

# Introduction to Background Investigations and Drug Testing

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# Why Screen Employees & Volunteers

- Verify information from applicants
- Associate with better, safer, competent individuals
- Avoid people
  - Who have dangerous, unacceptable behavior in past
  - Are falsifying your application and
  - Using illegal drugs
- Increase quality of workforce
- Defend against negligent hiring and negligent retention

# Compliance with the Fair Credit Reporting Act (FCRA)

- All consumer reports we deliver are governed by the FCRA.
  - Even though your firm may not be receiving credit reports, the law states that any report delivered by our firm is governed by the FCRA.
  - As such we are required to have a signed Agreement that lists your responsibilities and our responsibilities in this area.
  - Your firm is required to provide proper disclosure to the applicant and obtain proper authorization.
    - We make this process very easy to accomplish in our system with our QuickApp Process.

# Comply with Fair Credit Reporting Act

## More Details

- Applicants must be given a summary of their rights.
- A notice of disclosure must be written and separate .
- Your organization must obtain authorization.
- Your organization must certify you are following the FCRA
- You must follow adverse action steps if you use any information in our report to make an adverse decision
  - If any information in the consumer report we provide to your firm is used, in whole or in part, to make adverse employment decision you must issue:
    - Pre-adverse action letter
    - Adverse action letter
    - Contact information for CRA and statement the Consumer Reporting Agency did not make the Adverse Decision
    - <http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf>



# Compliance with the Fair Credit Reporting Act (FCRA)

- The pre-adverse letter gives the consumer a notice and a copy of the report you received from our firm.
- You must give the consumer a reasonable period of time to let us know the information is incorrect e.g. it is a different individual with the same name and date of birth or the record should have been expunged, etc.
- The adverse letter tells the applicant that you sent the pre-adverse letter and you did not hear from them and your firm is now taking adverse action.
- Our system makes issuance of these notices very easy to accomplish with the click of your mouse.

# Understand Criminal Convictions

- Crucial identifiers used to research criminal records
  - A person's finger print is a crucial identifier. BUT, not all firms are allowed access to the FBI fingerprint database. A firm has to be granted access via federal or state regulation. So, we use names, current, former and alias names and date of birth and addresses.
  - Social security number is not used in the criminal justice system
  - In a country of over 300 million people, many may have the same name and date of birth in a jurisdiction as someone else with a conviction.
  - A criminal conviction is only sent to your firm by us when there is a match on name, address and date of birth.
  - Be wary of firms that will report convictions to you based on name alone out of a database. This can result in costly mistakes.
  - When available, these are helpful identifiers to match: Race, Gender, Physical Description and Driver's License Number.

# More on Criminal Convictions

- Supplemental Name and Address Reports
  - We suggest including in your package a social security trace report. This report does not confirm any information with the Government. Rather it includes entries when an individual has submitted name, address and social security upon engaging in any type of financial transaction e.g. applying for credit, buying a car, etc.
  - It may reveal any addresses that the individual is trying to hide. What is the motivation for hiding the address? The individual knows there is a criminal conviction in the jurisdiction and doesn't want you to find it.
  - It will reveal any alias and former names. If someone has a conviction under Mary Smith and they list their current name as Mary Jones, the conviction under Mary Smith won't be discovered unless we know to look under the name of Mary Smith.

# More on Criminal Convictions

- Where are criminal convictions located?
  - County Level
    - County District Attorneys initiate criminal convictions at the county level. This is where the files are most accurate and timely. Some states have statewide repositories that we use in lieu of just searching the county courts. We use statewide repositories only if we are confident that the information is as timely and accurate as going to the county court.
    - The plus in accessing these acceptable statewide repositories is that you get increased geographic coverage at very little added cost.



# More on Criminal Convictions

- Federal District Level
  - Federal District Attorneys initiate federal criminal convictions at the federal district court level. These crimes typically involve any crime that crosses state lines.
- It is important to realize that criminal convictions at the local county level will not be listed in federal district courts and vice versa.
- Consider including BOTH criminal searches in your package

# More on Criminal Convictions

- Are there different types of convictions /how do you ask the question on your application?
  - Many companies ask for felony and misdemeanor convictions on the application but what about a verdict other than not guilty e.g. been placed on probation or deferred adjudication or paid a fine for any crime
- If you don't ask, they probably won't tell.
  - Consider defining the word conviction on your documents e.g. conviction includes any guilty or no-contest plea or verdict or finding of guilt, regardless of sentence imposed

# Criminal Databases

- Is There a Super Database On the Internet
- The short answer is that there is not. Nationwide databases are excellent supplement tools to use to perhaps catch a criminal conviction in another jurisdiction in which the individual perhaps traveled to. But, indications of hits from a national database should always, always, always be confirmed at the local level. This is important and I will be repeating this a number of times.
- A database should never be the sole source of your criminal conviction search

# Good and Bad of Databases

- The Good – Nationwide database searches are valuable because they cover a much larger geographical area than traditional searches, based on identified addresses at the county or state level. Since there are more than 3,200 jurisdictions in America, not all courts can be checked on-site.
  - For example, If someone lived and worked in Maryland for 20 years but went to Atlantic City and robbed a casino, the conviction will not be located in Maryland.
- These databases should never be used as sole source of criminal conviction searches. Rather a database search should always be used as supplemental to local jurisdictional searches.



# Good and Bad of Databases

- The Bad - Despite their value, criminal records databases have serious flaws, including incomplete records, name variations, untimely reporting of information into the database, incomplete information in the database and expungements not accurate. For example, many states only report records for individuals who served time in prison. But there are thousands of convictions without time in jail.
  - Because of these possible inconsistencies, indication of criminal hits from a database should always be confirmed at the local jurisdictional level – that is what we do. This is a best practice for your best interest.

# Good and Bad of Databases

- If you are just using databases for criminal convictions, do you want to be in front of jury justifying a \$12.95 internet criminal search? Using information from a database incorrectly can cost you money if done improperly. This is why we recommend local jurisdictional criminal conviction searches at provided and developed addresses.

# Good and Bad of Databases

- Our InstaCriminal National Alias report
  - We recommended using this report as a supplemental search to local and federal searches.
  - We use this report to develop addresses the individual may be withholding from you.
  - We use this report to identify former or alias names that might be withheld from you.
  - And it accesses almost 300 million conviction records and over 100 databases. So if someone committed a crime in a jurisdiction they neither worked nor lived, this report may uncover that conviction.

# Structure of a Criminal Conviction Search

- Identify the intensity and depth of a criminal conviction search.
  - Number of years' address history to use
    - You must decide how many prior years of addresses you want searched for criminal convictions
      - For example, you can decide to do 3 years, 5 years, 7 years, 10 years.
      - The longer the number of years you research, the higher the number of local jurisdictional searches will be conducted and the more likely you will find a criminal conviction.
  - We can of course comply with a request from you of just researching only those addresses provided by your firm.



# Structure of a Criminal Conviction Search

- Past residential & employment addresses
  - Also it is important to realize that a criminal conviction may be in the jurisdiction in which they worked and not where they lived.
  - For example, Maryland is surrounded by a few states. In northern Baltimore many people live in south central Pennsylvania but work in Maryland. If someone committed a crime against their employer in Maryland, the criminal conviction will be in Maryland and not in Pennsylvania.
  - Accordingly, we recommend that you obtain employment addresses and add them to the individual's list of prior addresses that would be researched.

# Structure of a Criminal Conviction Search

- Names, former and alias names
  - When we research public records we use name, address and date of birth. Public records are filed by name. If an individual had a former name and had a criminal conviction filed under that former name, we wouldn't see that record using just their current name.
  - For example, if Mary Smith changed her name to Mary Jones and had a criminal conviction under Mary Smith, we wouldn't see the record if we just searched under
  - This is why we recommend doing criminal conviction searches under current and former/alias names.
  - And, this is why the trace report is so crucial. It often reveals former/alias names used by the individual. And, if not revealed on your company documents there is no way to know a former/alias name exists.

# The Credit Report

- Will Show applicant's debt load, payment history, any public record information (liens, judgments, bankruptcies), addresses, past and current employers. This report is provided in compliance with applicable laws and its use is restricted for employment purposes. The credit report will contain name, address, social security number, date of birth. We employ a proprietary credit report summary that provides an outline of important statistics like number of collections, number of accounts paid late, number of delinquent accounts, and how long has credit been established. Turnaround time is minutes.
- The credit bureau will require you to list reasons why you want the credit report and will require a site audit conducted by their own representative. We pass the site audit fee of \$65 to the client at no upcharge
- Credit reports have come under severe scrutiny and should be used to satisfy a legitimate need.

# Drug Testing

- What panels to include
  - There are five panels of illegal drugs. A positive test on any of these is grounds for immediate dismissal. Those panels include, Opiates, THC (Marijuana), Cocaine, PCP and Amphetamines
    - It is perfectly legal to ask an applicant to undergo a drug test for the five illegal drugs before an offer is extended.
  - There are more panels of legal drugs. Those panels include Methadone, Barbiturates, Benzodiazepines and Propoxyphene.
  - It is only permitted to ask an applicant to undergo a drug test that includes these additional panels after a conditional job offer has been extended.
    - You should take note that if a Medical Review Officer determines a person has tested positive for LEGAL drug panels a negative test result is returned to your firm.



# Drug Testing

- When can you drug test
  - Pre-employment – only if five illegal panels are being tested
  - Random
  - Reasonable Suspicion
  - Accident
  - Return to duty
- When is most effective time to drug test
  - Historically random positive percentages are 50% higher than pre-employment tests. We can help you set up a random drug test program

# Drug Testing

- What specimen to use
  - Available specimens include urine, oral fluid, blood and hair.
  - Blood is extremely invasive and hardly ever used.
  - Hair is expensive and does not capture someone under the current influence.
  - Urine and oral fluid are the most common
    - Urine testing is easily scheduled in our software system. The donor takes the chain of custody form to the collection center. And if you use the eCup system you will be notified of negative results within four business hours.
    - Oral Fluid is easily administered. Your company representative merely observes the donor put a pad in their mouth for five minutes. Then the donor puts the pad in a tube, caps the tube, seals the tube and signs and dates the tube. The donor gives the signed sealed tube to your company representative. A chain of custody for is in place. And the sealed tube is sent to the laboratory via FedEx. You will receive negative results in two business days or less.

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- When is most effective time for drug test

# Drug Testing

- Zero tolerance policy
- The one-strike rule
  - Positive 6 Months Ago Doesn't Mean They Can't Re-Apply
- Current vs. past use - current use is never acceptable
- Drug testing works in the real world
- Maryland environment for drug & alcohol testing
  - <http://law.justia.com/codes/maryland/2005/ghg/17-214.html>
  - Federal rules and regulations trump state e.g. DOT
  - Comply with any bargaining agreements
  - Acceptable specimens
  - Notifications to donor
- Medical Review Officer – A best practice



# Thank You for taking time to review this information

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