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<http://www.nclc.org/issues/broken-records.html>

CRIMINAL BACKGROUND CHECKS: RAMPANT ERRORS COST WORKERS' JOBS AND SKIRT FEDERAL LAW

The National Consumer Law Center Urges Action to Hold Companies Accountable

BOSTON, Mass.—Since September 11, 2001, there's been an explosion in criminal background checks for job applicants by employers, yet many reports are riddled with errors. *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, a report from the National Consumer Law Center (NCLC), also finds an industry-wide lack of accountability and incentives to cut corners mean that tens of millions of workers may pay for these third-party errors with their jobs while employers waste money and miss out on hiring qualified employees.

“Background screening companies routinely cut corners to improve their profits and then they wipe their hands of any responsibility for producing an inaccurate or misleading report that can cost a worker his or her job,” says National Consumer Law Center Staff Attorney Persis Yu and co-author of the report. “Federal regulatory agencies and states should rein in the Wild West of the background screening industry by holding companies accountable.”

NCLC's research reveals that criminal background screening companies' reports *routinely*:

Mismatch people (i.e. a person with no criminal background with someone who has a record, which is especially problematic for people with common names);

Omit crucial information about a case, (i.e. a person is arrested but then found innocent);

Reveal sealed or expunged information (i.e. a juvenile offense);

Provide misleading information, (i.e. a single charge listed multiple times); and/or

Misclassify offenses (i.e. reporting a misdemeanor as a felony).

Many of these errors can be attributed to common practices by background screening companies, such as:

- Retrieving information through bulk record disseminations and failing to routinely update their databases;
- Failing to verify information obtained through subcontractors and other faulty sources;
- Using unsophisticated matching criteria;
- Failing to use all available information to prevent a false positive match; and
- Lacking understanding about state specific criminal justice procedures.

About 93% of employers conduct criminal background checks on some applicants, while 73% of employers conduct checks on all applicants, according to a 2010 survey by the Society for Human Resource Management. Yet there are *no* licensing requirements and there is *no* system for registration for background checking companies. Anyone with a computer and access to records can start a business; the total number of companies is unknown.

The National Association of Professional Background Screeners (the industry trade organization) has a voluntary accreditation program that contains some simple procedures (many of which are legally required) that background checking companies can take to enhance the quality of their information. Unfortunately, few companies actually are willing to commit to even the limited recommendations of their own trade association.

“Working without adequate federal supervision, many commercial background screening companies have produced poor quality reports that, in the most extreme cases, have shut people from their careers,” notes co-author Sharon Dietrich, who is managing attorney in Community Legal Services of Philadelphia’s Employment and Public Benefits Units.

RECOMMENDATIONS

The National Consumer Law Center report recommends that federal regulatory agencies and states use their authority to clean up industry-wide problems. For example, the **Consumer Financial Protection Bureau** could issue regulations under the Fair Credit Reporting Act (enacted in 1970 by Congress to protect the privacy of consumers) to ensure greater accuracy of background checks and to require consumer reporting agencies to register so consumers can correct inaccurate and misleading information. **The Federal Trade Commission** can investigate major commercial background screening companies for common FCRA violations and investigate major, nationwide employers for compliance with the FCRA requirements for users of consumer reports for employment purposes.

State legislatures and courts also have a role. They can require companies that receive bulk data from court databases to promptly delete sealed and expunged criminal records and routinely update their records. States can also audit companies and if not in compliance, states can revoke the companies’ receipt of data.

“Background screening companies generate billions of dollars in revenue for producing sloppy work while consumers are left handcuffed with little recourse to challenge and correct misleading or incorrect personal information,” says National Consumer Law Center attorney Persis Yu. “Where’s the justice in that?”

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Since 1969, the nonprofit National Consumer Law Center[®] (NCLC[®]) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and disadvantaged people, including older adults, in the United States. NCLC advances economic fairness through policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices and help financially stressed consumers build and retain wealth.