

ENSURING SAFETY IN THE DIGITAL AGE: The Background Check Evolution

April 2016

ABSTRACT

For years, public and private companies and government agencies have relied on background checks to make hiring decisions, evaluate business partnership risk, and ensure public safety. Law enforcement and policy makers have traditionally looked to fingerprint-based background checks as an uncontested gold standard, but independent government audits disprove this assumption. Advances in record aggregation, multi-factor identity verification, and data networks have improved the scope and quality of electronic background checks whereby such checks are as thorough and robust as fingerprint-based background checks when performed by industry-accredited professional background screeners.

SUMMARY

- » Background checks are a common business tool and are not unique to the sharing economy or law enforcement.
- » There are several safe and widely used methods of conducting background checks.
- » Fingerprint-based background checks - an assumed gold standard - are fundamentally flawed and are not more effective than other methods.
- » When conducting a background check, the only reason to collect fingerprints is to access police databases which are inaccurate and incomplete.
- » Flaws in police databases result in missed information that lead to unfair and potentially illegal hiring decisions.
- » Other methods solve these problems and provide a more complete and accurate background check.
- » These modern electronic methods still rely on highly regulated and accredited professionals to collect and interpret the data.

KEY FINDINGS

State and Federal Fingerprint Records Are Routinely Incomplete and Inaccurate

- » A nationwide audit of state law enforcement databases reveals that in twenty-six states and Washington, D.C., less than 70% of felony arrests have a matching final outcome. Fair hiring and licensing decisions depend on these final outcomes.
- » An independent news investigation found the Ohio Bureau of Criminal Investigation database was missing 6.6% of convictions from recent years – more than 10,000 overall – due to county court clerk errors.

Fingerprint Checks Are Inconsistent

- » Government agencies must have express authority from state or local statute to access FBI records; many agencies do not.
- » Even with authority, some government agencies rely on state records only and choose not to access FBI records. Searching records from only one state will not identify convictions in other states.

Professional Background Screeners Are Regulated and Accredited

- » Existing federal and state laws ensure strict standards for professional background screening firms.
- » Additional self-regulation by the industry also ensures high standards for performance, including abiding by national accreditation standards established by industry associations like the National Association of Professional Background Screeners.

Professional Background Screeners Use Robust Data Sources

- » Professional background screeners access more than 34 billion distinct public record files from over 10,000 individual data sources, including, but not limited to:
 - major credit bureaus
 - voter registration lists
 - magazine subscription lists
 - telecom provider records
 - public utilities providers
 - court judgments
 - departments of corrections
 - property deeds / mortgages
 - financial records
 - property assessments
 - vehicle registrations
 - US SEC filings
 - foreclosure documents
 - death records
 - watercraft registrations
 - aircraft and pilot registrations
 - hunting and fishing licenses
 - concealed weapons permits
 - firearms / explosives licenses
 - corporate filings
 - professional licenses
 - tax liens and judgments
 - DEA controlled substances licenses
 - UCC filings
 - marriage / divorce records
 - education records

Background Checks Are Performed in Nearly Every Industry

- » 87% of hiring organizations conduct background checks, including Fortune 100, health care, and child care companies.

ENSURING SAFETY IN THE DIGITAL AGE

Modern electronic background checks by professional background screeners are as rigorous and thorough as any other available method. Unfortunately, an examination of the arguments surrounding various background check methods shows that opinion and conjecture often substitute for meaningful research and analysis.

Law enforcement and legislators deserve the benefit of impartial analysis to guide smart policy decisions.

THE NEW ECONOMY

While the sharing economy and other digital platforms have spurred discussion of background checks, they are common across almost all industries. A recent study by the Society for Human Resource Management showed that 87% of hiring organizations conduct background checks.¹

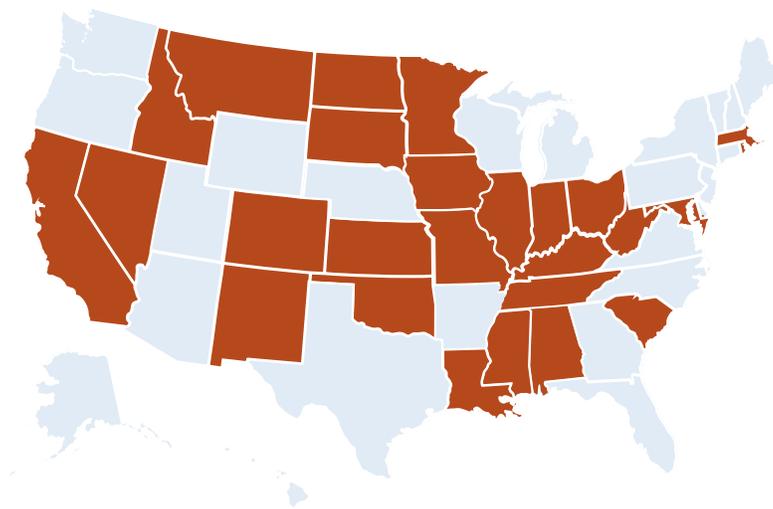
Law enforcement agencies are often burdened with the responsibility of conducting background checks for licensing or permitting purposes. Law enforcement records are adequate for establishing leads and conducting on-going criminal investigations. However, law enforcement record systems are not designed to be case management or employment verification systems and frequently fail to provide final outcomes following an arrest.

FACT:

Twenty-six states and Washington, D.C. indicated less than

70% of felony arrest records

have been updated with the final case outcome.²



■ Less than 70% of felony arrests in state database contain a final case outcome

FACT:

More than half of law enforcement agencies still use ink and paper – a method with a near

1 in 3 rejection rate

– to collect fingerprints.³

Studies from federal law enforcement agencies have shown that state repositories – and consequently the national FBI database – capture only a portion of arrest records and an even smaller portion of conviction records, often with significant errors and processing delays. Searches and resulting reports are only accurate if the repository is current and complete with all arrest records and every arrest record contains a quality fingerprint. Unfortunately, that is not the case for current state and federal law enforcement record repositories.

A recent analysis from The National Consortium for Justice Information and Statistics (SEARCH) states:

"Cite and release programs that allow for the release of the offender without being fingerprinted, result in no criminal history record entry for the offense."⁴

Police and criminal prosecutors know that state and federal law enforcement databases frequently lack final case disposition, which is vitally important for employment or business partnership decisions. For well-documented civil rights reasons, conviction – rather than arrest – information must be used in hiring decisions. When fingerprint-based background checks are the required standard, the lack of accurate and up-to-date conviction information in the FBI database prevents fair hiring decisions.

Fortunately, other methods of background checks do offer the ability to access county, state, and federal court records directly, which are by their nature the most complete and current sources of conviction history.

Criminal cases are adjudicated by county, state, and federal courts and a real-time electronic or manual search of court records is as thorough, if not more so, than a background check performed using law enforcement records.

FACT:

45 states allow law enforcement officers to issue citations in lieu of arrest for certain misdemeanors and/or **felonies**.⁴

EFFECTIVE BACKGROUND CHECKS

As the law enforcement community knows, there are two components to an effective background check: (1) establishing **identity**: "*Is the person who they say they are?*"; (2) a **review of criminal convictions**: "*Can this person be trusted to do this work without compromising public safety?*"

IDENTITY

Fingerprints are frequently invoked as the sole means to determine identity, yet this is hardly a best practice and can give a false sense of security. Government agencies rely on photo identification when receiving fingerprints and recent studies have demonstrated ways to render fingerprints unsuitable for identification purposes.⁵

In truth, there are other effective ways to establish true identity. One way to verify the accuracy of the provided information is to request multiple pieces of information issued by distinct organizations. While it may be feasible to forge a single form of identity document, it is much more difficult to forge multiple documents **that can be cross-verified electronically with the issuing body**. For example, a company could request a government-issued photo identification along with insurance documents, banking documents that will link with direct deposit, and telephone account verification.

This technique is currently in use by many on-demand economy companies who leverage such integration. Even some traditional organizations in the finance and health care industries, including by the Internal Revenue Service and the Centers for Medicare and Medicaid Services, use a similar concept of "identity proofing" which prompts a user to provide information that only the user would know **and can be independently verified**.

FACT:

Law enforcement agencies rely on standard, government issued photo identification when receiving fingerprints.

LAW ENFORCEMENT DATABASES ARE NOT THE GOLD STANDARD

The common belief, even among law enforcement, is that the FBI has a complete criminal justice database. However, the current Assistant Director of the FBI's Criminal Justice Information Services division recently stated:

"The misnomer is that FBI has everything that exists on criminal history records in some big repository, and that's simply not true."⁶

Even at the state level, criminal history databases are often riddled with errors and missing information.

For example, independent reports from investigative journalists in Ohio revealed that **over 10,000 persons were in sensitive and respected positions even though they had disqualifying criminal convictions not identified by law enforcement databases.**⁷ They included school teachers and home health care providers cleared by a system described as broken.

In many states, conviction information is not complete or not reported to the FBI at all. The most recent audit of state criminal history repositories from the U.S. Bureau of Justice Statistics showed that in the State of Illinois, for example, **only 17% of felony charges have a recorded final outcome.**⁸

Despite the formation in 2009 of a Disposition Task Force and an FBI state auditing regime, only a small number of state criminal record repositories improved their case outcome reporting performance from 2006 to 2012, while 10 states fell further behind, with reporting rates actually worsening.⁹

FACT:
Audits show between 2006 to 2012
10 states fell further behind
with case outcome reporting rates actually worsening.

The lack of consistent, accurate, and up-to-date information in the federal and state law enforcement databases accessed only by a fingerprint demonstrates the need for an electronic search of up-to-date, diverse, and complete data sources and the ability to physically search the original paper sources if necessary.

Tackling such a complex search requires a sophisticated service provider with points of contact deployed across all 50 states.

CRIMINAL REVIEW BY PROFESSIONAL BACKGROUND SCREENERS

Professional background screeners are regulated by federal laws enforced by the Federal Trade Commission and the Consumer Bureau of Financial Protection.¹⁰ Additionally, many states have enacted supplemental regulations that provide further protective measures.

Leading professional background screeners—defined in state and federal law as Consumer Reporting Agencies (CRAs) —can access more than 34 billion distinct public record files compiled from over 10,000 individual data sources comprising over two petabytes of data.¹¹

Under the Fair Credit Reporting Act (FCRA), consumer reporting agencies have a responsibility to assure maximum possible accuracy of the information they provide.¹² Accreditation by industry associations like the National Association of Professional Background Screeners (NAPBS) provides independent validation of organizational standards and practices in data security, compliance, performance, and professionalism. This combination of federal and industry oversight ensures that the highest standards and best practices are employed on an ongoing basis.

CRAs aggregate available records from a broad array of databases including all three major credit bureaus, voter registration lists, property assessments, vehicle registration lists, even magazine subscription lists, to name a few. See Appendix A for a list of additional sources.

After inspecting these records, CRAs identify relevant county, state, and federal courts associated with an applicant that consumer reporting agencies then search directly for the most complete and up-to-date information.

**FACT:
Professional
background screeners
are regulated by
federal laws enforced
by the Federal Trade
Commission and the
Consumer Bureau of
Financial Protection.**

10. 15 U.S.C. § 1681 et. seq. "Fair Credit Reporting Act"

11. LexisNexis Risk Solutions <<http://www.lexisnexis.com/en-us/products/public-records>. Accessed April 3,2016)

12. 15 U.S.C. § 1681e(b) "Compliance Procedures – Accuracy of Report"

CONCLUSION

Background checks conducted by professional background screeners are as thorough and effective as any other background check available. Far from a guarantee of safety, fingerprints are unnecessary and do not add value to the background check process. A recent independent research panel from the National Academy of Sciences concluded they **"were not able to find a body of evidence indicating whether fingerprinting added to safety one way or another."**¹³

Hiring decisions should be made using the most complete and current information available. Government database audits have shown that state repositories – and consequently the national FBI database – capture only a portion of arrest records and an even smaller portion of conviction records, often with significant processing delays. Fortunately, professional electronic background checks offer the ability to access county, state and federal court records directly, which are by their nature the most complete and current sources of conviction history.

ABOUT THE AUTHOR

Thomas C. Frazier, a police expert with over 45 years of experience in law enforcement, is CEO of Frazier Group, LLC, a private consulting firm specializing in organizational assessment, best practices, and civil rights compliance.

He is the past Executive Director of the Major Cities Police Chiefs Association, a national professional association representing the 70 largest law enforcement agencies in the United States (63) and Canada (7). He is an Adjunct Lecturer in the Johns Hopkins University Police Executive Leadership Program. He has served on the Independent Monitor Teams overseeing the Department of Justice's Los Angeles and Detroit Consent Decrees, as well as Compliance Director for Oakland, California's Negotiated Settlement Agreement.

Prior to establishing Frazier Group, Tom served as Director of the Office of Community Oriented Policing Services (COPS) of the Department of Justice, having been appointed by the President of the United States. In this capacity, he directed programs including the funding and hiring of 100,000 police officers, an \$8.8 billion program, and the establishment of a national network of Regional Community Policing Institutes.

Before his appointment to the COPS office, Tom served as Commissioner of the Baltimore Police Department, an agency of over 3,800 employees. Baltimore is one of the 15 largest police departments in the nation. He restructured the BPD, and lowered the crime rate during his tenure. As part of this effort, he established the second largest Police Athletic League in the nation, involving more than 10,000 youth.

Prior to his appointment as Commissioner in Baltimore, Tom retired as Deputy Chief of Police of the San Jose Police Department in California. He served the San Jose PD for 27 years. He served as commander in each of the agency's four bureaus and led the agency's transition to community oriented policing.

Tom was the elected President of the Board of the Police Executive Research Forum (PERF). He was the chair of the Baltimore-Washington High Intensity Drug Trafficking Area (HIDTA). Mr. Frazier holds a Master of Science degree from San Jose State University and is a graduate of the FBI National Executive Institute.

APPENDIX A: PROFESSIONAL BACKGROUND SCREENER DATA SOURCES

Sources include, but are not limited to, records from:

- All Major Credit Bureaus
- Voter Registration Lists
- Magazine Subscription Lists
- Telecom Provider Records
- Public Utilities Providers
- Court Judgments
- Departments of Corrections
- Property Deeds and Mortgages
- Financial Records
- Property Assessments
- Vehicle Registrations
- US Securities & Exchange Commission Filings
- Foreclosure Documents
- Death Records
- Firearms and Explosives Licenses
- Corporate Filings
- Professional Licenses
- Tax Liens and Judgments
- DEA Controlled Substances Licenses
- UCC Filings
- Marriage and Divorce Records
- Education Records
- Watercraft Registrations
- Aircraft and Pilot Registrations
- Hunting and Fishing Licenses
- Concealed Weapons Permits