



Criminal Background Checks: *What nonprofits need to know about criminal records*

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INTRODUCTION

In the 12 months ending September 2007, more than 60.8 million people, or 26.2 percent of the U.S. population, volunteered their time to a nonprofit organization¹. Nonprofits rely upon these volunteers to augment their staff and fulfill their missions. Whether a volunteer is answering phones in an office, delivering meals to an ill or disabled senior citizen or are serving as reliable soccer, baseball or football coaches for children, nonprofits must ensure they truly know who they are entrusting with their vulnerable clients.

Before a nonprofit organization utilizes the services of a volunteer, it must take time to review and research the background of each volunteer. Every nonprofit should have a comprehensive background screening policy that includes written applications, interviews, references and criminal background checks. Having a comprehensive screening policy and consistently following it will aid a nonprofit's effort to uncover past behaviors that can be indicators of future performance. Comprehensive screening will also help protect an organization's image, reduce their negligent liability and help protect the people the organization serves.

While nonprofits may have a deep understanding of how to write an application, conduct interviews and check references, the criminal background check is often daunting. There are many different types of criminal records to choose from as well as thousands of vendors. How does a nonprofit know which criminal record is best for its organization? What is the difference between county, statewide and federal criminal records? What is the difference between a private database and the FBI database? Are database searches reliable?

This paper will explore the intricacies of criminal court records and provide nonprofits with a deeper understanding of available records. This knowledge should be used to review current screening policies and practices, and to help ensure organizations are searching the right records to help select the right volunteers.



What is a criminal background check?

A criminal background check is a database or manual search of public records provided by state and/or local government agencies that is used to determine if an individual has a prior criminal conviction. The searches may be performed through a government agency or by utilizing the services of a private company that aggregates records from numerous government agencies.

Contrary to popular belief, no single source exists that provides complete and up-to-date information about a person's criminal history.² Given this knowledge, how does a nonprofit organization know how to use the many available sources of criminal records to ensure it performs a comprehensive criminal background check?

Before a nonprofit can determine how to use criminal records, it is important to understand the sources of criminal records as well as how they may be accessed. This white paper will explore the primary types and sources of records to aid nonprofit organizations in their understanding of criminal records.

Criminal record sources

In the United States, crimes are prosecuted in county, state or federal courts, and court records may be obtained from any of these sources. It is possible to receive the records directly from the courts, hire a vendor to access the court records or alternatively use a database comprising records from various courts. Next, we will evaluate the different records sources as well as the types of records available from each source.

COURT RECORDS

County Court Records

County courts typically hold the most detailed criminal records available. County court records typically require in-person visits to obtain criminal court records. Nonprofit organizations usually use a vendor to conduct county court searches on their behalf. A reliable vendor should not only have an extensive, nationwide network of court researchers who may easily obtain the information and report it back to a nonprofit organization, but it should also be able to provide reports from all reports from all U.S. counties.

However, with more than 3,100 county court houses, it can be challenging to conduct criminal background checks in all the areas where a volunteer has previously lived using only county court records. Keep in mind that an applicant may have committed a crime in a county where he or she did not live or he or she may fail to disclose a previous address, meaning records could be missed. One tip to narrow down the choices of counties is to use a vendor that offers Social Security number-based address verification on an applicant prior to ordering criminal records. This address verification search will uncover addresses associated with the applicant's Social Security number. This address history can be used to determine if additional county court record searched should be added to a background check. Combining searches in this manner can aid in preventing missed records.



Q & A with Les Nichols, vice president of club safety and design, Boys & Girls Clubs of America (BGCA).

Q: *What is Boys & Girls Clubs of America's policy regarding criminal background checks?*

Les: It is a requirement of our member organizations (local Boys & Girls Clubs) that every organization must conduct background checks on all staff and volunteers in direct, repetitive contact with Club members. Background checks must be completed prior to hiring and repeated at least every 24 months after hiring. Minimally, these background checks should include a Social Security number trace; a national criminal record search; a national sex offender registry search.

Additional background checks, such as motor vehicle searches, credit checks, employment verification and educational verification are recommended if they are related to specific positions or responsibilities of the candidate. Yet background checks are just one part of BGCA's comprehensive program for screening staff and volunteers.

Q: *What is your biggest challenge regarding criminal background checks?*

Statewide Records

Statewide criminal court record repositories are collections of records reported from the counties within a given state. Approximately 42 states currently allow public access to their criminal court record repositories. Additionally, a number of states require a nonprofit organization to complete specific authorization processes, submit specialized signed release forms or provide fingerprints to gain access to their statewide repository. Some states also levy access charges that will increase the overall cost of the background check. Vendors may choose to limit which states they will offer statewide record searches in due to the sometimes highly restrictive criteria required to access the records.

Statewide criminal court record searches can be convenient since they may access all available felony and misdemeanor information from counties within a state. However, there is no guarantee statewide repositories will contain records for all counties or that the information will be current. Some states provide extensive criminal court record information, while others are more limited.

In addition to criminal records data, all 50 states currently have a publicly available sex offender registry. Each state has its own regulations that govern how the information provided on its sex offender Web site may be used. For example, the state of Nevada currently prohibits that information on its sex offender registry be used to make decisions about employment. In addition, each state varies the level of offender provided on its public Web site. Level two and three offenders are normally included on public websites; level one offenders are not provided on all public Web sites. The level represents the amount of risk the offender is thought to impose. Level one offenders are considered low-risk, while level three are offenders who pose a high level of risk to their community. If you are working with a vendor, it should be able to offer guidance as to which state sex offender registries may be used for volunteer screening purposes and provide access to those records through its nationwide database.



Federal Court Records

Only selected crimes are prosecuted in federal court. These cases may include immigration law violations, financial fraud, bank robbery and serious drug violations, such as interstate drug trafficking. It is important to note that the federal court system is separate from the county and state systems. This means that searches performed at the federal level will not reveal crimes that occurred at the state or county level. Organizations typically only include federal court searches in their background checks when vetting a senior level employee.

DATABASE SEARCHES

Federal Government Databases

The Federal Bureau of Investigation (FBI) maintains a database known as the National Crime Information Center or NCIC. This database gathers criminal data from all 50 states and contains 18 different types of records including seven property files and 11 person files including Convicted Sexual Offender Registry, Foreign Fugitive, Identity Theft, Immigration Violator, Missing Person, Protection Order, Supervised Release, Unidentified Person, U.S. Secret Service Protective, Violent Gang and Terrorist Organization and Wanted Person Files.³

In spite of the large number of sources included in the NCIC database, it does have limitations. The NCIC database contains all federal crimes plus approximately 70-90 percent of each state's criminal databases; however, many NCIC records are not criminal records but are instead watch lists or property files. It is also important to note that low-level misdemeanors, such as driving citations and DUIs, make up the portion of state records that are generally not present in the FBI database. This means that some low-level crimes may not be found by doing just an FBI criminal background check. Additionally, approximately 50 percent of the records in the NCIC database do not contain a disposition. Without a disposition, you know only that the individual was arrested but not whether that arrest resulted in a conviction.

Les: Helping our Clubs understand that there is no such thing as a perfect background check is a challenge, since there is no single standard nationwide for criminal databases and there is no one single source that provides all criminal records.

Additionally, many of our clubs receive funding or have programs that require fingerprint-based background checks to be completed. We make efforts to educate Clubs about what they may or may not get with a fingerprint based check from state law enforcement or even the FBI. These sources can be great for finding serious felony convictions but such felonies are the “low-hanging fruit” – they are easy to find, but the least likely to occur. Other information like lesser misdemeanors may require additional searches either via a national database or a direct search of a county courthouse. The offenses that can be found from these sources are often more likely to be of value during the selection process.

Q: *What advice can you offer to nonprofit organizations that are beginning a background check program?*

Les: I would encourage a nonprofit that is just beginning its background check program to consider four things:

**1. Don't just consider price.**

People assume that criminal data is a commodity—that all companies have the ability to find the exact same data. Your vendor should definitely offer criminal background searches at discounted prices for nonprofits, but be certain you understand what you are paying for. Which leads me to my second recommendation...

2. Take the time to understand the quality and content of the search you are running.

It is critical to learn what the search you are using actually provides. As I mentioned earlier, it comes as a shock to most people that an FBI check doesn't return every possible criminal record an individual may have. In some cases it is best to combine an FBI check with another vendor's national check or even a state or county criminal search to find the most records that would have the greatest bearing on your hiring process. I believe casting the widest net possible will also protect your organization better against charges of negligent hiring, since it can be seen as a more comprehensive strategy.

3. Do not underestimate the importance of customer service. You should ensure

Access to the NCIC database is somewhat limited. There are existing, but limited, pilot programs that provide direct access to NCIC to youth-serving nonprofits, but most nonprofits must work through a law enforcement agency to access the database. Regardless of how a nonprofit accesses the NCIC database, a valid set of fingerprints is required. Each volunteer who will be screened using the NCIC must have his or her prints rolled by the nonprofit, by a law enforcement agency or at a third-party collection site. There may be a charge for gathering fingerprints that is assessed in addition to any fees charged to access NCIC.

Private Companies

Over the past decade, several private companies have filled the growing need for a national criminal database. These firms contract with hundreds of jurisdictions at the city, county and state level across the United States to receive regularly updated criminal data in electronic format. Upon receipt of this data, it is uploaded into a standardized, searchable database and made available to employers and other businesses. In turn, nonprofit organizations pay a nominal fee for the service, and based on how they intend to use the database, they must agree to the appropriate usage guidelines determined by the Fair Credit Reporting Act (FCRA) and other laws.

All vendors will have some differences in their nationwide criminal databases. At a minimum, a strong national database should include records from Department of Corrections (Inmates & Release files, Probation & Parole), Administrative Office of Courts, individual county courts, state-specific criminal record repositories and state sex offender registries. Some vendors will also supplement data obtained from these sources with records pulled by their courthouse researchers each time a county criminal search is ordered by any of their clients.

A nationwide database provides fast results and covers a considerably broader geographical reach, compared to a traditional county courthouse search. Due to the national coverage of a database, it can reveal records in jurisdictions not



reported by an applicant if he or she was attempting to hide a criminal history. Since database searches cost a fraction of a county courthouse search, they can save money if a criminal record is found that would disqualify a candidate, while also saving the time and expense of performing additional searches.

Is a national search enough?

While national criminal databases are a critical part of a complete criminal background check, it is important to know how to use them. It is imperative that a nonprofit organization understand the depth of coverage in the state and counties most relevant to a current applicant. It may be necessary to perform a national criminal database search AND a county courthouse search together.

Combined, these two searches complement each other and drastically enhance the effectiveness of a background check. Think of it this way: a national criminal database is “an inch deep and a mile wide,” while a county courthouse search is “a mile deep and an inch wide.”⁴ When used together, nonprofits will receive a much more comprehensive search.

Why is a national criminal search important?

Many nonprofits are fortunate to have close relationships with local law enforcement personnel who provide criminal background checks for their organizations. But, do you really know what records are being searched by your local law enforcement agency? Some may provide access to the NCIC database, but many others may only be searching local or state repositories.

With approximately 14 percent of the U.S. population moving each year, simply searching in an applicant’s current county of residence may not be enough to uncover a criminal history. Consider the following:

A study by ChoicePoint of all criminal convictions for individuals applying to work or volunteer with nonprofits from 2005 to 2007 found high percentages of convictions, or “hits”, occurred outside the applicant’s current state of residence. The following table

that whatever vendor you select, whether a private company or law enforcement agency, can and will provide sufficient support to help you understand exactly what records will be searched when you run a check as well as help you interpret the results of a check. Criminal records are not standardized across the country and having a third party that can and will help you interpret the offense and what it really means can be invaluable when you are deciding to hire an individual or select him or her as a volunteer.

- 4. Finally, have your board adopt a background screening policy and follow it for all potential hires and volunteers.** You should determine, among other things, what criminal records will automatically disqualify a candidate (often called barrier crimes), and what records might disqualify a candidate. Consistently following the same practice for all applicants will help ward off potential discrimination lawsuit because it establishes consistency and can help show that age, gender and other EEO categories were not hiring factors.



highlights states with high percentages of out-of-state criminal hits.

APPLICANT'S CURRENT STATE OF RESIDENCE	PERCENTAGE OF OUT-OF-STATE HITS
California	64.8%
Florida	55.2%
Georgia	63.8%
New York	92.1%

CASE STUDY

Fingerprint-based background checks may not always tell a complete story.

A school system in California hired a coach for a high school girls' basketball team in 1997. The school system has a program to perform background checks with the FBI upon hiring teachers, staff members or contract employees. The system will also alert schools automatically if these employees have later criminal convictions. At first glance, the school system seems to have a sound policy and practice in place.

The background check performed on the coach hired in 1997 did not uncover any criminal activity in his past. In reality, the coach had a misdemeanor conviction for peering into homes occupied by women in 1991, only six years prior to his employment by the school system. The coach pled no contest to that charge on June 10, 1991, and was sentenced to 18 months of supervised probation and 50 hours of community service, according to a court clerk. He was also ordered to seek counseling, the clerk said. The coach was also charged with the same crime again in 2000. However, this information was not returned by the fingerprint based background check or alerts system used by the school system.

On January 13, 2006 the coach pled guilty to three felony counts of lewd acts with a girl, who was 14 when the molestation allegedly first occurred, and 41 misdemeanor counts of annoyance or molestation of the same girl. All offenses occurred during his tenure as coach of a girls' basketball team.⁶

While the type of misdemeanor the coach was previously convicted of would not have resulted in automatic disqualification from working in a public school system, would knowledge of the prior convictions played a role in determining if this individual should be placed in a position of authority with teenage girls? School officials were quoted as saying they would have never hired him had they known about his first "peeping Tom" conviction, and they wonder how it is possible that a background check would not have alerted them of his criminal past. "I think it's a flaw in the system and a real wake-up call."⁷

In reality, the fact that the prior misdemeanor convictions were not returned by an FBI based search is not a flaw but rather a reality of how the database works and its actual contents.



Conclusion

It can seem that criminal background checks may be complicated and time consuming and some nonprofits may be tempted to forgo these checks altogether because of their complexity. In reality, criminal background checks are a proven way to round out an organization's overall background screening program. Nonprofits are responsible for ensuring that they take the time to understand what records can be returned by their selected background check providers, and they must be proactive to make sure that adequate sources are used to ensure full coverage. In doing so, a nonprofit can be certain that it is taking adequate steps to protect the clients it serves, and that it is bringing the right volunteers into the organization.



VolunteerSelect PLUS is ChoicePoint's innovative, market-leading background screening service providing comprehensive services at deep discounts to 501c(3) organizations and churches throughout the United States.

For more information on ChoicePoint's nonprofit services, partners and resources to help mitigate risk please visit www.choicepoint.com/nonprofit.

Appendix ChoicePoint Databases vs. the FBI Database: A Side-by-Side Comparison

	ChoicePoint VolunteerSelect Services	FBI (NCIC)
How large is the database?	ChoicePoint's National Criminal File contains more than 200 million records and represents more than 80 million individuals.	NCIC contains records on approximately 48 million individuals.
What is in the database?	<p>Convictions from all 50 states available in an instant database search.</p> <p>The sex offender registries for all 50 states are also included in the National Criminal File search for volunteer organizations.</p>	Federal crimes and 70-90 percent of state criminal databases.
Can we get additional searches?	Yes. VolunteerSelect SM allows for additional searches to be performed at the state or county level if desired. You may also add motor vehicle searches, credit reports, reference checks and other services as needed.	No.
What is not included?	<p>Some counties do not report all offenses to ChoicePoint. This is when a county check is recommended.</p> <p>VolunteerSelect PLUS will recommend the most complete search.</p>	<p>Low-level misdemeanors, Driving citations and DUIs.</p> <p>Approximately 50 percent of the records do not contain a "disposition". This means you will not know if the offense resulted in a conviction or not.</p>
Are Fingerprints Required?	No	Yes
How much does it cost?	<p>On average \$5 for a nationwide search. Many national nonprofits pay less.</p> <p>Complete checks including SSN verification and a county search average \$18.</p>	<p>Varies, but average cost is \$36 and this typically excludes the cost and time of gathering.</p> <p>Safety NET Pilot will offer access to youth serving nonprofits at \$25 not including costs of fingerprint gathering.</p>
How long does it take to get results?	Most are instant	After good fingerprints are obtained from the volunteer, it varies.
What support is available?	<p>24 x 7 phone and e-mail-based support is available.</p> <p>ChoicePoint also applies the FCRA to all background checks, so we support notify candidates when records are found and provide a consumer dispute process.</p>	



- ¹ The Corporation for National and Community Service, “Volunteering in America,” The Corporation for National and Community Service, <http://www.volunteeringinamerica.gov/newprofile.cfm>, Accessed 28 July 2008.
- ² The United States Department of Justice. “The Attorney General’s Report on Criminal History Background Checks”, June 2006.
- ³ The Federal Bureau of Investigations. “National Crime Information Center Brochure “, The Federal Bureau of Investigations, http://www.fbi.gov/hq/cjisd/ncic_brochure.htm, Accessed 27 July 2008.
- ⁴ ChoicePoint, inc. “FOCUS: National Criminal Record Databases Understanding Your Options”, <http://screening.choicepoint.com/content/solutions/natcrimFileSolution.jsp>. Accessed 10 August 2008.
- ⁵ U.S. Census Bureau. “Geographical Mobility/Migration “, U.S. Census Bureau, <http://www.census.gov/population/www/socdemo/migrate.html>. Accessed August 20, 2008.
- ⁶ Boyce, David. (2006, January 25). Basketball coach in molest case had prior ‘peeking’ conviction, The Almanac, Menlo Park, California.
- ⁷ The San Francisco Chronicle. “Accused coach has prior ‘peeping Tom’ convictions”, SFGate.com, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/01/20/BAGNKGQ59Q1.DTL>, Accessed March 18, 2008.



About ChoicePoint

ChoicePoint (NYSE: CPS) provides businesses, government agencies and nonprofit organizations with technology, software, information and marketing services, all intended to help manage economic and physical risks and to identify business opportunities.

ChoicePoint is proud to offer low-cost volunteer background screening to youth-serving and other nonprofit organizations and to be the preferred background screening provider for the National Human Services Assembly, Little League International, Boy Scouts of America, Points of Light & Hands on Network, National CASA and thousands of other nonprofits around the country that are diligently protecting the people they serve.