

Are There Criminals On Your Sales Team?



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Every employer fears unknowingly hiring a criminal. There are things that can be done to mitigate that risk if an effective criminal background screening program is put together. The operative word is "effective." This white paper will help you identify the important components to structure a criminal background check program for your salesforce.

James Smith seemed like just one of the guys on the sales team. He was friendly and outgoing. He was also a hard worker spending a number of days each week on the road meeting with prospects. One day while he was in the office, five hundred dollars disappeared from petty cash. The office manager later told the owner that she had seen James in the cash drawer earlier that day. The owner of the business confronted James about this and he admitted taking the money. He was in debt and desperate.

The owner called the police and criminal charges were filed against James. When the police investigated further, it turned out that James was a career criminal with a record in a number of states. The owner was puzzled as he had done a criminal background check on James, but it came back clear. How could this have happened?

This story is fictional, but scenarios like this play out every day in businesses of all sizes. You hear stories in the media about a door-to-door sales person committing a heinous crime and the employer says he did a criminal background check on this person before they were hired. Further investigation reveals a mile-long record of violent crimes. How does this happen?

Many companies, big and small, are novices to the world of criminal background screening. There are so many unknown nuances to this type of screening that they create a false sense of security for employers. How do you decide how to invest? Visualize a scale. At one end of the scale is not screening candidates at all. At the other end of the scale is an investment of \$100,000 per candidate for screening. Somewhere in that spectrum is a point called the "I can sleep at night" point. That point translates to the feeling that you have done the best job you can do to screen your applicants with the dollars you are willing to invest.

Bruce Berg, an industry consultant (www.bergconsultinggroup.com) with seventeen years of experience in background screening, puts this all in perspective. He says, "Considering the thousands of dollars you spend in the recruiting process (recruiter time, search fees, ads, personality tests, airfare, etc.) plus what it will cost you each day you have an undesirable on your payroll, a background check is the least expensive part in the entire hiring process. You can get by spending \$50 or you can be more sure investing \$150. That's less than one day's pay for your new hire. Don't be penny-wise and pound foolish."

It's not just the monetary investment that is an issue; it is also the lack of knowledge in formulating an effective criminal background screening program that creates risk. To compound

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this further, there is a tremendous amount of confusing advertising and misinformation that leaves employers lost. Thus, you could have felons on your sales team, or anywhere in your organization for that matter. While there are other important components of an employment screening program, this white paper focuses on criminal searches.

Inspector Eddie Frizell, a fifteen-year veteran with a large Midwestern Police Department, has conducted many background checks for potential police officers. "The applicant must be looked at as a whole, the good, bad, and ugly. A lackluster criminal background check may only give you a singular, skewed view of the applicant. A comprehensive criminal background check will ensure later, that any follow-on disciplinary investigation won't indicate that this person should not have been hired in the first place," says Lt. Frizell."

Some of you may be reading this and thinking that you already have a defined scope for all applicants so there is no need to be concerned. However, the scope of the background investigation for your sales people should be different than others in your company. Sales people cover a large geography by nature of the job, deal directly with the public, represent your brand and have access to sensitive and proprietary information.

Since the purpose of a background screening program is to ensure that undesirables do not make it onto your payroll, it is important to know how and where to conduct a criminal investigation search. On the employment application, the applicant provides names and addresses, but does that represent all of the names they have used and addresses where they have lived? If this person has a checkered past, probably not. This is where it gets tricky. It is up to you; the employer, in conjunction with your background screening firm, to find other names they have used and other addresses where they have lived.

Aliases

James Smith doesn't always go by the name James. He uses Jim and Jimmy too. His middle name is Thomas and he also goes by J.T. Smith and J. Thomas Smith. These aliases affect the investigative search process. If the field investigator only searches the files at the courthouse for James Smith, he will have missed possible criminal convictions for four other names. Criminals can be cunning. They know the system and many know how the "search game" is played. Thus, if James was convicted as J.T., he certainly isn't going to disclose that name on his employment application.

This comes back to the investment consideration in your background screening program. It can get very expensive for your company to check each alias for one applicant. It is, however, a great discussion point with your background screening firm to see how they handle aliases and for which ones they charge. Interestingly, there is not an industry standard for the handling of this fee. Every background screening firm has their own method. From a best practices

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perspective, for example, it is highly recommended to check maiden names in addition to married ones for female applicants.

Social Security Checks

Social security checks are sometimes called traces or verifications. The misconception that many employers have about social security checks is that their background screening provider is going to the Social Security Administration (SSA) for this information. This is a fallacy as the SSA prohibits third-parties (i.e. background screening firms) from accessing their information on behalf of employers for pre-employment screening purposes. Background screening providers use one of two sources. They go to one of the three national credit bureaus (Equifax, TransUnion, or Experian) or they use a proprietary database for this check. The proprietary databases work in much the same way as the aforementioned national criminal ones. Be sure to ask your provider how they gather this data for their clients and what sources are being utilized. Some of the proprietary databases supplement their data pool with useful information such as the United States Postal Services change of address database. This can be extremely helpful in uncovering additional addresses from which incremental criminal searches can be conducted.

What is the main purpose of a social security check? Remember, criminals can be cunning. If they were convicted of a crime in a particular county or state, they aren't going to put that address on their application. This check provides any address utilized when applying for credit; thus, the use of a credit bureau. Oftentimes, it produces aliases to search as well. It is important to note that additional names and addresses can add to the cost of the investigation with the background screening firm.

With names and addresses for the search identified, the next step is to determine the approach to investigate the criminal data.

National Online Criminal Searches

A better name for this section is "the mirage." Many have the misconception that all criminal convictions at the local level, are reported to the state, and thus to a giant, national criminal database. And why shouldn't you have this misconception? You go on the web and see advertisements for a national background check for \$9.95. For starters, there is no such database to which the majority of employers have access. While The Federal Bureau of Investigation (FBI) maintains a comprehensive database called the National Criminal Information Center (NCIC) database; access is limited to a select few sanctioned industries for hiring purposes.

So, what is this \$9.95 national check? There are a bunch of companies that have developed proprietary databases of criminal records. These databases have been formulated by acquiring records from departments of corrections (prisons), police departments, and other state and local

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government entities that sell their records. There are significant differences among these databases from a size, breadth, and quality standpoint. Don't be impressed by size as most of them tout having over 100 million records. Are these records from every county in the United States? No. Are these just criminal convictions? No. Can you make a hiring decision from these databases without further due diligence? No.

Then why use them? Aren't they a waste of money? Actually, a criminal database search is a very important component that adds breadth to the criminal background search. Most employers investigate the counties where the candidate has lived, worked, or gone to school within the past seven years. If the crime was committed outside of that area, no record will be found in this search. This tool provides a vehicle to potentially find criminal convictions outside of that scope. The ideal use of these databases is as a "tip and lead" system. Employers should not take action based on database information, but use that information to perform a more detailed search where a field investigator (sometimes called a court runner or research provider) actually reviews the criminal conviction file.

If you recall, James was on the road a lot as a sales person. He committed crimes in states while he was traveling on business. He was convicted of those crimes, but since the employer only investigated where he lived, worked, and had gone to school, he appeared to have a clear record. One of these databases may have produced a record that showed a potential issue with James in another part of the country. Once a "hit" came back on that search, a more comprehensive investigation could have been performed to determine if there was actionable information at the local level (performed by a field investigator).

How do you select a criminal database to use for employment screening purposes? Well, you may not have a choice. If you are working with a particular background screening firm, they may require that you use theirs. During the process of selecting a background screening firm, it makes sense to analyze the quality of their criminal database. There isn't a 100% guaranteed way to test the quality of these databases. However, one effective technique to assess size, breadth, and quality is to provide ten candidates that you did not hire due to their criminal history and have them run those candidates through their database. Obviously, you don't tell the firm that these all have "hits." See how they perform.

County versus Statewide Criminal Searches

James lived in Monmouth County, New Jersey and was convicted of a crime there. However, James' employer performed a New Jersey statewide search. At the time of the investigation, Monmouth County had not reported the conviction to the state of New Jersey. When James Smith was investigated at the New Jersey State office, his record came back clear. *(This story is completely fictional. I do not know how Monmouth County, New Jersey reports information to*

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the state of New Jersey. This story is shared to show what happens, but it is not specific to this county or state.)

Logic would say to check the state's records instead of the county's since the price for one county is usually about the same as the price for the entire state. In some cases, this approach makes sense. In others, like with James, it does not as some counties do not report their records to the state in "real time," in totality, or at all. This means that if you searched the state in which the applicant lives and the county in which they live, you could receive two different sets of data. The reporting relationship between counties and states varies and improves every day. It is important to ask your background screening provider, on a regular basis, which states offer comprehensive, "real time" records from their counties. In those instances, a statewide check is a better value as you receive the same quality of data over a broader landscape.

The challenge for employers is that there are 3,141 counties and 10,000 courthouses with separate, independent records. Simply put, most convictions occurring in the county of record are stored in that county. It is cost prohibitive to search every county which is why the "national" databases make sense as a supplement.

It is also not uncommon for felonies to be stored in one courthouse and misdemeanors to be stored in another courthouse. Most background screening firms say they report felony and misdemeanor convictions, but in the fine print it says that is only the case when both sets of records are stored in the same courthouse. If the misdemeanors are stored in a different courthouse, you probably will not see those convictions in your report. Does that matter? It depends on your policy. Every state defines misdemeanors and felonies differently. The same crime committed in one state could be a felony conviction while in another state the exact same type of crime is a misdemeanor conviction.

County/statewide criminal searches reveal crimes ranging from littering to murder. Interestingly, not all murders are handled at the county or state level. See the link.

<http://writ.news.findlaw.com/hilden/20031015.html>

Drug convictions are found at the county/state courthouse if the crime took place in one state. However, if the drug crime was committed in multiple states, you won't find the conviction in the archives of the county/state. Those records are stored in the Federal courthouse.

Federal Criminal Searches

Federal criminal searches are rarely ordered by employers. The obvious question is why? The main reason is a lack of employer knowledge on what these searches reveal. Some think that it is only comprised of "white collar" crimes. Others have the misperception that it is duplicative information that is also found at the county or state.

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Federal crimes are not limited to the politically incorrect term of “white collar” crimes. The information is also not duplicative with counties and states. Federal convictions include a myriad of types of crimes and the information is stored in Federal courthouses. Thus, when you check a county courthouse, you will not find Federal convictions and vice versa.

One of James’ indiscretions was that he robbed a bank. Since there was not a Federal search performed, no record of this conviction appeared. Back to the topic of databases, a criminal database search may have revealed the need to investigate the Federal courthouse in Trenton, New Jersey to find the bank robbery conviction.

Other examples of Federal crimes include: tax evasion, kidnapping, terrorism, mail fraud, interstate drug trafficking and Internet crimes. While the thought of investing in additional criminal searches provides a moment of pause, it is important to consider these searches when you have sales people that are handling your clientele’s money, credit cards, or personal information.

According to the website [USCourts.gov](http://www.uscourts.gov), there are 89 districts in the 50 states and the District of Columbia. Each district stores information independent of the others. Again, it is not economically feasible to search all 89, but a “national” criminal database could help bridge the gap from the seven-year search to a broader picture.

To get an idea of the type/volume of crimes tried in Federal court, click this link.

<http://www.uscourts.gov/judicialfactsfigures/2006/Table503.pdf>

Federal convictions are also on the rise. Click this link for statistics.

<http://www.uscourts.gov/judicialfactsfigures/2006/Table505.pdf>

National Sex Offender Database

While there is not a central repository of criminal records to which employers have access, there is a recently released (July 2005) national sex offender registry database available. There is, however, a similar issue with this check that there is with the county/state reporting relationship. There are latencies in the reporting to the national sex offender database meaning that if you checked the state and the national database, you could find information at the state that is not yet in the national database. See the disclaimer from their website: “The criteria for searching are limited to what each individual state may provide. Also, because information is hosted by each state and not by the federal government, search results should be verified by the user in the state where the information is posted. Users are advised to log on to pertinent state web sites for further information and/or guidance, as appropriate.”

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This becomes a decision of breadth versus depth. You can have a check of all 50 states or you could search one state and get more information. Each employer needs to make their own decision on this. One factor that could affect your decision is that it is available at no charge. However, it may be necessary to have your background screening firm perform additional due diligence before proceeding with a “hit” in this database for which there would probably be a fee. The website for this government database is: <http://www.nsopr.gov/>.

Conclusion

The intent of this document is not to persuade you to spend your entire HR budget on background screening. It is designed to help educate so that the best decisions can be made for your company. Many companies screen every applicant using the same background check methodology. Sales people require a different type of screening due to the nature of the tasks they perform. There are no guarantees that you won't hire a criminal for your sales team if you perform a background check. The idea is to mitigate the risk when hiring.

The “sleep at night” point in the screening spectrum is different for every company. Companies should make informed and educated decisions when background screening their sales people. Performing a comprehensive background check is not cheap, but what is the cost of unknowingly hiring a criminal to your workplace and brand? Only you can answer that question.

Note. The information contained in this document is not legal advice. It is recommended that you seek the advice of counsel before implementing a background screening program.

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