

Criminal Background Checks

Public Policy Position

Updated July 2011

Position

The American Camp Association (ACA) is committed to the physical and emotional safety of children and youth. This commitment is reflected in the education, training, publications, and camp standards that ACA provides. ACA believes that camps should utilize multifaceted screening and hiring programs and support practices appropriate to the clientele, staffing, supervision, and program consideration of each camp.

An important aspect of any screening program is biometric-based* criminal background checks for all staff and volunteers with access to children, youth, or vulnerable adults. In order for camps to implement effective biometric-based criminal background checks, a reliable federal program must be in place. ACA supports the establishment of a comprehensive federal biometric-based criminal background checking system that is reasonable in cost, timely in response, uniform in availability to camps across the country regardless of sponsorship, and consistent in the information provided according to identical pre-determined indicators of potentially harmful behavior.

In order for a federal program to be viable, ACA believes that states must mandate timely reporting to the state of information held at the county level; provide both county and state data to the federal program in a timely manner; mandate that checks be done for all staff and volunteers with access to children, youth, and vulnerable adults; and provide assistance to camps in accessing the system in a timely and affordable manner.

Furthermore, ACA advocates for the establishment of a coalition of agencies and associations with similar interests and concerns in order to promote a national response to this critical issue.
(Position taken 4/29/2005)

Background

- **Definition:** A criminal background check is a process of looking into the history of an individual to determine whether they have a criminal record.
- **Other Types of Background Checks:** 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:
 - ✓ Driving histories
 - ✓ Education records/academic degree verification
 - ✓ Reference Checks
 - ✓ Work history verification
 - ✓ Credit checks
 - ✓ Drug tests (drug tests to check candidates for current substance abuse are legal)
 - ✓ Worker's compensation reports



- **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.

Checks are based first on the method used to identify 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 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 is made up of 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 it is varies from state to state). Some states do 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.
- **Country/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. 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.
 - 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).
 - Vendors use the Fair Credit Reporting statutes to access data.
- **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, National Sex Offender Public Website:** This web site, (<http://www.nsopw.gov/>) launched in November 2005, provides the public access to each participating state Sex Offender Web Site. 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.
- **Costs:** Costs of the various kinds of checks vary enormously – depending on what type of check is done – and in which state. Nationwide checks currently range from about \$36 to \$70 per check for just one individual. And, as described above, there is no one single check that is totally complete.

Additional Specific Challenges for the Camp Community

- **Timeliness:** As noted above, 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.
- **Staff and Volunteers from Different Jurisdictions:** Camps do not employ (or accept volunteers) only from the state in which the camp is located. In fact, the majority of camps recruit staff and volunteers from a wide range of locations – including overseas. Since there is no one single database of background information, it becomes very challenging to perform checks in all the jurisdictions for each potential recruit.
- **A Special Note on International Staff:** Many camps utilize staff and volunteers who are neither residents nor citizens of the US. Background checks are not standard across countries. The available information varies widely. Some of the checks that are conducted are extremely comprehensive. Enhanced checks in the United Kingdom, for example, include information on subjects of police reports regardless of whether there is an associated conviction. However, this is not the norm. Many countries, particularly in Eastern Europe, do not run checks on temporary addresses (such as school addresses) but rather all convictions and associated records (if available) would be attached to the primary, or home, address. And some checks, Northern Ireland for example, do not verify addresses at all. Not all international staff get social security cards, nor of course will social security run checks on their addresses abroad. And notably, sexual predator databases are not a norm abroad. Finally, there is the challenge of language. The background check information from other countries will most often only be available in the language of that country – not English.

These challenges make utilizing international staff more complicated. However, the US camp community is committed to the advantages of international exchange and will continue to work with the companies that place internationals in US camps to seek out the best background check information available.

Legislative History

(Adapted from materials originally published by the National Mentoring Partnership.)

The current system of background checks has been shaped by the National Child Protection Act of 1993 (NCPA), the Violent Crime Control Act of 1994, and the Volunteers for Children Act (part of the Crime Identification Act of 1998). Prior to 1993, youth-serving organizations in most states were not legally allowed to obtain national criminal background checks.

- The 1993 NCPA encouraged states to adopt legislation that would allow youth-serving organizations to perform criminal background checks on volunteers or employees.
- The Violent Crime Control Act expanded the scope of this to include organizations serving the elderly and individuals with disabilities. However, most states did not choose to enact the authorizing legislation suggested by NCPA, so again youth-serving organizations in many states were left without the ability to obtain national criminal background checks.
- The Volunteers for Children Act of 1998 provided organizations serving children, the elderly, and individuals with disabilities to request background checks regardless of whether or not the state has passed authorizing legislation. However, it is left to each state's discretion to determine which types of human service organizations should be designated as "qualified entities" able to apply for national background checks through the state agencies.

In addition, with the advancement of America's Homeland Security initiatives, there has been an increased functionality and practice with electronic biometric screening of non-Americans entering the US. The lessons being learned will inform the criminal background check issue and initiatives.

Various bills have been introduced since 2002 that would have ensured that every youth-serving organization, no matter what state they are located in, would have access to nationwide criminal record checks. None have passed. [The Child Protection Improvements Act](#) has been introduced in 2011 in both the Senate and the U.S. House of Representatives. This bill will:

- Create universal access to nationwide background searches, by designating a criminal history review entity or organization to process background checks on prospective employees and volunteers for youth-serving organizations.
- Provide participating organizations with reliable and accurate information as to whether an individual's criminal record bears upon his fitness to work or volunteer with children.
- Create a "one-stop" system where a local organization could elect to obtain both a state and FBI search in one place.
- Keep the fee for nationwide background check and criminal history review as low as possible for youth serving organizations, no more than the actual cost – with a maximum of \$25.
- Ensure that individuals that are subject to background checks can request their full criminal histories and challenge their accuracy and completeness, and receive a prompt response from the jurisdiction holding the records.

[ACA's Public Policy Partnering Efforts Regarding Criminal Background Checks](#): ACA is partnering with the National Mentoring Partnership and the National Collaboration for Youth to continue to advance the issues related to criminal background checks. ACA continues to pursue other partnerships with organizations that serve youth in order to build a bigger base of organizations and gain momentum to make change in the US.

Rationale

Every year, more than 11 million children and adults benefit from the camp experience at approximately 12,000 camps throughout the United States.¹ Those 12,000 camps use almost 2 million individuals as staff or volunteers to serve children, youth, and vulnerable adults.² The American Camp Association believes that camps should utilize multifaceted screening and hiring programs and support practices appropriate to the clientele, staffing, supervision and program consideration of each camp.

Currently, the only way to assure the identity of an individual is through fingerprinting. However, camps may not be able to access a fingerprint-based check, depending on their state's background check laws. Name-based checks have inherent weaknesses:

- The individual could provide a false name and Social Security number. In fact, over 1% of the 45 million individuals in the FBI criminal database have used over 100 aliases and false Social Security numbers.³
- Females may have two or more different last names if they have been married one or more times.
- Criminal databases can have mistakes in the spelling of an individual's name and other relevant information.
- Due to common names, "false positives" may arise – in other words, a check might come back with criminal records, but they actually belong to another individual with the same or similar name.

FBI checks are the best identity background checks available, but it is not always accessible or feasible for camps. An FBI check must be obtained through a state's background check agency. But, many states have strict eligibility requirements for FBI checks, and camps often don't qualify. When FBI checks are accessible, they may be very costly and have a lengthy turnaround time.

Under current law, youth-serving organizations in 37 states are prevented from getting nationwide criminal record checks, leaving them the only option of conducting only state and local checks.

Additionally, the kind of information that is received from a background check varies widely by state and locality. For example, some states such as Colorado have established guidelines as to what crimes are acceptable in order to hire an individual to work with children. Those background checks simply report "hireability", without detail as to the crimes committed. In other states, background checks return vague information about what crimes have been committed, and leave it up to the employer to determine hireability. The American Camp Association believes that it is critical that background checks become consistent in the information provided according to identical pre-determined indicators of potentially harmful behavior.

Call to Action

The American Camp Association urges all camps and youth serving organizations to:

- Perform criminal background checks (for all staff and volunteers with access to children, youth, and vulnerable adults) as a part of their multi-faceted staff screening and hiring program.
- Advocate for their state to:
 - 1) mandate timely reporting to the state of information held at the county level.
 - 2) provide both county and state data to the federal program in a timely manner.
 - 3) provide assistance to camps and other youth-serving organizations in accessing the system in a timely and affordable manner.

- 4) provide information according to a logical set of criteria that is uniform among all camps and youth-serving organizations.
- Advocate for the establishment of a coalition of agencies and associations with similar interests and concerns in order to promote a national response to this critical issue.
 - Advocate for camp and other youth-serving organizations' access to the best and most complete database available.

**Data gathered from a biological source unique to an individual — possible examples include fingerprints and retinal scans.*

Notes

¹ ACA Fact Sheet, American Camp Association, 2005.

² Ibid.

³ National Mentoring Partnership Web Site, 2005, www.mentoring.org.