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CRIMINAL RECORDS FOR DACA

UNDERSTANDING WHEN DACA APPLICANTS NEED TO OBTAIN THEIR CRIMINAL RECORDS AND HOW TO GET THEM

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OVERVIEW

This resource provides persons applying for Deferred Action for Childhood Arrivals (DACA) with instructions about what criminal records they need for their application and how they can find them. DACA was first introduced in 2012 to provide certain persons who entered the country before they were 16 with protection from deportation and the ability to lawfully work in the United States. Persons are barred from receiving or renewing DACA if they have been convicted of a felony, a significant misdemeanor, three or more misdemeanors, or otherwise pose a threat to national security or public safety. DACA applicants who have been arrested or convicted of a crime may still be eligible, but they should first obtain their criminal records and take them to an expert immigration practitioner to obtain legal advice about their eligibility and potential risks of applying.

Lastly, because this resource does not cover special considerations for persons who have juvenile charges or adjudications, you can turn to our resource on DACA and Juvenile Delinquency Adjudications and Records found at <https://www.ilrc.org/daca-and-juvenile-delinquency-adjudications-records-faqs>.

WHO NEEDS TO OBTAIN THEIR CRIMINAL RECORDS?

If you have not had any contact with criminal law enforcement officers, you likely don't need to gather any criminal records. If you have ever been arrested by law enforcement, it is important that you gather all information regarding those encounters. Analyzing whether you are eligible for DACA is complex since it involves understanding criminal and immigration law, but the first step is to obtain your criminal records.

WHAT ARE THE CRIMINAL BARS THAT PREVENT PERSONS FROM RECEIVING DACA?

You can be barred from receiving or renewing DACA if you have been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, or otherwise pose a threat to national security or public safety. You can find a chart describing these criminal bars at <https://www.ilrc.org/daca-criminal-bars-chart>. Because analyzing whether your contact with law enforcement would prevent you from receiving DACA is complicated, we advise you to take your criminal records to an expert attorney or advocate.

WHAT IS A CRIMINAL RECORD?

Your criminal record is the government's documentation describing your criminal history.

WHAT DOES A CRIMINAL RECORD LOOK LIKE?

Generally, you would first get a criminal background check that produces a summary document that is often called a "RAP sheet," which is just a summary of interactions with law enforcement. **RAP sheets include:**

- Warrants
- Arrests
- Charges
- Convictions
- Prior deportations
- Sentencing information

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A RAP sheet does not have every record involved in an incident, including the actual and complete court records, arrest reports, officer notes, facts or evidence of the case. This means that sometimes you might have to go beyond a RAP sheet and obtain other documents as well (See the section titled **“Obtaining Criminal Information Outside of RAP Sheets”** below for more information).

WHO CREATES RAP SHEETS?

- ❑ The Federal Bureau of Investigation (FBI) maintains a system for the nation; and
- ❑ Each state also has its own background check system which will normally just include criminal information from encounters with law enforcement within that particular state.

GETTING YOUR CALIFORNIA CRIMINAL RECORDS

If your encounter with law enforcement happened with California law enforcement agents, you should file a records request in California. The two processes outlined below are for persons who either are California residents or out-of-state residents but need records from encounters in California.

For more information visit: <https://oag.ca.gov/fingerprints/record-review>.

| California Residents | Out of State Residents |
|---|---|
| <p>1. Find a Live Scan location near you.** You can find Live Scan Locations by county on the https://www.oag.ca.gov website. Once you find a location nearby, call and ask what forms of IDs are accepted.</p> <p>2. Download the Live Scan form. ▶ Most Live Scan locations will have this application form, but in case they don't you can download the form in English and Spanish at https://www.oag.ca.gov. ▶ Check "Record Review" as the "Type of Application". ▶ Enter "Record Review" on the "Reason for Application" line. ▶ Fill out all your personal information.</p> <p>3. Take the completed form to any Live Scan location.</p> <p>4. Submit \$25 Payment at Live Scan site (See Fees and Waivers for information on how to apply for a fee waiver)</p> | <p>1. Print out application. Available in English and Spanish at https://www.oag.ca.gov website. Once you find a location nearby, call and ask what forms of IDs are accepted.</p> <p>2. Out of State applicants must manually submit fingerprint cards.** ▶ Fingerprint cards must contain full name, date of birth, sex, and mailing address. ▶ See below for warning on obtaining fingerprint cards from a law enforcement agency.</p> <p>3. Payment ▶ Payments can be made via personal check, money order, or certified check to "California Department of Justice."</p> <p>4. Mail your application, fingerprint card and processing fee to: California Department of Justice Bureau of Criminal Identification and Analysis Record Review & Challenge Section PO BOX 160207 Sacramento, CA 95816-0207</p> |

****WARNING:** Some of the Live Scan locations include law enforcement agencies. Undocumented immigrants and others who have outstanding warrants should not go to a law enforcement agency (e.g., Police or Sheriff's Department) to have their fingerprints taken. They could be arrested and referred to ICE. Look into other locations for submitting fingerprints through a private agency or business. Call ahead to verify what forms of identification you may need to present.

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GETTING YOUR CRIMINAL RECORDS FROM OTHER STATES

If you have had contact with law enforcement from outside of California, please consult <https://www.clearinghouse.lac.org>. Find your state and follow the instructions under “Criminal Record Repository.”

GETTING YOUR FEDERAL CRIMINAL RECORDS

If you have had contact with law enforcement from a federal agency, you might need to get your records from the federal government. There are **two options** outlined below to obtain these records. For more information visit: <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

Option 1: Electronically Submit Request:

Step 1 - Register. Go to <https://www.edo.cjis.gov/> and enter your email address to get started. A personal identification number will be sent to you via email, and you will use this to complete the online application.

Step 2 - Submit your Fingerprints.

(A) Electronically. Visit one of the participating post offices. You will need to complete the online application form and submit the payment before going to the post office.

- List of participating post offices can be found on <https://www.edo.cjis.gov/>.

(B) By Mail. Include a completed fingerprint card found at <https://www.edo.cjis.gov> along with the printed confirmation email that you should have received in Step 1.

Please see <https://www.edo.cjis.gov/> for more information on correctly completing your fingerprint form.

Option 2: Submit Request via Mail:

Step 1 - Obtain and complete request form available at <https://forms.fbi.gov/identity-history-summary-checks-review>.

- Complete the application by filling out your name, date of birth, and mailing address.
- You may provide the address of an attorney or practitioner as well.
- Under “Purpose,” write “personal review.” *Do NOT write that it is for immigration purposes.*

Step 2 - Obtain fingerprints. Use the FBI Ink Form found at <https://www.edo.cjis.gov/>.

Step 3 - Submit Payment

- Permissible payment type: credit card, money order, or certified check
- Not allowed: cash, personal check, or business check.

Step 4 - Review. Consult the FBI Checklist: <https://www.fbi.gov/file-repository/identity-history-summary-request-checklist.pdf/view>.

Step 5 - Mail the signed applicant information form, fingerprint card, and payment of \$18 U.S. dollars to the address found at the bottom of the application.

Step 6 - Expect a response in the mail.

NOTE: The FBI has “Option 3.” This is not available to DACA applicants. Although criminal records may sometimes be requested through an FBI approved “channeler,” they are only authorized to process requests for a U.S. citizen or lawful permanent resident and therefore this option will not be available to DACA applicants.

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| Fees and Waivers | |
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| California | Federal |
| Fee Amount: \$25 | Fee Amount: \$18 |
| <p>Waiver Request: You must (1) fill out form with personal information, mailing address, and declaration of inability to pay. You can print or email the form.</p> <p>https://oag.ca.gov/fingerprints/record-review/fee-waiver</p> | <p>Waiver Request: (1) A claim and (2) Proof of inability to pay, such as a notarized affidavit of indigence.</p> <p>If you are submitting your request electronically, you will need to contact (304) 625-5590 or identity@fbi.gov to receive instructions for requesting a waiver for the fee prior to submitting your request.</p> |
| <p>OTHER STATES: Please check your state Attorney General’s website for information or on the application FAQ page.</p> | |

OBTAINING CRIMINAL INFORMATION OUTSIDE OF RAP SHEETS

As mentioned before, sometimes RAP sheets do not provide sufficient information for you to assess whether you are eligible for DACA and therefore you have to obtain more documents. You should review the criminal record with your attorney or legal advocate to find out if you need to request additional records. You can refer to the table below to learn about the type of documents you could obtain to give you more details about your criminal history depending on the type of contact you have had with law enforcement.

| Interaction | What You Need to Collect |
|---|---|
| Contact with law enforcement but no arrest | (1) A copy of the ticket or police report, if any. |
| Arrested OR detained, but no criminal charges filed | (1) An original or certified copy of the arrest report or certified disposition showing that the agency does not have any records for you. |
| Charged, but not convicted | (1) An original or certified copy of the arrest report. (2) Certified copies of the indictment, information, or charge AND the outcome of each charge. |
| Convicted or placed in alternative sentencing or a rehabilitation program OR your arrest for conviction was vacated, set aside, sealed, expunged, or removed | (1) An original copy of the arrest report. (2) Certified copies of the indictment, information, or charge, (3) Plea, conviction, or other final disposition (4) Sentencing order (5) If you completed probation or your sentence, an original certified copy of your probation or parole record showing that you completed the sentence, conditions for deferred judgement, or rehabilitative program (if applicable) OR documentation showing that you completed the alternative sentencing or rehabilitative program (if applicable). (6) Vacatur, expungement, pardon, or any other rehabilitative or other post-conviction relief. |

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| How to Obtain Other Documents | |
|-------------------------------|---|
| Ticket | <ul style="list-style-type: none"> Request your driving record from your state Department of Motor Vehicles (DMV). California: You can obtain an informal version online or you can request by mail or in person at the DMV. |
| Police Report | <ul style="list-style-type: none"> Contact the local police department where the incident occurred. |
| Court Documents | <ul style="list-style-type: none"> Reach out to the court directly. If you do not know the court location, your RAP sheet may identify the appropriate court. |

WHAT HAPPENS AFTER I REQUEST MY CRIMINAL RECORD?

- NOTE:** RAP sheets can be incorrect or incomplete. Even if the RAP sheet does not have a certain event listed, it does NOT mean that the government does not have a record of that interaction. You should share every encounter with law enforcement with your attorney.
- If you need more information, a RAP sheet may list courts when you can request a complete record. You must obtain records from every court where there may be records.
- In some cases, your criminal record shows facts that could be damaging to you if you submit them with your DACA applications. In other cases, your criminal record might involve juvenile adjudications, which might be against the law for you to share with the government. For these reasons, it is important for an attorney or legal practitioner to help you assess whether it makes sense for you to submit your criminal records and to assess your overall eligibility for DACA.

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