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Criminal Background Checks Require Due Diligence

By Doug Moser – Director, Business Development & Services

Checking a person's possible criminal background activity is an important facet in the due diligence process. There are varied avenues that can be taken in order to achieve this goal. However, a basic understanding of the different options and possible results is important. This information is not all-inclusive but important in understanding the varied options available.

Beware of the mythical Nationwide Criminal Records Check! It's not what you may perceive it to be. There is no such thing as a comprehensive national county by county, state by state, or city criminal public records check available to the public or employers at this time.

You may have heard of the National Crime Information Center (NCIC). This is an FBI database not available as public record and legally available only to criminal justice agencies. The FBI and state law enforcement have access to it, but it is illegal for a private company or individual to independently obtain criminal information from this source. There are strict penalties for unauthorized access to the information. Currently, the only access to NCIC is through fingerprinting and submission to the appropriate law enforcement agency.



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Background investigations and screening are our only business.

A National Criminal Search should be used as a supplemental search. Although this proprietary research source is steadily growing in scope with more enforcement entities, county, sex offender and prison records, the content is not all-inclusive by any means. Not all cities, counties or states share criminal information to a standardized source. The use of this service should be viewed as an "indicator" and useful supplement for searching criminal records beyond the person's resident state or county address of record. If a possible "hit" is noted, a more focused search must be performed to further verify any possible information received, such as a county criminal search. As mentioned above, this is not a comprehensive, all-inclusive search but an additional due diligence tool.

The Statewide Criminal Check is state specific criminal background information provided by individual counties within the reporting state. Not all states provide a statewide criminal information index. All statewide criminal sources are dependent on each city and county to provide updates and information in a timely manner. In some states not all counties are required to deposit records or doing so may be voluntary. So it is important to ascertain how current the statewide criminal index is. Also, if a possible "hit" is obtained, it may be necessary to crosscheck statewide information with the county of concern depending on how often the specific state index is updated.

There are three levels of accuracy and completeness of state repositories. The first level is a state-sponsored repository. Level two is the voluntary information sharing between counties within a state. The third level represents states that have no mandatory or voluntary central data sharing. Some companies are mandated to conduct statewide searches for governmental, regulatory, contractual or company policy reasons.

County Criminal Checks offer the most concise, accurate and current records available and should be considered a primary element in a criminal background search. To properly conduct this type of investigation, an on-site person search at the respective courthouse must be done, not a database search. Employer Lynx uses a nationwide network of professional experienced researchers to obtain this information. Be aware that many county felony and misdemeanor records are generally maintained separately and may require checking separate records. Also, be advised that if, for example, county "A" was checked but the crime was committed in nearby county "B," this incident would probably not be revealed. Completed reports indicate if a subject has a criminal record within the last seven years, or longer if the record includes a legally reportable conviction, including pertinent information of each offense.

Using Federal Criminal Records is a two-step comprehensive investigative process of the United States Federal court system to search for possible crimes that do not fall

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under state jurisdiction. It involves first determining a possible match and second, conducting a more detailed search within the district that the possible match is located. These criminal records show criminal complaints brought by the U.S. government for federal criminal law violations such as mail fraud, bank robbery, federal crimes against an entity, interstate drug trafficking, kidnapping, tax evasion, etc. Running a Federal Criminal Records check in the same Federal District as the geographical county areas is an excellent option delivering an extra-added layer of due diligence and protection.

State Prison Searches will indicate only if a person has spent time in a state prison system and show dates of incarceration. This investigation is done by state. Each state determines how detailed the information will be. This can be helpful in determining the accuracy of a person's background statements or gaps in employment. Remember that a prison search is research into a given state's prison system. This is generally not for revealing time spent incarcerated in a city or county jail.

The Registered Sex Offender Search is a two-step process including one state as well as a national search. Generally, it reveals Tier 3, which has been determined by the courts to be a person who is likely to repeat or is a repeat offender, and Tier 2, generally a person who has committed a sexual offense but has been determined by the legal system to probably not be a continued threat. There are lower level sexual offenses that may or may not show up on a given state's

index depending on the prosecuting jurisdiction's discretion and generally will not be included in a background report. Several industries mandate this search.

The Global Watch List is a comprehensive worldwide search for debarred, politically exposed and blocked persons, sanctioned and non-cooperative countries, territories, cities and ports, ineligible firms and numerous most wanted lists including terrorism lists. Resources such as INTERPOS, Bank of England, Canadian sanctions, European Union, World Bank, FBI, U.S. Bureau of Industry and Security, OFAC, Department of State Trade Control and others are used. This is an important element of added due diligence for many firms and specific industries under the U.S. Patriot Act, Homeland Security, Transportation Safety Administration and others.

Seven years past history is the generally accepted time period for revealing criminal convictions, parole or release from imprisonment.

Each state dictates the past historical information that is permitted to be released and to what extent. The seven-year time frame is presently the Nevada standard for most information obtained. However, there are exceptions depending upon requirements and regulations dictated by specific industries, special state government rules, federal requirements and others. Examples might be Homeland Security issues, law enforcement positions, and interstate transportation (Federal) requirements, CDL/HAZMAT certifications and nature of the crime to name a few, and they change frequently. For instance, some states will allow searching of criminal conviction records as far back as

records are kept on file if the subject's employment salary is above a state specified level. Some allow unlimited access. The federal government has no limit on historical criminal searches.

Beware that if a prospective employee shows up with a criminal record, it does not necessarily mean that person should not be employed, especially if qualified in every other manner for the job. An employer should not automatically deny employment based on a criminal conviction and should consider the nature of the offense, whether it is job related, when it occurred and what the individual has done since. Be careful—to automatically deny employment solely because of a criminal record could be considered a form of discrimination violating state and federal laws. Business related issues, security issues, violence, sexual offenses, specific local, state or federal regulations that might bar a person with a criminal record to qualify for a specific position or honesty concerning the completion of an employment application could be considered. The nature of the crime and/or final court adjudication can even be a consideration as to whether a state will release the information.

This is only a brief insight into criminal background checks. As you can see, the criminal investigation rules and regulations are ever changing. Knowledge of each state, federal and industry-specific issue must always be addressed. For legalities concerning more detailed industry-specific information, it is always advisable to consult with legal counsel.

Final Thoughts

Legal Terminology Defined – Part 2

In the last issue of *The Lynx Link*, we offered you a list of definitions for legal terminology that you may encounter in your background reports. This completes our list, though as we said in the fall issue, it is by no means an all-inclusive list.

Nolo contendere – A plea in a criminal case that has a similar legal effect as pleading guilty. Type of plea which may be entered with leave of court to a criminal complaint or indictment by which the defendant does not admit or deny the charges; complaint may not be brought before a Civil Court at a later date, should no criminal conviction result

Parole – Release from jail, prison, or other confinement after actually serving part of sentence. Conditional release from imprisonment that entitles parolees to serve remainder of term outside confines of an institution.

Plaintiff – A person who brings an action. A person who seeks remedial relief for an injury of rights; it designates a complainant.

Prosecute – To proceed against a person criminally.

Suspended sentence – In criminal law, a suspended sentence means, in effect, that the defendant is not required at the time of sentence is imposed to serve the sentence.

Warrant for arrest – A written order of the court which is made on behalf of the state or United States and is based upon a complaint issued pursuant to statute and/or court rule and which commands law enforcement to arrest a person and bring that person before court.

Reference: *Black's Law Dictionary, Sixth Edition, by Henry Campbell Black, published St. Paul, MN, West Publishing Co, 1990*

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