

*The Richard Netter Conference on Criminal Records and
Employment*



Montserrat Miller, Esq.
Arnall Golden Gregory LLP
montserrat.miller@agg.com

NAPBS



- Trade association representing approximately 700 member companies, the majority of which are small businesses.
- Conduct employment and tenant background checks – we are a consumer reporting agency not a credit reporting agency (FCRA § 603(f)).
- Assist end-users such as employers, volunteer organizations and non-profit organizations by providing background information on individuals so that they can make informed decisions about who they hire, mitigate risk and avoid negligent hiring situations.

Accuracy of Reports



- CRAs and the FCRA and EEO law – do you want a Google background check or one conducted by a CRA?
- CRAs must employ reasonable procedures to assure maximum possible accuracy of the consumer reports they produce – FCRA § 607.
- CRAs must reinvestigate disputed information, free of charge, to determine if information is inaccurate and record the status of the disputed information or delete the item from the file within 30 days – FCRA § 611.
- CRA must work with the furnisher of the information and the consumer to either modify or delete the disputed information where necessary.

How CRAs Operate and Reporting of Data



- CRAs provide information to decision makers – employers.

- Consumer rights under the FCRA include:
 - Must give consent for the background check;
 - Right to be informed that an adverse decision is based on information in a consumer report;
 - Right to see the consumer report;
 - Right to dispute inaccurate or incomplete information;
 - CRA's are obligated to re-investigate within 30 days of notice of inaccuracy or incomplete information at no cost to consumer.

How CRAs Operate and Reporting of Data



- Before an employer is permitted to take an adverse action based in whole or in part on the results of a consumer report they must provide applicant with a copy of the consumer report and the FTC Summary of Rights under the FCRA (pre-adverse action).
- If employer takes an adverse action they must provide applicant with second notice advising them of the contact information for the CRA and their right to dispute the accuracy or completeness of the consumer report.
- Majority of employers do not want to use/see arrest records and as a standard practice most CRAs do not report arrest records. For example -- Illinois and Kentucky prohibit use of arrest records.

National Databases



- National databases of criminal history records serve an important function, primarily as a pointer to other sources of data.
- NAPBS recommends that end-users consider multiple sources when conducting a background check.
- Use of a national database is a tool that employers and volunteer/non-profit agencies use as a larger part of a background check to make risk-based decisions about who is appropriate for a particular job.

Best Practices



NAPBS - Minimum Recommended Standards for Background Screening of Employees and Volunteers

- ✓ Social Security Number (SSN) Trace
- ✓ Name & Address History Trace
- ✓ County Level Criminal Searches
- ✓ Multi-jurisdictional – “National” Criminal Database
- ✓ National/State Sex Offender Registry

Best Practices Cont'd



- **SSN Trace** - Verification that the SSN has been validly issued and that the number is not on the “Death Master Index.” If search results indicate that the number is invalid or no record is found, obtain confirmation that the SSN has been recently issued and that the issue date and place match the subject’s stated history. Use an alternate method to verify that the SSN matches the subject.
- **Name & Address History Trace** - A commercial database product such as an SSN Trace (*i.e.*, SSN Verification) or other proprietary consumer reporting agency product to determine the names and addresses associated with a subject. The purpose of this search is to validate the subject’s name and address history provided on the application. If a “no record found result” is obtained, use alternate methods, to the extent available, to verify the name and address history of the subject.

Best Practices, Cont'd



- **County Level Criminal Searches** - Criminal records searches shall utilize all names and addresses of the subject revealed in the name and address history trace for the past seven years. Search of records in county courthouse or equivalent to determine if applicant has a record impacting his or her ability to be employed or volunteer with the vulnerable population. Searches shall be performed directly through the courts or their equivalents or better (more up-to-date and complete) sources and not through alternative databases that may not contain up-to-date records. If the subject has lived outside of the United States, including temporarily for purposes of work or education, during the seven years, searches of such foreign courts or their equivalent shall be completed unless not reasonably practical because of additional significant expense, delay, or lack of availability.

Best Practices Cont'd



- **Multi-jurisdictional/”National” Criminal Database** - Search of current and historical records on individuals by accessing critical information combined from participating jurisdictions in a nationwide criminal records database. This search includes information from multiple criminal record repositories, enhancing the discovery of records when applicant has moved or committed a crime in another state. The search often includes information from the Department of Correction records, FBI terrorist list and Federal/State/Local Wanted Fugitive Lists.
- **National/State Sex Offender Registry** - The search of current and historical information from all 50 states, the District of Columbia, and Puerto Rico for the identity and location of known sex offenders. This search may be combined with Multi-jurisdictional -- “National” Criminal Database search if sex offender records are included. The National Sex Offender Public Registry website can be used.

Expunged and Sealed Records



- CRAs do not report expunged records.
- CRAs do not report sealed records.

Thank You



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