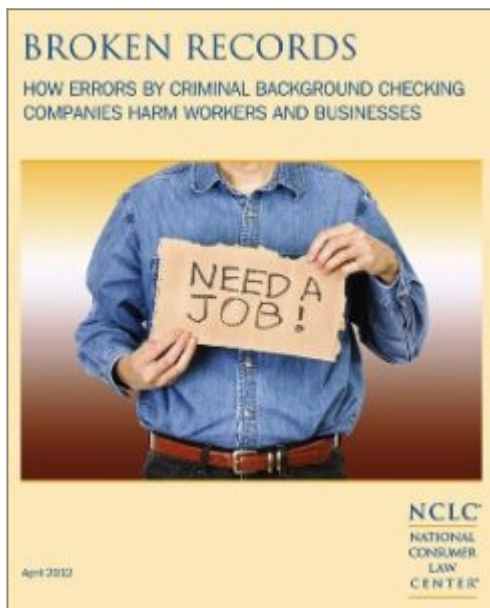


Broken Records

How Errors by Criminal Background Checking Companies Harm Workers and Businesses

Please see our 2019 updated report: Broken Records Redux.



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1, 2012 National Consumer
Law Center©

Mistakes on criminal background screening reports cost workers' jobs and skirt federal law (Fair Credit Reporting Act). Federal and state government and courts each have a role in improving the accuracy of background checks.

[Download the full report \(PDF\)](#)

[Download the Executive Summary \(PDF\)](#)

[Download a chart with problems, solutions, and the decision makers who can improve accountability and accuracy of reports \(PDF\)](#)

[Download case studies of real people harmed by poor practices and errors \(PDF\)](#)

[Download the press release \(PDF\)](#)

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. 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.

This report investigates common poor practices and mistakes with recommendations for solutions and the role of federal agencies and state government in holding background screening companies accountable for accurate work. It is essential that the Wild West of employment screening be reined in so consumers are not guilty until proven innocent.

A high percentage of adults living in the United States are affected.

- 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.
- Nearly 1 in 4 adults (an estimated 65 million people) in the U.S. have a criminal record.
- Many additional people *without* a criminal record are wrongly tagged as having a record.

The problems are industry-wide.

There are *no* licensing requirements for criminal background agencies. Anyone with a computer and access to records can start a business; the total number of companies is unknown.

There is *no* central system for registration for background checking companies. A consumer can't regularly order his or her own report to review for errors as there is no central source to find and request a copy.

Many companies attempt to skirt the federal Fair Credit Reporting Act (FCRA) by subcontracting work to other vendors or disclaiming responsibility.

Employers often fail to comply with the FCRA. This makes it difficult to know whether consumers were denied employment due to a background check report.

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 errors are due to common poor 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.

Recommendations

The National Consumer Law Center report recommends that federal regulatory agencies and states use their authority to rein in industry-wide problems (see page 35 of full report for detailed recommendations).

1. The Consumer Financial Protection Bureau (CFPB) can 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. The CFPB can also require consumer reporting agencies to register so consumers can correct inaccurate and misleading information.

2. 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.

3. State legislatures, administrative agencies and courts 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.