



SCHOOL BOARD ACTION REPORT

DATE: March 8, 2019
FROM: Ms. Denise Juneau, Superintendent
LEAD STAFF: Clover Codd, Chief Human Resources Officer,
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Ania Beszterda-Alyson, Volunteer Services Administrator,
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For Introduction: May 1, 2019
For Action: May 15, 2019

1. TITLE

Amending Board Policy No. 5005, Employment: Disclosure, Certification, Assurances and Approvals

2. PURPOSE

This Board Action Report makes edits to Board Policy No. 5005, Employment: Disclosures, Certification, Assurances & Approval, to allow Athletic and Human Resources departments to conduct national background checks of volunteer coaches through OSPI (current practice) as well as other Human Resources-approved services.

3. RECOMMENDED MOTION

I move that the School Board amend Board Policy No. 5005, Employment: Disclosures, Certification, Assurances & Approval, as attached to the Board Action Report.

4. BACKGROUND INFORMATION

a. Background

SPS is required by law to perform fingerprint-based national-level criminal background checks for employees through the Office of Superintendent of Public Instruction. Historically, we have also utilized the OSPI background check process for contractors and volunteers.

In 2017, OSPI notified us that they would discontinue background screening services for school volunteers. This prompted SPS staff to begin researching alternative methods for volunteer screening.

Since laws don't require volunteers to be screened specifically through fingerprinting, we expanded our research to name-based background check methods. Over the last two decades, a robust industry of professional background check vendors developed driven by the demand from employers, landlords, and non-profit organizations. Unlike fingerprint-based screeners, those vendors search federal, state, county and municipal criminal records using Social Security

Numbers – this allows the process to be conducted entirely online. Vendors use the applicant’s SSN not to pull a credit report, but rather to create their residential history so they can search through criminal record sources in each jurisdiction the applicant lived or worked in, delivering more comprehensive, accurate and timely background information.

Professional background check companies cite a number of reasons why their methods generate more complete and up-to-date criminal records than those generated through fingerprinting alone – see supporting documents attached.

Among the vendors researched by SPS, [Verified Volunteers](#) (VV) was determined to be the most qualified – they are the leading provider of volunteer screenings for the non-profit sector. Compared to OSPI, VV’s services are more affordable (by over 50%), much more convenient for most volunteers, and up to five times faster (see “Criminal Background Check Process Comparison Volunteer Athletic Coach Applicants” attachment).

VV Level 3 background check (comprehensive nation-wide screen) includes the following search sources and methods:

- SSN Trace
- 50 State DOJ Sex Offender Search
- OFAC Watchlist search
- Validated Nationwide Criminal Search
- Current County Residence Search
- County searches from last 7 years address history
- Validated Locator Select Search
- Alias and Maiden Name Searches
- Monthly Nationwide Updates

Procurement policies and procedures will be followed to secure these services.

Though OSPI reversed their 2017 decision last year, we believe that allowing SSN-based online background check services in our volunteer coach screening processes will benefit students, volunteers and staff. SPS Human Resources Department recommends that the Board approve the update to Board Policy, No. 5005 to allow the District, as permitted by law, to use vendors other than OSPI for screening athletic coach volunteers.

b. Alternatives

The intent for the policy update is to expand volunteer screening options rather than eliminate existing alternatives. For volunteer applicants who either prefer to go through fingerprint-based background check or do not have a SSN, we will continue recommending the following alternatives:

SPS-administered background check submitted to OSPI:

- costs \$44.25,
- results available in 7-14 days.

Seattle Police Department – downtown office:

- costs \$46 + postage (\$7 per print for 4 fingers, \$18 direct fee to FBI)

- FBI processing time 14-16 weeks.

c. Research

SPS staff researched alternative criminal record search services in 2017. Pricing offered by Verified Volunteers was comparable to their competitors at the time. Among the most important factors in favor of VV was their willingness to work with SPS to customize their product for Washington State’s unique background checking laws and resources (Washington State Patrol’s WATCH database) and administrative and user account settings that allow all schools independent access to their volunteer applicant background check reports.

Through additional market research in 2018, SPS negotiated with Verified Volunteers to lower their Level 3 background check price from \$31 to \$21.

5. FISCAL IMPACT/REVENUE SOURCE

Fiscal impact to this action will be \$0

The revenue source for this motion is \$0

Expenditure: One-time Annual Multi-Year N/A

Revenue: One-time Annual Multi-Year N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District’s Community Engagement tool, this action was determined to merit the following tier of community engagement:

Not applicable

Tier 1: Inform

Tier 2: Consult/Involve

Tier 3: Collaborate

Extensive outreach was conducted via email, phone and in-person to engage members of school personnel who administer volunteer background checks. Meetings were held with representatives and/or leadership of the following departments:

- Athletics,
- Risk Management,
- Human Resources,
- Community Partnerships,
- Transportation.

Outreach was also conducted to athletic coach volunteers and school-based athletic directors and coordinators to collect their feedback through a survey. Seventy individuals affiliated with 24 middle and high schools submitted feedback – 55 participants were athletic or club coaches.

Overall, respondents were overwhelmingly supportive of the proposed change:

- 58 respondents believed that the proposed background check process would “make it easier for volunteer coaches to complete their background check”.
- Seven respondents believed it would make the process harder for applicants who do not have a SSN. Staff reached out to these individuals to reassure them that the fingerprint-based option would continue to be available to individuals who prefer it for this or other reasons.

Additionally, numerous volunteer leaders who perform volunteer coordinator duties, and members of several PTAs provided input. Both staff and volunteer leaders provided valuable feedback, advocated for improvements to the proposed procedures, and helped simplify background check processes for volunteers.

7. EQUITY ANALYSIS

Overall, adding the option of online-based background checks in addition to fingerprinting improves access to volunteer opportunities at SPS across all communities. Applicants who have an SSN would no longer need to set an appointment in the central office during regular business hours and would pay 50% less for the service.

The following processes have been developed to ensure that the proposed policy change does not negatively impact communities who have historically faced greater barriers to volunteering:

- applicants who do not have a debit/credit card, access to the internet, or ability to pay the fee, are encouraged to notify staff for assistance with these challenges,
- family members of SPS students can complete their background check on SPS computers at the school,
- schools can request to sponsor a background check for their applicant (all volunteer and employee applicant background checks are by default paid by the applicant),
- schools are encouraged to use school budgets to screen family volunteers who are unable to cover the fee.

Additionally, currently utilized FBI’s central database frequently lacks final court dispositions disproportionately preventing the hiring of overpoliced communities. By utilizing online-based background checks, SPS will be able to access a more complete criminal record picture for each individual applying to volunteer and make more equitable volunteer eligibility decisions.

8. STUDENT BENEFIT

There are two main benefits to SPS students:

- athletic volunteer coach positions will be filled faster,
- increased student safety as volunteer applicants will be screened more thoroughly and accurately.

9. WHY BOARD ACTION IS NECESSARY

- Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- Adopting, amending, or repealing a Board policy
- Formally accepting the completion of a public works project and closing out the contract
- Legal requirement for the School Board to take action on this matter
- Board Policy No. _____, [TITLE], provides the Board shall approve this item
- Other: _____

10. POLICY IMPLICATION

There is one other board policy that regulates volunteer background checks: Board Policy No. 6625, Private Vehicle Transportation. This update to Board Policy No. 5005 would not affect Board Policy No. 6625.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the A&F Committee meeting on April 22, 2019. The committee reviewed the item and moved it forward to the full board with recommendation for consideration.

12. TIMELINE FOR IMPLEMENTATION

Upon approval of this amendment to Board Policy No. 5005 update is approved on May 15, 2019:

- The Athletic Department will be able to utilize online background checks for volunteer coaches immediately,
- Volunteer coach applicants in the process of being replaced will be notified about new background check screening options in June, and
- Beginning August 1, 2019, all volunteer coaches applying to SPS will have the option to be background checked via fingerprinting or SSN.

13. ATTACHMENTS

- Board Policy No. 5005, Employment: Disclosures, Certification, Assurances & Approval – clean (for approval)
- Board Policy No. 5005, Employment: Disclosures, Certification, Assurances & Approval – redline (for reference)
- Criminal Background Check Process Comparison - Volunteer Athletic Coach Applicants
- National Association of Professional Background Screeners Fact Sheet
- Fingerprints vs. Name-Based Background Checks white paper

 <p>SEATTLE PUBLIC SCHOOLS</p>	<p>EMPLOYMENT: DISCLOSURES, CERTIFICATION, ASSURANCES & APPROVAL</p>	<p>Policy No. 5005</p> <p>DATE</p> <p>Page 1 of 4</p>
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The Board has the legal responsibility of employing all staff. The responsibility of administering the recruitment process is assigned to the Superintendent. Prior to final action by the Board, a prospective staff member shall present necessary documents that establish eligibility to work and attest to his/her eligibility as required by P.L. 99-603, Immigration Reform and Control Act of 1986. As required by federal immigration law, the Superintendent or his or her designee shall certify that he/she has: “examined the documents that were presented to me by the new hire, that the documents appear to be genuine, that they appear to relate to the individual named, and that the individual is a U.S. citizen, a legal permanent resident, or a non-immigrant alien with authorization to work.” This certification shall be made on the I-9 form issued by the federal Immigration and Naturalization Service.

The district shall report all new hires to the state Department of Social and Health Services Division of Child Support as required by P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The district shall require that every prospective staff member sign a release form allowing the district to contact school employers regarding prior acts of sexual misconduct. The applicant shall authorize current and past school district employers, including employers outside of Washington, to disclose to the district sexual misconduct, if any, and make available to the district all documents in the employer’s personnel, investigative or other files related to the sexual misconduct. The applicant is not prohibited from employment in Washington State if the laws or policies of another state prohibit disclosure or if the out-of-state district denies the request.

Disclosure of Crime

Prior to employment of any staff member, the district shall require the applicant to disclose whether he/she has been:

- A. Convicted of any crime against persons;
- B. Found in any dependency action under RCW 13.34 to have sexually assaulted or exploited any minor or to have physically abused any minor;

- C. Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;
- D. Found in any disciplinary board final decision to have sexually abused or exploited any minor or to have physically abused any minor: or
- E. Convicted of a crime related to drugs: manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

The disclosure shall be made in writing, signed by the applicant and sworn to under penalty of perjury. The disclosure sheet shall specify all crimes committed against persons.

Background Check

Prospective staff members shall have their records checked through the Washington State Patrol criminal identification system and through the Federal Bureau of Investigation. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

Volunteer athletic coaches for the District in K-8, middle schools, and high schools shall have their records checked through the Washington State Patrol criminal identification system and through the Federal Bureau of Investigation, or using a national criminal background check service. The national service must be approved by Human Resources. All background checks must be cleared before they may start their volunteer coaching; however, a volunteer athletic coach may begin coaching on a conditional basis pending the outcome of the national criminal background check if a Washington State Patrol (WATCH) check has been done and a national criminal background check has been ordered.

The Superintendent shall have his or her designee provide a basis upon which frequency and levels of volunteer background checks will be performed pursuant to risk levels of various volunteer roles.

All volunteers shall be advised that they will be subjected to a state or national criminal background check. Volunteers may not start until this background check is completed.

Prospective staff members may be employed on a conditional basis pending the outcome of the background check and may begin conditional employment once completed fingerprint cards have been sent to the Washington State Patrol. If the background check reveals evidence of a guilty plea or convictions under RCW 28A.400.322, the candidate will not be recommended for employment, or if temporarily employed, will be terminated. When such a background check is received, the Superintendent or his or her designee is directed to consult with legal counsel.

If an applicant for employment has undergone a criminal record check by the Washington state patrol criminal identification system in the last two years for another entity, in lieu of a new background check, the district may request a release permitting the entity who conducted the check to provide a copy of the original record check's results to the district.

Providing false information on an application of employment or volunteer application may result in immediate termination of employment or services. If the background check reveals evidence of a guilty plea or conviction, outside of the crimes listed in RCW 28A.400.322, the district will review the entire employment file and the position to determine if the candidate or volunteer will be recommended for employment or allowed to volunteer, or if temporarily employed, will be terminated.

Record Check Database Access

The Superintendent is directed to establish procedures for determining which staff members are authorized to access the Superintendent of Public Instruction's record check database. Fingerprint record information is highly confidential and shall not be re-disseminated to any organization or individual by district staff. Records of arrest and prosecution (RAP sheets) shall be stored in a secure location separate from personnel and applicant files, and access to this information is limited to those authorized to access the SPI record check data base.

Certification Requirements

The district shall require that certificated staff hold a regular Washington state certificate, unless a waiver is obtained, with proper endorsement (if required for that certificate and unless eligible for out-of-endorsement assignment), for the role and responsibilities for which they are employed. Failure to meet this requirement shall be just cause for termination of employment. State law requires that the initial application for certification shall require a background check of the applicant through the Washington State Patrol criminal identification system and Federal Bureau of Investigation. No salary warrants may be issued to the staff member until the district has confirmed and recorded a valid certificate for the role to which he/she has been assigned.

In addition, any teacher who meets standard or continuing certification after August 30, 1987, must complete 150 hours of continuing education study every five years. Failure to satisfy this requirement will cause the certificate to lapse. If a certificated staff member with a lapsed certificate is issued a transitional certificate pursuant to WAC 181-79A-231(2), he or she may be conditionally employed for up to two years while he or she meets the certificate reinstatement requirements.

Classified Staff

Classified staff who are engaged to serve less than twelve (12) months shall be advised of their employment status for the ensuing school year prior to the close of the school year. Employees not continuing will receive written notice from Human Resources.

Board Approval

All staff members selected for employment shall be recommended by the Superintendent. The Board shall approve the selected staff through the personnel report each month. In the event an authorized position must be filled before the Board can take action, the Superintendent has the authority to fill the position temporarily with an employee who shall receive the same salary and benefits as a permanent staff member. The Board shall act on the Superintendent's recommendation to fill the vacancy at its next regular meeting.

Adopted: October 2011


Revised:

Cross Reference: Policy Nos. 5005; 5610

Related Superintendent Procedure:

Previous Policies:

Legal References: RCW 28A.320.155 Criminal history record information — School volunteers; RCW 28A.400.300 Hiring and discharging of employees — Written leave policies — Seniority and leave benefits of employees transferring between school districts and other educational employers; RCW 28A.400.303 Record checks for employees; RCW 28A.405.060 Course of study and regulations — enforcement — Withholding salary warrant for failure; RCW 28A.405.210 Conditions and contracts of employment — Determination of probable cause for nonrenewal of contracts — Nonrenewal due to enrollment decline or revenue loss — Notice — Opportunity for hearing; RCW 28A.410.010 Certification — Duty of Professional Educator Standards Board — Rules — Record check — Lapsed certificates — superintendent of public instruction as administrator; RCW 9.96A.020 Employment, occupational licensing by public entity — Prior felony conviction no disqualification — Exceptions; RCW 43.43.830 - .840 Washington State Criminal Code Records; RCW 50.44.050 Benefits payable, terms and conditions — "Academic year" defined; RCW 50.44.053 "Reasonable assurance" defined — Presumption, employees of educational institutions; P.L. 99-603 Immigration Reform and Control Act of 1986 (IRCA); P.L. 104-193 Personal Responsibility and Work Opportunity Reconciliation Act of 1996; WAC 162-12 Preemployment Inquiry Guide (Human Rights Commission); WAC 180-16-220 Supplemental basic education program approval requirements; WAC 181-79A Standards for Teacher, Administrator and Educational Staff Associate Certification; WAC 181-82-105 Assignment of classroom teachers within districts; WAC 181-82-110 Exceptions to classroom teacher assignment policy; WAC 181-85 Professional certification — Continuing education requirement; WAC 392-300-050 Access to record check data base; WAC 392-300-055 Prohibition of redissemination of fingerprint record information by education service districts, the State School for the Deaf, the State School for the Blind, school districts, and Bureau of Indian Affairs funded schools; WAC 392-300-060 Protection of fingerprint record information by education service district, the State School for the Deaf, the State School for the Blind, school districts, and Bureau of Indian Affairs funded schools; WAC 446-20-280 Employment — Conviction Records
Management Resources: *Policy News*, June 1999; February 1999; August 1998; October 2001; April 2004; October 2005; October 2010

	EMPLOYMENT: DISCLOSURES, CERTIFICATION, ASSURANCES & APPROVAL	Policy No. 5005 October 19, 2011 <u>2019</u> <u>DATE</u> Page 1 of 4
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All ~~V~~volunteers shall be advised that they will be subjected to a state or national name and birth date criminal background check ~~with the Washington State Patrol (WATCH).~~ Volunteers may not start until this background check is completed.

Prospective staff members may be employed on a conditional basis pending the outcome of the background check and may begin conditional employment once completed fingerprint cards have been sent to the Washington State Patrol. If the background check reveals evidence of a guilty plea or convictions under RCW 28A.400.322, the candidate will not be recommended for employment, or if temporarily employed, will be terminated. When such a background check is

received, the Superintendent or his or her designee is directed to consult with legal counsel.

If an applicant for employment has undergone a criminal record check by the Washington state patrol criminal identification system in the last two years for another entity, in lieu of a new background check, the district may request a release permitting the entity who conducted the check to provide a copy of the original record check's results to the district.

Providing false information on an application of employment or volunteer application may result in immediate termination of employment or services. If the background check reveals evidence of a guilty plea or conviction, outside of the crimes listed in RCW 28A.400.322, the district will review the entire employment file and the position to determine if the candidate or volunteer will be will not be recommended for employment or allowed to volunteer, or if temporarily employed, will be terminated.

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In addition, any teacher who meets standard or continuing certification after August 30, 1987, must complete 150 hours of continuing education study every five years. Failure to satisfy this requirement will cause the certificate to lapse. If a certificated staff member with a lapsed certificate is issued a transitional certificate pursuant to WAC 181-79A-231(72), he or she may be conditionally

employed for up to two years while he or she meets the certificate reinstatement requirements.

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Previous Policies:

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Management Resources: *Policy News*, June 1999; February 1999; August 1998; October 2001; April 2004; October 2005; October 2010



Criminal Background Check Process Comparison

for Volunteer Athletic Coach Applicants

Seattle Public Schools is committed to making its online information accessible and usable to all people, regardless of ability or technology. Meeting web accessibility guidelines and standards is an ongoing process that we are consistently working to improve.

While Seattle Public Schools endeavors to only post documents optimized for accessibility, due to the nature and complexity of some documents, an accessible version of the document may not be available. In these limited circumstances, the District will provide equally effective alternate access.

For questions and more information about this document, please contact the following:

Ania Beszterda-Alyson
Human Resources - Volunteer Services
ambeszterdaa@seattleschools.org

For document content, turn over

DOCUMENT CONTENT

- A. Process under the CURRENT Board Policy No. 5005
 - 1. Athletics Dept. sends the applicant onboarding instructions
 - 2. Applicant goes online to schedule fingerprinting appointment at JSCEE
 - 3. Applicant arrives at JSCEE, pays \$44.25 via check or money order in HR (2nd floor) and is fingerprinted by Security Dept. (1st floor)
 - 4. Athletics Dept. receives results within 7-14 days

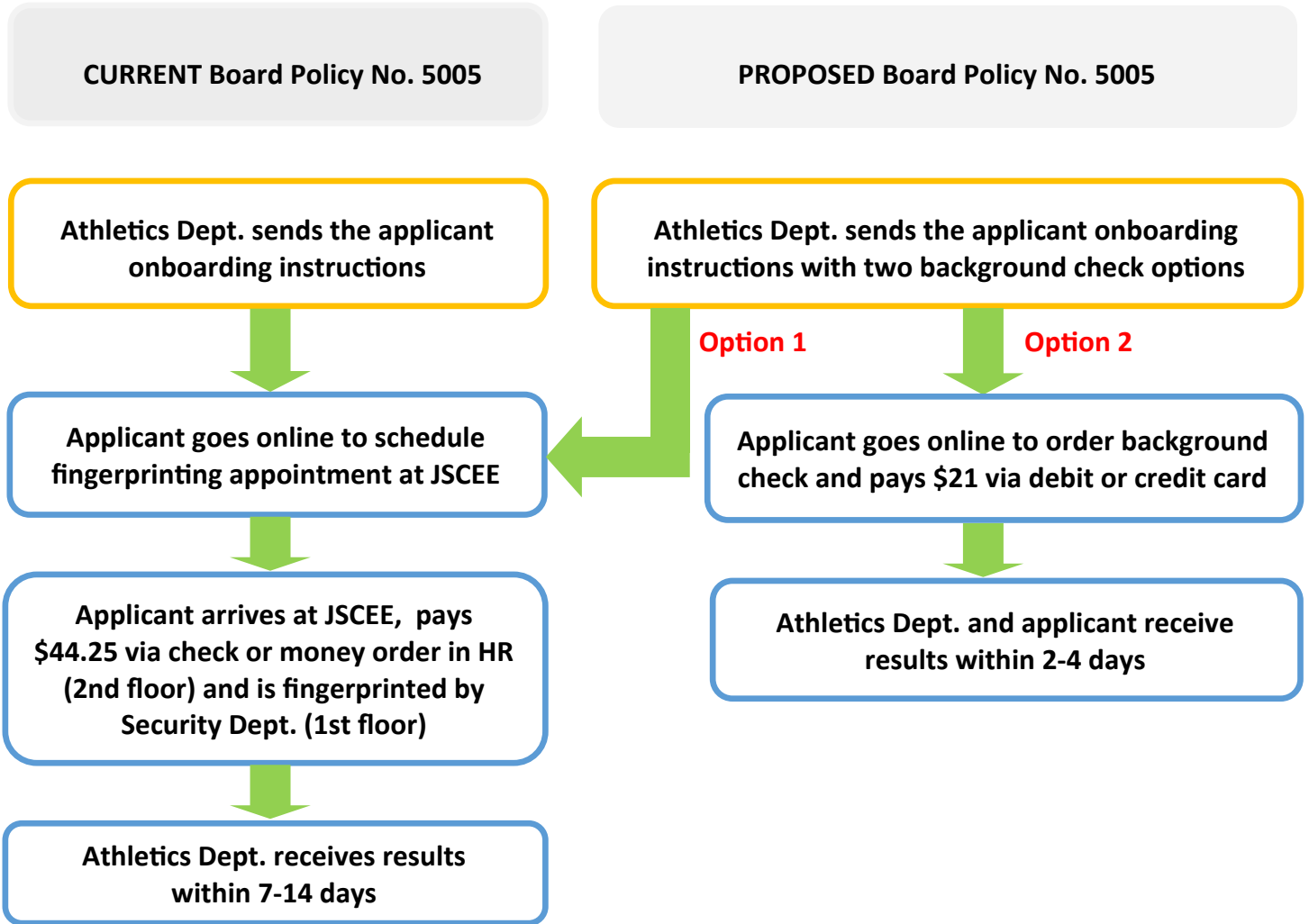
- B. Process under PROPOSED Board Policy No. 5005
 - 1. Athletics Dept. sends the applicant onboarding instructions with two background check options
 - 2. Applicant chooses to follow steps A 2-4, OR applicant goes online to order background check and pays \$21 via debit or credit card
 - 3. Athletics Dept. and applicant receive results within 1-4 days

- C. PROCESS COMPARISON: Fingerprinting vs. Online background checks
 - 1. Time applicant needs to complete the background check process: 1.5-2.5 hours VS 15-30 min
 - 2. Time between receiving instructions and securing results: 10-20 days VS 1-4 days
 - 3. Cost to the volunteer: \$44.25* VS \$21

* plus time off work, if applicable

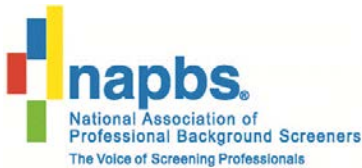
Criminal Background Check Process Comparison

Volunteer Athletic Coach Applicants



PROCESS COMPARISON: Fingerprinting vs. Online background checks

1.5-2.5 hours	Time applicant needs to complete the process	15-30 min
10-20 days	Time between receiving instructions and securing results	2-4 days
\$44.25 <small>plus time off work (if applicable)</small>	Cost to the volunteer	\$21



The Facts about Background Checks

Since the beginning of 2013, there has been a resurgence of interest in the topic of background checks. Most recently, background checks have taken center stage in the debate over immigration reform, often cited as one of several steps undocumented immigrants must complete on the potential pathway to citizenship. Before that, the tragic shooting at Sandy Hook Elementary school in Newtown, CT, prompted renewed calls for mandatory background checks in the political clash over gun control. While the context may change, the role of background checks is well established as an effective tool for a variety of uses. Interestingly, the term “background check” means different things when used in different contexts.

Despite the same terminology, specific details such as sources for information, regulatory oversight, and the degree of consumer protection in a background check may vary significantly, depending on their intended use. The National Association of Professional Background Screeners (NAPBS) has prepared this fact sheet as an educational tool to help explain the different types of background checks, what is meant by the term “background check” and how background checks are used today.

What is a background check?

A background check, also known as a background screen or a background investigation, is the process of looking up and compiling data from both private and public sources for purposes such as:

- Gun purchases
- Employment screening
- Tenant rental agreements
- Volunteer screening

Are all background checks alike?

No. While the term “background check” is used as a generic term to cover the universe of checks that may be performed, they are quite different depending on the intended purpose.

What are the differences between various kinds of background checks?

Gun Purchase Background Check

Currently, when a gun is purchased from a Federal Firearm Licensed (FFL) seller, an instant background check is performed, with the buyers consent, through the National Instant Criminal Background Check System (NICS). This is done either by phone or online through the FBI’s E- Check system. Convicted felons, people convicted of violent domestic crimes, those determined by the courts to be dangerously mentally ill, and those residing in the United States without

documentation, are prohibited by federal law from buying firearms. These background checks are unique to gun purchases and are not conducted by private background screening companies, also known as Consumer Reporting Agencies or CRAs. In direct private gun sales, no background check is required.

Employment Background Check

Employers routinely request background checks for potential new hires and existing employees, particularly for positions where employees may work with vulnerable populations or have access to consumers' financial information. Employers rely upon background screens to make informed hiring decisions and to help mitigate the risk of workplace violence, employee theft, and negligent hiring lawsuits. Background checks performed for pre-employment or employment purposes are generally conducted by CRAs and are regulated by the Fair Credit Reporting Act (FCRA) and state and local laws.

These checks can contain information from a variety of resources and may include:

- Criminal and civil record checks at county courthouses, state repositories, federal courts and/or international courts;
- Driving records checks;
- Drug testing;
- Verification of employment, education, professional licensure;
- Reference checks;
- Registry checks; such as sex offender and child and elder abuse lists;
- Office of Foreign Assets Control (OFAC) Specially Designated Nationals List (SDNL);
- Export Denial List Search;
- Patriot Act Searches (terrorist watch lists);
- Office of Inspector General (OIG) Search and other healthcare sanction lists;
- Financial Industry Checks, including SEC filings, FINRA and Federal Reserve Sanctions;
- Credit History (note – one's credit score is not included in a pre-employment screening report);
- Accessing the FBI's criminal database system when mandated by law.

Employers use the information gathered from these searches as a factor in helping them assess the suitability of candidates vying for employment. ***Background screenings conducted by CRAs for employment purposes require an individual's consent.***

Tenant and Volunteer Background Check

Tenant screening is a process used primarily by residential landlords and property managers to evaluate prospective tenants. The purpose is to assess the likelihood the tenant will fulfill the terms of the lease or rental agreement. Tenant screening services generally fall under the same rules adhered to for employment screening, are conducted by CRAs, and are regulated by the FCRA.

Volunteer screening is also performed by CRAs to screen the backgrounds of individuals who volunteer with groups and organizations that typically involve vulnerable groups, such as children and the elderly. Screening for volunteers is also regulated by the FCRA.

What Databases Are Used For The Different Kinds of Background Checks?

There are many different databases used to conduct background checks on individuals. The most commonly cited is the FBI database. **Ironically, the FBI database is actually not one single database, but a collection of different systems organized under the National Crime Information Center.** These systems include:

The FBI Identification Record: Often referred to as a criminal history record or a “rap sheet,” the FBI Identification Record is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service

National Instant Criminal Background Check System (NICS): The FBI’s NICS is used when performing a one-time instant check for gun purchases. ***It does not play a role in employment, tenant and volunteer recruitment background screening.***

Interstate Identification Index System or “III” System: The III System contains automated criminal record information accessible through National Crime Information Center. A federal- state compact was created in 1999 which allows criminal history records from the FBI and State criminal history record repositories to be shared through the III System for noncriminal justice purposes such as governmental licensing and employment background checks. **Despite popular belief, the III System is not a complete national database of all criminal history records in the United States. In fact, many state records, whether from law enforcement agencies or courts, are not included or have not been updated.**

According to a 2006 Department of Justice (DOJ) report entitled *The Attorney General’s Report on Criminal History Background Checks*, the authors state that “although it is quite comprehensive in its coverage of nationwide arrest records for serious offenses, the [FBI’s Interstate Identification Index] is still missing final disposition information for approximately 50 percent of its records.”
http://www.justice.gov/olp/ag_bgchecks_report.pdf

Bottom Line -- currently, there is no single government database containing complete and up-to-date records regarding a person’s criminal history.

Among those in the professional background screening community, the full range of FBI databases is considered one tool among many that may be used by some CRAs. However, due to its limitations, the FBI system is not considered a reliable enough source to use as a single

source for a background check for employment, volunteer or tenant screening purposes. Not all CRAs have access to the FBI's database for noncriminal justice purposes. Those CRAs that have access can reference the FBI fingerprint database for employment or licensing only if required to do so by Federal or State law. This is an important distinction to make when discerning the differences between a one-time instant background check for gun purchases as opposed to the more thorough background checks performed for employment, tenant and volunteer recruitment.

Is there government oversight of CRAs?

Yes. The FCRA spells out the rights consumers have with respect to background reports prepared by CRAs, including the right to dispute the accuracy of the reports and CRAs obligations to reinvestigate such inaccuracies. The FCRA describes the obligations employers have to provide notice to consumers if information in the background report is going to be used adversely against them. And finally, the FCRA spells out the responsibilities of CRAs when preparing and providing such background reports for a limited purpose such as employment or tenancy. The regulations governing the actions of professional background screeners as well as end-users are spelled out in the FCRA and the CFPB's *A Summary of Your Rights Under the Fair Credit Reporting Act* and the *Notice to Users of Consumer Reports: Obligations of Users Under the FCRA*.

Background screening, when conducted by a CRA, is highly regulated including by the Federal Trade Commission and the Consumer Financial Protection Bureau as well as state and local consumer protection laws. In addition the Equal Employment Opportunity Commission is active in this space and just last year issued revised enforcement guidance on the use of criminal background checks for employment screening purposes, which is directed toward employers who use such reports.

For more information please visit the website of the National Association of Professional Background Screeners, www.napbs.com. For more information on the laws that govern background screening, please visit the Consumer Financial Protection Bureau at www.consumerfinance.gov and the Federal Trade Commission at www.ftc.gov.

April 3, 2013



"Fingerprints vs. Name-Based Background Checks: And the Winner Is..."

A STERLING TALENT SOLUTIONS WHITE PAPER by Angela
Preston, Senior Vice President and Counsel, Corporate Ethics
and Compliance

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For questions and more information about this document, please contact the following:

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Abstract:

Verified Volunteers is a partner company of Sterling Talent Solutions specializing in background screening for non-profit and government organizations utilizing volunteers. Sterling Talent Solutions is an accredited consumer reporting agency (CRA).

FBI background checks drawn from a central database of fingerprints are often required by law, however this screening method presents several important limitations, 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.

Consumer reporting agency (CRA) conduct comprehensive name and social security number-based background checks drawing from a wider, deeper and more updated pool of sources. Searches include 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.

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 Act (FCRA) (15 USC §1681 et seq.) and equivalent state laws. The FCRA protects job and volunteer applicants from unfair employment actions. A volunteer 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 volunteer from being eligible to volunteer in their child’s school.

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

By Angela Preston, Senior Vice President and Counsel,
Corporate Ethics and Compliance



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.

THE CULTURE OF FINGERPRINTS

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).

THE CULTURE OF FINGERPRINTS

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.



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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

THE NAME-BASED CHECK: A BETTER WAY?

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

THE NAME-BASED CHECK: A BETTER WAY?

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 STERLING TALENT SOLUTIONS

Sterling Talent Solutions 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. Sterling Talent Solutions 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.sterlingtalentsolutions.com.

ABOUT VERIFIED VOLUNTEERS

Verified Volunteers helps nonprofit organizations gain confidence in the volunteers working with those they serve by delivering thorough, compliant background checks. By enabling volunteers to order, manage and share their background checks via a secure online platform, we create a community of vetted volunteers and help nonprofit organizations save time and money. Our extensive expertise in screening and compliance best practices help clients recruit the best volunteers in order to maintain a safe environment and positive reputation. Verified Volunteers is backed by Sterling Talent Solutions, one of the world's largest background screening companies, and partnered with Points of Light, the world's largest organization dedicated to volunteer service. Visit www.verifiedvolunteers.com.

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