

Checking Criminal Histories: Considerations Before You Begin

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Every nonprofit organization is responsible for taking reasonable measures to protect service recipients from harm. This responsibility extends to all facets of a nonprofit's interactions with its clientele.

While not a panacea, careful screening of the paid and volunteer staff who work with vulnerable populations is an important risk management strategy. The failure to adequately screen applicants may place service recipients in dangerous situations. Checking the criminal history records of applicants is one valuable tool in a comprehensive screening process.

This article explores some of the factors an organization should resolve prior to conducting criminal history record checks.

Preparing to Conduct Criminal History Record Checks

A criminal history record check is part of a screening process — not a selection criterion. Before incorporating criminal history record checks into their screening processes, a nonprofit should establish screening criteria — clear guidelines stating which offenses are relevant; what offenses will disqualify an applicant; what other factors will be considered; and how the rights of the applicant will be preserved.

The mission of each nonprofit provides a gauge for determining the amount of risk that an organization decides to accept. A nonprofit using ex-gang members as mentors for at-risk youths will likely use a different standard for evaluating criminal history records than an organization that assists elderly individuals in their homes with health care needs.

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Relevant Offenses

Within the context of a nonprofit's mission, the offenses that organizations might consider relevant are a function of the specific position in which a paid or volunteer staff person will serve.

Many nonprofits limit the use of criminal history record checks to positions who have substantial direct contact with children (as defined by state law) or who perform service in the homes of individuals considered vulnerable by the nonprofit. The question that organizations must answer is, “What offense histories would disqualify an individual from serving in such positions?”

When establishing screening criteria, organizations must take into account state and local laws and regulations. Some jurisdictions have instituted screening or licensing requirements for individuals who have substantial contact with children or other vulnerable individuals (dependent elderly or individuals with disabilities). Every

nonprofit should determine if licensing or regulatory agencies have identified specific offenses that would disqualify applicants for some assignments.

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Youth-serving organizations generally agree that individuals should be permanently disqualified from holding positions that require substantial contact with children if their criminal records include any of the following:

- Past history of sexual abuse of children.
- Conviction for any crime in which children were involved.
- History of any violence or sexually exploitive behavior.

Offenses become relevant based upon the nature of the position. For example, assisting with in-home health care could provide a paid or volunteer staff member with access to prescription medications that may tempt individuals with a history of drug abuse or those who recognize the potential street value of the drugs. A recent record (within the past few years) of substance abuse or drug distribution would be very relevant given the characteristics of the position in which the applicant would serve.

The more specific a criterion is, the more useful it is for screening. Specific offenses pinpoint the areas of concern and do not unnecessarily disqualify applicants. Some organizations include broad categories of offenses in their lists of disqualifying offenses, for example, “drug-related offenses.” This category encompasses everything from a single misdemeanor possession of less than an ounce of marijuana to felony racketeering. Nonprofits should consider narrowing their categories to target specific relevant offenses committed within a defined time period.

Court decisions decree that screening criteria must be based upon convictions — not arrest information. Nonprofits may, however, consider any arrests for which final disposition is pending. This is especially true for individuals who have charges pending for which they could be disqualified if a guilty verdict were to be rendered. For example, if an applicant was arrested for child sexual abuse and awaiting trial, the organization may disqualify the individual until the final disposition of the charge.

When establishing criteria for evaluating criminal history records, nonprofit organizations should consider what other factors should be taken into account. The five items listed below offer examples of circumstances an organization may consider when evaluating criminal history records. Rather than focusing on one or two of these factors, each nonprofit should examine the totality of the record to determine if it should disqualify an applicant.

The recency of and circumstances surrounding the conduct in question — Crimes that occurred within the past year or two may be more reliable indicators than crimes that occurred several years ago. (Keep in mind, however, that any convictions for child sexual abuse, rape, or other sexually exploitive offenses constitute an unacceptable level of risk extending throughout an individual’s life.)

- **The age of an individual at the time of the offense** — In some states juvenile records will not be available as they are protected by confidentiality laws.
- **Societal conditions that may have contributed to the nature of the conduct** — While societal conditions should not serve to excuse illegal behavior, the context in which the illegal behavior occurred may be considered.
- **The probability that an individual will continue the type of behavior in question** — Criminal history records that document a continuing pattern of repeated criminal offenses provide justification to believe that the individual represents a high risk for future criminal conduct.
- **The individual’s commitment to rehabilitation and to changing the behavior in question** — When an applicant has a criminal history record that includes potentially disqualifying offenses, the organization may consider the steps the applicant has taken toward rehabilitation.

Applicants’ Rights

Applicants have the right to be treated fairly and to have their privacy respected. Service providers are responsible for protecting these rights and therefore may need to establish and implement policies that achieve

these objectives. Criminal history data bases are not perfect and sometimes a records check will falsely identify a person as having committed a crime. For this reason, applicants should be given a chance to challenge the accuracy of information that an organization receives.

It is best to let the applicant resolve any disputes with the criminal justice agency from which the organization received the information. Until the organization receives a correction from the criminal history records repository, it should assume that the information it received is correct.

Fingerprints are the only positive means of identification. One way to confirm the identity of individuals about whom the organization receives negative information is to require a confirmation of the applicant's identity through a fingerprint check when the original criminal history records check was not based on fingerprints.

Many jurisdictions levy criminal and civil penalties against organizations and individuals who misuse or negligently handle the information obtained through criminal history record checks. Because laws in each jurisdiction may be different, every organization should ascertain from their state's criminal records repository what, if any, legal requirements apply to their custodianship of criminal history information.

The absence of specific legal requirements may not relieve a nonprofit of its obligation to protect the privacy of the applicant. Due to the sensitive nature of the information an organization may receive pursuant to a criminal history records check and the fact that it could be incorrect, a nonprofit should take steps to prevent its accidental disclosure. Establish policies governing who has access to the information, how it is stored, and how it is to be destroyed once it is no longer needed by the organization.