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The Pro's and Con's of Electronic Criminal Records Processing

Emerging Technology in the Backgrounds Check Industry Present Challenges

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Electronic criminal record search processing is a growing trend in the employment screening industry. While electronic criminal record searching has achieved some initial popularity for inexpensive and quick turnaround times, the technology has not yet begun to meet the level of accuracy and quality compared to criminal record searches conducted by a human being. Electronic criminal record searches lack standardized industry guidelines, offer inferior common name matching logic, and are unable to navigate many county's fragmented, multi-jurisdictional, and tiered conviction categorization index record systems. Employment screening companies, as well as the employers relying on the search information for the eligibility of applicants, should carefully consider the usage of electronic criminal record searching technologies.

The advantage to processing criminal records through electronic means is simple and straightforward. Background check companies who obtain criminal records through electronic means are able to recognize significant decreases in overhead and administrative costs. Processing criminal records eliminates the needs for a background check company to employ court runners. There is less paperwork associated with processing criminal records electronically. Furthermore, there is less chances of data entry errors compared to the manual extraction of records from one system to another. All of aforementioned items provide lucrative and attractive reasons for a background check company considering obtaining criminal records through electronic means.

Similarly, an employer may find that the usage of criminal records obtained through electronic means is compelling too. Employers with high-turnover may view the ability to receive some of their backgrounds within a shorter time provides a strategic competitive advantage over their competition. Others may be able to recognize cost savings. In sum, employers and background screening providers may be able to achieve faster and cheaper results.

Faster and cheaper, however, is not necessarily better. Faster and cheaper is only as good as your tolerance is for failure. I contend that all background screening companies and employers' tolerances for failing to accurately identify an applicant's criminal record should be none! Tolerance levels for background screening companies must be none because of the increased level of lawsuit activity for not accurately reporting criminal information. Employer's tolerance levels must be none because of state and federal compliance, public demand for safety, and preservation of corporate brands and assets.

Notwithstanding the need for protecting a company's brand, there are several other reasons why any employer or background check firm may consider abstaining from the use of electronic criminal record processing. There are three major issues that plague electronic criminal record processing. First, electronic criminal record searches lack standardized industry guidelines; second, they are unable to navigate many county's fragmented, multi-jurisdictional, and tiered conviction categorization index record systems; and, third they offer inferior common name matching logic. The three major issues listed above should give pause to any background check company and employer considering exposing their brand, safety, and assets to the loose veil of protection electronic criminal record searches likely provide.

With respect to the first issue, a lack of standardized industry guidelines, the accessing of criminal records electronically is currently in a state of unencumbered methodologies. There is currently no standard as to how the records may be pulled from a source, how the data must be clarified, scrubbed, handled for privacy, and returned for accuracy and completeness. Comparatively, NAPBS, the National Association for Professional Background Screeners, has exams, certifications, and specific guidelines as it pertains to searching for criminal records manually. NAPBS does not have any standards in place, however, for conducting criminal records searches electronically.

Similarly, the courts do not have standards for type and accuracy of the information they provide through their electronic access points. Many of the electronic integrations to criminal records may not be accessing the same information that is available through the public access terminals. Public access terminal are only accessible by in-person searches at the court house.

The second con of electronic criminal records is a software algorithm's inability to navigate most state's court systems' archaic indexing record schemas. In many state court systems only a human can provide the necessary precision to formulate an analysis of a court's jurisdictional breakdown, or tiered conviction categorization, when attempting to either locate or verify a record. For example, a common county court will segment its felony and misdemeanor index which, all together, extends back 20 years. The first segment may be computer based and extends back 5 years from present; the second segment is on microfiche and extends back 6- 10 years from present; the third is on paper and extends back 11- 20 years from present. Electronic criminal records processing is not going to be able to identify the records beyond 5 years.

Another common dilemma for electronic criminal records searches may be for a county with multiple courts. Each court within the county may have its own jurisdiction-specific index. None of which include all of the cases filed in the other courts and only one court provides electronic criminal records processing access.

The third and probably most deceiving con of electronic criminal records processing is the lack of matching accuracy. Under FCRA §607(b) Accuracy of Report, it states "whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." The processing of criminal records through electronic means may present a challenge under FCRA §607(b) because several court that provide electronic access to criminal records do not present reasonable alternatives to matching names compared to manual search processes.

The lack of matching accuracy is by no means a fault of the software extrapolating data from the court databases. Instead, it is the court databases that are restrictive with their presentation of data and additional personally identifiable information within the criminal record files. For example, you are researching the name Robert J. Smith on a criminal index. You see no listings for a Robert J. Smith as such, but you do see at least two dozen listings for the name Robert Smith with no middle name or initial. To further research these possible records your only recourse is to order the hard files for each of them to see if there is any additional personally identifiable information to match the criminal records to

your applicants. Information, such as an address or driver's license number is not available through electronic access or any other way than by ordering and reviewing the archived hard file of records. The inability or inconsistency to search all files in a court, all the courts within a jurisdiction, or all the potential names from additional personally identifiable information available is unacceptable.

Nevertheless, electronic criminal records processing will most likely become more accessible and acceptable in the future. Currently, there are a very limited number of the state courts and repositories that make the accessing of criminal records available through electronic means. Additionally, there are no standards in place to protect business, consumers, employees, applicants, or employers as it relates to the integrity of this type of criminal records search method. Background check companies and employers need to know how searches are being conducted on their behalf. Therefore, in determining whether the use of electronic criminal records searches befits a company's business practices careful consideration of the pro's and con's of accessing criminal records electronically should be balanced with an overall tolerance for risk.