Staff Screening:
What’s New and What You Need to Know
A Risk Management Webinar

November 2, 2005

Presented by:
Melanie L. Herman
Executive Director
Nonprofit Risk Management Center
1130 17th Street, NW - Suite 210
Washington, DC 20036
(202) 785-3891 - FAX: (202) 833-5747
Melanie@nonprofitrisk.org
Web site: www.nonprofitrisk.org
Staff Screening: What’s New and What You Need to Know

Nonprofit organizations serving vulnerable clientele—children, people with disabilities, and dependent elderly—have a responsibility to exercise reasonable care when selecting employees and volunteers. During the past 15 years, the standard of reasonable care has changed due to increased awareness of the perceived threat of sexual predators seeking access to victims by obtaining positions within nonprofit and religious organizations.

More than a decade ago, Congress enacted the National Child Protection Act of 1993 (NCPCA) to encourage states to open their criminal history repositories for the purpose of screening staff of organizations serving vulnerable individuals. While many states have provisions for screening applicants for positions with nonprofit organizations, few have responded to the National Child Protection Act.

Partially due to the focus of the NCPCA, considerable attention has been paid to the use of criminal history records. In order to ensure that an adequate job of screening has taken place, we need to broaden our attention to include other screening components as well as criminal history records.

Purpose of Screening

Screening has a two-fold purpose. The first is to select the best possible individuals for the positions you seek to fill. The second, albeit related, purpose is to prevent individuals who present potential threats to the safety of the clientele, other staff or to the organization from being accepted for positions within the organization.

Both of these purposes, acting together, dictate the kinds of information the organization needs to fulfill its due diligence obligations for the screening process.

Position Descriptions

The position description is an invaluable risk management tool. It should guide the screening process by specifying the duties for the position and defining the specific skills and knowledge needed to perform them. It also serves to identify some of the risks that are associated with a position—risks for both the staff member who is placed in the position and the organization. For example, the position may call for assisting individuals who use wheelchairs with such personal hygiene as bathing and toileting. The nature of this duty indicates that some physical strength may be required and the clientele receiving services may be in very vulnerable positions for sexual molestation. The screening process should take these factors into consideration.

Sources of Information

Organizations receive information about applicants’ abilities from two sources: the applicant and people who, through a relevant relationship, know the applicant. The applicant is the primary source of information through the application and interviews and the other people through reference and record checks serve as a “reality check” to verify or refute the information furnished by the applicant.

The following statistics reveal why this two-fold process is prudent:

- 71% of resumes contained false information about the number of years on the job. Source: Christian & Timbers Survey; 2001
64% of resumes had exaggerated accomplishments listed.  
Source: Christian & Timbers Survey; 2001

9% of job applicants falsely claimed that they had a college degree, listed false employers, or identified jobs that didn’t exist.  
Source: Resume Inflation: Two Wrongs May Mean No Rights, by Barbara Kat Repa, Nolo.com, 8/8/01

34% of all application forms contain outright lies about experience, education, and ability to perform essential functions on the job.  
Source: Wall Street Journal

11% of job applicants misrepresented why they left a former employer.  
Source: Resume Inflation: Two Wrongs May Mean No Rights, by Barbara Kat Repa, Nolo.com, 8/8/01

Nearly one-third of job applicants listed dates of employment that were inaccurate by more than three months.  
Source: Resume Inflation: Two Wrongs May Mean No Rights, by Barbara Kat Repa, Nolo.com, 8/8/01

As many as 30% of job seekers exaggerate their accomplishments, and about 10% “seriously misrepresent” their background.  
Source: The Complete Reference Checking Book, by Edward C. Adler

The first task faced by organizations is to determine what information is needed to evaluate applicants for positions. The second task is to decide how the information will be obtained. We recommend a sequential process beginning with standard application forms, then interviews with applicants, followed by reference checks and finally, for those individuals working directly with vulnerable clientele, criminal history record checks. The sequencing is important to bring a degree of efficiency to the screening process and to avoid unnecessarily triggering statutory provisions of employment laws.

Applications vs. Resumes

The primary difference between an application and a resume is that by having an application form, the organization is deciding what information they need from applicants. Resumes only give organizations information the applicant wishes to divulge. We prefer the use of a standard application form that is completed and signed by the applicant.

As we indicate in our Staff Screening Tool Kit, applications serve the following purposes:

- **Identification.** The application includes items such as the applicant’s name, Social Security number (if appropriate), and addresses for the past five years with dates of occupancy.

- **Qualifications.** The application includes information documenting the applicant’s qualifications for the position. The kinds of information needed for this may include academic achievement, training courses with dates of completion, and certificates and licenses (with their expiration dates).
Experience. The application asks the applicant to list relevant experience, both paid and volunteer; dates of service; descriptions of duties; organizations where service was provided; and names of immediate supervisors with addresses and telephone numbers to facilitate verification of the information.

Background and References. If permitted, the application asks for a listing of any convictions for criminal offenses or serious motor vehicle violations. You may want to identify the specific violations about which you are most concerned. For example, you may ask, “Have you ever been convicted of sexual assault, rape, child sexual abuse, or any other form of sexual misconduct?” Some offenses may have greater predictive value if they are recent offenses. A question on your application for accounting staff might ask, “Within the past five years, have you been convicted of theft, robbery, embezzlement, or forgery?”

For volunteer positions, questions about arrests may be permitted. The application should ask for references from other organizations in which the applicant served as a volunteer or at least three personal references from individuals who aren’t related to the applicant, but who have known the applicant for a period of time. In addition to their names, addresses and telephone numbers, the nature of the relationship and the length of time they have known the applicant should be included. For paid positions, the application should request three work-related references.

Waiver/Consent. The application should include a statement indicating that the applicant certifies that the information provided is true and accurate. Further, the applicant should be asked to authorize that the organization to verify the information included on the application and specifically waive any rights to confidentiality. The application should also contain a statement that the post-hire discovery of any misstatement on the application will be grounds for immediate dismissal. In the interest of full disclosure, the statement should specifically list the procedures that the applicant authorizes the organization to perform, such as criminal history record checks, reference checks, and employment verification.

Signature and Date.

Interviews

Interviews provide the opportunity for staff members to meet face-to-face with applicants. The interview provides both the employer and the applicant with an opportunity to obtain valuable information.

For example, the nonprofit has the opportunity to:
- expand the information from the application,
- probe the validity of the information,
- obtain nonverbal information, and
- seek other positive and negative characteristics that could influence the placement of the applicant in a staff position.

The applicant has the opportunity to:
- learn more about the organization,
- develop a more complete understanding of the requirements for the positions available,
- get a taste of the organizational culture, and
- decide if he or she wants to complete the placement process.

The individual conducting the interviews should prepare for the process by reviewing the position description and the application of the individual to be interviewed. The interviewer should note the particular strengths and apparent weaknesses an applicant brings to the organization and explore these during the interview. Ask for particulars about relevant experience and determine if the individual has the qualities the organization seeks in its employees.

Interviewers should avoid asking impermissible questions of applicants. This caution is particularly true for applicants for paid positions and should also serve as a guideline for volunteer positions. Most questions about specific health conditions or disabilities are illegal for pre-employment interviews. Questions about ability to perform the duties in the position description are usually permitted. For example, you are not supposed to ask if a person has a health condition, but may be asked if the person can meet the attendance requirements for the position.

Good interviewers will work hypothetical situations based upon the position description into the interview. For example, if a specific kind of training is required, the interviewer might ask the applicant what the most memorable aspect of the training was. If an individual is going to be working with children, the applicant may be asked to describe a challenging situation in previous work with children and how the applicant addressed the challenge.

**Reference Checks**

Reference checking is one of the most misunderstood parts of the screening process. It is one of the best ways to obtain information about an applicant from a third party. Without reference checking, the organization would only have information from the applicant about his or her performance, skills and competence. Reference checking should give the organization a picture of the applicant’s attributes from past employers or organizations in which the applicant served as a volunteer.

When checking references, as you do with interviewing and screening applications, start with the position description. One goal of checking references is to get an indication of whether the applicant is compatible with the requirements of the job. Equally important is the goal of determining whether the reference knows anything about the applicant that raises a “red flag.” You should also be attentive to any discrepancies between information provided on the application and that provided by references, since that may indicate the applicant is not always truthful.

The most common reference-checking mistake is to miss an opportunity to get critical information from the respondent. Try to avoid:

- **Asking leading questions.** When you are checking references, let the reference provide the information. Instead of “Tom Jones told us that you and he have been friends for 10 years,” you might want to ask, “How long have you and Tom Jones been friends?”

- **Asking questions that can be answered by a simple “yes” or “no.”** You need to phrase the questions so that references are required to think about their responses and to answer in their own words.
- **Asking questions that are related to an applicant’s health or disability.** Under the provisions of the ADA, in addition to the prohibition against asking an applicant about his or her health and disabilities, employers are also prohibited from making such inquiries of third parties concerning the applicant’s health and disabilities. You can, however, make non disability-related inquiries concerning an applicant’s “lifestyle” as long as those questions aren’t likely to elicit information about the existence, nature, or severity of a disability. (McKelway 1994)

- **Asking questions that are too general.** Some information you need is very specific relative to the nature of the position and the risks you have identified.

You should check any questionable information you receive. There may be reasons for discrepancies that are very logical and yet beyond the control of an applicant. It isn’t, however, your role to dismiss the information out of hand. Confront the applicant with the disputable information and give him or her a chance to explain any discrepancies. When confronting the applicant, you also need to respect the confidentiality of the source who gave you the information.

**Record Checks**

Once the organization has decided that an applicant appears to be worthy of acceptance for the position, then the organization may wish to complete the screening process by conducting record checks. Record checks are performed at the end of the screening process for two reasons—the first is that in most cases, record checks require an outlay of money. Why spend the money to perform record checks if the individuals don’t meet the other selection criteria for the position? The second reason is that if an outside vendor performs the record check, their report is considered a “consumer report” and the provisions of the federal Fair Credit Reporting Act are activated. These provisions require employers to use specific procedures to preserve the rights of applicants if adverse information is included in the report and that the adverse information is used as a reason to reject an applicant.

The advances of technology have enabled vast amounts of information to be amassed about individuals, much of which is accessible for use in screening applicants for employment and volunteer service. Unfortunately, the availability of the information also lends to its abuse. Nonprofit organizations should factor in the nature of the positions, the relevance of information, and the costs associated with accessing the information in making a decision to use databases and record centers for screening applicants for staff positions. Record checks most commonly used by nonprofit organizations include driving records (MVR) checks and criminal history record checks.

**Conducting Criminal History Record Checks**

- Adopt a policy requiring criminal history record checks that conforms to your organization’s needs and policies.
- Identify the positions that require applicants to be screened using criminal history record checks.
- Check with state agencies to determine if there are any requirements for criminal history record checks for your organization’s programs.
- Develop a list of disqualifying offenses and mitigating circumstances to be taken into account.
• Contact the state criminal history record repository for information concerning how to obtain criminal history record checks in your state, or retain a private firm to conduct criminal history record screening.
• Budget the necessary funding to pay for criminal history record checks.
• Review and revise application forms to reflect the requirements for performing a criminal history record check.
• Formulate an appeals process for applicants who feel that the information received by the organization is incorrect.
• Implement your screening process using criminal history record checks.
• Document the records check in the individual’s personnel file.

Both the National Child Protection Act and the Fair Credit Reporting Act call for the consideration of only cases resulting in convictions. Some states’ labor laws also prohibit employers from asking applicants about arrests that have not resulted in convictions. Court decisions have found that consideration of arrests constitutes discrimination and violates the requirements of Title VII of the federal Civil Rights Law of 1964 as it pertains to paid employment.

When establishing criteria for evaluating criminal history records, your organization should consider what, if any, other factors should be taken into account. The five factors listed below are adapted from guidelines published by the Bureau of Indian Affairs in the Federal Register, June 21, 1996. They offer examples of other factors organizations may consider when evaluating criminal history records. Rather than focusing on one or two of these factors, your organization should consider 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 of an individual’s qualification status for service than crimes that occurred several years ago. This would be particularly true if the only crimes listed in the record happened several years ago with no recent offenses. (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**—Many applicants are young adults; therefore, if they have a criminal record, their crimes were probably committed when they were juveniles. Organizations may consider this factor when evaluating criminal history records. In some states juvenile records won’t be available as confidentiality laws protect them.

• **Societal conditions that may have contributed to the nature of the conduct**—Organizations may consider the social context in which offenses occurred. For example, in some neighborhoods, becoming a gang member may be due to pressure exerted by the gang or to a perceived threat or harm that not joining a gang would create. While societal conditions shouldn’t serve to excuse illegal behavior, the context in which the illegal behavior occurred may be considered as a mitigating factor.

• **The probability that an individual will continue the type or 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. Also, some forms of criminal sexual conduct, such as child molestation, have a high probability of repetition.
Individuals with a high risk for continuing criminal behavior shouldn’t be assigned to work with vulnerable service recipients.

- **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. Words of remorse alone aren’t sufficient evidence of an individual’s commitment. Organizations should look for tangible evidence of the applicant’s desire to lead a law-abiding life, such as progress in rehabilitation programs or making restitution to victims.

**Why Should Nonprofits Consider Criminal History Record Checks?**

The following are some examples of results of background checks conducted by the National Center for Missing and Exploited Children (NCMEC) as part of the PROTECT Act pilot project:

- Registered as Sex Offender for criminal sexual conduct with a child aged 13-15
- Dismissed on strong-arm robbery due to insanity
- Found guilty of aggravated criminal sexual assault in Illinois; applying in Florida
- Found guilty of manslaughter
- Guilty of disorderly conduct with original charge of promoting/possessing obscene material
- Convicted of lewdness and charged with investigation for kidnapping
- Convicted of possessing more than 50 pounds of marijuana in Texas; applying in Missouri
- Convicted of injury to a child; gave a false name to police
- Charged (at age 32) with sexual contact with a child under the age of 16
- Charged with multiple rapes and assaults, indecent liberties, eluding, and prostitution
- Charged with assault causing bodily injury to a family member
- Charged with possession of photo sex performance of a child
- Charged with oral copulation concert force, rape by force, and oral copulation by force with the victim under 14 and 10 years younger (than the offender) in California; applying in Oregon

The PROTECT Act establishes a pilot program for volunteer groups to obtain criminal history background checks through the FBI. It assigns NCMEC to make fitness determinations using established criterion offenses after reviewing a volunteer’s criminal record. Thus far nearly 12,000 volunteers have been screened through this program.

**Sources of Records**

Criminal history record checks may be performed by a criminal justice system agency within the state, the FBI on a national level or through private vendors. All FBI record checks require a complete set of readable fingerprints with every finger accounted for. By requiring fingerprints, the FBI is assured that the individual’s identity is positively established and that if there is a record with matching fingerprints, it is the applicant’s record. The fingerprints are submitted to the state’s criminal history record repository for initial processing. If the state finds a record of a conviction in its records with positive identification of the fingerprints, the state is authorized to use the FBI’s system to seek additional information for no additional charge.
The state collects the money from the organization seeking the background check and then gives the FBI its fees. The FBI record check costs the state’s fee plus $24 for each employee or $18 for each volunteer.

The key identifiers used by private vendors to match records with individual names are the person’s name, date of birth, and social security number. When two of the three identifiers are matched, the vendor will send the report to the inquiring organization. When the applicant has a common name, it isn’t unusual for several records to be included in which the name and date of birth match, but for which no social security number is on record. This places responsibility on the organization to resolve inconclusive information and ensure that individuals who have been convicted for disqualifying offenses aren’t accepted for staff positions.

In some cases it may be desirable to use a combination of private vendor and FBI fingerprint record checks. When a private vendor name-based record check gives ambiguous results or when the individual questions the validity of the results, submitting the individual’s fingerprints to the FBI would remove the ambiguity.

**Driving Records**

Checking the driving records of applicants for positions in which they will be operating motor vehicles is a reasonable risk management strategy. State departments of motor vehicles, or similarly named agencies, maintain records that track accidents and motor vehicle violations.

Motor vehicle records (MVR) checks are required for anyone driving a vehicle holding 16 or more people (15 passengers plus the driver), by federal law. The U.S. Department of Transportation requires prospective employers to check, within 30 days of the date the driver’s employment begins, the applicant’s driving record and the driver’s employment record for the past three years. Drivers of these vehicles are also required to have a commercial driver’s license (CDL). This requirement applies to volunteers as well as employees.

Contact your state’s department of motor vehicles for information concerning MVR checks. In some states the threshold at which a CDL is required is lower than the federal standard. California is an example of this practice. In California, a CDL is required for any vehicle that holds 10 persons (including the driver). Your state department of motor vehicles Web site or your insurance provider may be able to information on this important topic.

**Foreign Workers**

Screening workers from other countries is a difficult task under the best of circumstances. Many organizations seek seasonal help from other countries in an effort to enhance their programs and create a better awareness of cultural diversity. There are specific procedures set out by the U.S. Department of Homeland Security and the U.S. State Department governing employment of foreign visitors. Information about these rules and regulations is posted on the agencies’ respective web sites.

Obtaining criminal history records is often a hit-or-miss proposition. Most commonly, individuals who accept positions in nonprofit organizations should be asked to obtain a certificate of good conduct from the police in their local jurisdiction.

**Summary**
Thorough screening of employees and volunteers is an important risk management tool for organizations serving vulnerable populations. The process should be logical, related to the positions being filled, and sequenced to enable decisions to be made at each step in the screening process.

Even the best screening process can’t predict future behavior of those selected. The organization must continue to use quality supervision and other risk management measures to adequately protect the ones they serve.