



Criminal Reports and Subject Identifiers: Whose Record Is This Anyway?

In the wake of our national concern over security, the background screening industry has received increased media attention. Much of that attention has focused on citizens' criminal histories. It seems that an article appears almost daily in one or another media source detailing for better or worse, one person's story of having a criminal background check processed. Often, what is reported is vague regarding the processes involved with the background screening industry. As a result, many misconceptions reside in the mind of the public regarding criminal history reporting and specifically the identifiers used regarding this practice. This paper will define where criminal history information comes from, the identifiers used to match a record to a specific subject, and the role these identifiers play in determining whether someone has a criminal history.

The Process of Criminal Records Research

One of the greatest misconceptions within our industry is that background screening is done by sitting at a computer surfing the web using an individual's name and social security number. In reality, nothing is further from the truth. In order to understand how criminal records are uncovered, one must understand the process of how they come to exist in the first place.

When someone is arrested and charged with a crime, one of the first things that the subject is asked for is his picture ID. The arresting officer, will write down the vital statistics of the subject, including his name and date of birth. This arrest record is the start of the criminal record file that will be maintained and eventually archived on an individual. If the crime is a crime where the state has jurisdiction (as opposed to a federal crime), the information will be kept at the county courthouse where the criminal proceedings will take place. Every court proceeding from that point forward, from the arrest through the conclusion of probation, if probation is included in the sentence, will be noted in the court file, also called a docket. The vast majority of these records

become public. This means that members of the public have a right to access and view all or part of the record. The courts maintain an index by which members of the public may search for records. Often, there are computer terminals set up in the courthouses where members of the public may go to search for a case. In most cases, one may search by case number if known, or more commonly by name and date of birth. For employment screening purposes, the vast majority of criminal searches take place at the county level where researchers visit the courthouse and search the index using a name and date of birth to determine whether the subject has a record at a particular courthouse in a particular city.

Each state has a means of keeping track of its criminal population either for purposes of law enforcement or for statistical reporting. Eventually, the information should migrate to the state repository. It is important to take note of two words in the previous statement, *eventually* and *should*. In theory, arrests are sent to the state repository shortly after they are made. The information from court proceedings such as pleas, dispositions or how the case was decided, and sentencing should also make their way to the state repository after these events take place. However, the reality can be quite different. And the rate by which information detailing the outcome of a case makes it to the state repository after a person has been arrested can vary dramatically by state, as well as by county within a particular state. The result is that many of the cases at the state level do not have dispositions and cannot be used for employment screening purposes. This is because cases without dispositions constitute an arrest record. Information at the state level is often referred to as a "rapsheet" because it details not only every conviction, but every time a person was arrested in the state. In addition, not all counties report their information to the state repository in a timely and complete fashion. And not all levels of offenses are always reported. The identifiers used by the state are carried over from those listed in the court file. State records are more inclusive of social security numbers. However, the primary means of searching for criminal records even at the state level is still name and date of birth.

States do share information among themselves through the National Crime Information Computer, or the NCIC. However, an employer must belong to a certain industry in order to have access to the NCIC information. Information is only provided by fingerprinting the subject and matching the fingerprints with those in the database. Most private sector employers do not have access to this information nor are screening companies able to provide information from this source to their clients without some sort of statutory requirement allowing them access to do so.

Due to the fact that NCIC information is not accessible to most employers, private companies have filled the gap by creating their own versions of National Criminal Files on consumers. These files are comprised of the names and other identifiers of millions of convicted criminals. The sources for these records are numerous and the identifiers vary depending on the source of the information. If a record is found on an individual through one of these private databases, the FCRA requires that a new search be conducted at the local level where the record is located to ensure that the most current and accurate information is being reported. Or at the time that the user of the report receives the report, the consumer of the report must be notified of the information that is being reported about him or her.

Access at the county and state levels are the two main means by which criminal records are researched by screening firms. In both cases, name and date of birth are the primary means by which records are matched with subjects and compiled in a consumer report. A screening firm doing a thorough and competent job, will also look for additional identifiers such as middle name, driver's license number and or address listed to further identify a subject in a criminal record. This practice should bolster the integrity of the report and reduce the chance of reporting a record that does not actually belong to the individual.

As previously discussed, there are sound methodologies involved in criminal record research to enable subjects of records to be properly identified. However, records are researched and reported by humans and as such, errors can and will happen. However, the FCRA is designed to mitigate the risk that these errors will adversely affect a candidate getting a job. Under the FCRA, before adverse action is taken, the candidate must receive a copy of the report. The candidate is then entitled to a period of time whereby he can dispute the findings of the report. If he does not dispute the content, he is then notified that he is not being offered the job based on the information provided in the report.

Conclusion

Businesses and consumers need to be aware that using a background-screening provider that is competent and law abiding ensures that the reports produced are as accurate as possible and that the rights of the consumer are not overlooked. This allows both parties peace of mind throughout the process.