JC. Criminal history checks. Non-profit risk management center. 1998. Available at: [http://www.nonprofitrisk.com/csb/csb\\_crim.htm](http://www.nonprofitrisk.com/csb/csb_crim.htm). Accessed on September 13, 2006.

<sup>38</sup> National Council of State Board of Nursing. Uniform Core Licensure Requirements. Available at: <https://www.ncsbn.org/667.htm>. Accessed on August 20, 2006.

<sup>39</sup> Carr K. Background checks on campus. *CSO Magazine*. July 2005. Available at: [http://www.csoonline.com/read/070105/briefing\\_background.html](http://www.csoonline.com/read/070105/briefing_background.html). Accessed on August 20, 2006.

<sup>40</sup> Yuska G. Expungement: The answer to an employment background check in this era of heightened security. Stark & Stark. FindLaw.com. Available at: <http://library.findlaw.com/2003/Jun/5/132788.html>. Accessed on September 15, 2006.

noted on the record. In New Jersey state law states that a person having received an expungement can, on an employment application, answer "no" to the question asking whether you have been arrested or convicted of a crime.<sup>41</sup>

## **Errors in Reporting**

Criminal background checks are not infallible and do not necessarily predict future unprofessional or illegal behavior. Errors and limitations in the record search process can mean that a convicted felon's record are returned "clean" or an individual without a record is confused with someone who does. For instance, in 2001 auditors for the state of Colorado Department of Education identified teachers with felonies, misdemeanors, and child abuse records despite the use of a state and FBI fingerprint checks at the time.<sup>42</sup>

According to a 2005 MSNBC article, national databases have a 41 percent error rate due to inaccurate or incomplete reporting at the county, state, and federal level; as well as mistakes made on the part of the CBC staff. A pharmacy institution must rely on a combination of background check sources to decrease the chance of receiving inaccurate or incomplete results.<sup>43</sup>

Shawn Bushway, assistant professor and criminologist at the University of Maryland, led a recidivism rate study that inadvertently revealed substantial inaccuracies in the reports provided by one unnamed CBC vendor. The institution contracted with the company to conduct a search on the 120 parolees and probationers in the study to determine whether any additional arrests would appear on their records. Sixty-four of the 120 convicted criminals in the study came back with no criminal records despite known felony convictions and the company's practice of visiting courthouse to search findings, rather than relying solely on national or state databases.<sup>44</sup>

## **Appeal Process**

The criminal background check process is imperfect. A student may receive an inaccurate record report as a result of mistaken identity or because the criminal record contains errors or omissions that make the offense appear more serious than it really is. The institution's criminal background check policy should include an appeal process for students who believe there are inaccuracies in their record or that the institutional response to the record was excessive based on the nature of the offense.<sup>45</sup>

Students have the right to review their FBI records and to complete, or challenge the accuracy of, the information contained in that record. Students who wish to review their FBI records should contact the FBI field office that serves their area for instruction on the procedure and any applicable fees.<sup>46</sup>

If the student claims the report from a private CBC firm is inaccurate, the school should provide the student with the option to have the CBC vendor verify the results of the background check. The school may also want to pre-select a second approved CBC vendor the student may use if there any suspected problems associated with the quality of service provided by the primary CBC

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<sup>41</sup> U.S. Department of Justice.

<sup>42</sup> Bridgman A. Conducting criminal background checks on school employees is smart policy, safe hiring, and it's the law. *American School Board Journal*. 2005: 192,12.

<sup>43</sup> Sullivan.

<sup>44</sup> Scalet.

<sup>45</sup> Ernst CR, Rosen L. National criminal history databases: issues and opportunities in pre-employment screen" PRRN Conference, Long Beach. February 2002. Available at: <http://www.brbbpub.com/articles.asp>. Accessed on August 19, 2006.

<sup>46</sup> State of Utah, Division of Occupational and Professional Licensing. Application for Licensure: Pharmacy Intern. Available at: <http://www.dopl.utah.gov/licensing/forms/003.pdf>

vendor. The school should consider whether it will postpone any action until the results of the review and appeal are finalized.

## MANAGING CBC RESULTS

### ***Confidentiality and Recordkeeping***

The National Association of College and University Attorneys (NACUA) recommends that criminal records be filed separately from academic records and that access be restricted to a limited number of individuals. Paper records should be stored in a locked file. Online and paper CBC records should not be accessible to unauthorized staff, faculty, administrators, students, volunteers, or parents.

### ***Disclosure of Results***

Forty-nine percent of pharmacy schools currently receive some type of criminal report directly from the CBC provider. Those institutions that receive records directly from the CBC provider should identify in the appropriate publication which institutional officials and other entities may have access to a student's criminal background check data. NACUA advises that "Only a limited number of individuals should be allowed to have access to criminal background check information, and it should be strictly on a need-to-know basis". To comply with the Family Educational Rights and Privacy Act (FERPA), pharmacy faculty and preceptors must not have access to these sensitive records because the results could influence how the student's performance is evaluated.<sup>47</sup>

### ***Experiential Site***

As a result of JCAHO, many hospitals and health care facilities have policies requiring drug testing and/or criminal background checks for employees, students and volunteers. Experiential sites may receive these results directly from the CBC vendor, receive a copy of the report from the pharmacy institution or receive an attestation statement from the institution indicating that the student's criminal record does not violate the site's eligibility criteria. Seventeen percent of the pharmacy schools indicated that the experiential site currently receives the criminal report directly from the CBC vendor. The pharmacy school policy may state how the experiential sites will receive the student CBC records.

The school policy may state that experiential sites have, or may adopt in the future, drug testing and/or criminal background check policies. If a criminal offense is revealed in the background check process, the student may not be able to participate in the rotation or complete the requirements of the pharmacy degree curriculum due to the nature of the offense or because it was not revealed in the admissions process.

The Lloyd L. Gregory School of Pharmacy at Palm Beach Atlantic University School states, "A training facility has the right to deny access to a student based on the results of a criminal background check or drug screen. If a facility refuses to accept a student based on the results of a criminal background check or drug screen, reasonable effort will be made to locate a different training facility that will accept the student..."<sup>47</sup> A student who is not able to complete the experiential training requirements of the Doctor of Pharmacy curriculum due to the results of a

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<sup>47</sup> Student criminal background checks. *NACUA Notes*. 2006: 4,1. Available at: <http://www.nacua.org/nacualert/memberversion/StudentCrimBckgndChks.asp>. Accessed on July 1, 2006.

criminal background check or drug screen, will be expelled from Palm Beach Atlantic University.”<sup>48</sup>

The pharmacy school policy should state whether the institution will make an effort to find an alternative learning site in those cases where the offense may not prohibit the student from completing the program or ultimately obtaining licensure.

Some health profession institutions, such as the University of Washington School of Pharmacy, state that students cannot refuse to go to a particular experiential site because they do not wish to submit to drug testing or criminal background checks required by the site. Schools should state whether students who do not participate in the self-disclosure or CBC process will be eligible for admission, continuation in the curriculum, or graduation.

## **Financial Aid Officers**

According to the Free Application for Federal Student Aid (FAFSA) web site, “a federal law suspends a student’s eligibility for federal student aid, if the student has been convicted under federal or state law for possession of or sale of illegal drugs (not including alcohol or tobacco) if the offense occurred during a period of enrollment for which the student was receiving federal student aid (grants, loans, and/or work-study).”

If the background check is conducted prior to enrollment, then the student would have been convicted of any drug offenses before the pharmacy institution distributed any federal aid. In addition, if a background check reveals a conviction, then the applicant will probably not be offered admission, or the offer will be revoked in which case the individual cannot receive Title IV funds because the student is not enrolled. AACP is not aware of any requirement at this time that obligates Financial Aid Offices to receive CBC data or report criminal background data to the Department of Education.<sup>49</sup>

## **Campus Police / Security**

Only one pharmacy institution currently releases CBC results to campus security or police. NACUA states that student records may be used for campus security purposes. In some cases at other institutions, the campus police manage or store the criminal background check records.

## **Substance Abuse Counselors and Residence Life**

None of the pharmacy schools release student-specific CBC results to student counseling centers or substance abuse counselors. AACP member institutions also do not release the results to directors of residence life or campus housing. AACP does not track the percentage of pharmacy students who live in campus housing. If a student is eligible to work with patients in experiential education settings, then the student should be eligible to live with fellow students on campus. The unauthorized release of information to an unauthorized administrator may be considered a violation of FERPA unless the student gives the institution explicit permission to release it.

## **State Police**

As discussed in an early section, the state police manage the criminal background check process from some institutions and may be responsible for transmitting the results. These results may be

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<sup>48</sup> Student Policies and Procedures: 2006-2007. Lloyd L. Gregory School of Pharmacy, Palm Beach Atlantic University. Available at: <http://cosmas.pba.edu/pharmacy/Students/PoliciesProcedures.doc> . Accessed on September 9, 2006.

<sup>49</sup> Drug Conviction Worksheet. Free Application for Federal Student Aid. 2006. Available at: <http://www.fafsa.ed.gov/before013.htm>. Accessed on September 1, 2006.

limited to offenses within the state and would not include non-criminal information such as employment verification.

State laws may require colleges and universities to report selected personal data to a state authority that relate to criminal records. In 2006, the Virginia legislature passed a law that requires all colleges and universities in the state to submit personal information about their accepted applicants to the state police so it may be checked against registries of sex offenders. Virginia institutions must report the full names, genders, dates of birth, and Social Security numbers (or other student unique identifier) for all accepted students on an annual basis. The new statute specifies accepted students, rather than enrolled students, due to FERPA restrictions on releasing matriculated student data.<sup>50</sup>

Institutional policy manuals should reference any third-parties, such as the state police, that may or will receive their institutional records or CBC results.

### **State Boards of Pharmacy**

Colleges and schools of pharmacy should not release offenses revealed in a criminal background check report to the state board of pharmacy, or another third-party, unless it receives explicit and advance approval from the student to disclose that information. If the institution releases that information without permission, it will violate FERPA.

If the student authorizes the CBC vendor or institution to release or discuss their criminal record with a state board, the institution may be tempted to ask whether a specific offense would bar the student from ultimately obtaining licensure. The institution should not interpret the board's response, if given, as an absolute, unless it is a signed and binding decision. The composition of the state board and board policies may change by the time the student graduates from the pharmacy degree program. Also, new information may be revealed in a different criminal background check process.<sup>51</sup>

In the case of Louisiana, and possibly other states, all pharmacy students must obtain their criminal background checks directly from the state Board of Pharmacy prior to beginning Introductory Practice Experiences. Ten percent of the AACP survey responders indicated that the state board of pharmacy receives a copy of the CBC report directly from the vendor in lieu of or in addition to the pharmacy institution.<sup>52</sup>

## **RECOMMENDATIONS**

The AACP Criminal Background Check Advisory Panel developed the following list of recommendations for the Association and member institutions.

### **Recommendations for AACP**

1. The advisory panel recommends that PharmCAS modify its instructions pertaining to criminal background checks to address the following items:
  - Reasons for criminal background checks as stated by AAMC in the Introduction.

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<sup>50</sup> Henig S. New law in Virginia will require colleges to report applicants' personal data to police. *The Chronicle of Higher Education*. June 21, 2006. Available at: <http://chronicle.com/daily/2006/06/2006062105n.htm> . Accessed on June 21, 2006.

<sup>51</sup> Using criminal background checks to inform licensure decision making. National Council of State Boards of Nursing. 3 Apr 2006. Available at: [http://www.ncsbn.org/pdfs/Criminal\\_Background\\_Checks.pdf](http://www.ncsbn.org/pdfs/Criminal_Background_Checks.pdf) . Accessed on September 1, 2006.

<sup>52</sup> Policy and Procedures Manual: Student Background Check. University of Louisiana at Monroe. Available at: <http://rxweb.ulm.edu/pharmacy/oe/policies.html> . Accessed on September 5, 2006.



- Acknowledgment that colleges and schools of pharmacy will conduct CBC's; therefore, applicants need to be prepared to report all arrests that involved some type of judgment (i.e., jail, probation, fines, court costs), and other disciplines or requirements. Even though PharmCAS at the present time only requests information regarding felonies, instructions should state that the colleges and schools of pharmacy may ask for further information. Applicants should be informed that if they are admitted to a college or school of pharmacy, they may be required to report
    - arrests for misdemeanors and felonies in which the consequences involved adjudication of the offense (with details of the judgments or disciplines);
    - adjudication withheld (with details of the requirements completed);
    - nolo contendere (with details of judgments or disciplines); and
    - plea bargain (with details of judgments or disciplines).
  - PharmCAS should include a statement that an acceptable CBC, as defined by the college or school of pharmacy, does not guarantee an admitted student will be eligible to complete the program or obtain a license to practice pharmacy upon graduation. Experiential sites and boards of pharmacy may have a different interpretation of the CBC that could be an obstacle to completion of the pharmacy curriculum or access to the licensing examination.
2. The advisory panel also recommends that AACP should negotiate an agreement with a national criminal background check vendor to facilitate a centralized record search process for pharmacy students at member institutions. The purpose of the centralized search process would be to reduce the administrative workload of conducting a criminal background check and the fees for students and schools. Institutions should be able to customize the types of searches required and how these records would be reported to the student, institution, state board, and/or experiential site. Institutional participation in the centralized background check service should be voluntary.
  3. AACP should collaborate with the members of the Federation of Associations of Schools of the Health Professions (FASHP) and other key stakeholders (i.e., JCAHO) to determine the feasibility of developing a standardized criminal background check process for all health profession students. FASHP should also create a set of policy templates that may be presented to state legislatures, state boards, experiential sites, and university administration. The purpose of the template is to reduce the redundancies, inconsistencies, and expense of the myriad and conflicting requirements.

## ***Recommendations for AACP Member Institutions***

The AACP Criminal Background Check Advisory Panel proposes that member institutions adopt selected recommendations made by the AAMC Criminal Background Check Advisory Committee in May 2006.<sup>53</sup>

- That the criminal background check be initiated at the time of first acceptance by a pharmacy school.
- That the criminal background check not be a component of the application, interview, or selection processes for pharmacy school, but that it be a mandatory component of the pre-matriculation process for each accepted applicant.
- That any communication sent by a pharmacy school to an accepted applicant (and any correspondence with selected wait-listed applicants) include information about the criminal background check requirement, and contain a statement that a final decision

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<sup>53</sup> AAMC.



about matriculation will be made only after review of the criminal background check report on the applicant.

- That appropriate authorization, with pertinent identifying information necessary to initiate the check, be received from the applicant prior to initiating the criminal background check. This authorization should inform the applicant of the applicant's access to criminal background check report data in order to ensure their accuracy and of the appeals process to be used in the event that any criminal background check report data are inaccurate.
- That each pharmacy school receives a report of all requested information produced by the criminal background check to the extent permitted by law. An alternative, formula-based approach that would deliver only "processed" information or conclusions to schools (e.g., "red," "yellow," or "green" indicators for criminal background checks assessed as "unacceptable," "subject to caution," or "acceptable") was regarded as inadequate.
- That the final decision about the matriculation of an applicant should be communicated to the applicant only after a careful review, based on institutional policies and procedures, of the self-reported information in the applicant's application file and the information in the criminal background check report. Factors involved in this final decision may include, but not be limited to:
  - the nature, circumstances, and frequency of any reported offense(s);
  - the length of time since the offense(s) and available information that addresses efforts at rehabilitation; and
  - the accuracy of the information provided by the applicant in pharmacy school application materials.
- That the ultimate decision by an institution about the matriculation of an applicant whose criminal background check report reveals information of concern be made in a manner consistent with institutional policies and procedures developed and approved in accord with institutional standards. This decision-making process would appropriately include input from various sources, including, for example, representatives of the admissions committee and personnel in the offices of admissions, legal affairs, and minority affairs. In developing these policies and procedures, schools should take into account the requirements of affiliated clinical facilities and other educational sites where students might be trained.
- That each school develop policies and procedures, in collaboration with its institutional general counsel, regarding the handling of information generated by criminal background checks on applicants, both prior to the final matriculation decision and after the information has been used for its intended purpose(s). These policies and procedures should address the:
  - need to maintain the confidentiality of any information in these reports that is unrelated to decisions about admission and continued enrollment;
  - appropriate handling of information entered by the applicant regarding the applicant's criminal history in the pharmacy school application, including the institutional office in which this information should be maintained;
  - the need to ensure that the information in a criminal background check report not be used to unlawfully discriminate in admissions or other decisions; and
  - disposition of the information in a criminal background check report after the purpose(s) for which it was collected has been served.
- That school policies, procedures, and decisions about the applicant and/or student whose criminal background check reveals information of concern be administered separately

- from policies, procedures, and decisions about applicants and/or students with medical, psychiatric, and substance abuse conditions and disabilities.
- That the criminal background check include, as data are accessible and to the extent permitted by law, a:
    - search by Social Security number
    - determination of areas of prior residence
    - search, based on areas of prior residence, at the local (county) level, as well as searches at the state, national, and federal levels
    - sex offender search
    - search for dishonorable discharge from the Armed Forces
    - search of the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (LEIE), a database which provides information to the public, health care providers, patients, and others relating to parties excluded from participation in the Medicare, Medicaid, and all Federal health care programs.
  - That the criminal background check involve, as relevant data are accessible and to the extent permitted by law:
    - conviction information for all criminal offenses (felonies, misdemeanors) committed as an adult
    - all types of adjudications
    - all legal processes not yet resolved (e.g., an arrest record for an offense pending court disposition, an unresolved bench warrant, a failure to appear in court).
  - That the criminal background check not include any offenses committed as a juvenile, except for offenses for which the juvenile was tried as an adult. Committee members expressed strong sentiment against including any record of arrest for an “offense” for which the individual was ultimately adjudged “not guilty.”
  - That the current question(s) on the PharmCAS application regarding felony convictions be expanded to include a broader range of self-reported criminal history information.

Term or Type of Record Search	Description	Source
Adjudication	Giving or pronouncing a judgment or decree, or the rendering of a decision on a matter before a court	<a href="http://www.utcourts.gov/resources/glossary.htm">www.utcourts.gov/resources/glossary.htm</a>
County Criminal History	Counties are generally selected based on the individual's residence history, work history and institutional enrollment. Case details may include offense, pleading/finding, disposition, and docket number. Researchers may access county criminal record searches via "walk-in" searches and/or external databases. County checks are the most accurate; however, they only provide a record of incidents for that particular county. If a student does not provide a complete residency history or if the student has a record outside his/her place of residency, then the county search may not reveal all past offenses.	
Credit History Report	A credit history report can be used to help identify an individual's residency or as part of a social security number trace. Health profession institutions do not typically receive credit score or history information due to risks associated with identity theft.	
Department of Motor Vehicles	DMV records are not generally a required component of a background check for students. Any convictions should be revealed in other searches.	
Docket	A brief entry or the book containing such entries of any proceeding in court.	<a href="http://www.utcourts.gov/resources/glossary.htm">www.utcourts.gov/resources/glossary.htm</a>
Excluded Parties Lists System (EPLS)	EPLS is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and non-financial assistance and benefits. The EPLS is administered by the General Services Administration (GSA).	<a href="http://epls.arnet.gov/FAQEPLS.html#1">http://epls.arnet.gov/FAQEPLS.html#1</a>
Expungement	A court order allowing the destruction or sealing of records of minors or adults, after the passage of a specified period of time or when the person reaches a specified age and has not committed another offense.	<a href="http://www.utcourts.gov/resources/glossary.htm">www.utcourts.gov/resources/glossary.htm</a>
Federal Court Record Search (aka Federal Criminal Court Search)	See PACER	

Fraud and Abuse Control Information System (FACIS)	The Fraud and Abuse Control Information System (FACIS®) was designed by Government Management Services, Inc (GMS). GMS was founded to assist healthcare industry personnel search a single database containing information on healthcare individuals and entities that have been excluded from federal healthcare programs as well as adverse actions taken by licensing boards of State governments. FACIS® contains information from all 50 states on individuals who have been the subject of State licensing board sanctions. FACIS® is not a Consumer Reporting Agency and does not provide information to the general public. May also be referred to as "Healthcare Sanctions/Adverse Actions Check"	<a href="http://www.facis.com">www.facis.com</a>
Healthcare Integrity and Protection Data Bank	HIPDB is a government site and not open to the general public. Information may, however, be captured in FACIS.	<a href="http://www.npdb-hipdb.com/hipdb.html">http://www.npdb-hipdb.com/hipdb.html</a> <a href="http://www.interpol.int/Public/Wanted/Fugitives/Default.asp">http://www.interpol.int/Public/Wanted/Fugitives/Default.asp</a>
Interpol Fugitives Wanted List	Interpol's activities in relation to international fugitives have been part of its core business since the creation of the organization. Interpol circulates internationally at the request of its member countries, electronic diffusions and notices containing identification details and judicial information about wanted criminals. Its red notices have been recognized in a number of countries as having a legal value to serve as a basis for provisional arrest. The General Secretariat of Interpol offers to its member countries direct automatic search facilities and responds to queries concerning wanted persons.	<a href="http://www.interpol.int/Public/Wanted/Fugitives/Default.asp">http://www.interpol.int/Public/Wanted/Fugitives/Default.asp</a>
List of Excluded Individuals/Entities (LEIE)	Office of the Inspector General (OIG) exclusion has national scope and is important to many institutional health care providers because the Congress of the United States established a Civil Monetary Penalty for institutions that knowingly hire excluded parties. Accordingly, the OIG maintains the List of Excluded Individuals/Entities (LEIE), a database which provides information to the public, health care providers, patients and others relating to parties excluded from participation in the Medicare, Medicaid and all Federal health care programs.	<a href="http://exclusions.oig.hhs.gov/search.aspx">http://exclusions.oig.hhs.gov/search.aspx</a>
National Background Check	Privately-owned background check firms will utilize a myriad of databases or a privately-owned database for national searches. Due to the inconsistencies in county and state reporting, a national background check should not be used as the sole record search. National background searches do not include federal records or sexual offenses. See PACER and the National Sex Offender Public Registry.	

National Crime Information Center (NCIC)	The National Crime Information Center (NCIC) is the United States central database for tracking crime-related information. The NCIC is maintained by the Federal Bureau of Investigation's Criminal Justice Information Services Division (CJIS). Most data is received from federal, state and local law enforcement agencies, as well as tribal law enforcement agencies and non law enforcement agencies such as state and federal motor vehicle registration and licensing authorities. The data is only available to governmental agencies, such as the state police and VA hospitals. NCIC is not open to privately-owned research firms.	<a href="http://www.fbi.gov/hq/cjisd/ncic.htm">http://www.fbi.gov/hq/cjisd/ncic.htm</a> <a href="http://permanent.access.gpo.gov/lps3213/ncicinv.htm">http://permanent.access.gpo.gov/lps3213/ncicinv.htm</a>
National Practitioner Data Bank	NPDB is a government site and not open to the general public. Information may, however, be captured in FACIS.	<a href="http://www.npdb-hipdb.com/npdb.html">http://www.npdb-hipdb.com/npdb.html</a>
National Sex Offender Public Registry	The National Sex Offender Public Registry, coordinated by the Department of Justice, is a cooperative effort between the state agencies hosting public sexual offender registries and the federal government. This web site is a search tool allowing a user to submit a single national query to obtain information about sex offenders through a number of search options. The criteria for searching are limited to what each individual state may provide. Also, because information is hosted by each state and not by the federal government, search results should be verified by the user in the state where the information is posted. Users are advised to log on to pertinent state web sites for further information and/or guidance, as appropriate.	<a href="http://www.nsopr.gov/">http://www.nsopr.gov/</a>
Nolo Contendere	A plea in a criminal case which does not require the defendant to admit guilt, but the defendant does not contest the facts on which the charge is based. Some judges refuse to accept such pleas in criminal cases.	<a href="http://www.utcourts.gov/resources/glossary.htm">www.utcourts.gov/resources/glossary.htm</a>
Patriot Act / Terrorist Watch List	The Terrorist Watch list is comprised of multiple searches including the (1) US Department of Treasury, Office of Foreign Asset Control, Terrorism Sanction Regulations--Named Terrorist Organizations; (2) US Department of Treasury, Office of Foreign Asset Control--Specially Designated Nationals and Blocked Persons; (3) US Department of State, Trade Control--Debarred Parties; (4) FBI Most Wanted List; (5) INTERPOL Most Wanted List; (6) Bank of England Sanction List; (7) World Bank Debarment List; and the (8) European Union Terrorism List	Information provided by Castle Branch, Inc.

Plea Bargain	A process whereby the prosecutor and defense attorney negotiate a mutually satisfactory disposition of the case. The court and the defendant must approve of any settlements. For example, a guilty plea may be exchanged for a lesser charge or a sentencing recommendation, or for dismissal of one or more of the charges in a multi-count information, or for dismissal of another case.	<a href="http://www.utcourts.gov/resources/glossary.htm">www.utcourts.gov/resources/glossary.htm</a>
Public Access to Court Electronic Records (PACER)	PACER (also known as U.S. Party/Case Index) is a service of United States Judiciary and is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and the U.S. Party/Case Index via the Internet. Each court maintains its own databases with case information. Because PACER database systems are maintained within each court, each jurisdiction will have a different URL. Accessing and querying information from each service is comparable; however, the format and content of information provided may differ slightly. Not all federal courts participate in the database.	<a href="http://pacer.psc.uscourts.gov/">http://pacer.psc.uscourts.gov/</a>
Social Security Number Search	The social security number (SSN) search is offered by background check services and is a tool for finding addresses or names an individual used when applying for credit with a social security number. The SSN trace may reveal if an individual has used a different name or other residences. Once all prior names and addresses are known; a county, state, or national criminal background check can be performed from this information.	
Specially Designated Nationals List (SDN)	As part of its enforcement efforts, OFAC (Office of Foreign Assets Control, U.S. Department of the Treasury) publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.	<a href="http://www.ustreas.gov/offices/enforcement/ofac/fag/answer.shtml#17">http://www.ustreas.gov/offices/enforcement/ofac/fag/answer.shtml#17</a>
State Sex Offender Registries	All 50 states and Puerto Rico maintain centralized repositories on sex offenders. These records may or may not be reported to the national repository.	<a href="http://www.fbi.gov/hq/cid/cac/states.htm">http://www.fbi.gov/hq/cid/cac/states.htm</a>

Statewide Criminal History	State checks do not always report all criminal convictions within the state. Each county is instructed to send records to the state on a scheduled basis. Some counties comply with state reporting requirements, while other counties send records to the state on a delayed or sporadic basis, and some counties do not send any information to the state. Therefore, a statewide background check may be incomplete or inaccurate.	<a href="http://www.virtualchase.com/resources/criminal_records.html#">http://www.virtualchase.com/resources/criminal_records.html#</a>
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## Examples of Minor Traffic Violations

- Bicycle ordinance violations.
- Blocking or retarding traffic.
- Child restraint violations (unless charged with child endangerment).
- Crossing median.
- Cutting across private property to avoid intersection.
- Disobeying traffic lights signs or signals.
- Driving on shoulder.
- Driving uninsured vehicle.
- Driving with blocked vision or tinted window.
- Driving with expired plates or without plates.
- Driving without headlamps.
- Driving without rear lamps.
- Driving without registration or without proper registration.
- Driving wrong way on dual lane or one-way street.
- Failure to dim headlamps.
- Failure to have vehicle under control.
- Failure to signal when turning.
- Failure to stop for RR warning.
- Failure to stop or yield to pedestrian.
- Failure to submit report after accident.
- Failure to yield from private drive, left turn, right of way.
- Faulty equipment, such as defective brakes, tires, exhaust, horn, lights, mirror, muffler, signal device, steering device.
- Following too closely.
- Improper backing, such as into intersection, highway, or backing over.
- Improper blowing horn.
- Improper loading of vehicle.
- Improper passing, such as on right, in no-passing zone, by stopped school bus, or a pedestrian in crosswalk.
- Improper turn.
- Improper use of traffic lane.
- Inspection violation such as unofficial or invalid inspection sticker or failure to display sticker.
- License plates improperly displayed or not displayed.
- Motorcycle - Failure to burn headlamps, tail light, or wear helmet.
- Overloaded/overcrowded vehicle.
- Parking violation.
- Racing, dragging or contest for speed.
- Red light violation
- Seat belt violation.
- Skateboard or roller-skate violations.
- Speed less than posted minimum or than reasonable.
- Speeding (unless charged with reckless driving).
- Speeding in a school zone.
- Spilling load on highway.
- Spinning wheels, improper start, zigzagging or weaving in traffic.
- Stop sign violation.
- Unsafe movement.
- Violation of driver license restrictions.
- Violation of noise control ordinance (vehicle).

## Virginia Barrier Crimes

- Abduction with Intent to Extort Money or for Immoral Purpose
- Abduction (Kidnapping)
- Abuse and Neglect of Children
- Abuse and Neglect of Incapacitated Adults
- Adulteration of Food, Drink, Drugs, Cosmetics, etc.
- Aggravated Malicious Wounding
- Aggressive Use of a Machine Gun
- Assault and Battery
- Assault and Battery (Misdemeanor) in the Ten Years Prior to Application Date
- Assault and Battery Against a Family or Household Member
- Assault and Battery Against a Family or Household Member (Misdemeanor) in the Ten Years Prior to Application Date
- Assault and Battery Against Law Enforcement (Code Section was changed after 1997)
- Attempted Aggravated Sexual Battery
- Attempted Forcible Sodomy
- Attempted Object Sexual Penetration
- Attempted Rape
- Attempted Sexual Battery
- Attempts to Poison
- Bodily Injuries Caused by Prisoners, Probationers, or Parolees
- Breaking and Entering Dwelling House with Intent to Commit Other Misdemeanor
- Burglary
- Burning Building or Structure While in such Building or Structure with Intent to Commit Felony
- Burning or Destroying any Other Building or Structure
- Burning or Destroying Dwelling House, etc.
- Burning or Destroying Meeting House, etc.
- Burning or Destroying Personal Property, Standing Grain, etc.
- Carelessly Damaging Property by Fire
- Carjacking
- Carnal Knowledge of Certain Minor
- Carnal Knowledge of Child Between 13 and 15
- Carnal Knowledge of Inmate, Parolee, Probationer and Pretrial or Posttrial Offender
- Causing, Inciting, etc. Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to such Buildings, etc.
- Certain Premises Deemed Common Nuisance
- Crimes Against Nature Involving Children
- Delivery of Drugs to Prisoners
- Distribution of Certain Drugs to Persons Under 18
- Drive-By Shooting
- Drug Attempts
- Drug Conspiracy
- Electronic Facilitation of Pornography
- Employing or Permitting Minor to Assist in Obscenity and Related Offenses
- Entering Bank, Armed, with Intent to Commit Larceny
- Enter Dwelling House, etc. with Intent to Commit Larceny, Assault and Battery or Other Felony
- Enter Dwelling House, etc. with Intent to Commit Murder, Rape or Robbery
- Escape from Jail
- Extortion by Threat
- Failing to Secure Medial Attention for Injured Child
- Felonies by Prisoner
- Firearms – Allowing Access by Children

- Hazing
- Homicide
- Incest
- Involuntary Manslaughter
- Maiming, etc. of Another Resulting from Driving While Intoxicated
- Maintaining a Fortified Drug House
- Malicious Bodily Injury by Means of any Caustic Substance or Agent or Use of any Explosive
- Malicious Bodily Injury to Law Enforcement Officers
- Malicious Wounding by Mob
- Manufacture, Possession, Use, etc. of Fire Bombs or Explosive Materials or Devices
- Manufacturing, Selling, Giving, or Distributing a Controlled Substance or an Imitation Controlled Substance
- Money Laundering (Pertains to convictions prior to 1999, when law was repealed)
- Murder, Capital
- Murder, First and Second Degree
- Murder of a Pregnant Woman
- Obscenity Offenses
- Obtaining Drugs, Procuring Administration of Controlled Substances, etc., by Fraud, Deceit or Forgery
- Pandering
- Pointing Laser at Law Enforcement
- Possession and Distribution of Flunitrazepam
- Possession and Distribution of Gamma-Butyrolactone or 1, 4 – Butanediol
- Possession and Distribution of Illegal Stimulants and Steroids
- Possession of Burglarious Tools, etc.
- Possession of Child Pornography
- Possession of Drugs (Felony) and Continue on Probation or Parole or Have Failed to Pay Required Court Costs
- Possession of Drugs (Felony) in the Five Years Prior to Application Date
- Possession of Infectious Biological Substances
- Production, Publication, Sale, Possession with Intent to Distribute, Financing, etc. of Sexually Explicit Items Involving Children
- Rape
- Reckless Endangerment
- Reckless Handling of Firearms; Reckless Handling While Hunting
- Robbery
- Sale of Drugs on or near Certain Properties
- Setting Fire to Woods, Fences, Grass, etc.
- Setting off Chemical Bombs Capable of Producing Smoke
- Setting Woods, etc. on Fire Intentionally Whereby Another is Damaged or Jeopardized
- Sexual Assault – Marital
- Sexual Battery
- Sexual Battery – Aggravated
- Sexual Battery – Infected
- Sexual Penetration – Object
- Shooting, etc. in Committing or Attempting a Felony
- Shooting, Stabbing, etc. with Intent to Maim, Kill, etc.
- Sodomy – Forcible
- Stalking (Felony)
- Taking, Detaining, etc. Person for Prostitution etc. or Consenting Therto
- Taking Indecent Liberties with Child by Person in Custodial or Supervisory Relationship
- Taking Indecent Liberties with Children
- Threats of Death or Bodily Injury
- Threats to Bomb or Damage Buildings or Means of Transportation; False Information as to Danger to Such Buildings, etc.

- Transporting Controlled Substances into the Commonwealth
- Use of a Machine Gun in a Crime of Violence
- Use of a Sawed-Off Shotgun in a Crime of Violence
- Use or Display of Firearm in Committing a Felony
- Voluntary Manslaughter

## State Board of Nursing for South Carolina

### Section VI: Administrative Denial of Licensure Statement

#### **CRIMES THAT INVOLVE MORAL TURPITUDE**

**Arson:** *State v. Yates*, 280 S.C. 29, 310 S.E.2d 805 (1982), vacated on other grounds, 474 U.S. 896 (1985).

**Assault and battery, high and aggravated nature (ABHAN):** See *State v. Bailey*, 275 S.C. 444, 272 S.E.2d 439 (1980), holding that whether ABHAN is deemed a crime of moral turpitude depends on the circumstances (probably would be a crime of moral turpitude where the ABHAN conviction resulted as a lesser included offense from an indictment of ABIK or Criminal Sexual Conduct).

**Assault and battery with intent to kill:** *State v. Spinks*, 260 S.C. 404, 196 S.E.2d 313 (1973); *Horton v. State*, 306 S.C. 252, 411 S.E.2d 223 (1991). **(2)):** Op. Att'y Gen. 7-26-83.

**Assault with intent to commit criminal sexual conduct:** Op. Att'y Gen. 10-29-81.

**Assault with intent to kill:** Op. Att'y Gen 12-29-80.

**Auto theft:** *State v. Millings*, 247 S.C. 52, 145 S.E.2d 423 (1965).

**Bank robbery, accessory to:** *State v. Gregg*, 230 S.C. 222, 95 S.E.2d 255 (1956).

**Breach of trust with fraudulent intent:** *In re Derrick*, 301 S.C. 367, 392 S.E.2d 180 (1990).

**Bribe, law enforcement officer accepting:** Op. Att'y Gen. 9-18-79.

**Bribery (18 USC § 201 (b))**

**Burning lands of another, willful (§ 16-11-170):** Op. Att'y Gen. 7-16-92

**Burning untenanted or unoccupied building (§ 16-11-560):** Op. Att'y Gen. 1-23-91.

**Cocaine/marijuana, trafficking in:** *In re Moseley*, 302 S.C. 429, 396 S.E.2d 830 (1990); *Green v. Hewett*, 305 S.C. 238, 407 S.E.2d 651 (1991).

**Conspiracy to commit offense involving moral turpitude:** Op. Att'y Gen. 3-11-88.

**Contempt of court for jury tampering:** Op. Att'y Gen. 1-24-83.

**Controlled substance, possession with intent to distribute:** *Porter v. State*, 290 S.C. 38, 348 S.E.2d 172 (1986) (even if sentenced as an accommodation sale).

**Controlled substances, conspiracy to violate 21 USC § 812 and 21 USC § 841(a)(1) manufacture, distribution, dispensing controlled substances):** Op. Att'y Gen. 4-24-81.

**Crack cocaine, attempted possession:** Op. Att'y Gen. 6-25-91.

**Criminal sexual conduct with a minor, any degree:** *State v. McFarlane*, 279 S.C. 327, 306 S.E.2d 611 (1983).

**Embezzlement:** Op. Att'y Gen. 7-23-81.

**Extortion (18 USC § 1951):** Op. Att'y Gen. 3-22-84.

**False pretenses, obtaining property under:** Op. Att'y Gen. 3-11-74.

**Housebreaking:** *State v. Van Williams*, 212 S.C. 110, 46 S.E.2d 665 (1948).

**Marijuana, possession with intent to distribute:** *State v. Lilly*, 278 S.C. MUSC College of Nursing VI - 4 2005-2006 Student Handbook 08-19-05

**False representations, making/Certificate of Eligibility, Public Service Employment (18 USC § 1001):** Op. Att'y Gen. 4-3-79.

**False statement, making / concealing material facts on application for certificate of title or registration of motor vehicle:** Op. Att'y Gen. 3-11-88.

**False statement, making to federally insured financial institution (18 USC § 1014):** Op. Att'y Gen. 6-13-89.

**False statement, making to obtain unemployment benefits (§ 41-41-10):** Op. Att'y Gen. 3-6-90.

**False statement, making/willfully overvaluing security to influence action by Commodity Credit Corp. (18 USC § 1014):** Op. Att'y Gen. 4-30-82.

**False statement, on tax forms (26 USC § 7206 (1)):** Op. Att'y Gen. 10-25-78.

**Forgery:** *State v. Johnson*, 271 S.C. 485, 248 S.E.2d 313 (1978)

**Fraud through use of the United States mail (18 U.S.C. § 1341):** *In the Matter of Parker*, Op. No. 23916 (S.C. Sup. Ct. filed Aug. 9, 1993) (Davis Adv. Sh. #21).

**Fraudulent check, utterance of:** *State v. Harrison*, 298 S.C. 333, 380 S.E.2d 818 (1989)

**Furnishing false property tax receipt (§ 12-54-40):** Op. Att'y Gen. 8-31-90.

**Heroin, possession of:** *In re Gibson*, 302 S.C. 12, 393 S.E.2d 184 (1990). **Hit and run driving:** *State v. Horton*, 271 S.C. 413, 248 S.E.2d 263 (1978).

**Illegal drugs, sale/distribution of:** *Merritt v. Grant*, 285 S.C. 150, 328 S.E.2d 346 (Ct. App. 1985); *Porter v. State*, 290 S.C. 38, 348 S.E.2d 172 (1986).

**Jury tampering:** Op. Att'y Gen. 3-2-82.

**Larceny:** *State v. Spinks*, 260 S.C. 404, 196 S.E.2d 313 (1973); *State v. Corn*, 215 S.C. 166, 54 S.E.2d 559 (1949); *State v. Van Williams*, 212 S.C. 110, 46 S.E.2d 665 (1948).

**Larceny, conversion of property (15 USC § 741m(a), (c)):** Op. Att'y Gen. 4-30-82.

**Larceny, grand:** *State v. Yates*, 280 S.C. 29, 310 S.E.2d 805 (1982), vacated on other grounds, 474 U.S. 896 (1985); *State v. Van Williams*, 212 S.C. 110, 46 S.E.2d 665 (1948).

**Lewd act upon a child under age 14:** Op. Att'y Gen. 10-29-81.

**Mails, using to facilitate an act constituting a felony (21 USC § 841(a)(1) and 21 USC § 843(b)):** Op. Att'y Gen. 7-17-79.

**Malicious injury to personal property:** *State v. Perry*, 294 S.C. 311, 364 S.E.2d 201 (1988).

**Manufacturing illegal whiskey:** *Gantt v. Coca-Cola Bottling Co.*, 204 S.C. 374, 29 S.E.2d 488 (1944).

**Marijuana, conspiracy to possess with intent to distribute a Schedule I Controlled Substance (21 USC §§ 846 and 841(a)(1)):** Op. Att'y Gen. 12-16-81.

**Marijuana, criminal conspiracy to import:** *Green v. Hewett*, 305 S.C. 238, 407 S.E.2d 651 (1991). 499, 299 S.E.2d 329 (1983); *State v. Drakeford*, 290 S.C. 338, 350 S.E.2d 391 (1986).

**Misapplication of mortgage proceeds:** *In re Pride*, 276 S.C. 363, 278 S.E.2d 774 (1981).

**Motor vehicle, breaking into with intent to steal:** *Rouse v. McCrory*, 291 S.C. 218, 353 S.E.2d 130 (1986).

**Murder:** *State v. Hyman*, 276 S.C. 559, 281 S.E.2d 209 (1981) (though conviction deemed too remote in time for impeachment):

**Murder, solicitation to commit:** *Whitehead v. State*, S.C., 417 S.E.2d 529 (1991).

**Obstruction of justice by influencing grand jury: (18 USC § 1503):** Ops. Att'y Gen. 2-26-86, 10-16-79.

**Peeping tom:** *State v. Harris*, 293 S.C. 75, 358 S.E.2d 713 (1987).

**Rape:** *State v. Lee*, 269 S.C. 421, 237 S.E.2d 768 (1977).

**Receiving stolen goods:** *State v. Millings*, 247 S.C. 52, 145 S.E.2d 422 (1965).

**Resisting arrest (10 year statute):** *State v. Hall*, 306 S.C. 293, 411 S.E.2d 441 (Ct. App. 1991) (may depend on circumstances of the case).

**Robbery:** *State v. Corn*, 215 S.C. 166, 54 S.E.2d 559 (1949).

**Shoplifting:** Op. Att'y Gen. 3-19-90.

**Using official position for personal financial gain (old § 8-13-410):** Ops. Att'y Gen. 2-1-80, 3-20-91.

**Vote buying, conspiracy (42 USC § 1973i(c)):** Op. Att'y Gen. 2-5-81.

### **CRIMES THAT DO NOT INVOLVE MORAL TURPITUDE**

**Bookmaking:** *State v. Morris*, 289 S.C. 294, 345 S.E.2d 477 (1986).

**Breach of the peace:** *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d (1980).

**Carrying a pistol:** *State v. Spinks*, 260 S.C. 404, 196 S.E.2d 313 (1973).

**Disorderly conduct:** *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d (1980).

**Driving under suspension/ habitual offender adjudication:** Op. Att'y Gen. 8-13-84

**Driving under the influence, first offense:** *State v. Hall*, 306 S.C. 293, 411 S.E.2d 441 (Ct. App. 1991).



**Driving under the influence, third offense:** Op. Att'y Gen. 8-13-84.

**Driving without a license:** *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980).

**Escape from jail:** *Taylor v. State*, 258 S.C. 369, 188 S.E.2d 850 (1972).

**Lottery, setting up/selling tickets/ conspiracy to set up:** Op. Att'y Gen. 3-18-83.

**Manslaughter:** *Taylor v. State*, 258 S.C. 369, 188 S.E.2d 850 (1972); *State v. McFarlane*, 279 S.C. 327, 306 S.E.2d 611 (1983); *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989), holding that a manslaughter conviction in New York was inadmissible to impeach defendant as crime of first degree manslaughter in New York has the same elements as voluntary manslaughter in South Carolina, noting that in South Carolina manslaughter is not a crime of moral turpitude.

**Manslaughter, involuntary:** *Liberty Mutual Ins. Co. v. Gould*, 266 S.C. 521, 224 S.E.2d 715 (1976).

**Marijuana, simple possession.** *State v. Lilly*, 278 S.C. 499, 299 S.E.2d 329 (1983); *State v. Drakeford*, 290 S.C. 338, 350 S.E.2d 391 (1986).

**Pointing a firearm (§ 16-23-410).** Op. Att'y Gen. 2-12-91.

**Possession of an unlawful weapon:** *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980).

**Public drunkenness:** *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980).

**Resisting arrest (one year statute)** *State v. Hall*, 306 S.C. 293, 411 S.E.2d 441 (Ct. App. 1991).

**Resisting arrest, non-violent (§ 16-9-320(a))** Op. Att'y Gen. 2-12-91.

**Stimulant drugs, possession of without prescription:** *State v. Carriker*, 269 S.C. 553, 238 S.E.2d 678 (1977).

**Trespassing:** *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980).

### **CRIMES THAT MAY INVOLVE MORAL TURPITUDE**

**Assault and battery, high and aggravated nature:** See *State v. Bailey*, 275 S.C. 444, 272 S.E.2d 439 (1980).

**Conspiracy—may involve moral turpitude if conspiracy contains fraud, deceit, misrepresentation or other crime involving moral turpitude:** *State v. Horton*, 271 S.C. 413, 248 S.E.2d 263 (1978); Op. Att'y Gen. 3-18-86.

**Contempt of court—look at specific grounds for conviction:** *State v. Bailey*, 275 S.C. 444, 272 S.E.2d 439 (1980); Ops. Att'y Gen. 3-18-86, 3-2-82.

**Misconduct in office/official misconduct (§ 8-1-80):** Op. Att'y Gen. 5-5-83.

**Mistreatment of a child (§ 20-7-60)—look at facts alleged in indictment:** Op. Att'y Gen. 4-30-91.

**Resisting arrest with force (§ 16-9- 320(b)):** Op. Att'y Gen. 2-12-91.

## AACP CRIMINAL BACKGROUND CHECK SURVEY RESULTS

August 2006

*N = 63 pharmacy degree institutions*

**Does your institution currently have a criminal background check policy for professional pharmacy degree students?**

Yes	63.4%
No	28.5%
Not sure	7.9%

**When do most professional pharmacy degree students at your institution complete their FIRST criminal background check?**

Currently, no CBCs at any time.	11.1%
Prior to offer of admission.	0.0%
After offer of admission.	33.3%
During the P1 year.	17.4%
Prior to or during the P2 year.	3.1%
Prior to or during the P3 year.	4.7%
Prior to or during the P4 (or final) year.	11.1%
Other (describe):	19.0%

**What entity drove or mandated the development of a criminal background check (CBC) process for the pharmacy degree students at your institution?**

Not applicable.	20.6%
Experiential site(s) as a result of JCAHO requirements.	63.4%
Central university administration.	1.5%
Pharmacy college or school.	11.1%
Other health profession programs within the institution.	3.1%
State legislature.	1.5%
State board of pharmacy.	4.7%
Other (describe):	6.3%

**How frequently do most pharmacy degree students complete a CBC at your institution?**

Never.	9.5%
Varies significantly.	12.6%
One (1) time.	28.5%
Twice (2).	22.2%
Once PER YEAR during the Pharm.D. degree program.	9.5%
Multiple times PER YEAR during the P4 (or final) year.	1.5%
Multiple time PER YEAR, every year during the Pharm.D. degree program.	0%
Other (describe):	15.8%

**Approximately what percent of your hospital, community, and other experiential sites currently require your students to complete a CBC?**

1) hospital pharmacy sites

100 percent	15.8%
75-99 percent	22.2%
50-74 percent	14.2%
25-49 percent	11.1%
10-24 percent	12.6%
5-9 percent	1.5%
Less than 5 percent	17.4%
None	4.7%

2) community pharmacy sites

100 percent	3.1%
75-99 percent	4.7%
50-74 percent	6.3%
25-49 percent	1.5%
10-24 percent	6.3%
5-9 percent	9.5%
Less than 5 percent	28.5%
None	39.6%

3) other

100 percent	3.1%
75-99 percent	4.7%
50-74 percent	4.7%
25-49 percent	3.1%
10-24 percent	12.6%
5-9 percent	7.9%
Less than 5 percent	31.7%
None	31.7%

**What CBC vendor do you currently use? Leave the field blank, if it is not applicable. If your institution uses multiple vendors, separate each with a comma.**

- Acxiom
- Adam Safeguard
- ADP (2 respondents)
- Applicant Insight
- Castle Branch, Inc. (3 respondents)
- Certified Background (4 respondents)
- Employee Screening Services
- FBI (3 respondents)
- Five Star Detective Agency in Illinois
- Florida Department of Law Enforcement
- Group One
- Indiana State Police Limited Criminal History Check
- Lifescan
- Louisiana State Police
- my background check
- NAPS

- Oklahoma State Bureau of Investigation (2 respondents)
- One Source
- OSU Medical Center who uses the WebCheck through Ohio Attorney General's office.
- Police Department of Puerto Rico
- Screenpointe
- State Board of Pharmacy
- State Department of Criminal Investigation
- State Highway Patrol
- Utah BCI
- Validity-formerly Clarence Kelly & Associates (2 respondents)
- Verified Credentials (5 respondents)
- Washington State Patrol (2 respondents)
- WV state police

**Which criminal background checks are your pharmacy degree students required to complete?**

Certification & Designations Check:	U.S. 20.6%, Non-U.S. 12.6%
County-By-County Check:	U.S. 44.4%, Non-U.S. 22.2%
Credit History Report:	U.S. 12.6%, Non-U.S. 6.3%
Education Verification:	U.S. 7.9%, Non-U.S. 6.3%
Employment Verification:	U.S. 14.2%, Non-U.S. 6.3%
Federal Bureau of Investigations:	U.S. 20.6%, Non-U.S. 11.1%
Federal Criminal Court Search:	U.S. 25.3%, Non-U.S. 19.0%
Federal Wanted Persons Search:	U.S. 9.5%, Non-U.S. 7.9%
GSA List of Parties Excluded from Federal Programs:	U.S. 25.3%, Non-U.S. 14.2%
Healthcare Sanctions/Adverse Actions Check:	U.S. 9.5%, Non-U.S. 6.3%
HHS/OIG List of Excluded Individuals/Entities:	U.S. 36.5%, Non-U.S. 15.8%
Immigration and Naturalization Service Verification of Residency Status:	U.S. 6.3%, Non-U.S. 14.2%
Interpol Fugitives Wanted List:	U.S. 3.1%, Non-U.S. 6.3%
Liens, Judgments, and Bankruptcy Search	U.S. 1.5%, Non-U.S. 1.5%
Motor Vehicle Driving Records	U.S. 23.8%, Non-U.S. 11.1%
Nationwide Criminal Background Check	U.S. 44.4%, Non-U.S. 26.9%
Nationwide Healthcare Fraud and Abuse Scan:	U.S. 15.8%, Non-U.S. 11.1%
Patriot Act / Terrorist Watch List:	U.S. 17.4%, Non-U.S. 11.1%
Professional Disciplinary Action Search:	U.S. 9.5%, Non-U.S. 3.1%
Professional License Verification:	U.S. 14.2%, Non-U.S. 3.1%

**How are the CBC expenses paid?**

Not applicable.	12.6%
Student pays the CBC vendor.	49.2%
Student pays a separate CBC fee directly to school.	6.3%
Student pays a CBC fee that is BUNDLED with school tuition/fees.	11.1%
Student pays a CBC fee to the practice site.	1.5%
Pharmacy school covers student CBC-related expenses.	6.3%
Practice site pays the CBC vendor.	1.5%
Other (describe)	11.1%

**Who receives the original CBC report DIRECTLY from the vendor or source?  
Check all that apply.**

Pharmacy student.	36.5%
Experiential sites.	17.4%
Pharmacy college or school.	49.2%
Central university administration.	4.7%
State board of pharmacy.	9.5%
Other (list):	12.6%

**Would or does the institution share any student-specific CBC results with other individuals or entities? Check all that apply. If none, leave the boxes blank.**

Campus health clinic.	0.0%
Campus housing.	0.0%
Campus security.	1.5%
Dean's office.	25.3%
Experiential sites.	31.7%
Financial aid office.	0.0%
Student counseling center.	0.0%
Substance abuse counseling center.	0.0%
State government.	0.0%
State board of pharmacy.	1.5%
Other (briefly describe):	14.2%