

Recommendations to State Legislators Regarding Criminal History Background Screening for Civil Decisionmaking Purposes

Submitted by SEARCH, The National Consortium for Justice Information and Statistics¹

Background

The past two decades have seen a surge in demand for criminal history record background checks for noncriminal justice purposes, such as screening an individual's suitability for employment, licensing, or placement in positions of trust. The demand is driven by public and private employers who want to exercise due diligence in protecting employees, business assets, and the public, as well as by nonprofit organizations who want to screen their employees and volunteers who work with vulnerable populations, such as children or the elderly.

As State legislators consider proposals related to modifying or expanding background checks for noncriminal justice purposes, SEARCH offers the guidance below.

Recommendation: Law- and policymakers should promote laws, policies, and practices in which background checks of individuals are supported by a biometric identifier.

SEARCH supports fingerprint-based *State and national* criminal history record checks for civil decisionmaking purposes, including for employment, licensing, and volunteer positions.

- Accurately identifying individuals who are subject to background checks for employment, licensing, or other noncriminal justice purposes is critical to public safety, national security, and the protection of vulnerable populations. It is a process that begins with the recording of fingerprints and other biometric information, and continues with the addition of other information linked to the fingerprint-based record. Biometric identification strengthens the integrity of criminal history records and improves the utility and reliability of records by ensuring that subsequent records (such as arrests, charges, and convictions) are linked to the proper individual.

Recommendation: Law- and policymakers should encourage laws, policies, and practices in which the official criminal history record is used for civil decisionmaking purposes.

SEARCH values the official criminal history record. The record the States and Federal governments share is the premier record for decisionmaking. It is the official record, directly managed by the accountable State and Federal agencies, and is subject to high standards for accuracy, completeness, timeliness, and accessibility. These records benefit from fingerprint-based identity verification, initiatives to connect arrests with final case dispositions, and more.

- The official record is subject to the highest standards of identify verification and operational policies-making it highly superior to records from third-party providers. Such providers do not guarantee the accuracy and completeness of the records they sell; they are collectors only, and are not responsible for maintaining the records through user-governed policy and practice. Moreover, background check services offered by third-party providers are primarily name-based, although they may include other

¹ SEARCH, The National Consortium for Justice Information and Statistics, is a nonprofit organization governed by a Membership Group of governor appointees from the States and territories. SEARCH Members operate the State criminal history record systems, which are used to provide criminal history records information for criminal and civil background screening.

identifiers such as Social Security number or date of birth, and can be circumvented by an individual using an alias or a counterfeit identification document.

Recommendation: Law- and policymakers should promote laws, policies, and practices that ensure justice information is collected and used in ways that protect citizens in adherence with an individual's privacy and civil rights.

SEARCH values privacy and civil liberties protections as fundamental to effective justice information sharing.

- Justice data systems maintain and share sensitive personally identifying information (PII) on millions of citizens. The sensitive nature of justice information-and the harm its inappropriate use can cause to the individual, the community, and to the effectiveness and reputation of the agency holding the information requires that privacy and civil liberty protections be in place and enforced.

Recommendation: Law- and policymakers should provide guidelines on the type of information to be included in a criminal history record for noncriminal justice decisionmaking purposes.

Information contained in criminal history records for noncriminal justice purposes varies by State. Many State legislatures have considered proposals to modify the content of criminal history records returned from background checks for noncriminal justice purposes.

- Legislators should specify the type of information to be included in criminal history records for noncriminal justice purposes (full records, convictions only, arrests without dispositions, specific types of crimes, juvenile records, etc.).

Recommendation: Law- and policymakers should promote laws, policies, and practices to most accurately evaluate the criminal history record of an applicant.

Criminal history records should be provided to the end user for the most precise determinations regarding suitability of the applicant for the position, thereby promoting a customized, fair, and accurate process.

- The requestor – with the appropriate privacy and security policies and controls in place – will more precisely determine suitability of the applicant to the position, and such review supports the broader goals of public safety, re-entry, and protecting individual rights.

Additional Information

SEARCH has long been involved with efforts by the States and Federal government to tackle the legal, policy, and operational aspects of criminal history background checks for noncriminal justice purposes.

- SEARCH's Policy Statements, which articulate our core principles as developed and approved by the SEARCH Membership Group, July 29, 2014, are available at the following site:
http://www.search.org/files/pdf/MG-Adopted_Policy_Statements.pdf
- For additional information, please contact SEARCH's Director of Law and Policy, Becki Goggins (becki.goggins@search.org), and Manager of Government Affairs, Melissa Nee (melissa@search.org).