

Knee-Jerk Risk Management?



By John C. Patterson

Resource Type: Articles

Topic: Youth Protection and Child Safety

Should FBI criminal history record checks be required of individuals who work with children? On the surface, the answer to this question would appear to be a resounding yes. Further analysis, however, reveals that a more conditional endorsement of criminal history record checks is warranted.

First, we should state for the record that an FBI criminal history record check is a valuable component of a risk management program for some organizations that offer services to children. Programs in which there is extensive one-to-one unsupervised contact between individual adults and children could certainly justify the resource allocation to conduct such record checks. Having said this, the value of such record checks has yet to be proven on anything more than an anecdotal basis.

There are other issues that must be examined. Many of the proponents of criminal history record checks seem to be looking for a panacea to the problem of child sexual molestation. There is no silver bullet. Youth serving organizations must have access to a wide variety of sexual abuse prevention strategies and be permitted to select those that enable them to protect the children they serve while not unduly interfering with their ability to accomplish their missions.

One must ask not only if criminal history record checks are effective in protecting children; but also, are they the best way to protect children? Certainly, to the extent that criminal history record checks identify individuals who have a conviction for a disqualifying crime, criminal history record checks serve a purpose. But given a choice of allocating resources for conducting criminal history record checks or obtaining educational materials for volunteers, parents and children, education has demonstrable advantages.

“Criminal history record checks should not lull anyone into a false sense of security. Every youth serving organization should examine ways in which staff and volunteers are monitored during their interactions with children.”

For many nonprofit organizations offering valuable services to the nation’s youth, the expenditure of funds for criminal history record checks would mean that other portions of the program would suffer. In a mentoring program, would diverting funds from case management staff for criminal history record checks be a wise expenditure? In most cases, probably not. Case supervision is a key for identifying individuals without criminal

convictions, but who could constitute a threat to the safety of children.

Access is another big issue. Merely providing organizations with authorization to request FBI record checks (as does the Volunteers with Children Act) does not ensure access. First, states have no legal obligation to forward the request to the FBI. Second, as long as there is a fee associated with conducting a criminal history record check, many nonprofits are denied access. The FBI performs criminal history record checks of volunteers at a cost of \$18 per record check. States may charge as much as an additional \$18 for a total cost of \$36.

We have some experience with requiring criminal history record checks that bears examination. Some states enacted legislation several years ago to require criminal history record checks of camp counselors. A common complaint from summer camps is that they frequently hire counselors in the spring and submit their fingerprints for records checks and do not receive the results until after the camping season is over. If the current system is so slow, what would be the impact of millions more requests? Also, how long will a volunteer keep interest while waiting for a criminal history record check result?

What should the standard of care be for all organizations offering services to children? In so far as screening applicants for volunteer positions, the National Collaboration for Youth has recommended that all organizations conduct a basic screening process consisting of a written application, face-to-face interviews, and reference checks. For organizations in which there is an increased possibility of sexual abuse by a volunteer, the Collaboration recommends augmenting the basic screening with name-based criminal history record checks at the state level and additional reference checking. They recommend the routine use of national criminal history record checks be reserved for those volunteers who have considerable opportunity for sexually abusing a child in the program. This position corresponds with the Congressional intent of the National Child Protection Act that created a liability shield for organizations that take steps to protect children from sexual abuse, but that do not require criminal history record checks.

Criminal history record checks should not lull anyone into a false sense of security. Every youth serving organization should examine ways in which staff and volunteers are monitored during their interactions with children. Whether it's limiting the opportunity for one-on-one contact or initiating frequent contact with mentored children, supervision of the program after the volunteer placement is required.

What else needs to be done to help youth serving organizations prevent child sexual abuse in their organizations? First, true access to criminal history records needs to be offered to any organization that believes such record checks are necessary to protect the children receiving their services. Congress should look to states such as California and Washington as models. These states provide criminal history record checks on volunteers without charge.

Second, to make name-based checks more effective, states should enact laws to criminalize giving false information on applications for positions that involve working with children. The offense should be a felony and the law would pertain only to individuals already convicted of a disqualifying offense. Currently there are no legal sanctions. An additional component of this kind of law would be to mandate a standard probation and parole requirement prohibiting individuals who have been convicted of a disqualifying offense from volunteering or being employed in youth-serving positions.

Third, the National Child Protection act should require states to seek participation by nonprofit organizations in the selection of offense criteria that would disqualify individuals from working with children. This requirement could be fulfilled by appointing an advisory council with nonprofit representatives to select the specific offenses used by the state to determine if a person should be disqualified from working with children.

Finally, organizations should inform parents about the parameters of their programs. Parents need to know that your screening process is designed only to select individuals to conduct your activities and that screening is only a part of your protective strategies. You do not select staff for your program to be their child's best friend, baby sitter, or surrogate parent. Whenever anyone from your organization displays an unusual interest in their child, they need to notify the organization and monitor the situation closely.

For information about the Nonprofit Risk Management Center, visit [www.https://nonprofitrisk.org/](https://nonprofitrisk.org/) or call (703) 777-3504.