

Conducting Criminal History Records Checks

Sex-Offender Registries

The 1994 Jacob Wetterling Act requires the states to register individuals convicted of sex crimes against children. Megan's Law, enacted in 1996, gives the states discretion to establish criteria for disclosure (how to make it known), but urges them to make private and personal information on registered sex offenders available to the general public.

Guided by state and federal Megan's Laws, every state and the District of Columbia has established a sex-offender registry. These databases are lists of individuals who have been convicted of criminal sexual conduct ranging from child molestation to rape.

On July 27, 2006 the federal Adam Walsh Child Protection and Safety Act was signed into law. This act required specific registration requirements for all sex offenders in every state and make it a felony crime for sex offenders failing to register. It also required the U.S.

Justice Department to create a public accessible Internet-based national sex offender database that allows users to specify a search radius across state lines. The result is the [Dru Sjodin National Sex Offender Public Website](#).

Although mandated by law with penalties for noncompliance, the registry is only as sound as the information submitted and entered into the database in a timely manner. KlaasKids Foundation (<http://www.klaaskids.org/pg-legmeg.htm>) provides excellent information about sexual offender registries, including a state-by-state assessment of the sexual-offender information available in each state and the District of Columbia.

The Process

With the advent of the national sex offender registry, checking for registered sex offenders is a simple process. Simply go to the [Dru Sjodin National Sex Offender Public Website](#) and use the search tool provided.

What to Expect and What You'll Get

Since each state and the District of Columbia are allowed discretion in how they will disclose information on offenders to the public, there are 51 opportunities for variance in each criterion. States have great latitude in how they arrange the information they do provide to the public. The national site recommends that any results be checked against your state and/or local jurisdictions, which can provide additional information and clarify exactly what their criteria are for registration.

Other Considerations

The material provided in national and state databases is "information of record" and may not reflect the *current* residence, place of employment, school, status, or other information concerning the registrant (offender). Sex offenders are responsible for their own compliance, and each state has different rules. States' methods for tracking known sexual offenders vary, as does how much personal information will be made publicly available.

Things That Can Go Wrong

- Failure to register initially, or upon change of address (many offenders go “underground” in an effort to keep their past secret, making some of these databases incomplete).
- No photograph provided, or photo shown no longer resembles offender.
- Not enough personal data supplied to differentiate between all the “John Smiths” in the registry (collect more information from the applicant if you have doubts).
- Search made during grace period (number of days offender has to register change in circumstances). For this reason, you may want to check these records periodically to see if any of your volunteers have new offenses.
- If the convictions were prior to Megan’s Law enactment, January 1, 1996, the offender may not have been required to register.
- Results interpreted inaccurately. (Mistakes happen.)
- Name issues: common name, no middle initial, alias; maiden vs. married name; or legal name change resulting in multiple positives. Agencies must be extremely diligent in making sure that any positive results are accurate before making a determination.

State Records Checks

Each state establishes its own requirements for processing criminal history record checks. The first step in conducting a state records check is to determine what the rules and regulations are for the states from which you will be requesting records checks. Most state records checks use a name-based search rather than fingerprints.

A list of state criminal history record repositories is maintained by the State of Wisconsin Justice Department: <http://www.doj.state.wi.us/dles/cib/sclist.asp>. Be sure to verify that the information for your state is correct before proceeding.

Tip: When using name-based criminal history record checks, verify the applicant's identification with a driver's license or other official picture identification, such as a state-issued non-driver's ID or a passport. Submit applicant's full name, date of birth, current address, gender and, in most states, Social Security number.

Timeframe

Timeframes vary from state to state. Most report that they complete state criminal history record checks within two to three weeks after they receive the request.

What to Expect and What You'll Get

Most state-level checks will reveal only arrests and convictions for crimes that occurred within the state. The reports vary from state to state, so be sure you find out what the reports will contain before you begin.

Tip: State criminal record checks do not suffice for individuals who have resided in multiple states. Check other states of residence and employment and/or conduct FBI Identification Record checks to more adequately screen these applicants.

Things That Can Go Wrong

- County-level criminal records weren't sent to the state
- Crimes committed before records were required to be kept don't show up
- Backlog of requests can slow process down
- A common name, aliases, legal name changes, and other name issues can increase false positives and negatives
- A fingerprint check may be required to verify that the person is correctly identified
- False information provided by applicant
- Directions not followed (make sure all your staff know the appropriate procedures)
- Offense codes don't clearly identify the crime, making evaluation more difficult

National Record Checks

There is no such thing as a national or nationwide criminal history records check for all crimes. Even the FBI database is not truly comprehensive, as it does not include misdemeanors and only includes records that are sent from the county to the state and then forwarded to the FBI. However, fingerprint-based searches are the most reliable way to conduct criminal record checks and the least likely to result in a false positive or false negative search result.

National Criminal Information Center (NCIC)

The FBI checks against the National Criminal Information Center database. The NCIC maintains a computerized index of criminal justice information. Data contained in NCIC are provided by the FBI; federal, state, local, and foreign criminal justice agencies; and authorized courts.

Access to the FBI database is governed by the state in which the organization is located, so all requests go through the individual state. The FBI is empowered to exchange criminal history record information with officials of state and local governments for employment, licensing (which includes volunteers), and other justice purposes, if authorized by a state statute that has been approved by the U.S. Attorney General. The state will charge a fee to check its records in addition to the FBI charges. Fees vary by state.

The Process

To begin, contact your state's criminal history records repository, which can be found here: <http://www.doj.state.wi.us/dles/cib/sclist.asp>. Determine the procedures to follow for obtaining an FBI fingerprint background check for employment. The state will forward the request to the FBI. Any matches found in the FBI record checks are confirmed through fingerprint analysis before a report is sent to the state requesting the check. The state agency then sends its report, which contains data from any state in the NCIC database, to the organization making the request.

The FBI requires that:

- Applicants must provide a complete set of readable fingerprints and sign a statement indicating whether they ever been convicted of a crime. If they have been convicted of a crime, a written statement must describe the crime and particulars of the conviction.
- Organizations must inform applicants that they may request a record check for the volunteer position sought.
- Organizations must inform applicants of their rights to obtain a copy of any background report and to challenge the accuracy and completeness of the information with the agency providing the information before final eligibility is determined.

Timeframe

The amount of time the state takes to send the request to the FBI varies. Be sure to allow several weeks for processing. The poor quality of fingerprints submitted for identification is a common reason that FBI record checks take as long as they do. The FBI reports that even when a trained technician takes the fingerprints, it has to reject a significant percentage because they are unreadable. The FBI requires a complete set (all 10 fingers) of clear, readable prints for checks.

What to Expect and What You'll Get

An FBI Identification Record, often referred to as a Criminal History Record, or “rap sheet,” 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. If the fingerprints are related to an arrest, the Identification Record includes the name of the agency that submitted the fingerprints to the FBI, the date of arrest, the arrest charge, and the disposition of the arrest (case dismissed or defendant convicted), if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities.

Things That Can Go Wrong

- Fingerprint records aren't readable (sometimes they need to be redone)
- People are intimidated by going to the police station to get fingerprinted
- Fingerprinting agency has limited and inconvenient hours of operation
- Person has illness (i.e., Parkinson's, arthritis), physical deformity (amputation, chemical or other burn) that makes fingerprinting difficult or impossible
- Machine just can't read the fingerprints (no reason given)
- State doesn't have a statute allowing access to FBI Identification Record (you will need to put extra emphasis on your other screening methods if this is the case)
- Applicant doesn't wish to be fingerprinted (your policies should address the consequences of this)
- Delayed results discourage the applicant and he/she withdraws from consideration
- Items submitted to the FBI are missing or incomplete
- Offense codes don't clearly indicate the crime which makes it difficult to evaluate without more research