Chapter 1
Pre-Employment Screening 101

Pre-employment screening is used by many businesses to verify the accuracy of applicants’ employment history, educational history, and credentials, as well as confirming the lack of criminal history, workers compensation claims, and sanctions. Employment screening is using public or private records and investigation to confirm or disprove the accuracy of an applicants resume. Because of the potential sensitivity of the information uncovered, employment screening is subject to a unique set of laws and regulations to protect consumers in the event of misuse of data or fraud.

Part 1. Why Does an Employer Conduct a Background Check?

Employers check potential and current workers for several reasons. The things an employer wants to know about you can vary with the kinds of jobs you might seek. Here are a few of the reasons for employment screening.

* **Negligent hiring** lawsuits are on the rise. If an employee's actions hurt someone, the employer may be liable. The threat of liability gives employers reason to be cautious in checking an applicant's past. A bad decision can wreck havoc on a company's budget and reputation as well as ruin the career of the hiring official. Employers no longer feel secure in relying on their instinct as a basis to hire.

* Current events have caused an increase in employment screening.

* Child abuse and child abductions in the news in recent years have resulted in new laws in almost every state that require criminal background checks for anyone who works with children. The move to protect children through criminal background checks now includes volunteers who serve as coaches for youth sports activities and scout troop leaders.

* **Terrorist acts of September 11, 2001, have resulted in heightened security and identity-verification strategies by employers. Potential job candidates and long-time employees alike are being examined with a new eye following September 11, 2001.**

* **Corporate executives, officers, and directors now face a degree of scrutiny in both professional and private life unknown before the Enron debacle and other corporate scandals of 2002.**

* False or inflated information supplied by job applicants is frequently in the news. Some estimates are that 30% to 40% of all job applications and resumes include some false or inflated facts. Such reports make employers wary of accepting anyone's word at face value.

* **Federal and state laws require that background checks be conducted for certain jobs. For example, most states require criminal background checks for anyone who works with children, the elderly, or disabled. The federal National Child Protection Act authorizes state officials to access the FBI's National Crime Information Center (NCIC) database for some positions.**
Many state and federal government jobs require a background check, and depending on the kind of job, may require an extensive investigation for a security clearance.

* The "information age" itself may be a reason for the increase in employment screening -- the availability of computer databases containing millions of records of personal data. As the cost of searching these sources drops, employers are finding it more feasible to conduct background checks.

I don't have anything to hide. Why should I worry?

While some people are not concerned about background investigations, others are uncomfortable with the idea of an investigator poking around in their personal history. In-depth background checks could unearth information that is irrelevant, taken out of context, or just plain wrong. A further concern is that the report might include information that is illegal to use for hiring purposes or which comes from questionable sources.

Usefulness

Employment screening can be a practical, low-cost way to significantly reduce employee theft and dishonesty and notably increase productivity and safety. Certain industries require background checks on all employees. Examples include the banking, financial, and security industries, transportation industries, childcare, healthcare, and teaching industries, police, law enforcement, and certain military positions. The level of background investigation may vary from industry to industry or position to position. Employers who actively screen their applicants before hiring also face less liability in the event of a workplace accident or crime. Pre-employment screening is a primary way of eliminating or minimizing negligent hiring liability.

CRIMINAL BACKGROUND CHECKS: A CHECKLIST OF THE PROS AND CONS

Long gone is the time when hiring decisions were simply an interview and a handshake. Companies are instituting diverse and sophisticated selection tools to determine the best candidates and weed out those who are not a fit for the position or organization. Options in selection include intelligence testing, background checks, interviewing, phone screens, assessment centers, outsourced hiring, credit checks, references, psychological profiling, drug and alcohol screens, education verification, and so much more. An HR professional could spend months sorting out the best techniques.

Criminal background checks are a selection device that is becoming more and more common as a result of increased access to information and increased liability for failure to tap into that information. This white paper lists the reasons companies are using criminal background checks and challenges encountered in this process and juxtaposes risk and rewards of criminal background checking.

Reasons to Conduct Criminal Background Checks

1. Reduce theft and embezzlement.
2. Limit legal exposure for negligent hiring and retention (see reference checking section).
3. Increase applicant quality.
4. Check for potential discipline problems.
   a. Most employers want to know this type of information about potential employees as it has a bearing on employee success and organizational liability.
   b. This type of information is particularly hard to get from past employers due to fear of defamation lawsuits.
5. Verify application information. Asking and verifying such information is a simple and inexpensive integrity and honesty indicator.
6. Decrease insurance costs. Some insurance companies will give discounts to organizations that conduct background checks or drug screening.
8. Decrease workplace violence.
9. Discourage applicants who have something to hide.
10. Limit uncertainty in hiring process.
11. Enable the company to know who it is hiring.
12. Demonstrates Due Diligence and discourages applicants with something to hide

Challenges in Conducting Criminal Background Checks

1. **Limited access to records.**
   - When private employers check criminal records, they at times do not have access to restricted or nonpublic governmental criminal databases.
   - Private employers often can check criminal records only by going to individual courthouses and looking through the records that are kept by each court. Since there are more than 10,000 courthouses in America, a nationwide criminal check may not be practical.
   - If searches are only done in specific locales (where the applicant lived for past seven years, for example), employers may miss criminal activity in other locales.
   - There may be legal limits as to how far court researchers can go in reporting convictions (usually seven years), even if the conviction is a very serious one.

2. **Mistaken identity.**
   - Because of the way public records are maintained, errors are always possible and cases of mistaken identification have occurred.
   - A good background checking vendor should have plans in place to deal with cases of mistaken identity that include limiting employer liability and providing errors and omissions insurance.

3. **Legal limitations on information that can be used by employer.**
• Employer may not ask about or consider information about arrests or detentions that did not result in convictions. Only convictions and pending cases can be considered.

• Employer may not consider crimes that have been sealed or expunged or where the applicant participated in a special pretrial alternative program. Juvenile activity may also be restricted in reporting.

• There are limits concerning misdemeanors. Most employers will ask about both felonies and misdemeanors on applications, but a misdemeanor cannot be considered if probation was completed and the case dismissed or for minor marijuana offenses more than two years old.

4. Limits on across-the-board convictions bans.

• Courts have found that a policy of automatically denying employment can result in discrimination against certain groups.

• Instead, employers must examine whether there is a sound business reason to not hire an individual with a criminal record, taking into account the nature of the offense, whether it is job-related, when it occurred and what the person has done since.

• Some states have laws prohibiting discrimination against people who have a criminal record. It’s advisable to check with the state Department of Labor before securing the criminal record information.

Risks versus Rewards Summary

Risks of conducting criminal background checks:

• Expense in checking criminal backgrounds.
• Time spent in checking backgrounds—some state repositories take up to six weeks or longer to confirm a conviction. This delay can cause loss of applicants.
• Limited access to records.
• Legal limits on use of records uncovered.
• Inaccuracies such as mistaken identity resulting in unfair or undesirable rejection of a quality candidate.
• Potential adverse impact (though an organization may be able to justify this legally).
• Time and expense in complying with the FCRA.

Rewards of conducting criminal background checks:

• Higher quality applicant pool.
• Discouragement of applicants who have something to hide.
• Reduced theft and embezzlement.
• Reduced legal exposure for negligent hiring and retention.
• Increased applicant quality.
• Potential decrease in discipline problems.
• Possible decrease in insurance costs.
• Potential to uncover drug/alcohol problems in applicant.
• Reduced workplace violence.
• Peace of mind.

It is the ultimate nightmare for every human resources, security, or risk-management professional: Your phone rings late Friday afternoon as you wind up loose ends from yet another challenging week and are looking forward to a quiet weekend. A panic-stricken voice informs you that Pat in accounting has assaulted another co-worker and threatened to harm a supervisor. It turns out Pat was not only stealing money, but did not really have the experience claimed.

As the mess is being sorted out, everyone will be asking you the same question over and over. From the company CEO, CFO, and corporate attorney to managers, supervisors, and co-workers, there is one thing everyone wants to know: How did that person get hired in the first place?

If the matter turns into litigation, the legal fees for just one incident of workplace misconduct can easily soar into the six figures, and jury awards can be astounding. Your firm can be sued by injured co-workers, members of the public who were damaged, or even the bad employee who may claim wrongful termination. Once litigation starts, you will also find that in addition to your normal duties you now have a second and nearly full-time job--dealing with the discovery process in litigation and the organizational fallout. The statistics on the consequences of even one bad hire are chilling. The financial cost to businesses from theft, violence, and false credentials can be enormous. There are other costs that are hard to measure, such as the harm to employee morale or the firm's reputation. Industry statistics suggest the cost of even one bad hiring decision can exceed $100,000, taking into account the time spent recruiting, hiring, and training and the amount of time the job is left undone or done badly by an unqualified applicant.

Given the enormous price tag of a bad hiring decision, it is no surprise that employers of all sizes are turning to various tools to boost the effectiveness of their hiring process. The tools run from honesty and skills testing to behavior-based and group interview techniques.

Ultimately, none of these tools has proved effective in weeding out bad candidates, unless used in conjunction with a program of pre-employment background screening to obtain hard facts about a candidate.

Pre-employment background screening works in four critical ways:

1. Just having background screening can discourage applicants with something to hide. A person with a criminal record or false resume will simply apply to a company that does not pre-screen.
2. It limits uncertainty in the hiring process. Although using instinct in the hiring process can be important, basing a decision on hard information is even better.
3. A screening program demonstrates that an employer has exercised due diligence, providing a great deal of legal protection in the event of a lawsuit.
4. Having a screening program encourages applicants to be especially forthcoming in their interviews.

Pre-Screening Tools

Another important tool is **resume verification**. Job applicants often use their resumes as a marketing tool, but the hiring company can find itself in trouble when resumes exceed the bounds of honesty. It is estimated that up to 30 percent of resumes contain material falsehoods that pertain to previous employment, education, and professional licenses. A professional screening firm can verify whether an applicant has the degrees or licenses claimed. Even if a past employer will not give details about job performance, just verifying the job dates and job title is crucially important. One of the most critical parts of the hiring process is to look for unexplained gaps in employment. That is important in order to help a screening firm check the appropriate courthouses while searching criminal records. Other tools can include credit reports (when relevant to the job), Social Security number traces, driving records, national wants and warrants, as well as civil and federal court records.

Common Employer Concerns

Is it legal?
Yes. Employers have an absolute right to conduct lawful pre-employment screening in order to hire the best-qualified candidates. A federal law called the Fair Credit Reporting Act (FCRA) balances the right of employers to know whom they hire with an applicant's right of disclosure and privacy. Under that law, the employer first obtains the applicant's written consent to be screened. In the event negative information is found, the applicant must be given the opportunity to correct the record. Employers should set up a consistent policy so similarly situated applicants are treated the same. A qualified screening company will assist an employer with legal compliance issues.

Does it invade privacy?
No. Employers can find out about only those things that an applicant has done in his "public" life. For example, checking court records for criminal convictions or calling past employers or schools does not invade a zone of personal privacy. Employers are looking only at information that is a valid and non-discriminatory predictor of future job performance. To maintain privacy, most background firms have Internet systems with secured Web sites. Employers should also take steps to maintain confidentially within their organization, such as keeping reports in a separate file from the personnel files.

Is it cost-effective?
Yes. A pre-employment screening will typically cost less than the cost of a new employee on his or her first day on the job. That's pocket change compared to the damage one bad hire can cause. In addition, employers typically only screen an applicant if a decision has been made to extend an offer, and not all applicants. It is ironic that some firms will spend hours shopping for a computer bargain and at the same time try to save money by not adequately checking out a job
applicant, which represents an enormous investment. The bottom line is that problem employees usually cause employee problems, and money is well spent to avoid problems in the first place.

Does it discourage good applicants?
No. Employers who engage in screening do not find that good applicants are deterred. Job applicants have a desire to work with qualified and safe co-workers in a profitable environment. A good candidate understands that background screening is a sound business practice that helps a firm's bottom line and is not an invasion of privacy or an intrusion.

Does it delay hiring?
No. For an overburdened HR, security, or risk-management department already handling numerous tasks, outsourcing background screening can be done very quickly and effectively. A qualified pre-employment screening firm can set up the entire program and provide all the necessary forms in a short period of time. Many firms have Internet-based systems that speed up the flow of information and allow an employer to track the progress of each applicant in real time. For this reason background screening is normally done in just 48 to 72 hours. Most of the information needed is not stored in databases, but must be obtained by going to courthouses or calling up past employers or schools. Occasionally there can be delays that are out of anyone's control, such as previous employers who will not return calls, schools that are closed for vacation, or a court clerk who needs to retrieve a record from storage.

How do we select a service provider?
Both employers and applicants have learned that pre-employment screening is an absolute necessity in today's business world. More importantly, they've learned due diligence in hiring is a way to keep firms safe and profitable in these difficult times. An employer should look for a professional partner, not just an information vendor selling data at the lowest price. An employer should apply the same criteria that it would use in selecting any other provider of critical professional services. For example, if a employer were choosing a law firm for legal representation, it would not select the cheapest--it would clearly want to know it is selecting a firm that is competent, experienced, and knowledgeable, as well as reputable and reasonably priced. The same criteria should also apply to critical HR services. A screening firm should have an understanding of the legal implications of background checks, particularly the federal Fair Credit Reporting Act.

Checking criminal records is a good example of a pre-screening process that helps promote safe hiring. It is estimated that 10 percent of job applicants have criminal conviction records relevant to the hiring process; without a screening program, it is a near-statistical certainty that a company is going to hire someone with a criminal record. Contrary to popular perception, there is no national database available to private employers. Criminal records are normally checked by having qualified researchers visit courthouses in counties where an applicant has lived or worked. Because there are more than 10,000 courthouses in America where records are kept, most employers outsource this task to qualified firms that specialize in pre-employment screening. Even with all of the advantages of a screening program, many employers still have questions and concerns about implementing background checks.
Chapter 2
Background Checks

Who Conducts Background Checks?

There are many companies that specialize in employment screening. It is outside the purpose of this fact sheet to identify background checking companies by name. The most important thing to keep in mind is that companies conducting background checks fall into several broad categories. This can range from individuals commonly known as "private investigators," to companies that do nothing but employment screening, and to online data brokers.

Corporations that employ large numbers of people may have an established relationship with a third-party background checking company or may even use an affiliated company for their employment screening. Other background checking companies may work on a less formal basis with employers. There are about several companies that conduct employment screening and thousands others nationwide, including private investigators.

With the information age upon us, it is easy for employers to gather background information themselves. Much of it is computerized, allowing employers to log on to public records and commercial databases directly through dial-up networks or via the Internet. Finding one of these online companies is as easy as using an Internet search engine to find web sites that specialize in "background checks." Employers should beware of companies advertising on the Internet that they can "find everything about anyone." They are not necessarily going to be in strict compliance with federal and state laws, especially the provisions that require accuracy of background check reports.

Types of Background Checks

There are a variety of types of investigative searches that can be used by potential employers. Many commercial sites, will offer specific searches to employers for a fee. Services like these will actually perform the background checks, supply the company with adverse action letters, and ensure compliance throughout the process. It is important to be selective about which pre-employment screening agency you use. A legitimate company will be happy to explain the process to you and should have some type of application process to ensure they are only providing information to legitimate businesses.

Many employers choose to search the most common records such as criminal records, driving records, and education verification. Other searches such as sex offender registry, credential verification, reference checks, credit reports and Patriot Act searches are becoming increasingly common. Employers should consider the position in question when determining which types of searches to include, and should always use the same searches for every applicant being considered for one position.

Possible Information Included

* Criminal and incarceration records.
* Litigation records. Employers may want to identify potential employees who routinely file discrimination lawsuits. It has also been alleged that in the U.S., employers that do work for the government do not like to hire whistleblowers who have a history of filing qui tam suits.

* Driving and vehicle records. Employers in the transportation sector seek drivers with clean driving records--i.e., those without a history of accidents or traffic tickets.

* Drug tests are used for a variety of reasons--corporate ethics, measuring potential employee performance, and keeping workers' compensation premiums down.

* Education records. These are used primarily to see if the potential employee had in fact received a college degree. There are reports of SAT scores being requested by employers as well.

* Employment records. These usually range from simple verbal confirmations of past employment and timeframe to deeper, such as discussions about performance, activities and accomplishments, and relations with others.

* Financial information: Individuals with poor credit scores, liens, civil judgments, or those who have filed for bankruptcy may be at an additional risk of stealing from the company.

* Licensing records. A government authority that has some oversight over professional conduct of its licensees will also maintain records regarding the licensee, such as personal information, education, complaints, investigations, and disciplinary actions.

* Military records. Although not as common today as it was in the past fifty years, employers frequently requested the specifics of one's military discharge.

* Social Security Number (or equivalent outside the US). A fraudulent SSN may be indicative of identity theft, insufficient citizenship, or concealment of a "past life".

* Polygraph test. Also known as a psychophysiological detection of deception (PDD) examination.

* Other interpersonal interviews. Employers will usually wish to speak with potential employees' references to gauge employability. More intensive background checks can involve interviews with anybody that knew or previously knew the applicant--such as teachers, friends, coworkers, and family members.

The amount of information included on a background check depends to a large degree on the sensitivity of the reason for which it is conducted—e.g., somebody seeking employment at a minimum wage job would be subject to far fewer background check requirements than somebody applying to work for the FBI.

**Search Descriptions**

**Repository Criminal Court Checks**

**Statewide Repositories**
Description: Statewide Repositories are excellent tools to use in addition to county level searches. Most are available as part of our NationCheck and others are accessible only as a non-instant search. The strength of this search is that it allows you to get a thumbnail sketch of a large area. The weakness of this search is that No Database is 100% Accurate. Therefore, best practice is to conduct both the County and Statewide Searches.

**Nationwide Indexes**
Description: We have combined several Levels of search including County Databases into the most Comprehensive Nationwide Search we have seen. Scanning the largest databases and more than 175,000,000 records instantly.

We emphasize Best Practices in all background checks. Repository searches are excellent for filling in the gaps but are not recommended as a standalone search as they are not up to the minute. For the most complete search we suggest the NationCheck combined with our Hands-On CountyChecks. First, contrary to popular belief, there is no national computer of criminal records available to private employers. Although the FBI and state law enforcement has access to a national computer database, it is absolutely illegal for a private company to obtain criminal information from law enforcement computer databases.

There are a number of states that have statewide criminal databases (not including California), but the statewide requests often take too long for the hiring process and require burdensome paperwork. In addition, not all statewide depository of records are accurate. Many state wide systems are only clearing houses for those counties that choose to deposit records. There are no guarantees that all counties are up to date or are even participating.

For the best protection, POINT HR recommends that an employer search each county where a person has lived worked or studied for the past seven years. The seven years is recommended is generally recommended given the current state of law. In November of 1998, congress amended to Fair Credit Reporting Act to do away with the seven year limitation. However, Congress left in tact the portion of the law that provided that in states with a more restricted rules, the more restricted rule would apply. Since many states, such as California, passed laws that copied the provisions of the FCRA including the seven year limitation in certain instances, there is currently no workable national rule. For that reason, the seven year rule is still recommended until Congress clarifies the national policy.

There are some counties in certain states that are available on a database. However, employers should never use a criminal database for employment decisions, and should always make sure that a screening company is utilizing the most hands-on means available to obtain criminal records, which is usually an on-site search at the courthouse. There are a number of disadvantages to a database search. First, the database may not be absolutely current. Secondly, not all counties have criminal records on the database. Third, databases are notorious for being inaccurate. Fourth, if an applicant’s name does appear, the actual records must still be pulled from the courthouse. Denying employment based just upon a name in a database without reviewing the actual court file would violate a number of laws and rights of applicants. Employers who rely on databases for employment decisions are opening themselves up to serious lawsuits. The bottom line is that an employer who relies upon such a database, and still hires a person with a criminal record resulting in some claim of damages, may not have the legal protection they thought they had. There would be a considerable legal question as to whether having used a database would provide evidence of due diligence. In other words, databases may well not demonstrate that an employer took reasonable care.

Where the employer seeks the full seven-year search, POINT HR will look in every jurisdiction it can locate, based upon the application, driving record, social security or credit report, and
employment verifications. The obvious difficulty is that a person may have a criminal record in a county where there is no indication that the person has had any contact. However, experienced firms such as POINT HR will look at gaps in employment or residential history to determine if more questions should be asked.

**Hands-On Criminal Court Checks**

- **County Courts**
  Description: All Criminal Justice Starts At The County Level - A County Search, although limited in its geographic scope, may be the only way to obtain the most accurate and up to date information. The county criminal search is the basic building block of any background check program. Court Check maintains a network of researchers in over 3,142 U.S. counties who conduct courthouse research on a daily basis. Obviously, researchers cannot go to every courthouse in the country for every person, since there are over 3,000 jurisdictions. However, depending upon the company’s needs, POINT HR will send researchers to those counties that should be checked. As a minimum, POINT HR recommends that an employer check the county of residence and current employment, if different. Due to the manual nature of the assignments turnaround time can vary anywhere between 24 hrs to 5 days and court access fees vary. In many jurisdictions, older records have been placed in storage. Where there is a possible match, additional time is sometimes needed to have the local county clerk pull the records from storage. POINT HR has no control over how long that process may take.

- **Federal District Courts**
  Description: Federal criminal records show criminal complaints brought by the U.S. government against defendants for violations of federal criminal law. The Federal court system is totally separate from the State and County court systems. Examples of federal crimes include mail fraud, bank robbery, crimes committed in an airport, interstate drug trafficking and kidnapping. If you are interested in a complete and thorough background check, federal searches are a must.

- **Civil Court Checks**
  **Lower County Civil Court**
  Description: Lower Civil searches identify lower value cases such as eviction, small claims and minor disputes. The lower civil courts generally do not handle cases where the dollar amount in dispute exceeds $5000.

  **Upper County Civil Court**
  Description: Upper Civil searches are generally of higher value, cases such as divorce and other more substantial monetary settlements. High profile civil cases are generally handled in the civil upper court.

  **Federal District Civil Court**
  Description: Federal Civil searches (usually white collar offenses) include records that involve alleged violations of federal statutory or constitutional rights. These civil cases are brought by individuals, businesses or governmental entities; they may seek monetary damages, request injunctions to stop allegedly illegal behavior or monetarily pursue other remedies provided by
law. Federal civil cases deal with many types of issues, including interstate commerce, anti-trust activity and violations of federal codes.

Financial Checks

· Employment Credit Report
Description: A pre-employment credit report enables you to review an applicant’s credit history, verify background information and personal data, and quickly and easily assess an applicant for potential risk.

· Federal Bankruptcy Filings
Description: We have access to Federal Bankruptcy filings which cover all types of commercial bankruptcies (Chapter 7, 11, 12 and 13.) The Bankruptcy report can determine if a potential hire has become insolvent.

· State Tax Lien
Description: A State tax lien is a claim against assets filed by a state taxing authority against property of a person who owes back taxes. These are maintained in each county.

· Federal Tax Lien
Description: A Federal tax lien is a claim against assets filed by a federal taxing authority against property of a person who owes back taxes. Our researchers will investigate the records maintained at either the state or county levels as appropriate.

State Motor Vehicle Records

Description: We offer MVR reports solely for employment purpose. By compiling information from a state's Department of Motor Vehicles (DMV), an MVR can assist you in identifying individuals whose driving record indicates a bad risk for your business.

Reference Checks

* Education records
Description: With more than 4000 colleges and universities and countless numbers of high schools and GED programs, this aspect of the pre-employment screening process can be arduous. We contact educational institutions both domestic and foreign each day streamlining this process for your company. Under both federal and California law, transcripts, recommendations, discipline records, and financial information are confidential. A school should 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. (20 USC §1232g, www.ed.gov/offices/OM/fpco/ferpa/index.html)

* Military service 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. (5 USC §§552, 552a) For
more on military records, visit the National Archives and Records Administration web site:
www.archives.gov/facilities/mo/st_louis/military_personnel_records.html

*Medical records*
In California and many states, medical records are confidential. There are only a few instances when a medical record can be released without your knowledge or authorization. The FCRA also requires your specific permission for the release of medical records. 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 your ability to perform specific job functions. (42 USC §12101)

There are other questions such as age, marital status, and certain psychological tests that employers cannot use when interviewing. These issues are beyond the scope of this fact sheet. If you have further questions, contact the resources at the end of this fact sheet. The federal Equal Employment Opportunity Commission and the fair employment agencies in the states handle these issues.

*Employment*
Description: Often the most time consuming aspect of the pre-employment screening process, we remove this burden from your employees and assigns the task to our reference specialists. High quality, rapid verification is key to getting the Right person for the job in the job.

*Credentials*
Description: Understanding the necessity for documentation to place a professional in a position, we verify the Professional License or Certification Required for a particular position quickly and efficiently.

Equifax Social Security Verification Social Security Address Trace
Description: using the name and social security number the IdentiCheck verifies the personal identifying information provided by the applicant. These searches can help you verify the fact that your applicants are who they claim to be and identify other information such as past addresses, date of birth, past employers, former names, phone number, and other additional information.

Can an employer ask my friends and neighbors about me?
Yes. Under the FCRA, a background check that includes interviews with "neighbors, friends, or associates" about your "character, general reputation, personal characteristics, or mode of living" is called an "investigative consumer report." (The term "investigative consumer report" has a different meaning under California Law. See www.leginfo.ca.gov, Civil Code §1786.)

When information about you is gathered from interviews, the FCRA requires a separate disclosure. You are also entitled to know the "nature and scope" of an investigative consumer report, but you have to ask. For more on how the FTC staff interprets the term "investigative consumer report" and other keys topics under the FCRA, visit the FTC web site www.ftc.gov/os/statutes/fcra/index.htm
Chapter 3  
The Fair Credit Reporting Act

Due to the sensitivity of the information contained in consumer reports and certain records, there are a variety of important laws regulating the dissemination and legal use of this information. Most notably, the Fair Credit Reporting Act (FCRA) regulates the use of consumer reports (which it defines as information collected and reported by third party agencies) as it pertains to adverse decisions, notification to the consumer, and destruction and safekeeping of records. However, the law only applies to background checks performed by an outside company, called a "consumer reporting agency". The law does not apply in situations where the employer conducts background checks in house. Under the FCRA, a background check report is called a "consumer report." This is the same "official" name given to your credit report, and the same limits on disclosure apply.

The FCRA says the following cannot be reported on a consumer report:
- Bankruptcies after 10 years.
- Civil suits, civil judgments, and records of arrest, from date of entry, after seven years.
- Paid tax liens after seven years.
- Accounts placed for collection after seven years.
- Any other negative information (except criminal convictions) after seven years.

Some states, such as California, Minnesota, Oklahoma and Connecticut, have additional disclosure requirements. Your state may have stronger laws, such as California's Investigative Consumer Reporting Agencies Act (Civil Code §1786) and the California Consumer Credit Reporting Agency Act (Civil Code §1785). In addition, many state labor codes and state fair employment guidelines limit the content of an employment background check. (For more on the FCRA, see Part 5.) Local regulations should be checked by employers.

The most recent change to the FCRA made criminal convictions reportable indefinitely. California still follows the seven-year rule (CA Civil Code 1786.18) as do some other states. To find the limit for reporting criminal convictions in your state, contact your state employment agency or office of consumer affairs. Although arrest record information is public record, in California and other states employers cannot seek from any source the arrest record of a potential employee. However, if the arrest resulted in a conviction, or if the applicant is out of jail but pending trial, that information can be used. (California Labor Code §432.7).

In California, an exception exists for the health care industry where any employer who has an interest in hiring a person with access to patients can ask about sex related arrests. And, when an employee may have access to medications, an employer can ask about drug related arrests.

- Criminal history. In California, criminal histories or "rap sheets" compiled by law enforcement agencies are not public record. Only certain employers such as public utilities, law enforcement, security guard firms, and child care facilities have access to this information. (California Penal Code §§11105, 13300) With the advent of computerized court records and arrest information, however, there are private companies that compile virtual "rap sheets."
Employers need to use caution in checking criminal records. Information offered to the public by web-based information brokers is not always accurate or up to date. This violates both federal and California law when reported as such. Also, in California, an employer may not inquire about a marijuana conviction that is more than two years old.

* Workers' compensation. In most states including California, 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. (42 USC §12101).

In California, employers may access workers' compensation records after making an offer of employment. To gain access, employers must register with the WCAB and confirm that the records are being accessed for legitimate purposes. Although the agency may not reveal medical information and the employer may not rescind an offer due to a workers' compensation claim (California Labor Code 132a), employers sometimes discover that applicants have not revealed previous employers where they had filed claims. In such situations, employers often terminate the new hire because it appears they falsified the application.

* Bankruptcies. Bankruptcies are public record. However, employers cannot discriminate against applicants because they have filed for bankruptcy. (11 USC §525)

Although these laws should prevent an employer from considering certain information, there is no realistic way for the applicant to determine whether such information will be revealed in a background check. This is particularly true for investigations conducted online where the information obtained from web-based information brokers might not be verified for accuracy or completeness.

For example, if you were arrested but never convicted, a data search could reveal the arrest, but the investigator who compiled the information might not delve further into the public records to determine that you were acquitted or the charges were dropped. Reputable employment screening companies always verify negative information obtained from data base searches against the actual public records filed at the courthouse.

Amendments to the FCRA, in effect September 30, 1997, increase the disclosure and consent requirements of employers who use "consumer reports." Such reports might consist only of a credit check. (See Part 6) More extensive reports might include criminal histories, driving records, and interviews with neighbors, friends and associates.

• The steps a business must take to comply with FCRA, if required, depend on the type of report the consumer reporting agency provides: a “consumer report” or “investigative consumer report.” The Federal Trade Commission, which enforces the FCRA, treats criminal background checks as investigative consumer reports.

• Generally, before obtaining an investigative consumer report, an employer must:
- Certify to the consumer-reporting agency that the employer is in compliance with the FCRA and will not misuse the information it receives.
- Disclose to the applicant or employee, on a form separate from the job application, that it plans to obtain a consumer report or investigative consumer report and that the report will be used solely for employment purposes.
- Obtain written authorization from the applicant or employee.
- Inform the individual of his or her right to request additional information on the nature of the report and the means through which such information may be obtained.
- Inform the applicant that the consumer report may include information obtained through personal interviews regarding the individual’s character, general reputation, personal characteristics and mode of living.
- Provide the individual with a summary of his or her rights under the FCRA.

To be covered by the FCRA, the Federal Trade Commission (FTC) says that a report must be prepared by an outside company -- a "consumer reporting agency" or business that "for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in ... assembling ... information on consumers for the purpose of furnishing consumer reports to third parties." (FCRA §603f)

Under the FCRA, the employer must obtain the applicant's written authorization before the background check is conducted. The authorization must be on a document separate from all other documents such as an employment application. In California, at the time an employer obtains permission for a background check, the applicant or employee should also be told that he or she may request a copy of the report.

- If a consumer report is used as a factor in an adverse hiring decision, the consumer must be presented with a “Pre-adverse action disclosure,” a copy of the FCRA summary of rights, and a “notification of adverse action letter.” Consumers are entitled to know the source of any information used against them including a credit reporting company.

    - Inform the individual that it plans to take adverse action (pre-adverse action disclosure).
    - Give the individual a copy of the consumer report.
    - Advise the individual of his or her rights under the FCRA to dispute inaccurate or incomplete information contained in the consumer report.

- When the employer takes the adverse action, it must notify the individual and again advise the individual of his or her rights under the FCRA to dispute inaccurate or incomplete information.

Under federal law, if the employer uses information from the consumer report for an "adverse action" - that is, denying the job applicant, terminating the employee, rescinding a job offer, or denying a promotion - it must take the following steps, which are explained further in the Federal Trade Commission's web site, www.ftc.gov/bcp/conline/pubs/buspubs/credempl.htm
* Before the adverse action is taken, the employer must give the applicant a "pre-adverse action disclosure." This includes a copy of the report and an explanation of the consumer's rights under the FCRA.

* After the adverse action is taken, the individual must be given an "adverse action notice." This document must contain the name, address, and phone number of the employment screening company, a statement that this company did not make the adverse decision, rather that the employer did, and a notice that the individual has the right to dispute the accuracy or completeness of any of the information in the report.

Modified disclosure and adverse action procedures under the FCRA (§604(b)(3)(B)) apply to positions subject to U.S. Department of Transportation (DOT) regulations such as truck drivers. The DOT has independent authority to set qualifications for workers in transportation industries. (49 USC §31502)

**Does the FCRA fall short?**

The federal law has two significant loopholes. First, if the employer does not use a third-party screening company but, rather conducts the background check itself, it is not subject to the notice and consent provisions of the FCRA. Second, the employer might tell the rejected applicant that its adverse decision was not based on the contents of the background investigation, but, rather that the job pool was so exceptional that it made its hiring decision based on the fact that there were individuals more qualified than the applicant.

In both of these situations, the applicant would not have the ability to obtain a copy of the background check to find out what negative information it contained. We have learned of situations where the individual remained unemployed for years, not knowing that wrongful criminal records which resulted from identity theft were the reason for the individual's failure to find employment. (Read "Identity Theft: The Growing Problem of Wrongful Criminal Records," www.privacyrights.org/ar/wcr.htm.)

Recent amendments to California's "investigative consumer reporting" law have closed those loopholes. California law now requires that individuals who are subject to employment screening are able to obtain a copy of the background check whether or not an adverse action has been taken. And applicants have the same rights to notice and consent whether the employer hires an outside company to conduct the investigation or does the background check itself. (California Civil Code §1786). And now in California when an individual requests a copy of their report from the consumer reporting agency, the agency must explain their rights in a document written in both English and Spanish.

**FCRA Update: Workplace Investigations and Annual File Disclosures**

Recent amendments to the FCRA, known as the Fair and Accurate Credit Transactions Act of 2003 or FACTA, set a new standard for what FACTA calls "employee misconduct investigations." In addition, FACTA says job applicants and employees who have undergone an employment background screening covered by the FCRA may receive a free annual file
disclosure from the company that performed the background check.

Workplace Investigations

What is an "employee misconduct investigation"?

This is an investigation conducted by a third-party your employer may hire if the employer suspects you of:

* Misconduct relating to your employment.
* A violation of federal, state or local laws or regulations.
* A violation of any preexisting written policies of the employer.
* Noncompliance with the rules of a self-regulatory organization, that, for example, oversees the securities and commodity futures industry.

Why was this change made to the FCRA?

This section was adopted to make it clear that employers do not have to get permission to conduct a misconduct investigation. Prior to this, FTC staff issued an opinion letter, the so-called "Vail Letter," that said the FCRA applies even when an employee is suspected of misconduct and the employer hires an outside investigator. (Note: California law already includes an exception for workplace misconduct investigations. www.privacyrights.org/fs/fs16a-califbck.htm)

If my employer suspects me of misconduct, what does this mean for me?

It means your employer does not have to give you notice and get your permission to conduct a misconduct investigation. Like other inquiries covered by the FCRA, this only applies if the employer hires an outside party to conduct the investigation.

It also means you will not receive a notice of your rights as others who are subject to a standard employment background check normally would. If, at the end of the investigation, the employer decides to take some action against you, you receive the "adverse action" notice only after the action has been taken.

You will receive only a "summary" of the investigation report, but not the more detailed report that may include sources.

Who will see the investigation report?

The report may be communicated to:

* The employer or its agent.
* Any federal or state officer, agency or department or any officer, agency or department of a unit of general local government.
* Any self-regulatory organization with regulatory authority over the activities of the
employer or the employee.
* Others, as is otherwise required by law; or
* A government agency, in accordance with an existing FCRA section that allows a consumer reporting agency to disclose personal identifying information to a government agency.

Can I dispute the findings?

Not under the FCRA dispute procedure. That is because this new section on workplace misconduct investigations was enacted by removing this type of investigation from the definition of "consumer report." Thus, the usual protections that apply to a "consumer report" conducted for employment purposes do not apply to workplace misconduct investigations. If you find yourself in this position, you will probably want to seek the advice of an employment law attorney.

Annual File Disclosure

Another new feature of the FCRA allows consumers to get a free copy of their credit report once a year. Final regulations adopted by the FTC set a geographical "rollout" schedule for free credit reports beginning December 1, 2004. The final regulations can be found on the FTC's web site at www.ftc.gov/opa/2004/06/freeannual.htm. The schedule for access to free credit reports is also available on the PRC web site: www.privacyrights.org/fs/fs1-surv.htm

FACTA also requires a free annual file disclosure for consumer reports prepared by "nationwide specialty consumer reporting agencies." This refers to companies that compile, maintain files, and issue reports on consumers that relate to:

* Medical records or payments.
* Residential or tenant history.
* Check writing history.
* Employment history.
* Insurance claims.

For job applicants and employees, this means, starting in January 2005, you may receive a free copy of your "file" maintained by a "nationwide specialty consumer reporting agency" that supplies employers with background checks. Before, you could request a copy of your "file" but would have to pay for it.

Now, companies that provide employment background check reports have to, as a minimum, set up a toll-free number that gives you instructions on how to get the information in your "file." Companies may but are not required to also provide access to the free "file" disclosure through a web site address.

Your "file" is not the same as your "report." The "report" is the document the background screening company gives to your employer. The FCRA gives you the right to receive a copy of your "report" directly from the employer," but only if the employer issues an "adverse action" notice. Your "file" is defined in the FCRA as ".all of the information [about you] recorded and
retained by a consumer reporting agency regardless of how the information is stored." (FCRA §603(g)) You are entitled to see your "file," whether or not the employer gives the "adverse action" notice.

The FTC has declined to publish a list of national specialty consumer reporting agencies that are subject to this requirement. We will publish a list of these agencies and the toll free number or other means of access as this information becomes available. In the meantime, if you are asked to submit to an employment background check, it is a good idea to ask the employer for the name of the company that will do the check.

The federal Fair Credit Reporting Act (15 USC §1681 et seq.) does not require employers to conduct employment background checks. But the law sets a national standard that employers must follow in employment screening. State laws may give an employee more rights than the FCRA.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. For more information, including information about additional rights, go to .ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if: C a person has taken adverse action against you because of information in your credit report; C you are the victim of identity theft and place a fraud alert in your file; C your file contains inaccurate information as a result of fraud; C you are on public assistance; C you are unemployed but expect to apply for employment within 60 days. In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores
used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

**You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See .ftc.gov/credit for an explanation of dispute procedures.

**Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

**Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

**Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

**You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to .ftc.gov/credit.

**You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-800-567-8688.

**You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

**Identity theft victims and active duty military personnel have additional rights.** For more information, visit .ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

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<th>CONTACT:</th>
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<tr>
<td>Consumer reporting agencies, creditors and others not listed below</td>
<td>Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357</td>
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<td>National banks, federal branches/agencies of foreign banks (word &quot;National&quot; or initials &quot;N.A.&quot; appear in or after bank's name)</td>
<td>Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219  800-613-6743</td>
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<tr>
<td>Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)</td>
<td>Federal Reserve Board Division of Consumer &amp; Community Affairs Washington, DC 20551  202-452-3693</td>
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<tr>
<td>Savings associations and federally chartered savings banks (word &quot;Federal&quot; or initials &quot;F.S.B.&quot; appear in federal institution's name)</td>
<td>Office of Thrift Supervision Consumer Complaints Washington, DC 20552  800-842-6929</td>
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<tr>
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<td>National Credit Union Administration 1775 Duke Street Alexandria, VA 22314  703-519-4600</td>
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<td>State-chartered banks that are not members of the Federal Reserve System</td>
<td>Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638  1-877-275-3342</td>
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<tr>
<td>Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission</td>
<td>Department of Transportation, Office of Financial Management Washington, DC 20590  202-366-1306</td>
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<td>Activities subject to the Packers and Stockyards Act, 1921</td>
<td>Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250  202-720-7051</td>
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Chapter 4
The Other side of the Background Check

Whether you are hired or promoted for a job may depend on the information revealed in a background check. Job applicants and existing employees as well as volunteers may be asked to submit to background checks. For some jobs, screening is required by federal or state law. The current emphasis on security and safety has dramatically increased the number of employment background checks conducted.

In short, employers are being cautious. At the same time, applicants and employees fear that employers can dig into the past in ways that have nothing to do with the job.

This guide explains the why and how of background checks. It also tells you what can be covered in a background report, your rights under the Fair Credit Reporting Act, and what you can do to prepare. For more information, go to the References section at the end of this guide. The PRC does not perform background checks.

Can an employment application ask about things that should not be reported?

The FCRA does not prohibit an employer from asking questions in an employment application. See FTC letters to Nadell and Sum:

www.ftc.gov/os/statutes/fcra/nadell.htm
www.ftc.gov/os/statutes/fcra/sum.htm

For example, an employment application might ask if you have "ever" been arrested. The FCRA says a consumer reporting agency cannot report an arrest that from date of entry was more than seven years ago. It does not say the employer cannot ask the question.

How to handle such questions on an employment application is of real concern to many people, especially those concerned with a youthful mistake from the distant past.

How to Avoid Hiring Criminals and Problem Employees: Ten Tools Employers can take today (at no cost)

Why be concerned--- “Parade or Horribles”

- Past criminal conduct raises concern about propensity to repeat criminal behavior
- Workplace violence
- Up to 40% of resumes contain material lies or omissions about education, past jobs or qualifications
• Workplace disruption Lawsuits for Negligent Hiring, Retention, Promotion or Supervision Wrongful termination lawsuits
• Theft, Fraud or Embezzlement
• Cost of a bad hire estimated at $10,000 to $100,000 given time wasted recruiting, hiring and training and job not being done.

Workplace Violence

• Literally millions of incidents--Per 1998 DOJ, about two million violent incidents at work a year including 1,000 homicides, 600,000 assaults, 42,000 rapes/sexual assaults and 23,000 robberies
• Even a threat of violence is very serious
• American business looses over $55 BILLION dollars in lost wages as a result of missed worked days per US Dept. of Justice study (1994) Past criminal conduct is common denominator in incidents of workplace violence

Workplace Theft

• Employee dishonesty costs over $50 BILLION annually (US Dept. of Commerce)
• One-third of business failures are direct result of employee theft (US Chamber of Commerce)
• Over 42% of inventory shrinkage is due to employee theft

Litigation Exposure

• Every Employer has legal duty to exercise due diligence in hiring
• An employer can be sued for negligence if they hire someone who they knew, or in the exercise of reasonable care should have known, was dangerous or unfit for the particular job.
• Per recent California survey, employers lose 60 percent of negligent hiring cases with verdicts average about $3 million Average settlement $500,000 plus attorney fees

No National Criminal/Credentials Database

• Problem: contrary to popular belief, there is no national database available to private employers to check criminal records or false credentials
• Fingerprint checks from FBI only available when mandated by law (e.g. teachers/child care workers)
• Primary method for obtaining criminal records is to physically look at each relevant courthouse! Over 10,000 courthouses in America with court records in over 3200 jurisdictions Searches subject to human error as well

Ten Critical Tools

1. Have consent for background check
2. Use an application form
3. Ask about criminal convictions in application
4. Include other critical language in application
5. Review application carefully for “red flags”
6. Ask the Five critical interview questions
7. Check past employers/schools
8. Procedure if employment starts before screening completed
9. Check for criminal records at local courthouse at a minimum
10. Understand rules about the proper use of criminal records

**Have background consent as part of the application**

- Discourages applicants with something to hide
- Encourages an honest applicant to disclose a previous problem--a mistake honestly admitted may have less impact
- If employers use a third party agency, need a separate standalone disclosure document per federal Fair Credit Reporting Act (FCRA) and California law

**Applications are a best practice**

- Resumes often not complete or clear
- To applicant, a resume is a marketing tool
- Applications ensures uniformity
- Also, requires applicant to provide all necessary information and prevents employer having impermissible information

**Questions about Past Convictions**

- **CRITICAL:** Specifically ask if person has been convicted, or has pending charges
- Use broadest legal language for both felonies and misdemeanors
- May also inquire about pending cases
- Leaving out misdemeanors is a BIG mistake
- Criminal conviction does not automatically eliminate from consideration
- Nationally, 10% of job applicants have a criminal record employers need to know about

**Need Critical Language**

- Need statement that any fraudulent statement or material omissions grounds to terminate the process, or employment no matter when discovered
- May also include other essential language (employment at will/arbitration/non-discrimination policies, etc)
- Also ask for past addresses
- Employers should have CAE review their employment applications

**Look for Red Flags on Application**
When there is a problem employee, there was usually a red flag on the application:

- Applicant does not sign application
- Applicant leaves criminal questions blank (the honest criminal syndrome)
- Applicant self-reports offense
- Applicant fails to explain why left past jobs
- Incomplete information
- Applicant fails to list past supervisors or details of past employment
- Excessive cross-outs and changes
- Applicant fails to explain employment gaps

**Interview Process: The Four questions**

Away ask these four question (during housekeeping stage of interview)- Since applicant signed a consent and believe you are doing checks, powerful incentive to be truthful

1. We do background checks on everyone we make an offer to. Do you any concerns about that you would like to discuss? (Good applicants will shrug off)
2. We also check for criminal convictions for all finalists. Any concerns about that (question should reflect what employer may legally ask in your state)
3. We contact all past employers. What do think they will say? Will past employer tell us that e.g. your were tardy, did not perform well etc.
4. Are there any gaps in your employment history. If so can you give me a brief explanation for the gaps?

**Limitations on Using Criminal Records**

Criminal records are an important consideration for a number of reasons. However, there are also some important limitations that employers need to know about:

1. An employer may NOT ask about arrests or detentions that did not result in a conviction
2. An employer may only consider convictions or pending cases;
3. There are certain limitations on misdemeanors, crimes that have been sealed or otherwise expunged, or cases where a person participated in pre-trial diversion;
4. An employer should NOT automatically deny employment due to a criminal conviction, but should consider the nature of the offense, whether it is job related, when it occurred and what the person has done since.

For California employers, the various rules are found in the federal Fair Credit Reporting Act, the California Labor Code, the California Civil Code, the rules of the Fair Employment and Housing Commission contained in the California Code of Regulations, as well as federal case law interpreting equal employment opportunity laws and decisions by the federal Equal Employment Opportunity Commission.

Finally, it can be a form of discrimination to automatically bar employment to a person solely because of a criminal record. The reason is that the use of criminal records may unfairly result in the disproportionate screening out of certain groups. However, an employer can deny employment if there is a sound business reason. The employer should take into account the nature of the job and the scope of the duties, as well as factors about the applicant such as age.
and time of the offense, seriousness and nature of the violation, and efforts made at rehabilitation.

Often times, it is not the criminal record itself that disqualifies the applicant, but rather the lack of honesty in the application process. Often times, information honestly disclosed in an interview may have no effect. But if a third party discovers the information, the lack of honesty can be the reason for not wanting to give the applicant the position.

**Verifying past employment is as critical as criminal background check**

- Critical to verify employment to determine where a person has been (even if you only get dates and job title)
- Looking for unexplained gaps AND for locations to search for criminal records
- If can verify person gainfully employed last five-ten years, less likely spent time in custody for serious offense
- Just attempting and documenting effort demonstrates due diligence
- Can also verify education/credentials

**Procedure if employment starts before screening is done**

If need person to start before screening is done, be certain to state in a written offer letter: “Employment is conditions upon the receipt by employer of background information that is satisfactory to the employer.” Important to make sure that it is the employer that decides if an applicant passes a background check

**Check for Criminal Records**

- Check for a criminal conviction at the local courthouse AT A MINIMUM
- Can retain firms to check other counties, such as last three counties or all counties where a person lived or worked in past seven years
- Researcher goes to actual courthouse
- Depending on county, can use public look-up or clerk performs the search
- Some counties charge an access fee
- Can have court clerk delay if must locate record

**Understand the basic rules of obtaining and using criminal records**

- Must confirm identity and case details from looking at actual court file
- Critical rule--cannot deny employment automatically (EEOC)
- Discriminatory impact by disqualifying disproportionate number of certain groups
- Must determine if there is a rational job related reason that person is unfit for the job
- FACTORS: Nature and gravity of offense, when it occurred and nature of position

**Criminal records**
- California limited to seven years if use third party
- Felony/Misdemeanor Convictions or pending cases only--NO arrests
- No national/statewide computer database--search each applicable courthouse
- Databases are secondary tools ONLY
- Certain restrictions for minor/expunged offenses
- If person lied on application, can be basis for adverse action
- Special CA rules if employer does own look-up

Policy on Convictions

- Go through individualized process taking above factors into account
- Have policy that employer maintains a safe work place and will conduct strict review of any application with a criminal record, but no automatic disqualification
- Remember—person who has made mistake and repaid society needs a job in order to live law abiding life

If person is still hired

- If exception made, document reasons and process (in case sued by third party for injury, or future applicant with similar record not hired)
- Ensure person is in a job for which they are reasonably suited
- Any special supervision or assistance necessary to help the person succeed and maintain safety?

Can employer be sued for checking criminal records

- Chance of being sued successfully by a criminal for not hiring are probably remote
- Near statistical certainty that without screening, employer will hire a criminal since 10-12% of screened applicants have criminal records
- Employer must balance certainty that without screening they will hire a criminal against remote possibility of lawsuit
- The FCRA guards against mistake--applicant can review report prior to adverse action

Credit Reports

- Should be limited to positions involving access to assets or financial decision
- Credit report should only be used when the information is correct and relevant to ability to carry out job
- In California, applicant has a right to request copy if employer obtaining credit report
- Cannot discriminate on the basis of bankruptcy

Workmans’ compensation

Under ADA-limited to post-offer, pre-employment situation
May rescind a job offer only if:
1. If applicant has lied (e.g. during a medical exam, lies about not having a previous injury),
   or
2. Applicant is a safety or health threat to self or others,
   or
3. Applicant unable to perform essential job function according to a medical expert

DMV Records
- Not just for driving
- Employer liability for driving by employee is broadly defined in the law
- Often first sign of drug/alcohol problem
- Can indicate level of responsibility

The FCRA in 4 easy steps
- Employer must certify will follow the law (not discriminate, use for employment only)
- Obtain written release/disclosure on a stand alone document
- Pre-adverse action-copy of report and statement of rights so applicant can object if information inaccurate or incomplete
- Second letter sent to applicant if decision is made final

#1 Legal and privacy concerns
- In a Pre-Screening program, all of an applicant’s legal and privacy rights are respected
- Conducted under the Fair Credit Reporting Act (FCRA)
- By following the FCRA, applicants have a wide range of protections
- Following FCRA also protects employers
- California has special rules (important to ensure following state rules)

#2 Does it delay hiring
- Report are normally completed in 3-4 business days
- Employers doing pre-screening find that screening does not delay hiring
- Pre-screening program can be integrated seamlessly into hiring practices

#3 Is it cost effective
- The cost of a background screening is less than the cost, to a firm, of a new employee on just the first day on the job
- Avoiding even one bad hire will justify the cost of a background screening thousands of times over

#4 Effects on applicants
- Good applicants appreciate that employer concerned about safe and profitable workplace
• Applicants understand that this has become a business necessity and also protects everyone in the workplace
• Pre-employment screening is becoming a necessity in the workplace

**What Are the Major Laws That Affect Information an Employer may have?**

The following is a brief reference to some of the important laws that affect pre-employment screening. This is by no means an exhaustive list or a detailed explanation.

**Fair Credit Reporting Act (FCRA)**—This federal law, amended effective October 1997, regulates the obtaining and using of information that affects consumer. It controls what can go into a consumer report, and the rights of consumers. **POINT HR** has included with its information a summary of the law prepared by the Federal Trade Commission entitled, "**Notice to Users of Consumer reports: Obligations of Users under the FCRA.**" The following should be noted when engaging in Pre-Screening by using a consumer report for employment purposes:

1. A background screening can only be used for a legitimate purposes, such as employment, and not in violation of any state or federal equal opportunity law;

2. For use in employment decisions, the employer must make a conspicuous disclosure in a document that consists solely of the disclosure that a consumer report may be obtained and certain employee rights;

3. The employer must certify that if any adverse action is intended against an applicant based upon anything in the consumer report, a copy of the report and a statement of the consumer’s rights must be provided to the consumer. If an adverse action is actually taken, then a notice must be sent to the applicant;

4. Where the employer plans to do reference checking or ask questions of previous employers about an applicant’s character, reputation or other matters, the consumer must also be notified that an “investigative consumer report” is being prepared.

5. The information may not be disclosed to anyone who does not have a reason to receive the information for hiring purposes.

At **POINT HR**, we assist with handling all of these requirements as part of our service. We provide forms needed to obtain background information. In the event an employer intends to deny employment based in whole or in part upon the information provided, the employer simply needs to contact **POINT HR** and we will take care of the notice requirements, and provide the report and statement of rights. After that, if the applicant disputes any of the information, we will make a timely investigation at no charge, and notify the employer of our findings. This law makes it fair to everyone. If there is inaccurate or disputed information contained in public
records, the applicant has the opportunity to correct it, and the employer can then reconsider the applicant with the corrected information.

**Americans with Disabilities Act (ADA)**--This federal law regulates hiring of Americans with disabilities and has broad implications. In terms of background screenings, an employer may not use or obtain any information that violates the rights afforded under this law. The most obvious impact of the law relates to medical records, disabilities and worker’s compensation records that are discussed in more detail under specific services that **POINT HR** provides. **POINT HR** does not provide any records relating to medical conditions or disabilities. **POINT HR** can provide worker compensation records, but only under the strict procedures mandated by the Americans with Disabilities Act.

**Federal and State anti-discrimination requirements**--A number of federal and state laws make it illegal to discriminate in hiring. These include restrictions as race, color, national origin, religion, ancestry, medical condition, age, marital status, sex, or exercise of family care or medical leaves. Regulations and rulings from federal and state agencies and courts supplement these laws as well. At **POINT HR**, we carefully monitor our reports to ensure that no information is given to an employer that violates these various rules.

To assist our clients, we provide a copy of a publication by the California Department of Fair Employment and Housing entitled, "Pre-Employment Inquiry Guidelines." This reviews questions that an employer can and cannot ask.

Where the situation becomes more complicated is where information that appears neutral on its face is utilized in a discriminatory way. For example, credit reports and criminal records are perfectly legal for employers to obtain (provided they comply with various state and federal rules). However, there have been rulings that the use of credit reports or criminal records can tend to discriminate against certain groups. The generally accepted limitations to the use of certain types of information are discussed under each individual item. However, if your company has any questions, your legal department or employment lawyer should be contacted.

**California State Laws Regulating Consumer Reports**--California has two of its own laws governing consumer reports, which includes credit reports. These are the California Consumer Credit Reporting Agencies Act, and the California Investigative Consumer Agencies Act. As a result of legislation passed by California in 2002, screening in California must be done under a separate set of rules. forms and procedures utilized in the other 49 states are not applicable in California.

**Special Issues With Obtaining And Using Criminal Record**

There are several special issues concerning obtaining and using criminal records. For most employers, information about criminal records is an important concern. There are a number of cases where an employer has been hit hard for negligent hiring, when an employee with a criminal record has harmed other employees or the public.
First, contrary to popular belief, there is no national computer of criminal records available to private employers. Although the FBI and state law enforcement has access to a national computer database, it is absolutely illegal for a private company to obtain criminal information from law enforcement computer databases. (The exception are firms that are licensed by either the state or federal government, and where a fingerprint check is required by law, such as school teachers, or child care workers. In California, when a fingerprint check is required, it is done by "Livescan." However, the vast majority of private employers do not have access to Livescan.)

Instead, private companies must obtain criminal records on a county by county basis at the actual courthouse. There are a number of states that have statewide criminal databases (not including California), but the statewide requests often take too long for the hiring process and require burdensome paperwork.

An experienced screening company such as POINT HR has the ability to have public record researchers go to any courthouse in the United States to research whether a particular applicant has a criminal record. POINT HR generally needs the person’s social security number and birth date, as well as any other or previous names the person may have used.

Obviously, researchers cannot go to every courthouse in the country for every person, since there are over 3,000 jurisdictions. However, depending upon the company’s needs, POINT HR will send researchers to those counties that should be checked. As a minimum, POINT HR recommends that an employer check the county of residence and current employment, if different.

For the best protection, POINT HR recommends that an employer search each county where a person has lived, worked or studied for the past seven years. The seven years is recommended, since many states have seven year limitations. In the absence of a workable national rule, a seven year search balances legal protection for the employer with a reasonable search period. Going back further without specific need, could also potentially violate EEOC rules that caution employers to take into account the age of a criminal offense before utilizing an offense to deny employment.

Where the employer seeks the full seven-year search, POINT HR will look in every jurisdiction it can locate, based upon the application, driving record, social security or credit report, and employment verifications. It should be noted that a screening firm is selecting jurisdictions to search using one of two methods. Some employers will actually designate the counties POINT HR is to search. For those applicants where the employer is requesting POINT HR to select counties, the selection is based upon materials provided to POINT HR, such as a social security trace or past addresses in an application. POINT HR then utilizes information from the US Post Office to match cities and zip codes to certain jurisdictions. However, a screening firm cannot independently investigate everywhere a person has lived. Employers need to understand that it is always possible that a criminal matter could be missed if the materials provided to POINT HR do not point to a particular county.

Because the record searches normally take place at the actual courthouse, it can take up to two full days after the order is placed to obtain a report. In many jurisdictions, older records have
been placed in storage. Where there is a possible match, additional time is sometime needed to have the local county clerk pull the records from storage. POINT HR has no control over that.

Another complicating factor is that most counties have separate records for felonies and misdemeanors. Generally, felonies are the more serious crime that carries a greater potential punishment. However, most employers will also want to know about misdemeanor convictions as well. This can also include serious problems, such as assaults, threats, weapon charges, drug or alcohol possession, or crimes involving theft and honesty. Most employers want BOTH felonies and misdemeanors checked in all jurisdictions. It is the policy of POINT HR to check both. Some counties charge an extra fee for providing copies of certain records, as well. It should also be noted that searches are conducted in the Central Court only. Some jurisdictions have outlaying courts, such as Justice of the Peace Courts. It is simply not possible to send researchers to every small local courthouse that may house less serious matters.

There are other limitations to a criminal record search. First, only records of convictions or pending cases can be obtained. An employer may not ask about or receive information about arrests or detentions that did not result in conviction. Second, an employer may not receive information on certain cases that have been sealed, a pardon granted or where the applicant received "diversion," which is a special procedure that does not count as a conviction.

Finally, it can be a form of discrimination to automatically bar employment to a person solely because of a criminal record. The reason is that the use of criminal records may unfairly result in the disproportionate screening out of certain groups. However, an employer can deny employment if there is a sound business reason. The employer should take into account the nature of the job and the scope of the duties, as well as factors about the applicant such as age and time of the offense, seriousness and nature of the violation, and efforts made at rehabilitation.

Employers should also be aware that criminal searches are not perfect since they are conducted by human beings, and such are subject to human errors. Court researchers conduct searches at the courthouse by entering names into computers, or by reviewing manually large lists of names on a computer or in some other format. It is always possible that a researcher can inadvertently miss a name. If a county requires that a search be conducted by the court clerk, then the screening firm is dependent upon the court clerk conducting the search, also using some manual procedures. For those reasons, POINT HR recommends that an employer not rely entirely upon criminal record searches, but also pay close attention to their application, interview and reference checking process as well, as explained in other POINT HR Reports.

**Other Special Issues in Pre-Screening**

**1. Credit Reports:** At POINT HR, the practice of automatically obtaining credit reports for every job applicant regardless of position is discouraged. It has been held that such a policy may have the effect of disproportionately screening out members of certain groups who may have bad credit. This is especially a concern if a credit report is not reasonably relevant to job function. Obviously, where an applicant has access to cash or assets, or must exercise financial discretion, credit reports can be useful. It can be a gauge as to how well a person can handle
financial responsibility. An employer may also reasonably be concerned that a person who has excessive debts could be a security risk if they have access to cash or assets. However, when the position to be filled is entry level, and the applicants are young people, and there is supervision in the work place, there may be little need for a credit report. In that situation, a social security/identity check will normally suffice.

2. Date of Birth information on screening application: Special problems are faced concerning an applicant’s date of birth when obtained and used for screening. Federal and State laws prohibit employment discrimination on the basis of age for persons over 40 years old. Many states have rules that prohibit an employer, either directly or through an agent, from seeking or receiving information that reveals date of birth and age before an offer is made. See for example the Pre-employment Inquiry Guidelines by the California Department of Fair Employment and Housing (DFEH). Most authorities agree that any information tending to reveal age should not be requested on an application form or during an oral interview. Asking for date of birth during the selection process could violate the law by tending to deter older applicants from even applying.

On the other hand, without a date of birth, it is very difficult to perform applicant pre-screening. When researching court records, date of birth is probably the most important factor needed to identify an individual. Many court records do not contain social security numbers. In fact, in some jurisdictions, a criminal search cannot be conducted without a date of birth. It is also needed in many states in order to obtain a driving record.

Under the federal Age Discrimination Act of 1967, there is not an absolute prohibition against asking for date of birth or age. That is a common misconception among employers. In fact, the EEOC has specifically ruled that asking for date of birth or age is not automatically a violation of the act. However, the EEOC ruling indicated that any such request would be closely scrutinized to ensure that it is for a permissible purpose. The EEOC also indicated that the reason for asking for date of birth should be clearly disclosed so that older applicants are not deterred from applying. (See 29 Code of Federal Regulations Part 1625.)

In order to comply with the law, and at the same time to allow an employer to conduct a pre-employment screening, employers may consider the following steps:

- Applicants are assured on the POINT HR Release form that the information on the release form is for screening and verification of information only, and has no role in the selection process.
- An applicant is also assured on the release form that all federal and state rights are respected in our screening process.
- We recommend that our clients keep the screening forms and the reports separate from the employee’s personnel file or application papers, so that there can be no inference that age played any factor in any employment decisions. Furthermore, the applicant release forms should not be made available to the person or persons with hiring authority, so there is no suggestion any information was used in hiring.
- POINT HR forms indicate that the year of birth is optional.
• The **POINT HR** form clearly indicates the information is used for identification only and makes the process go faster.

6. The request for date of birth information is on the **POINT HR** form, not the employer's form. If an employer is sensitive about the date of birth issue, and employer can even keep the forms physically separated, so that anyone involved in selection will not see the date of birth information on the **POINT HR** forms. This eliminates the possibility of any applicant being the victim of discrimination in the selection process based upon someone having access to their age.

• For maximum protection, **POINT HR** recommends that firms consider performing all screening and obtaining information post-offer.

• **POINT HR** takes steps to remove all references to age and date of birth in its reports, so that employers will not receive such information.

• If an employer determines that they do not want to request date of birth even in the screening firm's paperwork, **POINT HR** will work with the employer to accommodate that procedure. However, an employer needs to understand that when a screening firm obtains date of birth for identification purposes that there can be a delay and increased costs. **POINT HR** can review that with each employer.

There are other options that can be considered as well, depending up the state the employer is located. However, if an employer has any questions, they should consult their own legal counsel. **POINT HR** will work with employers to accommodate a process of obtaining date of birth in a way that is consistent with federal and state laws. **POINT HR** is not offering any legal advice on this issue. In order to ensure legal compliance, employers are urged to seek advice from their attorneys, or to contact their local, state or federal EEO office.

3. Reference for former Employee: Another recurring problem is giving or obtaining references for former employees. Many attorneys advise their clients to keep such references to the basics, such as employment dates, and job title, even though many states, such as California, have passed laws giving employers protection. This whole area creates difficulties. At **POINT HR**, when a client requests an in-depth reference from a former employer, we will attempt to interview the supervisor in detail if that information is on the employment application. If company policy prohibits such detailed interviews, or if we are unable to locate the supervisor, **POINT HR** will then contact Human Resources of Personnel to verify basic employment information. Please see the detailed **POINT HR** report on Employment References at under **POINT HR** Publications at www.pointhr.com.

4. Worker Compensation Records: There are special procedures to obtain worker compensation records under both the Americans with Disabilities Act and California law. Essentially, the records may only be obtained after a conditional offer of employment has been extended. There are also limitations on the use of the records. Different states have different rules. For example, in California, an employer needs to obtain authorization from the state to receive these reports. **POINT HR** will assist in obtaining the authorization. However, to ensure legal compliance, a company should contact its legal department or employment lawyer before seeking these records.
5. Administering Screening Programs Uniformly—Another important consideration in administering a screening program is that once a decision is made to screen for a particular position, ALL candidates being considered for that position should be screened. Selective screenings could raise an inference of a discriminatory practice, particularly if the subject is a member of a legally protected group. Furthermore, all individuals who are screened should also be evaluated using the same criteria.

These nine steps are:

1. Job announcements, such as newspaper ads, should clearly indicate the firm requires background checks. This discourages an applicant with something to hide by clearly stating in the public announcement for a job opening that the company does screening. Employers find good applicants are not discouraged from applying at companies that do background screening. Employees are just as anxious as employers to work in a safe environment with qualified and honest people.

2. All applicants must sign consent for a background check, including a specific consent for criminal records at the time they submit an application or resume. This serves two vital functions in the screening process. First, it makes it very clear to a job applicant that criminal records will be searched. An applicant with a criminal record they want to hide may apply instead with a firm that does not perform screening. Second, some individuals may voluntarily disclose a prior difficulty. For some positions, a minor criminal violation honestly disclosed may not necessarily eliminate a person from consideration if the criminal offense is not related to the job.

There are some companies that do not use application forms, but instead hire based upon resumes. In that situation, a company can prepare a supplemental release form for the applicant to complete and sign. Some firms include a supplemental sheet in their applications asking a candidate specifically if they have any concerns about a background screening and whether there is anything they wish to bring to the company’s attention. This is an excellent device to focus applicants on the fact a thorough investigation will be conducted a part of the hiring process.

3. Include language in the consent concerning a release of records from foreign countries. Doing pre-employment screenings and criminal record checks in foreign countries can be difficult and expensive, and in many instances are not even possible. One approach, however, is to add specific language to a background form indicating the release to search for criminal records also applies to any jurisdictions outside the United States. That may cause applicants from abroad to either self-disclose problems or apply elsewhere.

4. Applicants should be asked directly if they have a criminal record in the interview and employment application. It is crucial that applicants be asked directly during the process if they have a criminal conviction or pending case. Ideally, that language should be in the employment application. During oral interviews, part of the standard questioning should be, "If we were to check with the courts, would we discover any criminal convictions or pending cases?"

In asking about criminal records, employers should keep the following in mind:
a. Always ask the broadest question allowed by the law in your state. Some employers are under the mistaken belief they can only ask about felonies. However, misdemeanor convictions can also represent serious crimes, and should be included as allowed by state law.

b. Employers should carefully phrase the question in order to not elicit any information about arrests not resulting in convictions. Employers are generally limited to convictions or pending cases.

c. Ask the applicant to describe any convictions or pending cases and give the specific location. This allows the employer to pull the court file and to determine if the applicant is truthful about the nature of the criminal case. It is also critical to ask for the exact location so the employer or background company knows exactly what court to search.

d. In any written application or release asking about criminal convictions or pending cases, the form also should contain the language to ensure compliance with discrimination laws. For example, "This company will not deny employment to any applicant solely because the person has been convicted of a crime. The company, however, may consider the nature, date and circumstances of the offense as well as whether the offense is relevant to the duties of the position applied for."

5. The employment application must clearly state that any false or misleading statements or material omissions is grounds to terminate the application process, or to terminate employment if it has begun, regardless of when the information is discovered. This is another critical part of an effective program. Employers generally cannot deny employment automatically because of a criminal conviction without taking certain factors into consideration. However, where a person has lied on their application by not admitting a prior criminal conviction in a response to a direct question, the lack of honesty is a valid reason for a rejection. An applicant needs to clearly understand dishonesty can lead to termination no matter when it is discovered.

6. If the background screening may not be completed before the start date for the position, make sure the applicant understands any employment is conditioned upon the employer’s receipt of a background report that is satisfactory to the employer. Sometimes employment will begin prior to the background report being completed. In those situations, it is important to notify the applicant, preferably in writing, that employment is subject to the employer’s receipt of a background report. It is also important the employer clearly state the background report is subject to the employer’s satisfaction only, so a job applicant cannot debate whether a report is satisfactory or not.

7. Check past employment references. Checking references is an essential part of the screening process. In fact, it can be just as valuable as a criminal records search. It would be difficult, if not impossible, to defend an employer sued for negligent hiring that failed to confirm a person’s past employment history. Even if previous employers limit the information to just start date, end date and job title, that is still invaluable. The primary purpose is to confirm an applicant’s whereabouts for the past five to seven years and to make certain there are no unexplained gaps in employment. By knowing where a person has been, an employer limits the possibility that an applicant spent time in
custody for a criminal offense.

It also assists an employer in determining what jurisdictions to search for criminal records. This is important because there is no such thing as a national criminal record search for most employers. Employers can only obtain criminal records by searching individual courthouses. Since there are more than 10,000 courthouses in America, it is important to know where to look.

Of course, an uninterrupted work history does not guarantee a lack of a criminal record. Some jurisdictions allow jail sentences to be served on weekends or through a work furlough program where a prisoner is released during working hours. However, when done in conjunction with all the other steps, checking past references is a vital part of the program.

8. Obtain a listing of all past addresses. Another important step is to include on the consent form a listing of all addresses for the past seven years, as well as the approximate time at each address. This not only reinforces in the applicant’s mind that the company is serious about screening, but it assists the employer in determining which jurisdictions to search for criminal records.

9. Include future screenings in the consent language. Every consent form should include language that the consent for a background screening allows for future background checks for purposes of promotion, reassignment or retention, unless otherwise revoked in writing. This serves three important purposes. First, it reinforces the idea the employer is serious about maintaining a safe workplace. An employee is on notice that they are subject to future investigations. Second, this language facilitates future investigations if necessary for claims of harassment, theft, violence or other difficulties. Finally, the language is also important due to recent interpretations of the federal Fair Credit Reporting Act, the federal law that governs pre-employment screening by outside agencies. This language in the release form makes it easier for an employer to utilize the services of an outside agency to conduct future investigations if workplace issues arise.

In addition to these nine steps, an employer also must perform additional checks to satisfy due diligence. The most important of these are courthouse searches for criminal records. There are other checks that can be performed as well. However, these preliminary steps that occur before a person is even hired can dramatically increase the effectiveness of a screening program. These steps also have the advantage of promoting workplace safety with very little additional costs. By enlisting everyone in the hiring process from the beginning, firms can dramatically increase the effectiveness of their screening programs.

What employers can and can't find out about applicants

Violence, theft and criminal activity have become greater risks in the workplace, so more employers are performing criminal background checks in addition to asking about criminal records on job applications. In fact, employers who fail to take reasonable precautions about whom they hire can be sued if an employee with a criminal background harms someone.
Do criminal record searches, however, mean that applicants who had a brush with the law will never find a good job, or that employers are assured that they will never hire a criminal? The answer to both is no.

When private employers check criminal records, they normally do not have access to governmental criminal databases (unless the position qualifies for a fingerprint check, such as teachers or child-care workers). Private employers can check criminal records only by going to individual courthouses and looking through the records that are kept by each court. Since there are more than 10,000 courthouses in America, a nationwide criminal check is not practical.

To determine where to search, employers will examine the resume or job application. They can also review records kept by credit bureaus that list addresses associated with Social Security numbers, and they need to verify past jobs to confirm where a person has been and to make sure there are no unexplained gaps in employment. Even with these precautions, however, records can be missed.

When a company hires a service to perform the search, it is regulated by the federal Fair Credit Reporting Act. Searches can be conducted only if an applicant provides written consent. If a criminal record is found, applicants must be given an opportunity to question its accuracy and must receive a copy of their legal rights before the decision to deny the job is made final.

Because of the way public records are maintained, errors are always possible, and cases of mistaken identification have occurred. There are also legal limits on how far back court researchers can go in reporting convictions.

Despite these limitations, employers still find criminal record searches valuable. A search for criminal records discourages applicants with something to hide and limits uncertainty in the hiring process. It also shows that an employer exercised due diligence.

Even if there is a criminal record, there are legal limitations on what information can be used by an employer.

First, an employer may not ask about or consider information about arrests or detentions that did not result in convictions. Only convictions and pending cases can be considered.

Second, an employer may not consider crimes that have been sealed or expunged, or where the applicant participated in a special pretrial alternative program.

Third, there are limits concerning misdemeanors. Most employers will ask about both felonies and misdemeanors on applications, but a misdemeanor cannot be considered if probation was completed and the case dismissed, or for minor marijuana offenses more than two years old.

If a criminal conviction or pending case is located, does that necessarily mean that an applicant is eliminated? The answer again is no.
Courts have found that a policy of automatically denying employment can result in discrimination against certain groups. Instead, employers must examine whether there is a sound business reason to not hire an individual with a criminal record, taking into account the nature of the offense, whether it is job-related, when it occurred and what the person has done since.

What should applicants do if they are concerned about a criminal matter?

First, ask an attorney if the criminal record can be expunged or set aside by going back to court, or whether it is the type of offense that an employer may legally ask about or consider.

Second, applicants can seek to rebuild their resumes by finding employment with people they know, or with employers in a tight job market willing to give them an opportunity.

Finally, honesty is always the best policy. A criminal matter honestly explained during an interview may have much less of a negative impact than hiding it and having an employer discover it later. If an employer discovers an applicant was dishonest, the denial of a job could be based upon a lack of honesty, regardless of the nature of the offense.

Complying with the Fair Credit Reporting Act (FCRA) in Four Easy Steps

Employers have become acutely aware that hiring a job applicant with an undesirable background, criminal record or falsified credentials can carry enormous economic and legal consequences. Many employers utilize pre-employment background screening to be more careful about who is hired in the first place.

Pre-employment background screening promotes a safe and profitable workplace, by protecting an employer from negligent hiring exposure, wrongful termination lawsuits, incidents of sexual harassment, financial loss, false claims, theft, workplace disruption or time wasted in recruiting and training the wrong candidate.

Background pre-screening is normally conducted by outside agencies called Consumer Reporting Agencies (CRA). Other than calling former employers for references, employers generally cannot conduct such screenings in-house due to the specialized resource and knowledge involved. In addition, firms risk legal liability if the procedures utilized to check on applicants infringe on legally protected areas of privacy.

A federal law called the Fair Credit Reporting Act (FCRA), however, governs pre-screening obtained from outside agencies. This law sets out various requirements and rules for pre-employment background reports, called Consumer Reports. This law was substantially amended on September 30, 1997, to provide greater privacy protection to consumers, and to ensure that information was accurate and complete. Some important amendments were made in 1998.

A Consumer Report is much broader in scope than just a credit report. It affects a wide variety of information obtained concerning job applicants. A Consumer Report includes criminal and civil records, driving records, civil lawsuits, reference checks and any other information obtained by a Consumer Reporting Agency. By following the FCRA, an applicant's privacy
rights are protected. For this reason, many legal experts advise employers to engage the services of an outside screening firm.

When engaging the services of a Consumer Reporting Agency, both the employer and the CRA must follow the four steps described in this report. Failure to do so can result in substantial legal exposures, including fines, damages, punitive damages and attorneys fees. Private investigators who engage in the business of pre-employment background screening are also covered by the FCRA.

**STEP ONE**--An Employer must certify to the Consumer Reporting Agency that it will follow the FCRA (FCRA Section 604)

Prior to supplying a Consumer Report, an employer must certify to the Consumer Reporting Agency (CRA), that the employer will follow all the steps set forth in the Fair Credit Reporting Act. These include:

- That the employer will use the information for employment purposes only.
- That the employer will not use the information in violation of any federal or state equal opportunity law.
- That the employer will obtain all the necessary disclosures and consents as discussed below.
- That the employer will give the appropriate notices in the event that an adverse action is taken against an applicant based in whole or in part on the contents of the Consumer Report
- That if a special type of consumer report is requested, called an Investigative Consumer Report, that the employer will give the additional information required by law.

These requirements are explained further in a document prepared by the Federal Trade commission entitled, "Notice to Users of Consumer Report." The FCRA requires a Consumer Reporting Agency to provide a copy of that document to every employer who requests a report.

**STEP TWO**--An Employer must obtain a written Release and a separate Disclosure from a job applicant before obtaining a Consumer Report (FCRA Sections 604 and 606)

Before obtaining a consumer report from a Consumer Reporting Agency, the employer must obtain written consent from the applicant and provide the applicant with a clear and conspicuous written disclosure that a background report may be requested. The disclosure must be provided in a standalone document to prevent it from being buried in an employment application. A 1998 amendment to the FCRA clarified that the disclosure and consent may be in the same document. However, the Federal Trade Commission (FTC), which enforces the FCRA, cautions that the form should not contain excessive information that may distract a consumer.

The Consumer Reporting Agency will normally provide employers with the forms needed for the Disclosure and Release. A special procedure is necessary where the employer requests a Consumer Reporting Agency to obtain employment references. Where the Consumer Reporting Agency is merely verifying factual matters, such as the dates of employment or salary, no special procedure is necessary. However, where the Consumer Reporting Agency is asking for
When an Investigative Consumer Report is requested, there are some special procedures to follow:

- There must be a disclosure to the applicant that an investigative consumer report is being requested, along with a certain specified language. Unless it is contained in the initial Disclosure, the consumer must receive this additional disclosure within three days after the request is made.
- The Disclosure must tell the applicant that they have a right to request additional information about the nature of the investigation.
- If the applicant makes a written request, then the employer has five days to respond with additional information and must provide a copy of a document prepared by the Federal Trade commission called, "A Summary of Your Rights Under the Fair Credit Reporting Act (which your background agency should provide).

As a practical matter, a Consumer Reporting Agency should handle all of these requirements for an employer as part of their services.

**STEP THREE--If adverse action is intended as a result of a Consumer Report, then the applicant is entitled to certain documents (FCRA Section 604)**

Where an employer receives a Consumer Report, and intends not to hire the applicant based upon the report in any way, then the applicant has certain rights. Before taking the adverse action, the employer must provide the following information to the applicant:

- A copy of the consumer report
- The FTC document "A Summary of Your Rights Under the Fair Credit Reporting Act."

(This should be provided by the screening service.)

Here is a sample letter:

*Dear Applicant,*

* A decision is currently pending concerning your application for employment at (the above employer)(this company). Enclosed for your information is a copy of the consumer report that you authorized in regard to your application for employment, together with a "Summary of Your Rights Under the Fair Credit Reporting Act.*

*If there is any information that is inaccurate or incomplete, you should contact this office as soon as possible so an employment decision may be completed.*

*Sincerely yours,*
The purpose is to give an applicant the opportunity to see the report that contains the information that is being used against them. If the report is inaccurate or incomplete, the applicant then has the opportunity to contact the Consumer Reporting Agency to dispute or explain what is in the report. Otherwise, applicants may be denied employment without ever knowing they were the victims of inaccurate or incomplete data.

As a practical matter, by the time an applicant is the subject of a Consumer Report, an employer has spent time, money and effort in recruiting, and hiring. Therefore, it is in the employer's best interest to give an applicant an opportunity to explain any adverse information before denying a job offer. If there was an error in the public records, giving the applicant the opportunity to explain or correct it could be to the employer's advantage.

Even if there are other reasons for not hiring an applicant in addition to matters contained in a consumer report, the adverse action notification procedures still apply. If the intended decision was based in whole or part on the Consumer Report, the applicant has a right to receive the report. In fact, these rights apply even if the information in the consumer report used against an applicant is not even negative on its face. For example, an applicant may have a perfect payment record on his or her credit report, but an employer may be concerned that the debt level is too high compared to the salary. The applicant still is entitled to a notice of pre-adverse action, because it is possible that the credit report is wrong about the applicant’s outstanding debts. In a situation where the employer would have made an adverse decision anyway, regardless of the background report, following the adverse action procedures is still the best practice for legal protection.

The question that arises is how long an employer must wait before denying employment based upon information contained in a Consumer Report. The Fair Credit Reporting Act is silent on this point. However, many legal authorities advise that an employer should wait a reasonable period of time before making the final decision. This period should be the time that would be needed for an applicant to meaningfully review the report and make known to the employer or the Consumer Reporting Agency any inaccurate or incomplete information in the Consumer Report. A Consumer Reporting Agency should be able to assist employers in complying with these requirements. This does not mean that an employer is required to hold the job open for a long period of time. After the first notice is given, and the applicant has had an appropriate opportunity to respond, an employer may either wait until there has been a re-investigation, or fill the position with another applicant. Most employers find as a practical matter that this provision of law does NOT impose any hardship or burden upon an employer. Even though in rare situations an employer may have questions on how to proceed, the clear advantages of a pre-employment screening program far outweigh any complications that can theoretically arise from compliance.

**STEP FOUR**--Notice must be give to an applicant after an adverse action (FCRA sec. 615)

If after sending out the documents required in Step 3, the employer intends to make the decision final, the employer must take one more step. The employer must send the applicant a Notice of Adverse Action informing the job applicant that the employer has made a final decision, along with another copy of the FTC form "Summary of Your Rights under the Fair Credit Reporting Act."
The Notice of Adverse Action must contain certain information. The following is a sample letter that contains the necessary statements:

Dear Applicant,

In reference to your application for employment, we regret to inform you that we are unable to further consider you for employment at this time. Our decision, in part, is the result of information obtained through the Consumer Reporting Agency identified below.

The Consumer Reporting Agency did not make the adverse decision, and is unable to explain why the decision was made.

You have the right to obtain within 60 days a free copy of your consumer report from the Consumer Reporting Agency as identified below and from any other consumer reporting agency which complies and maintains files on consumers on a nationwide basis.

You have the right to contact the Consumer Reporting Agency listed below to dispute any information contained in the report that you believe may be inaccurate or incomplete. A copy of your rights under the "Fair Credit Reporting Act" is enclosed, entitled "Summary of Your Rights under the Fair Credit Reporting Act." (List the Consumer Reporting Agency's name, address and phone number below, including any 800/888 number.)

Many employers find it difficult to believe that Congress intended that an applicant be notified twice, both before an adverse action and after. However, the law clearly requires two notices. This is also the interpretation of the Federal Trade Commission Staff. The purpose is to give job applicants the maximum opportunity to correct any incomplete or inaccurate reports that could affect their chances of employment.

**Background Checks and Your Credit Report**

An employment background check often includes a copy of your credit report. 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 your credit-payment history and other credit habits from which current or potential employers might draw conclusions about you.

An employment report provides everything a standard credit report would provide. However it doesn't include your credit score or date of birth. Nor does it place an "inquiry" on your credit file that may be seen by a company looking to issue you credit. Having too many credit inquiries tends to lower your credit score.

**My job doesn't require handling money. Why does the employer do a credit check?**

Often employers use your credit history to gauge your level of responsibility. Whether a valid assumption or not, some employers believe if you are not reliable in paying your bills, then you will not be a reliable employee. Unfortunately, a bad credit report can work against you in your search for employment. For more on how a credit record can affect your job search, see the
In addition to your payment history, a credit report typically includes information about your former addresses and previous employers. Employers can use this as one way to verify the accuracy of information you provide on an application or resume.

**I never use credit. Can an employer hold that against me?**

Yes. The employer might be looking for someone who has an established record of paying bills on time. The FCRA says only that certain things like negative information more than seven years old cannot be considered. The absence of a credit history can also be considered. But if this bit of information means you don't get the job, the employer has to give you an adverse notice decision. For more on an employer's responsibility under the FCRA, see www.ftc.gov/bcp/conline/pubs/buspubs/credempl.htm

**How to Prepare for a Background Check**

When you know you are going to be on the job market, take the following steps to reduce the chances that you and/or the potential employer will be "surprised" by information found in the background check process:

* Order a copy of your credit report. If there is something you do not recognize or that you disagree with, dispute the information with the creditor and/or credit bureau before you have to explain it to the interviewer. Another individual's name may appear on your credit report. This happens when someone mistakenly writes down the wrong Social Security number on a credit application causing that name to appear on your file. Or you might be a victim of identity theft. (See PRC Fact Sheet 6 on your credit reporting rights, www.privacyrights.org/fs/fs6-crdt.htm, and Fact Sheet 17a on identity theft, www.privacyrights.org/fs/fs17a.htm.)

* Check court records. If you have an arrest record or have been involved in court cases, go to the county where this took place and inspect the files. Make sure the information is correct and up to date.

Reporting agencies often report felony convictions when the consumer truly believes the crime was reduced to a misdemeanor, or that it was reported as a misdemeanor conviction when the consumer thought the charge was reduced to an infraction. Court records are not always updated correctly. For example, a signature that was needed to reduce the charges might not have been obtained or recorded by the court. Don't rely on what your attorney may have told you. If you think the conviction was expunged or dismissed, get a certified copy of your report from the court. For an explanation of expungement, visit www.epic.org/privacy/expungement.

* Check DMV records. Request a copy of your driving record from the Department of Motor Vehicles, especially if you are applying for a job that involves driving.

Many employers ask on their application if you were ever convicted of a crime. Or they might word the question to ask whether you have ever been convicted of a felony or misdemeanor.
Typically, the application says you do not have to divulge a case that was expunged or dismissed, or that was a minor traffic violation.

Don't be confused. A DUI (driving under the influence) or DWI (driving while intoxicated) conviction is not considered a minor traffic infraction. Applicants with a DUI or DWI who have not checked "yes" on a job application may be denied employment for falsifying the form -- even when the incident occurred only once or happened many years before. The employer perceives this as dishonesty, even though the applicant might only have been confused by the question.

* Do your own background check. If you want to see what an employer's background check might uncover, hire a company that specializes in such reports to conduct one for you. That way, you can discover if the data bases of information vendors contain erroneous or misleading information. (Consult the Yellow Pages under "Investigators.") Or, you can use one of the many online search services to find out what an employer would learn if conducting a background check in this way.

* Ask to see a copy of your personnel file from your old job. Even if you do not work there anymore, state law might enable you to see your file. Under California law, you can access your file until at least a year from the last date of employment. And you are allowed to make copies of documents in your file that have your signature on them. (California Labor Code §432.) You may also want to ask if your former employer has a policy about the release of personnel records. Many companies limit the amount of information they disclose.

* Read the fine print carefully. When you sign a job application, you will be asked to sign a consent form if a background check is conducted. Read this statement carefully and ask questions if the authorization statement is not clear. Unfortunately, jobseekers are in an awkward position, since refusing to authorize a background check may jeopardize the chances of getting the job.

Notice of a background check has to be on a separate form. The only other information this form can include is your authorization and information that identifies you. Neither the notice of a background check nor any other form should ask questions like "race," "sex," "full date of birth," or "maiden name." Such questions violate the federal Equal Employment Opportunity laws. And, you should not be asked to sign any document that waives your right to sue a screening company or the employer for violations of the law.

* Tell neighbors and work colleagues, past and present, that they might be asked to provide information about you. This helps avoid suspicion and alerts you to possible problems. In addition, their prior knowledge gives them permission to disclose information to the investigator. Forewarning others speeds up the process and helps you get the job fast.
Chapter 5  
State FCRA Rulings


**Alaska** Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

AS 12.62.160 (b) (8) Release and Use of Criminal Justice Information
Subject to the requirements of this section, and except as otherwise limited or prohibited by other provision of law or court rule, criminal justice information may be provided to a person for any purpose, except that information may not be released if the information is non-conviction information or correctional treatment information.


**California** Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state rulings:

**CA Civil Code (Consumer Credit Reporting Agencies Act) 1785.13.6 – Conviction**
No consumer credit reporting agency shall make any consumer credit report containing any of the following items of information (6) Records, of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that in the case of a conviction a full pardon has been granted, or in the case of an arrest, indictment, information or misdemeanor complaint a conviction did not result.

**CA Civil Code (Consumer Credit Reporting Agencies Act) 1785.20.5. – Disclosure – Copy of Report**
Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used and the source of the report, and shall contain a box that the person may check off to receive a copy of the credit report. If the consumer indicates that he or she wishes to receive a copy of the report, the user shall request that a copy be provided to the person when the user requests its copy from the credit reporting agency. The report to the user and to the subject
person shall be provided contemporaneously and at no charge to the subject person.

CA Civil Code (Investigative Consumer Reporting Agencies Act) 1786 et seq.
Under the federal Fair Credit Reporting Act (FCRA), most of the background screening reports we provide are considered “consumer” reports, while under the California Investigative Consumer Reporting Agencies Act (ICRA), Cal. Civil Code 1786 et seq., they are classified as investigative consumer reports. It should be noted these requirements are placed only on California employers who hire California residents to work in the state of California.

CA Civil Code (Investigative Consumer Reporting Agencies Act) 1786.18 (a) (7) – Conviction Records
Except as authorized under subdivision (b), no investigative consumer reporting agency shall make or furnish any investigative consumer report containing any of the following items of information (7) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, form the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that, in the case of a conviction, a full pardon has been granted or, in the case of an arrest, indictment, information, or misdemeanor complaint, a conviction did not result; except that record of arrest, indictment, information, or misdemeanor complaints may be reported pending pronouncement of judgment on the particular subject matter of those records.

Colorado Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

CRS 12-14-.3-105.3 (1)(e) – Reporting of information prohibited
No consumer reporting agency shall make any consumer report containing any of the following items of information: (e) Records of arrest, indictment or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven years. Exception: If the salary of an individual equals or is reasonable expected to equal $75,000 or more, the 7-year restriction does not apply.


Georgia Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

**GA Code 35-3-34 (3) (b) – Georgia Crime Information Center Records**
In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

Hawaii Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

**HI Revised Statutes 2003 §378-2.5 (a) (b) – Employer inquiries into conviction records**
Subject to subsection (b), an employer may inquire about and consider an individual’s criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position. (b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.


Illinois Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

**(20 ILCS 2635/7 (A) (1) (2) (from ch. 38, par. 1607) – Illinois Uniform Conviction Information Act**
The following provisions shall apply to requests submitted pursuant to this Act for employment or licensing purposes or submitted to comply with the provisions of subsection (B) of this Section: (1) A requestor shall, in the form and manner prescribed by the Department (Illinois Department of State Police), submit a request to the Department, and maintain on file for at least 2 years a release signed by the individual to whom the information request pertains. The Department shall furnish the requester with a copy of its response. (2) Each requestor of conviction information furnished by the Department shall provide the individual named in the request with a copy of the response furnished by the Department. Within 7 working days of receipt of such copy, the individual shall
have the obligation and responsibility to notify the requester if the information is inaccurate or incomplete.


Kansas Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

KS Chapter 50 Article 7 – Fair Credit Reporting - Obsolete Information
Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information: (5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven (7) years. Exception: If the salary of an individual equals or is reasonable expected to equal $75,000 or more, the 7-year restriction does not apply.

Kentucky Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

KRS Chapter 367.00 §310 – Consumer reporting agency records restriction
No consumer reporting agency shall maintain any information in its files relating to any charge in a criminal case, in any court of this Commonwealth, unless the charge has resulted in a conviction.


Maryland Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

Code of Maryland §14-203 (5) - Reporting of obsolete information prohibited
Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years. Exception: If the salary of an individual equals or is reasonable expected to equal $20,000 or more, the 7-year restriction does not apply.

Massachusetts Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state rulings:
M.G.L. Chapter 93, Section 52 – Information not to be contained in report; exceptions
Except as authorized under subsection (b) no consumer reporting agency shall make any consumer report containing any of the following items of information:
(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.
Exception: If the salary of an individual equals or is reasonable expected to equal $20,000 or more, the 7-year restriction does not apply.

M.G.L. Chapter 151, Section 4 (9) – Unlawful practices
It shall be unlawful practice: (9) For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) and arrest, first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violation, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting there from, whichever date is later, occurred five of more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.

**Michigan** Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

**Michigan Complied Laws Act 453 of 1976 37.2205a (1) – Convictions**
An employer, employment agency, or labor organization, other than a law enforcement agency of this state or a political subdivision of this state, shall not in connection with the terms, conditions, or privileges of employment or membership request, make or maintain a record of information regarding a misdemeanor arrest, detention, or disposition where a conviction did not result. A person is not guilty of perjury or otherwise for giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold by this section. This section does not apply to information relative to a felony charge before conviction or dismissal.

**Minnesota** Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA),
15 U. S. C. § 1661 et seq. and the following state ruling:

Minnesota Statutes 2003 13.02 subdivision 2 – Form; copy
The disclosure required under subdivision 1 must be in writing and must be provided to the consumer before the consumer report is obtained or caused to be prepared. If a written application is provided for employment purposes by an employer or prospective employer, the disclosure must be included in or accompany the application. The disclosure must include a box that the person may check off and return to receive a copy of the consumer report. If the consumer requests a copy of the report, the person requesting the report shall request the person preparing the report to provide a copy to the consumer. The report must be sent to the consumer by the person preparing the report within 24 hours of providing it to the person requesting the report.


Montana Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

Montana Code Annotated 2003 31-3-112 – Obsolete information
No consumer reporting agency may make any consumer report containing any of the following items of information: (5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; (6) any other adverse item of information which antedates the report by more than 7 years.


Nevada Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

Nevada Revised Statutes 598C.150 (2) – Purging of information from files of Reporting agency; disclosure of purged information.
A reporting agency shall periodically purge from its files and after purging shall not disclose: (2) Except as otherwise provided by a specific statute, any other civil judgment, a report of criminal proceedings, or other adverse information which precedes the report by more than 7 years.

New Hampshire Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:
HRS 359-B:5 - Obsolete Information
Except as authorized under paragraph II, no consumer reporting agency may make any consumer report containing any of the following items of information:
(e) Records of arrest, indictment, or conviction of crime which from date of disposition, release, or parole, antedate the report by more than 7 years.
Exception: If the salary of an individual equals or is reasonably expected to equal $20,000 or more, the 7-year restriction does not apply.


New Mexico Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

New Mexico Statute 56-3-6 – Report information; limitations
A credit bureau may report the following matters for no longer than the specified periods: (5) arrests and indictments pending trial, or convictions of crimes for not longer than seven years from date of release or parole. Such items shall no longer be reported if at any time it learned that after a conviction a full pardon has been granted, or after an arrest or indictment a conviction did not result; and (6) any other data not otherwise specified in this section, for not longer than seven years.

New York Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

New York State Consolidated Laws Article 25 Section 380-j – Prohibited information
Prohibited information. (a) No consumer reporting agency shall report or maintain in the file on a consumer, information: (1) relative to an arrest or a criminal charge unless there has been a criminal conviction for such offense, or unless such charges are still pending. (f) (1) Except as authorized under paragraph two of this subdivision, no consumer reporting agency may make any consumer report containing any of the following items of information. (v) records of conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.


Ohio Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA),

Oklahoma Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

Oklahoma House Bill 2492 – Copy of Consumer Report
Prior to requesting a consumer report for employment purposes, the requestor or User of the consumer report shall provide written notice to the person who is the subject of the consumer report. The notice shall inform the consumer that a consumer report will be used and the notice shall contain a box that the consumer may check to receive a copy of the report, the user of the consumer report shall request that a copy be provided to the consumer when the user of the consumer report requests its copy from the credit reporting agency. The report sent to the consumer shall be provided at no charge to the consumer.


Texas Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

Business & Commerce Code – Chapter 20 § 20.05 – Reporting of information Prohibited. (a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to: (4) a record of arrest, indictment, or conviction of a crime in which the date of disposition, release, or parole predates the consumer report by more than seven years. Exception: If the salary of an individual equals or is reasonable expected to equal $75,000 or more, the 7-year restriction does not apply.


**Washington** Abide by the Federal Trade Commission’s Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1661 et seq. and the following state ruling:

> RCW 19.182.040 – Consumer report – Prohibited information – Exceptions
> Except as authorized under subsection (2) of this section, no consumer reporting agency may make a consumer report containing any of the following items of information: (e) Records of arrest, indictment, or conviction of crime that, from date of disposition, release, or parole, antedate the report by more than seven years. Exception: If the salary of an individual equals or is reasonable expected to equal $20,000 or more, the 7-year restriction does not apply.

