

The How's, Why's and Why Not's of Employment Background Screening

Part Two: Criminal Records

Employers are a special breed of people that provide the means to house, clothe and feed their employees, whom in turn provide the labor and skills to complete the circle. It's the perfect symbiotic business relationship that fuels the greatest nation in the history of the world...

- Except for criminals that steal and destroy instead of contribute.
- Except for social tinkering that rewards objectionable behavior over respect.
- Except for those that would commit fraud over the truth.
- Except for a lack of personal responsibility over those that achieve.
- Except for over-reaching regulations from a government that has no clue where the revenue actually originates from.

Welcome to the Human Resources Department of the 21st Century. Now go hire some people to grow your business!

The format of this eBook is simple in that I'll take you through what comprises a legal and effective employment criminal background check. As a Credit Reporting Agency (CRA) everything that we touch at HireSafe is focused first on our fiduciary responsibility to our client, while always maintaining the rights of the job applicant.

The backbone of an employment background check is the search for criminal records associated with the candidate. While court records are part of the public domain, convenient retrieval and understanding what they contain can be problematic. Only a CRA has complete access to county, state and federal criminal records.

Flash Point: Getting Started

Doing your homework didn't end in high school! Before an employment criminal background check is even considered the position needs to be clearly defined as to:

1. Responsibilities associated with the position.
2. Requirements (experience; skills; academic; etc.) to be met.
3. Red Flag's (any disqualifying history).

By first designating the responsibilities associated with the position, an employer can assign the appropriate level of due diligence required. Failure to properly do so could place unjustified and inappropriate scrutiny on an applicant. Not all positions require the same level of scrutiny.

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Flash Point: County Criminal Court Records

The main component for background screening performed is the criminal record search. Too many TV shows and movies create an image of comprehensive information instantly available at the touch of the screen. In reality, nothing could be further from the truth.

The criminal reporting system in the USA is a mosaic of the laws of each state, DC and territories locally enforced and prosecuted from 3,200 county (or parish) courts. Each of these local jurisdictions maintains their own internal process by which to obtain a criminal history. Some are very sophisticated and provide electronic records, while others are require that our researchers review the files and request a copy from the court clerk and waiting several days (or even weeks) for their response. There is no uniformity except in the fact that they all are different, even within a given state.

All criminal records released to an employer must contain at a minimum two identifiers. Most often it is the name and date-of-birth of the subject, but may also include their photograph (mug shot), address or physical description. Social Security Numbers (SSN) generally do not appear in court files over the concern for Identity Theft.

The county court criminal record search is the undisputed sole source of compliant employment background screening. At the local jurisdiction the case has been presented, with final adjudication and it is where the records are filed. Court record availability varies by jurisdiction nationally, but a minimum seven-year history has become the industry standard.

Flash Point: Criminal Database Records

The database search is another format of criminal record history that is often used throughout the industry. Often this search is misrepresented to be that of the [National Criminal Information Center](#) (NCIC) which operates under the control of the Federal Bureau of Investigation (FBI). The NCIC is allowed to be used primarily by law enforcement in the investigation and prosecution of crime. Under strict restrictions, this file is available to each state through electronic fingerprinting to screen specifically mandated groups; most notably state licensing and for those that deal with at-risk groups (teaching; daycare provider; youth organizations). Use of this file for non-authorized purposes is a federal crime.

The product that is used in the screening has a vital role is screening an applicant, but only when it is used correctly. This type of search is a proprietary product, and not the result of any state or federal agency. These reports are not the same as a county-level search, but merely act as an indicator of where we should look for additional locations of possible criminal records. The files are incomplete, often without a secondary identifier and coverage does not include all of the counties nationwide.

By the very nature of its origin, a database contains stale data, outdated the week after it was produced. The records may be updated semi-annually or yearly, if at all. The [Fair Credit Reporting Act](#) (FCRA) requires that an adverse hiring decision based upon a criminal record can be only considered based upon the most recent information available. (FCRA §613)

Therefore, using the criminal records found in a database-only search as the only format for reporting a criminal violates the requirement that the criminal record information be the most recent available. Between when that the database was compiled and the request for records is made, the case may have been dismissed or involved other changes that affect its accuracy.

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To satisfy this requirement, HireSafe conducts a county-level search of all “hits” found in the database product prior to releasing the information to the employer. The value in the database search is that it covers a broad spectrum of the counties in the USA. However, the database search does not include 100% of these jurisdictions, as not all states/counties make their records available. To rely on the database search as the primary search tool for a criminal background is inadequate, because jurisdictions that don't report would show as “no records found” when exactly the opposite could be true.

Flash Point: State Repository Criminal Records

Each of the states maintain a central repository in their respective Departments of Justice. That information is in theory forwarded to the state DOJ for their use. Human nature and bureaucratic inefficiency can create gaps in reporting and compilation, and not all states make their information available outside of their own mandated purposes. Those states that have demonstrated gross inadequacies in their reporting are not utilized by HireSafe after our own internal audit of records. In the case of the majority of the records in the State of New York, their statewide reporting system is the only location for access to those criminal records.

Flash Point: Federal Criminal Court Records

The federal court system is completely separate from that of the state, consisting of criminal, civil and bankruptcy records. As a parallel system, they alone do not represent the history of an individual as these records are filed at the federal level, not state. Due to the nature of these records, only specific levels of employment are generally involved with federal records. Secondary identifiers can be difficult to obtain.

SUMMARY

As we have seen, identifying a criminal history on an applicant is much more involved than it appears to be. Applicants have rights under federal and some state laws that are immutable.

Compliance is not an option in the accurate reporting of criminal records and failure to do so is an indefensible position. Fines and judgments are severe, and in the case of class-action suits, can run into multimillions of dollars. Compliance begins with the quality of the records presented to our client, the employer. As a CRA, HireSafe takes their role very seriously in order to consistently provide accurate and compliant reports. The final report price may be higher, but there's a reason for that.

So why not do it correctly? Frugality does not equal accuracy.



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