For collection and use of conviction information, a more complicated picture emerges. Since a conviction indicates criminal misconduct has occurred, the nature of the misconduct might be relevant to the applicant's suitability for the job. State and local laws often allow collection and use of conviction information if it is job related.

The EEOC enforcement guidance on arrest and conviction records has several provisions about conviction records. It warns that collection and use of conviction records could result in disparate treatment, in which case the organization must be prepared to either defend the impact as job related and consistent with business necessity or take steps to eliminate its occurrence.

For disparate impact, in particular, the guidance says there are two ways to meet this defense requirement. The first defense is providing validation evidence about the criminal history screening procedure. That evidence must be collected in accordance with the Uniform Guidelines on Employee Selection Procedures (see Chapter 9). The evidence must show that the screening procedure is predictive of important employment outcomes, such as job performance or theft.

The second defense is for the organization to have a targeted screening procedure. The procedure must consider three factors in showing how specific criminal conduct may be linked to important employment outcomes for a specific position:

1. The nature and severity of the offense or conduct
2. The time that has passed since the offense, conduct, or sentence completion
3. The nature of the job held or sought

Moreover, in the procedure, the organization must conduct an individualized assessment for those who may be rejected for the job. In that assessment, the organization should:

1. Inform the person that he or she may be rejected because of previous criminal conduct
2. Provide the person an opportunity to show why that rejection should not apply to his or her case
3. Consider whether the information provided by the individual shows that the rejection policy as applied is not job related and consistent with business necessity

If the individual does not provide the requested information, the organization may go ahead and make its hiring decision without it.

Finally, the enforcement guidelines do not preempt federal restrictions on hiring persons with convictions for certain jobs (e.g., airport security screener, law enforcement officer, child care worker, bank employee, or port worker). They also do not preempt federal occupation and licensing requirements.

States also place restrictions on criminal check usage. Pennsylvania allows refusal to hire only when the job is related to the crime. In New York, refusal to hire must take into account job responsibilities, time since the crime was committed,