





Navigating the Changing Climate of Background Screening



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Benefits of Using A Professional Screening Company / Consumer Reporting Agency (CRA)

- Using a CRA
 - Legal protections
 - FCRA US Federal Law: 15 U.S.C. § 1681
 - Protection: FCRA 1681(e) states that a consumer cannot sue the agency, the user of (e.g., an employer) or any person who furnishes information to a consumer reporting agency for defamation, invasion of privacy, or negligence unless the case involves false information furnished with malice or willful intent to harm.
 - Regulated by FTC, CFPB, EEOC
 - Obligation of accuracy
 - Consumer Protections
 - Dispute rights and reinvestigation
 - NAPBS / National Accreditation
 - FCRA Certification


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FCRA Requirements


- **Disclose and Authorization** in writing from applicant/employee.
- "Pre Adverse Action" or "First Notice"
 - Notify applicant/employee and provide:
 - A copy of background report
 - **A Summary of Your Rights under the Fair Credit Reporting Act.**
- Applicant/employee contacts CRA if she/he disputes any information in background report.
 - CRA must immediately open case.
- CRA re-investigates any disputed items of information and issues updated report.
- "Final Adverse Action".
 - If final employment decision is denial then a notice of adverse action is sent to applicant/employee.

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EEOC


- On April 25, 2012 the EEOC approved, by a 4-1 vote, an Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964
 - Disparate Treatment
 - Disparate Impact
- The Guidance was effective immediately
- There was no public comment on proposed content
- New Guidance Highlights
 - Nature and Gravity of Offense
 - Time Passed
 - Nature of Job Held
 - Individualized Assessment



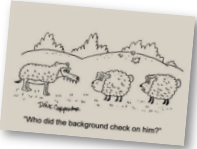
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New Requirements

- Summary of Consumer Rights under the FCRA
- Notice to Users of Consumer Reports of their Obligations under the FCRA
- SSN Redaction
- "Ban the Box"
- Fingerprinting

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CRA's and Criminal Records **ARE NOT** Created Equally



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Criminal Records 101...
Don't Believe What You See on TV

Address Database
Name: [Redacted]
DOB: [Redacted]
City: [Redacted]
State: [Redacted]
ZIP: [Redacted]
Result: NO RECORD FOUND

DB Fingerprint
State: Maryland
County: Baltimore
DOB: [Redacted]
Result: NO RECORD FOUND


Additional Searches
Conducted with court clerk

Disposition: Felony Conviction
Jail 141 days, Received: 10/28/10
Packed 04/23/11

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No Single Screening Tools Exists

Applicant: Dylann Roof
Applicant Supplied Info:
Name, DOB, SSN, Address




Searches Conducted:
FBI / Fingerprint

Reported Results:
No Record Found

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Successful Screening Requires A Series of Overlapping Tools

Applicant: Dylann Roof
Applicant Supplied Info:
Name, DOB, SSN, Address



Searches Conducted:
FBI / Fingerprint

Reported Results:

- County Criminal**
Case: 3/15/2015
Offense: Poss of Controlled Substance
Plea: Pending
- County Criminal**
Case: 4/27/2015
Offense: Trespassing
Plea: Guilty Bench Trial
Verified and 12 Days in Jail

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Criminal Records


- No single tool can be relied on but need series of overlapping tools
- Criminal records sources – 10,000 + courts
 - FBI
 - Nationwide
 - County, Town and Municipal Courts
 - State Courts
 - Online AOC/ State / County
 - Civil Courts
 - Federal Courts
 - Tribal Courts
 - Other Record Sources
 - Prison Systems
 - Sexual Predator Lists
 - Federal Sanctions and Watch lists
 - Vendor Databases
 - Police



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FBI – Fingerprint Search

- Though perceived as all encompassing, the FBI database is not considered reliable as a single source for background screening purposes - it is recommended that other sources be used to supplement the FBI search
- Fingerprint matching – prints must be on file
- Significant time lags from reporting states
- Inconsistent reporting requirements from state to state
- Limited reporting of case dispositions (45 – 50 %)
- Serious issues in depository data linking
- Return delays




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National Databases 1


- "National" is a misnomer:
 - While current multi-jurisdictional databases contain millions of records (often 900-million or more), there exists no single, national database that contains all criminal records in the US
- These databases include only those records from various government and law enforcement entities, counties, sex and violent offender registries and other sources that have been made available for purchase
- Data cannot be 100 percent accurate, complete or up-to-date

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National Databases 2

- The data is only as accurate as the person adding it into the database at time of record origination
- Data structures are not always reliable:
 - When combining several different databases into one, the methods used to structure the data will impact search results
 - For example, when a query is done using "ROBERT SMITH," results returned may or may not include ROBERT A, BOB, BOBBY, and ROBERTO ... whether separate queries must be made for each name varies from one database to another
- Hits must be reverified



County Criminal Records


- A county criminal search is a deep search, usually conducted in person, for a particular county
- Latest and most complete information available, revealing the greatest level of detail
- Most common for employers and regulators
- Misdemeanor and felony
- Co-located records
 - What most people don't know ...
- Limited in scope
- Fees





State Criminal Records 1

- Limited access
- Not available in all states
- Often require additional release
- Often lack disposition
- Six (6) have closed records
- Not all counties contribute
- Fees



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State Criminal Records 2


| State | % Arrests with Final Dispositions | Average # of Days to Receive and Process Submitted Arrest Data | Average # of Days to Receive and Process Submitted Dispositions |
|-------|-----------------------------------|--|---|
| AL | 90% | 1 | 2 |
| AK | 90% | 1 | 1-4-5 |
| AR | 80% | 1-5 | 1-5 |
| AZ | 80% | 15-30 | 1-5 |
| CA | 45% | 30 | 4 |
| CO | 70% | 11 | 8 |
| CT | 40% | 10 | 1000 |
| DC | 80% | 20 | 5 |
| DE | 80% | 1-10 | 1 |
| FL | 80% | 10 | 10 |
| GA | 65% | 10-20 | 100 |
| IA | 80% | 10-15 | 7-14 |
| IL | 80% | 2-10 | 2 |
| IN | 70% | 10 | 0 |
| KS | 70% | 2 | 10 |
| KY | 80% | 1 | 1 |
| LA | 80% | 15 | 22 |
| MD | 70% | 10-15 | 100 |
| MI | 80% | 1-20 | 30 |

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Online Court Network/County Searches


- Automated searches:
 - Screen scraping or data extraction
- Search criteria NOT flexible
- Name match only
- Not available in all counties
- Often no disposition
- Often need additional research




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Best Practices


- Use address locator to automate county searches
- Verify all "hits"
- Don't rely on FBI Fingerprint, Police or Nationwide Database as a stand alone search
- Individuality assess
 - Gravity
 - Nature of offense
 - Job relatedness
 - Length of time sense offense
- Set Policy in writing
- "Salt" Searches
 - Don't be fooled by price
 - Stay informed of legislative changes
- Use a reliable source - CRA
 - NAPBS Accreditation
 - FCRA Certified



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