

Fingerprints **VS.** Name-Based Background Checks: And The Winner Is...

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Abstract

Today, businesses face greater challenges than ever, with increasing concerns and risks around workplace violence and negligent hiring practices. Companies need to minimize risk and protect their brand's reputation. Personal background checks for certain government as well as industry jobs have loomed large. An FBI check, drawn from a central database of fingerprints, has been perceived as the gold standard. But is it? It has well-known flaws and shortcomings including:

- + **Voluntary record contributions from individual states resulting in incomplete criminal history,**
- + **An irregular update schedule which can make records weeks or months out of date, and**
- + **Frequent lack of a final court disposition which may prevent a hiring decision and may disproportionately affect minority communities.**

Despite the limitations, FBI background checks are often required by law. But, lawmakers may be unaware that such checks are poorly suited for employment screening. Comprehensive name-based background checks are a better alternative when it comes to thorough screening by drawing from a wider, deeper and fresher pool of sources.

THE CULTURE OF FINGERPRINTS

Since the late nineteenth century, fingerprinting has been accepted by the public as the gold standard for criminal investigations. The first reliable system of identifying and recording fingerprints was invented by Sir Francis Galton, an English scientist. His book, *Finger Prints*, published in 1892, displayed a set of the author's own prints on the title page.

Later that same year, fingerprinting was the key to solving a murder in Argentina. The arresting officer, Juan Vucetich, had begun fingerprinting criminals the year before. Thereafter, fingerprinting became a prime tool for law enforcement. By 1924, the FBI's ID division was established and began to amass what would become one of the world's largest fingerprint databases.

Fingerprints are woven into our popular culture in numerous crime novels, films and TV shows. Along with other scientific tools, fingerprints seem to help the police solve crimes quickly and easily. They draw on the vast collection of prints that the FBI maintains in its Criminal Justice Information Services (CJIS) Database. A fingerprint is one way to access criminal history, but it is not the only way; in fact, it is often necessary to use other personal identifiers to access a full criminal history.

The CJIS Database provides leads in criminal investigations and can point to possible criminal records, but it is not reliable as a resource for employment screenings as it was not designed for that purpose.

THE LIMITS OF INFORMATION AND ACCESS

It's important to highlight that a set of fingerprints alone does not identify you unless you are already in the system—either from a prior arrest or job application. It does not tell who you really are. Many people believe that you must have a

fingerprint to identify someone. That would be true if the CJIS Database had a fingerprint for every individual—but it does not. The fingerprint on file with data collected by the FBI is simply a link to that data.

In addition, the CJIS Database is not a case-management system. It's a contributory database that contains arrest records as submitted voluntarily by state law enforcement agencies. It depends on record updates from federal, state and county courts to provide details on the outcome of the arrest. Often these updates never come.

A 2006 report by the U.S. Attorney General found that final outcomes of arrests are missing in fully half of the FBI's records. More-thorough checks are needed. According to the report:

...there is no single source of complete information about criminal history records. A check of both public and commercial databases and of primary sources of criminal history information such as county courthouses would perhaps provide the most complete and up-to-date information.¹

Moreover, because state law enforcement agencies provide the FBI only first-arrest prints as pointers, the information on what eventually resulted from these arrests is not consistently updated in the database.

¹ The Attorney General's Report on Criminal History Background Checks, U.S. Dept. of Justice, Office of the Attorney General (June 2006), 54.

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This is because of how the CJIS Database works: Prints taken during arrests at the county level are sent up to state agencies and from there to the FBI. While state or federal agencies are supposed to provide information on final outcomes, Washington's criminal history records database is incomplete according to a June 2015 [audit](#) by the Washington State Auditor's Office: *Performance Audit: Improving the Completeness of Washington's, Criminal History Records Database*, Wash. State Auditor's Office, 11, June 15, 2015.

The Washington State Auditor's Office audit showed that “[one-]third of the dispositions for charges reported in the Judicial Information System (JIS) in 2012 were missing from [the Washington State Identification System] WASIS.” The audit also found that “more than half of the individuals with missing dispositions had at least one missing disposition for an offense on the state's Department of Social and Health Services' list of disqualifying offenses. These offenses include such crimes as harassment, child molestation and domestic violence.” *Id.*, 3-4. More than one-in-ten of the missing dispositions were for felonies and 89% were gross misdemeanors, which also include offenses like stalking, shoplifting and animal cruelty.

WHAT FINGERPRINTS DON'T TELL

The FBI's Fingerprint Identification Records System excludes “...arrests and court actions concerning non-serious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations

(except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run). . . .”². For some safety-sensitive positions, a conviction for drunkenness and disturbing the peace may be highly relevant.

A good example: Gilbert Maier, 45, of Lake Stevens, Washington, was arrested for DUI in Snohomish County, Washington while driving a bus with 11 senior citizens from the Snohomish Senior Center to the Skagit Valley Tulip Festival. According to eye witness accounts, Mr. Maier ran two stop signs, and, according to police, struck two Jersey barriers. (Alison Grande and Linzi Sheldon, Senior center bus driver arrested for DUI with 11 on board, KIRO-TV, April 8, 2015, [Link](#).) According to KCPQ-TV, the April 2015 arrest was Mr. Maier's second in less than a year. “Administrators at the senior center said Maier's 2014 DUI arrest didn't show up on their background check, and Maier didn't mention the arrest on his volunteer application. It turns out the State Patrol wasn't required to report the 2014 incident because the charge is a gross misdemeanor – and Maier wasn't taken to jail.” (Steve Kiggins, How did a volunteer shuttle bus driver with DUI charge pass background check?, KCPQ-TV, April 9, 2015, [Link](#).)



² (Code of Federal Regulations, §20.32.b).

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In addition, there are a growing number of “Cite and Release” cases where fingerprints are never even taken, and the charges and dispositions never get into the database. For example, a study of seven circuit court locations in Oregon over a three-month span in 2009 found that 31% of all cases filed were “book and release” cases. Of those, 52% had no control numbers because no prints were taken.³ In Ohio, “thousands of convictions, which police officers and public and private employers hope to detect during background checks, are missing from the state database.” A number of counties in the state “have not turned in the most-serious offenses — felony convictions — for three months and perhaps much longer, according to the May 1 audit.” It was discovered during an “an investigation by WBNS-TV (Channel 10) and The Dispatch discovered major flaws in a criminal background-check system that periodically reports that felons have clean records.” (Randy Ludlow, Law enforcement is stymied when clerks don’t report convictions, Columbus Dispatch, May 10, 2015, [Link](#).)

Whether from inconsistent local reporting standards or poor fingerprint quality, many criminal history records are never entered into the system at all. What information does exist may take weeks to surface after an agency requests it. A 2005 study⁴ showed the following lag times in reporting:

- + Arrest information: 24 days
- + Court disposition: 46 days
- + Prison admission: 31 days

DATABASES AND HUMAN ERROR

Criminal-background databases, no matter how large, are only as strong as their weakest link. According to the FBI, “The National Instant Criminal Background Check System, or NICS, is all about saving lives and protecting people from harm—by not letting guns and explosives fall into the wrong hands. It also ensures the timely transfer of firearms to eligible gun buyers.”

However, the recent Charleston, South Carolina mass shooting shows that the NICS is not foolproof. FBI Director James B. Comey said the suspected shooter’s earlier admission of a drug arrest should have prevented him from buying firearms. But because the arrest was mistakenly attributed to the wrong arresting agency, it was never properly entered into the database. The FBI’s three-day window for reporting crimes before a purchase was then closed.⁶ Human misjudgments and misunderstanding led to a catastrophic failure.

The crime proved embarrassing for the Bureau and its system. In a lengthy assessment after the shooting, Comey said, “What we can do is make sure that we learn from it, get better, and work to ensure that we catch everything.”⁷ What that learning entails is how to create a better system for re-verifying information.

³ Teresa L. Bennett, “Book and Release Cases: A Comparative Analysis of Complying with Fingerprint Orders,” Executive Master of Public Administration, Capstone for Public Administration 510/512, Portland State University, Spring Term 2012. Accessed 09-12-2015 at https://www.pdx.edu/cps/sites/www.pdx.edu.cps/files/Bennett_Teresa_EMPA_Capstone%5B1%5D%20approved%20final.pdf

⁴ “The National Crime Information Center: A Review and Evaluation,” August 3, 2005. Report prepared on behalf of the National Association of Professional Background Screeners (NAPBS) by Craig N. Winston.

⁵ “National Instant Criminal Background Check System,” FBI. <https://www.fbi.gov/about-us/cjis/nics>.

⁶ Nakashima, Ellen, “FBI: Breakdown in background check system allowed Dylann Roof to buy gun,” Washington Post, July 10, 2015

⁷ “Statement by FBI Director James Comey Regarding Dylann Roof Gun Purchase,” FBI National Press Office, Washington, D.C., July 10, 2015; <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-comey-regarding-dylann-roof-gun-purchase>

WHY FBI CHECKS ARE OFTEN REQUIRED

Despite the limitations, FBI background checks are often required by law. But the requirements go no further. There may be several reasons for this. First, the FBI and its database are well known. It's natural, and relatively uncomplicated, for legislators to draw up statutes based on what they think they know. It's the path of least resistance, so to speak.

They may be unaware that such checks have limitations and shortcomings. They may not know that such checks are poorly suited for employment screening. FBI checks, which in most case files will not contain the "full story," may well be best used as lead generators. But they are not the basis for sound hiring decisions. Legislators may not even know that there are better alternatives when it comes to thorough screening.



THE NAME-BASED CHECK: A BETTER WAY?

Let's compare. For employment screenings and other important business decisions, what matters is the story - the data behind the identification. Without a complete or accurate story, identification can go only so far. Fingerprint checks are being required for certain positions but considering their limitations, a broader type of background check is needed. Consumer reporting agencies (CRAs, commonly referred to as background screening companies) fill this need with comprehensive, name-based checks. CRAs do more than fingerprint checks; they use names, addresses, and social security numbers as starting points for top-to-bottom background screenings.

SEARCH CHARACTERISTICS	FINGERPRINT CHECK	COMPREHENSIVE NAME-BASED CHECK
Complete up-to-date case information	NO	YES
Cite and release cases	NO	YES
Residential jurisdiction coverage	POSSIBLY	YES
Re-verification of data needed	YES	NO
Identifiers	FINGERPRINT	PERSONAL IDENTIFIERS
Application rights	NO	YES
Best practices/national standards	NO	YES

A SUITE OF SERVICES FOR IN-DEPTH CHECKS

For hiring decisions, CRAs are the better alternative. Their background screenings excel because they provide what an FBI check does not. They draw from a suite of complete, up-to-date services and multiple sources for effective name-based checks.

The standard for best practices includes an address-history locator and a national criminal history database with a disposition that is confirmed at the source—the county-level court where the charges originated. Name-based checks also extend to Federal District Court criminal records, and criminal record checks at primary and previous residential jurisdictions, plus national sex offender registries. Law enforcement agencies use geographic profiling. Digging deeper into the

geography and history is important, because most crimes are committed closer to home.⁸ What use is a background check that fails to cover the place where an applicant lived? That's where criminal records are most likely to be found. A check that retrieves timely, in-depth regional and jurisdictional records where a subject has lived, worked, or has been, is much more likely to result in a true picture of the subject's criminal past.

Using personal identifiers, professional screeners span national and local jurisdictions. They pour over thousands of primary sources to compile their information. The result is a unified picture of anyone who is being considered for a responsible position. A check conducted by a CRA may go well beyond a criminal check. Within one comprehensive

⁸ E.g., Brantingham, P.J. & Brantingham, P.L., authors of *Environmental Criminology*, Beverly Hills, CA: 1981; and of *Patterns in Crime*, New York, NY: 1984

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report is such information as driving and employment records, education verification and professional certification, as well as local, state and federal records of arrests and their outcomes. With so much information pulled together into one comprehensive report, these reports are the most cost-effective and efficient means of providing background checks. And compared to the FBI's lag times (which may be weeks), these agency results are delivered within only a few days.

THE GROWING AWARENESS OF NAME-BASED CHECKS

In many industries, CRA reports are the most reliable way to screen potential hires. Their name-based background checks of public records are now seen as a superior alternative to fingerprints alone.

The regulated financial industry, for example, has begun to realize that checks of public records should be a part of the approval process for all registered professionals. In 2014, FINRA (Financial Industry Regulatory Authority) expanded its background check requirements. Rule 3110(E), which was approved by the SEC (Securities and Exchange Commission) in December, went into effect on July 1, 2015. The new rule states:

Firms should consider all available information gathered in the pre-registration process . . . , each member shall establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's initial or transfer Form U4 (Uniform Application for Securities Industry Registration or Transfer) no later than 30 calendar days after the form

is filed with FINRA. Such procedures shall, at a minimum, provide for a search of reasonably available public records to be conducted by the member, or a third-party service provider, to verify the accuracy and completeness of the information contained in the applicant's initial or transfer Form U4.⁹

FINRA recognizes the value of a third-party search of public record for positions of trust.

In another example, the booming ride-sharing industry poses special business challenges. Some municipalities have suggested that all drivers undergo a fingerprint check based on decades-old laws regulating taxis. However, the comprehensive name-based background screenings for ride-sharing services are often more rigorous as they access a broader range of primary and secondary sources to find the most up-to-date record of compromising offences. Half of U.S. state legislatures have scrutinized the TNC (Transportation Networking Company) industry and established comprehensive safety legislation, and those state legislatures agree on comprehensive name-based background checks as the industry standard.

CRA REPORTS PROTECT EMPLOYERS AND APPLICANTS

Unlike FBI reports, a.k.a "rap sheets," reports compiled and assembled by CRAs are "consumer reports," which afford their subjects protections that FBI reports do not. Applicants have the right to challenge any information contained in a CRA report.

CRAs are regulated by the Fair Credit Reporting

⁹ FINRA, Regulatory Notice 15-05, March 2015, http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-05.pdf

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Act (FCRA) (15 USC §1681 et seq.) and analogous state laws . The FCRA protects job applicants from unfair employment actions. An applicant who is the subject of an incomplete or inaccurate FBI rap sheet does not have the opportunity to set the record straight. This could keep good prospective employees from receiving an offer or keeping a job. In crucial hiring decisions, such gaps are unacceptable.

According to the National Employment Law Project (NELP), approximately 600,000 job applicants each year are hobbled by incomplete FBI data.¹⁰ A record of an arrest does not necessarily signify that a person was convicted of a crime. An employer may not use a person's arrest record to discriminate in deciding to hire an applicant, or to suspend or fire an employee.

Any employer who requests a consumer report, or background check from a CRA is obligated as follows:

- + **Must have applicant's permission to ask the CRA for a criminal history (in a written authorization and disclosure).**
- + **Before making an adverse decision based in whole or in part on a background check, must give applicants a copy of any criminal history report and a summary of their rights, and follow a pre-adverse and adverse notice process.**
- + **Must notify applicants if a prospective employer intends not to hire them, or to fire employees, on the basis of a CRA-obtained report.**



¹⁰ Madeline Neighy and Maurice Emsellem, "Wanted: Accurate FBI Background Checks for Employment—Reward: Good Jobs," NELP, July 2013.

The Information to Act

There is no perfect background check. We can never be certain that we have discovered everything we might need to know before acting. But business leaders and hiring managers do not have a choice; they must make decisions in the moment based on the best information they have at the time.

So you have choices: One includes a restricted database, based on fingerprint records contributed voluntarily at the state level, but with unverified information and obvious gaps. What decisions could you make based on data that takes weeks to clear? Or would you rather choose a system designed especially for business decisions, with as much timely, accurate information as possible, presented in a suite of services? Should you go with one or the other or both? What is the clear winner?

About SterlingBackcheck

SterlingBackcheck helps employers across the globe make smart hiring decisions and onboard new employees through a comprehensive suite of superior employment background screening services and cloud-based human capital management solutions. The foundation of our technology is rooted in compliance; embracing industry standards and corporate policies as well as global and U.S. federal, state, and local government regulations. We're passionate about customer success and continuously invest in unique, empowering technology solutions. SterlingBackcheck is accredited by the National Association of Professional Background Screeners (NAPBS), a distinction earned by less than two percent of all employment screening companies. For more information visit www.sterlingbackcheck.com.

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