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November 9, 2012

The Honorable Tom Johnson  
1725 S. Naperville Road, Suite 200  
Wheaton, Illinois 60189

(E-mailed to Senator Johnson)

Dear Senator Johnson:

**RESTRICTIONS ON STATE HIRING OF PEOPLE WITH CRIMINAL RECORDS**

You asked us to find all Illinois statutes and regulations that restrict employment of applicants with criminal records by over 70 named agencies, and to distinguish between the restrictions that are mandatory versus discretionary.

Few Illinois laws or regulations actually bar employment of persons who have criminal records. Those that do generally apply to jobs involving care of patients or children in care institutions. But many state agencies select employees under the Personnel Code. Thus, provisions in that Code that touch on this subject may affect the initial hiring of employees in many agencies.

As described in Appendix A to this letter, the Personnel Code, along with two other merit employment codes that apply to employment by the Secretary of State or the Comptroller and were based on the Personnel Code, each contain a sentence apparently intended to prevent applicants for civil service hiring from being excluded from consideration due to what might be called "minor" misdemeanors. That sentence, in the part of the Personnel Code applying to its Jurisdiction B (merit and fitness), says:

No person with a record of misdemeanor convictions except those under Sections 11-1.50, 11-6, 11-7, 11-9, 11-14, 11-15, 11-17, 11-18, 11-19, 11-30, 11-35, 12-2, 12-6, 12-15, 14-4, 16-1, 21.1-3, 24-3.1, 24-5, 25-1, 28-3, 31-1, 31-4, 31-6, 31-7, 32-1, 32-2, 32-3, 32-4, and 32-8, subdivisions (a)(1) and (a)(2)(C) of Section 11-14.3, and sub-sections 1, 6

and 8 of Section 24-1 of the Criminal Code of 1961 or arrested for any cause but not convicted thereon shall be disqualified from taking such examinations or subsequent appointment, unless the person is attempting to qualify for a position which would give him the powers of a peace officer, in which case the person's conviction or arrest record may be considered as a factor in determining the person's fitness for the position.<sup>1</sup>

That sentence was added to the Personnel Code by a 1969 act,<sup>2</sup> and later incorporated into the other two acts when they were enacted.<sup>3</sup> The added sentence does not explicitly authorize agencies to bar persons with convictions of felonies, or of misdemeanors listed in that sentence, from state hiring; but it might be read as implying that such persons can be discretionarily barred under the Personnel Code's grant of authority to use tests of "character"<sup>4</sup> along with other criteria in state hiring.

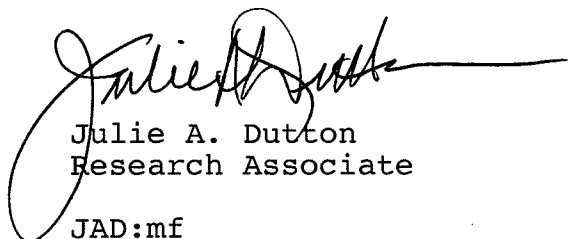
The corresponding sentences in the merit employment codes for the Secretary of State and Comptroller appear to be identical to the sentence in the Personnel Code—except that the Comptroller Merit Employment Code substitutes "a position that entails financial responsibilities" for "a position which would give him the powers of a peace officer."

To attempt to offer as comprehensive a reply as possible to your question, we did computer searches for Illinois laws and regulations.<sup>5</sup> Although such searches are not foolproof, we are reasonably confident that these searches found any provisions explicitly authorizing (or even suggesting) the exclusion of persons with criminal records from state employment. Appendix A lists the few mandatory exclusions that we found, along with the provisions on civil service hiring described above that might be read as implying that persons with felony or more serious misdemeanor convictions are to be excluded.

As we discussed with your office, we also plan to send at least one additional appendix, to list laws and regulations we found that are clearly discretionary in allowing persons to be barred from state employment due to criminal records.

We hope this information is helpful. This letter is a response to a request for legislative research. It is not a legal opinion on how any laws cited would be interpreted by state agencies or the courts.

Sincerely,



Julie A. Dutton  
Research Associate

JAD:mf

#### Notes

1. 20 ILCS 415/8b.1, second paragraph, second sentence.
2. P.A. 76-1832 (1969).
3. P.A. 80-13 (1977) and P.A. 80-1397 (1978)
4. See 20 ILCS 415/8b.1, second paragraph, first sentence.
5. The search query was for: ("convict\_", "crim\_", "felon\_" or "misdemeanor\_") within 20 words of ("appoint\_", "contract\_", "employ\_", or "hir\_").

## Appendix A: Mandatory Disqualifications for State Employment Due to Criminal Record

<i>Employing agency</i>	<i>Description of prohibition</i>	<i>Citation</i>
Secretary of State (for employees under Secretary of State Merit Employment Code)	<p>A sentence (copied from the Personnel Code) makes an exception to the Code's provision allowing an appointing authority to test applicants for "character" and other qualities. That sentence says in relevant part:</p> <p>"No person with a record of misdemeanor convictions except those under [a list of over 30 statutory sections defining misdemeanors], or arrested for any cause but not convicted thereon shall be disqualified from taking such examinations or . . . appointment unless the person is attempting to qualify for a position which would give him the powers of a peace officer, in which case the person's conviction or arrest record may be considered as a factor in determining the person's fitness for the position."</p> <p>The apparent effect is that the appointing authority under this Code may not consider misdemeanor convictions that are not on the list of misdemeanors considered to be more serious than other misdemeanors. The section has no such prohibition on considering felony convictions.</p>	15 ILCS 310/10b.1 (a)
Comptroller (for employees under Comptroller Merit Employment Code)	<p>Like Secretary of State Merit Employment Code described above, but with "a position that entails financial responsibilities" in lieu of "a position which would give him the powers of a peace officer."</p>	15 ILCS 410/10b.1
State Treasurer	<p>The Treasurer's Division of Personnel is authorized to provide by rule that a person seeking employment must authorize a background investigation for criminal convictions and the dispositions of such convictions (presumably on appeal).</p> <p>The Division of Personnel is additionally authorized to provide by rule for rejecting candidates or eligibles "who have been guilty of infamous or disgraceful conduct" among other disqualifying conditions.</p>	15 ILCS 510/9b.1  15 ILCS 510/9b.3
Agencies under Personnel Code, Jurisdiction B	<p>Substantively identical to Secretary of State Merit Employment Code sentence described above. (That sentence originated in the Personnel Code, to which it was added by P.A. 76-1832 (1969). Sentences based on it were included in the Secretary of State and Comptroller Merit Employment Codes when they were enacted by P.A. 80-13 (1977) and P.A. 80-1397 (1978) respectively.)</p>	20 ILCS 415/8b.1, first paragraph

## Appendix A: Mandatory Disqualifications for State Employment Due to Criminal Record (cont'd)

<i>Employing agency</i>	<i>Description of prohibition</i>	<i>Citation</i>
Department of Human Services (under Mental Health and Developmental Disabilities Administrative Act)	Each person seeking to be employed in a direct care position must authorize a fingerprint-based criminal background check.  An employing unit can hire applicants on a probationary basis pending investigation, after notifying them that they can be terminated based on criminal investigation results.	20 ILCS 1705/4.2(c)
Illinois National Guard	Conviction of a "felony or breach of the peace" is to result in vacation of the appointment and commission of an officer or warrant officer.	20 ILCS 1815/19
Department of State Police		
Regular State Police officer	Applicants for appointment as State Police officers must "have no criminal records" (along with being of good moral character and meeting other requirements).	20 ILCS 2610/9(a)
Auxiliary state police officer (unpaid position)	To be appointed as an auxiliary state police officer, a person must not have been convicted of felony or other crime involving moral turpitude.	20 ILCS 2610/23, second paragraph
Health Facilities and Services Review Board	The Board's members and staff must not have been convicted of or pled guilty to a felony.	20 ILCS 3960/4(b)
Law enforcement agencies (Illinois Police Training Act)	No law enforcement agency may knowingly employ a person as a peace officer without a background investigation showing no conviction of an offense listed in subsection 6.1(a).  That subsection refers to all felonies, and also lists some 20 misdemeanors.	50 ILCS 705/10.2(b)  50 ILCS 705/6.1(a)

Appendix A: Mandatory Disqualifications for State Employment Due to Criminal Record (cont'd)

<i>Employing agency</i>	<i>Description of prohibition</i>	<i>Citation</i>
Health care employers (applies to employees in some state facilities or agencies)	<p>The Director of Illinois Department of Public Health is authorized to prohibit each “health care employer” as defined from employing persons who have been convicted of committing or attempting any of over 80 crimes (all but a few of which are felonies) for duties involving direct contact with patients, or access to their living quarters or records.</p> <p>Health care employers must check the Health Care Worker Registry before hiring a person to determine that a fingerprint-based criminal history record check has been done and the applicant has no disqualifying convictions.</p> <p>(Students, applicants, and employees who are listed on the Health Care Worker Registry may request waivers of the prohibition against employing them.)</p>	<p>225 ILCS 46/25(a)</p> <p>225 ILCS 46/33(g)</p> <p>225 ILCS 46/40(a)</p>
Illinois Liquor Control Commission	No one may be employed by the Commission who has been convicted of a felony; has violated any federal or state law concerning the manufacture or sale of alcoholic liquor; or has paid a fine or penalty, or forfeited a bond to appear in court, in a prosecution under such a law.	235 ILCS 5/3-6