

## **Criminal Background Checks What are they and how do I get one?**

### **Definition**

A criminal background check is a process of looking into the history of an individual to determine whether they have a criminal record.

### **What other types of “background checks” are there?**

There are many different types of background checks an employer can pursue when performing pre-employment (or pre-volunteerism) screening. In addition to criminal background checks, other types of common checks are:

- Bankruptcy records
  - Up to 10 years previous are accessible.
- Court records
- Credit checks
  - An employment background check often includes a copy of credit reports. The three major credit reporting agencies (Experian, TransUnion, and Equifax) provide a modified version of the credit report called an "employment report." An "employment report" includes information about credit-payment history and other credit habits from which current or potential employers might draw conclusions.
  - An employment report provides everything a standard credit report would provide. However it doesn't include credit score or date of birth. Nor does it place an "inquiry" on credit file that may be seen by a company looking to issue credit.
- Driving histories
- Drug tests
  - Drug tests to check candidates for current substance abuse are legal.
- Education records/academic degree verification
  - Under federal and most state laws, transcripts, recommendations, discipline records, and financial information are confidential. A school cannot not release student records without the authorization of the adult-age student or parent. However, a school may release "directory information," which can include name, address, dates of attendance, degrees earned, and activities, unless the student has given written notice otherwise.
- Medical records
  - In most states, medical records are confidential. There are only a few instances when a medical record can be released. If employers require physical examinations after they make a job offer, they will have access to the results. The Americans with Disabilities Act allows a potential employer to inquire only about ability to perform specific job functions.
- Military records
  - Under the federal Privacy Act, service records are confidential and can only be released under limited circumstances. Inquiries not authorized by the subject of the records must be made under the Freedom of Information Act. Even without the applicant's consent, the military may release name, rank, salary, duty assignments, awards, and duty status
- Property ownership records
- State Licensing records
- Vehicle registration records
- Worker's compensation reports
  - In most states, when an employee's claim goes through the state system or the Workers' Compensation Appeals Board (WCAB), the case becomes public record. An employer may only use this information if an injury might interfere with one's ability to perform required duties. Under the federal Americans with Disabilities Act, employers cannot use

medical information or the fact an applicant filed a workers' compensation claim to discriminate against applicants.

### **The Fair Credit Reporting Act and its Impact on Screening**

The federal Fair Credit Reporting Act (FCRA) sets national standards for employment screening. However, the law only applies to background checks performed by an outside company, called a "consumer reporting agency" under the FCRA. The law does not apply in situations where the employer conducts background checks in-house.

Your state may have stronger laws, such as California's Investigative Consumer Reporting Agencies Act and the California Consumer Credit Reporting Agency Act. In addition, many state labor codes and state fair employment guidelines limit the content of an employment background check

Under the FCRA, a background check report is called a "consumer report." This is the same "official" name given to a credit report, and the same limits on disclosure apply. The FCRA says the following cannot be reported:

- o Bankruptcies after 10 years.
- o Civil suits, civil judgments, and records of arrest, from date of entry, after seven years.
- o Paid tax liens after seven years.
- o Accounts placed for collection after seven years.
- o Any other negative information (except criminal convictions) after seven years.

### **Types of Criminal Background Checks**

There are several different kinds of criminal background checks available today, each with its strengths and weaknesses. There is no single criminal database in this country that includes every criminal record, so there is no one "perfect" background check.

#### ***Method of Identifying the Individual:***

- *Name-based check:* A name-based check uses a person's name and Social Security number to match any possible criminal records.
- *Fingerprint-based check:* A fingerprint-based check uses fingerprints taken from an individual to identify that individual and to match any possible criminal records.
- *Other biometric-based checks:* While the technology is not widely available – there are other ways (besides fingerprints) to determine the identity of an individual in order to match any possible criminal records. These methods will increase in the future and include methods such as retinal scans and DNA extraction.

#### ***Records/Databases that are Checked:***

- ***Federal Bureau of Investigation (FBI):*** The FBI maintains the most complete criminal database in the United States. It contains over 200 million arrest and conviction records concerning over 45 million individuals. All records are fingerprint-based. The database contains all federal crimes plus approximately 70-90% of each state's criminal databases. Low-level misdemeanors, driving citations and DUI's make up the portion of state records that are generally not present in the FBI database.
- ***State Background Checks:*** These checks include only the crimes committed within that state. These background checks are obtained through a state agency (the agency varies from state to state). Some states allow fingerprint-based checks, some only allow name-based checks, and some offer both types for different fees. Most state checks also include arrests, but a few include only convictions.
- ***County/Local Checks:*** These checks include only the crimes committed within a local jurisdiction. Background checks of a county or local jurisdiction are obtained through the local police department.

- **Private Vendor Checks/Databases:** There are dozens of private vendors that advertise their ability to conduct criminal background checks. (Visit the ACA Web Site at: [www.ACAcamps.org/partners/](http://www.ACAcamps.org/partners/) for a list of forms that have partnered with ACA to offer discounted checks to ACA camps.) Private background checks are generally name-based. There are two basic methods that these private vendors use for providing background checks:
  - Some vendors search county record repositories for the county of residence for the past 3-5 years (sometimes longer)
  - Other vendors maintain databases of criminal records, often searchable online. Some of these vendors advertise their background checks as national in scope. But, these databases are actually only really "multi-state." These vendors buy their criminal data from the states. But, many states have strong privacy laws, so they do not sell any criminal data. Other states only sell a portion of their data (for example, parole records – but not the full conviction or arrest files).
- **Driver's License Check:** This would catch any tickets, citations, or convictions related to poor driving, including DUIs.
- **State Sex Offender Registries:** Most states have sex offender registries available online. However, states do not share the same criteria of what constitutes a "sex offender". (Any crimes that would cause an individual to be on a sex offender registry should show up in a state or FBI criminal background check).
- **US Department of Justice, Dru Sjodin National Sex Offender Public Registry:** This web site, launched in November 2005, provides the public access to each participating state Sex Offender Web Site. ([www.nsopr.gov](http://www.nsopr.gov)) In most cases, the database includes individuals who have been convicted of sexually-violent offenses against adults and children and certain sexual contact and other crimes against victims who are minors.
- **Child Abuse Registries:** A few states will allow organizations that work with children to check an individual against their child abuse registry. These databases often include complaints of abuse that never result in arrest or prosecution and so would not be in a criminal database.

***Special Note on the Records/Databases that are Checked:***

One of the imperfections with criminal databases is that, often, an arrest will be recorded, but the courts or police do not update that arrest record with the ultimate result. Without that update, it is not known if the individual was convicted, had the charges dropped, or was found not guilty. These incomplete records are often called "open arrests." Some types of background checks only access convictions. When that happens, the check misses any of those open arrests.

**Accessibility**

Currently, each state is the "gatekeeper" for background checks – they decide who can access background check information and for what purpose. Each state sets its own laws on background checks, thus, there is no consistency from state to state on eligibility, process, cost, and turnaround time. In many states, the most thorough types of background checks may not be accessible at all to camps.

**Timeliness**

The turn-around time for criminal background checks is widely erratic. It is not uncommon for some checks to take months. When a camp is only open for a few months of the year, this is a very difficult barrier to overcome. Working with the FBI and/or a commercial firm can help improve the timeliness of response.

**ACA Standard**

The ACA Standard on Staff Screening, HR-4 is:

A camp must have written evidence of a policy in practice that requires screening for all camp staff with responsibility for or access to campers that includes:

- HR4-A (MANDATORY): Annually for all camp staff – paid, volunteer, and contracted:
  - A voluntary disclosure statement, and
  - A check of the National Sex Offender Public Registry
- A camp should have written evidence of a policy in practice that requires screening for all camp staff with responsibility for or access to campers that includes:
  - HR4-B (MANDATORY): For new camp staff 18 years and older, paid volunteer, and contracted, a criminal background check.
  - HR4-C: For new camp staff, at least two reference checks and verification of previous work (including volunteer) history.
  - HR4-D: For new camp staff, personal interview by the camp director or a designated representative

## Key Questions to Ask When Considering Background Checks

And if you decide to work with a commercial background check firm – the following are excellent questions to ask to assist you in choosing between the firms

- **Does your state require you to do background checks at this time?**
  - If yes, what kind? If yes, are those checks to be performed on in-state residents only? State requirements range from biometric fingerprint checks to checks against sexual predator registry lists or no checks at all. Some states only require that employees who are residents of that state be checked. Be sure you know what's required by your state and comply with that requirement. (For information on what your state requires, visit: <http://www.acacamps.org/publicpolicy/regulations/> ).
  - It is wise to also look closely at the information you will receive and decide if it meets your needs. Many camps are doing a state biometric check and adding a commercial check because of the areas from which they draw staff.
- **Does your insurance company require you to do background checks at this time?**
  - If yes, what kind? Your insurance company may require you to run checks on your staff regardless of whether your state requires it or not. Insurance companies are usually asking for a commercial check and may have business partnerships also. Check with your insurance company to see the elements they want to be included in the check.
- **Do you employ year round staff?**
  - The needs of year round staff are different from seasonal staff and may be more easily met. They may or may not be from your community but may be more stable in their previous job locations. You might want to consider meeting those needs separately in your screening decisions.
- **Do you employ seasonal staff? Does any of your staff live in two places during the year – example, home and school?**
  - Seasonal staff are a challenge in screening in that they can live in more than one location during a particular time and those locations could vary from year to year. Therefore, you need to consider all of those locations in the screening process.
- **Does any of your staff live out of your geographic area? Do they live out of your state?**
  - Staff who are recruited from other states need to be screened in those locations. This can be accomplished by biometric screening of national databases and by commercial checks of those states.
- **Does any of your staff live out of the country? How many international staff are returning and have a social security number?**
  - Staff living out of the country may or may not present a challenge in the screening process. Most placement agencies provide support to you and the staff member to get the most comprehensive police check available in their country. In most countries, those records are tied to the home/permanent address so you do not have to be as concerned about staff living at home and school. If they are living or working in a country other than their home country, you might consider asking for a check from their home country depending on how many years they've been abroad. Be sure you ask for English translation or review of international checks. You might also consider running a national check in the US on returning international staff who have a social security number and who have spent time traveling or working in locations other than your camp.
- **Do you employ any staff that is under 18 years of age?**
  - The age of the staff determine somewhat the type of information you can expect to receive. Most, but not all, records are sealed for staff less than 18 years of age.
- **How many staff do you employ?**

- The number of staff you employ in each different category (year round, seasonal, out of state, out of country, under age) will impact your decisions financially. If you are doing commercial checks on large numbers of staff look closely at the various choices available when making decisions about the most cost effective way to proceed. Also look at the elements provided by the different commercial check options and compare them to each category of staff you employ.
- **How long does it take to get a report?**
  - The length of time to get back reports is critical in camp when the season can be short. Some camps do commercial as well as biometric checks as the commercial checks are usually returned more quickly.
- **Why would I want to do more than just check a sexual predator database?**
  - The US Department of Justice National Sex Offender Public Registry and all other online state sexual offender databases will only reflect certain types of criminal sexual behavior. The databases are only name based and do not verify that the name you check does belong to that person.
- **What do I do with this information?**
  - Just doing a check is not enough. Some states will just tell you hire or do not hire without any supporting information. Some states will filter information based on their predetermined set of criteria for your employment classification. For other checks, including commercial checks, you may get back an abundance of information that might not seem relevant. You need to have an organizational plan on what to do with the information before you receive it. Many camps wait to think about the hiring process until they get back negative information. Emotions may rule at that point and consistency in the process is hard to attain. Discuss what your camp or organization is willing to tolerate in past history i.e. how does a drug misdemeanor from 7 years previous affect your decision?
  - It has been suggested that the following may be cause for concern with staff working in camp: felony, drug conviction, acts of cruelty or violence, sexually related crime, cruelty to animals, and other acts specific to the position such as embezzlement.
- **Do I need to do a check on returning staff every season?**
  - A few states have “flag” or “pull” programs where once you have a done a check on a person, you are automatically notified if that person commits a crime. Most programs do not have this capability at this point in time. Therefore, you have no way of really knowing what the staff member has been doing unless you do a new check.