

EXECUTIVE SUMMARY

Since 2007, the United States has experienced the worst unemployment rates since the Great Depression. Adding to this job crisis, criminal background checking companies are making it even more difficult for workers to obtain employment. Approximately ninety-three percent of employers conduct criminal background checks for some potential applicants, and seventy-three percent of employers conduct criminal background checks for all potential applicants. The widespread dissemination of criminal record histories limits employment opportunities for an estimated sixty-five million adults (nearly one in four adults) in the United States who have some sort of criminal record.

Moreover, criminal background checks often contain incorrect information or sealed information. Samuel M. Jackson was allegedly denied employment after a prospective employer ran an InfoTrack background check. InfoTrack reported a rape conviction from 1987—when Mr. Jackson was four years old. The rape conviction actually belonged to fifty-eight-year-old male named Samuel L. Jackson from Virginia, who was convicted of rape in November 18, 1987. That Samuel Jackson was incarcerated at the time the InfoTrack report was run.

Whether these checks should be used for employment screening is a matter of public debate. However, there is little debate that if these records are to be used, they *must* be accurate.

Despite its promotion as a public safety service, the sale of criminal background reports has become a big business generating billions of dollars in revenue. The Internet has facilitated the emergence of scores of online background screening companies, with many claiming instant access to millions of databases.

Under the Fair Credit Reporting Act (FCRA), background checking agencies are required to maintain procedures to ensure the accuracy of information they report about consumer. Unfortunately, the FCRA, as currently interpreted and enforced, fails to adequately protect consumers when it comes to employment screening. Even applicants who successfully remove errors from their background check are frequently denied employment.

Despite the importance of the accuracy of criminal background reports, evidence indicates that professional background screening companies routinely make mistakes with grave consequences for job seekers.

This report describes a number of ways in which background screening companies make mistakes that greatly affect a consumer's ability to find employment. Although the mistakes discussed in this report are not inclusive of all errors found on background checks, attorneys and community organizations that work with consumers with faulty background reports state that they repeatedly see background reports that:

- Mismatch the subject of the report with another person;
- Reveal sealed or expunged information;

- Omit information about how the case was disposed or resolved;
- Contain misleading information; and
- Mischaracterize the seriousness of the offense reported.

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

- Obtaining information through purchase of bulk records, but then failing to routinely update the database;
- Failing to verify information obtained through subcontractors and other faulty sources;
- Utilizing unsophisticated matching criteria;
- Failing to utilize all available information to prevent a false positive match; and
- Lack of understanding about state specific criminal justice procedures.

Even the National Association of Professional Background Screeners agrees there are some simple procedures 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. Criminal background checking is big business, and ensuring accurate and complete information reduces profits.

Based upon the issues identified in this report, we recommend that the Consumer Financial Protection Bureau (CFPB) use its rulemaking authority under the Fair Credit Reporting Act to:

- Require mandatory measures to ensure greater accuracy.
- Define how long an employer has to wait in between sending an initial notice and taking an adverse action, i.e., rejecting an applicant or terminating an employee.
- Require registration of consumer reporting agencies.

The Federal Trade Commission should use its FCRA enforcement authority to:

- Investigate major commercial background screening companies for common FCRA violations.
- Investigate major, nationwide employers for compliance with FCRA requirements imposed on users of consumer reports for employment purposes.

Finally, as the source of most of the data reported by background screening agencies, states have a huge role to play in ensuring the accuracy of criminal background checks. States should ensure that state repositories, counties, and other public records sources:

- Require companies that have subscriptions to receive information by bulk dissemination from court databases to have some procedure for ensuring that sealed and expunged records are promptly deleted and ensure that dispositions are promptly reported.

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- Audit companies that purchase bulk data to ensure that they are removing sealed and expunged data and, if a company fails such an audit, revoke its privilege to receive bulk data.

With the explosive growth of this industry, it is essential that the “Wild West” of employment screening be reined in so that consumers are not guilty until proven innocent. Currently, lack of accountability and incentives to cut corners to save money mean that consumers pay for inaccurate information with their jobs and, thus, their families’ livelihood.