



About Criminal Background Checks

Searching for criminal records is much more complicated than it appears on the surface. Contrary to popular belief, there is no central database available to most private employers to instantly find a person's criminal record at one touch. The FBI database, (National Crime Information Center – NCIC) is only available to law enforcement or employers that are legally authorized or mandated to submit fingerprints and even with this database there is the possibility of errors in the records. Searches offered by most background screening firms are drawn from government data that is commercially available or has been deemed to be a public record and released.

The best practice for conducting criminal records checks is to identify counties associated with the applicant and to search those counties by going to the actual courthouse. With some 3,200 counties in the US and over 10,000 courthouses a background investigations firm must use tools and techniques to identify potentially relevant counties to search for criminal records. Most counties in the United States can be researched on site, at the courthouse within 24-48 hours (excluding weekend and court holidays).

One of the best ways that relevant counties are identified is first by using a tool called a *Social Security Trace* that uses millions of records that show what addresses a social security number is related to. In addition, a quality background investigator will use at least three different proprietary databases to: cross-check the identifying information, identify additional counties in which the applicant lived (not found by the *Social Security Trace*) and finally to identify missing data and to confirm all data from all sources.

In addition, some employers also choose to search counties for criminal records where a person has worked or gone to school. Although such searches are very accurate, as with anything depending on human beings, there is still some small margin of error possible.

Even assuming a record is found, we must determine if there are sufficient identifiers to associate the record to the applicant and even if the criminal record belongs to the applicant. Investigators should search for all convictions located at the courthouse as the primary source of courthouse data. They should be performed at the central courthouse or by use of the same resources that are available at the central courthouse. Courts are searched using the most hands-on means available, which typically means going to the actual courthouse. In some cases, where the courthouse has placed their records online, it is acceptable to use the courts online access provided that it is the same information that would be obtained at the actual courthouse, so that the online system is the functional equivalent of going to the courthouse. However, Background investigators should NEVER substitute cheap commercial databases as a substitute for courthouse searches.

Employers should be careful in the use of *commercial databases* that are advertised to search millions of records with instant results. Those 30 second searches are NOT a substitute for a real criminal check at a courthouse and probably would not demonstrate due diligence if used all by themselves. These databases are assembled from a hodgepodge of various sources that are willing to make their data public or to sell data, such as incarceration systems, state repositories or individual counties. These databases do not cover all states and may not be up-to-date, accurate or complete. Certain states do not provide date of birth, which is another reason a criminal record may not come up in a database. This can all lead to both *false negative* and *false positive results* from databases. A false positive means a person is branded a criminal who is not, and a false negative means a person with a criminal record is falsely ‘cleared.’

The commercially available instant criminal reports are best used as a research tool only by a professional screening firm to locate other places to search. Since they cover such a wide area, they can be very valuable in locating records that a county by county search can miss. However, these instant databases are also a potential source of litigation against employers and screening firms, with applicants filing lawsuits for being unfairly tarnished as criminal, or victims claiming that the employer did not exercise due diligence.

Even if there is a database ‘hit,’ under the federal Fair Credit Reporting Act, the background screening firm must either reconfirm the details at the actual courthouse to ensure accuracy, or send a contemporaneous notice to the applicant at the same time, so they know that they are the subject of negative public records. We believe it is a best practice to reconfirm all database hits at the courthouse to guard against unfairly labeling someone as a criminal where their case has been dismissed, or they are the victim of identity theft or just happen to have the same last name as a person with a criminal record.

For the maximum protection, all jurisdictions where an applicant has lived, worked, or studied should be checked. If there is a possible criminal record, it is critical to carefully review the underlying court documents to locate identifying information to determine if the criminal record in fact belongs to the subject of the search. The criminal record must also be examined to determine the details of the offense and whether the criminal matter is reportable.

There is also a difference between state court searches and federal courts. Investigators can also search federal court records. The federal court system is an entirely separate court system from county courts. Federal courts are searched at the district court level utilizing a federal service called PACER. On occasion, Employers should be aware that positive identification can be difficult with federal searches due to lack of identifiers (date of birth, etc.) in federal court files.

Even if we can report a conviction, the employer needs to consider whether the use of the record is discriminatory. An employer should not automatically reject an applicant with a criminal record, unless there is a business justification, taking into account such things as the nature and gravity of the act, the nature of the job and the age of the crime.

For all of the above reasons, criminal record searches are not an exact science and errors are always possible. However, when used in conjunction with other safe hiring tools, criminal records checks, such as employment checks and social security traces, are extremely effective in protecting the workplace against hiring individuals who are dangerous, unfit, or unqualified for a particular job.

MSA Investigations provides a variety of quality Due Diligence and Background Investigation services. All of our background checks utilize the established and recognized best practices within the background screening industry and will reduce your risk of hiring an unsuitable employee. Please contact us at the phone number or website address listed below if you would like to learn more about how we can help you.