MYTHS & MISCONCEPTIONS

#1

A Criminal History Background Check is All I Need

• Only one tool in your screening toolkit
• Other tools include:
  ✓ References
  ✓ Interviews
  ✓ Education verification
  ✓ Behavioral / cognitive assessments

#2

One Database Knows All

• National Criminal Information Center (NCIC), aka FBI Database
  – 50 to 55 percent
  – Shared management philosophy
  – Other databases to supplement
MYTHS & MISCONCEPTIONS #3

One & Done

- Criminal history background checks aren’t just a one-time thing
- Consider checking on a periodic basis

MYTHS & MISCONCEPTIONS #4

All Nonprofits Can (& Should) Use the Same Disqualifying Criteria

- Nonprofit missions, values, and programs differ to a great degree
- State laws also differ
MYTHS & MISCONCEPTIONS #5

Once You See a Rap Sheet, You’ll Know

• It’s important to have a plan in place prior to doing background checks
  – What offenses are automatic disqualifiers?
  – What offenses are potential disqualifiers?

Developing Criteria

• Every nonprofit is unique

• Different requirements and concerns

• Different approaches to hiring staff & volunteers
Developing Criteria

• Position-specific? Or organization-wide?

• Are there certain positions that have very different duties or responsibilities? Do the positions in your nonprofit pose varying degrees of risk?

• Does your organization have special exposures that might make a single set of criteria useful?

• What type of internal culture does your nonprofit have? Zero-tolerance for any prior criminal conduct? Or more forgiving?
Developing Criteria

• Which job applicants are required to undergo background checks? All, or just some?

• Will current staff members and new hires be required to undergo background checks on a regular basis (every year, or every two or three years)?

Developing Criteria

• If a criminal history background check uncovers an unsavory past, will the applicant or staff member have the ability to appeal a disqualification?

• How will the appeals process work? Is it FCRA compliant?
Disqualifying Criteria – Positions Working with Children

• **The U.S. Department of Justice**: “Automatic disqualification of a potential worker or volunteer is appropriate when screening indicates that the individual as an adult perpetrated any crime involving a child...regardless of how long ago the incident occurred.”


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Important Considerations

When evaluating criminal history records, consider:

  – **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**: Societal conditions should not serve to excuse illegal behavior, but 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.
Considerations for Youth-Serving Organizations

- Youth-serving organizations generally agree that applicants 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.

Appeals Process EXAMPLE

If you were not hired based upon information obtained from K. Griff Investigations, the Fair Credit Reporting Act requires that we provide you with the following information:

1. The information was provided to The University of Texas M. D. Anderson by Pre Check Inc., 1283 North Post Oak Rd., Houston, TX 77055, 713-369-1356.
2. The decision to take adverse action was not made by Pre Check Inc., and Pre Check Inc. is unable to provide you the specific reasons the adverse action was taken.
3. You have the right to obtain a free copy of the report from Pre Check Inc., provided you request the copy from them no later than sixty (60) days after your receipt of this notice.
4. You have the right to dispute with Pre Check Inc., the accuracy or completeness of any information in the report furnished by them.
Where HireRight Solutions went wrong

By: Lesley Fair | Aug 8, 2012 11:02AM

Most job seekers are familiar with the basics: Wear a clean shirt, extend a firm handshake, and don’t ask about vacations in the first 10 minutes of the interview. But these days more businesses are digging deeper. Tulsa-based HireRight Solutions is a background screening company that thousands of employers use to check out current employees and people applying for jobs. When it comes to Fair Credit Reporting Act complaints, the FTC says HireRight Solutions got it wrong by not using reasonable procedures to ensure the accuracy of the information it was selling. The upshot: a $2.6 million civil penalty, the second-largest ever in an FTC FCRA case.

According to the complaint, the company didn’t take reasonable steps to make sure the info in the reports was current and reflected updates, like the expungement of criminal records. The FTC says that sometimes the reports included multiple entries for the same offense. What’s more, some reports listed convictions for people other than the applicant or employee — even though the person with the criminal record had a different middle name or date of birth. If a tomato soup stain on a tie can torpedo a job applicant’s chances, imagine the effect of a wrongly reported rap sheet.

Sample 1

Carlsbad Police Department

Background Investigations
Pre-Employment Disqualifying Criteria

Very few negative factors are automatically disqualifying.

Each incident is evaluated in terms of the circumstances and facts surrounding its occurrence and its degree of relevance to the position.

Employer and experience
- Terminations
- Employee theft
- Using illegal narcotics or alcohol while on duty
- Violent behavior demonstrated at the workplace
- Unstable work history
- Significant disciplinary actions for violating company policies
- Tardiness or absenteeism issues

Education
- Suspension or expulsion from school
- Violent behavior demonstrated at school

Sample 2

USPS Driver

Table of Disqualifications

General disqualifying factors:

a. Applicant does not have at least 2 years of documented driving experience.
b. Applicant has had his or her driving permit suspended once or more in the past 3 years, or twice or more in the past 5 years.
c. Applicant has had his or her driving permit revoked once or more in the past 5 years.

<table>
<thead>
<tr>
<th>Specific disqualifying violations</th>
<th>In past 3 years</th>
<th>In past 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reckless driving or other similar offenses (e.g., careless driving)</td>
<td>1 or more</td>
<td>2 or more</td>
</tr>
<tr>
<td>2. Any driving offense involving the use of drugs, alcohol, controlled substances, etc.</td>
<td>Any conviction</td>
<td>Any conviction</td>
</tr>
<tr>
<td>3. All other traffic offenses (but not parking violations)</td>
<td>3 or more (or more than 1 in last 12 months)</td>
<td>5 or more*</td>
</tr>
<tr>
<td>4. At-fault accidents</td>
<td>2 or more, or any at-fault accident resulting in a fatality</td>
<td>2 or more, or any at-fault accident resulting in a fatality</td>
</tr>
<tr>
<td>5. Hit-and-run offense</td>
<td>Any conviction</td>
<td>Any conviction</td>
</tr>
</tbody>
</table>

* Three convictions for the same offense are disqualifying, because they indicate a pattern of inadequate responsibility and disregard for law and order that may affect safety.

Note: For purposes of determining disqualifying violations, consider only offenses resulting in a conviction (e.g., fined, jailed, or ordered to attend traffic school). For purposes of establishing time frames for disqualification, use the date of the actual violation. At-fault accident is defined as the applicant was fined or sued, and received adverse judgment; if the applicant’s insurance company settled for damages to another party or applicant settled out of court, or the applicant was otherwise determined to be liable.
Sample 3

Texas School District

An applicant to the District may be disqualified for employment with the District if his/her criminal history report shows conviction, probation, or adjudication for the following offenses:

1. Any offense against a child
2. Any sexual offense
3. Any offense involving an act of violence or injury or death of a person
4. Any weapons related offense
5. DWI, DUI, or Reckless Driving if the position applied for involves the operation of any district vehicles or the transportation of students.
6. Forgery, fraud, or alteration of an official document
7. Convictions for any theft related offense that in the aggregate equal two or more
8. Convictions for public intoxication that in the aggregate equal two or more
9. Felony drug offenses
10. Misdemeanor drug offenses within five years of the date of application
11. Burglary related offenses
12. Stalking, kidnapping, or harassment related offenses
13. An active warrant for arrest or charges pending on any criminal violation
14. Any other offense that the Director of Security believes may compromise the safety, security, or well being of students, staff, or facilities or violates District Policy.

Sample 4

Uber

Criteria for drivers to pass through Uber’s screening, going back seven years:

- No DUI or other drug related driving violations or severe infractions*
- No Hit and Runs
- No fatal accidents
- No history of reckless driving
- No violent crimes
- No sexual offenses
- No gun related violations
- No resisting/evading arrest
- No driving without insurance or suspended license charge in the past 3 years

*CA requires no DUI in the past 10 years
Sample 4  Youth Sports Organization

- Any individual on probation or required to complete rehabilitation... will not be considered to serve as a volunteer until all terms and conditions established by the court have been satisfied and proof of completion submitted.
- Any person convicted of a crime against or otherwise involving a minor at any time in the past will not be approved to be a volunteer.
- Most felony convictions will result in a negative determination. Evidence of multiple convictions, either felony or misdemeanor, will likely result in a negative determination.
- Persons convicted of a crime of violence or other serious crime against a person within the prior 20 years will be disqualified from any volunteer position.
- Persons convicted of sex offences will be disqualified from volunteering.
- Persons convicted of a theft or fraud within the past 10 years will be disqualified from the handling of funds, property or personal identification information.
- Persons convicted of a serious substance abuse crime within the past 10 years will be disqualified from coaching positions, refereeing or leading children's activities.
- Persons convicted of less serious crimes of violence, substance abuse... within the past 5 years will be disqualified from any coaching position or leading children's activities.
- In certain limited instances, XYZ will disqualify volunteers who have been arrested for a crime, even if the arrest later results in no charges being filed.
- DUI: Persons convicted of driving under the influence or other traffic/conduct related crimes within the preceding 3 years will be disqualified from the position of team coach or assistant coach. Persons convicted of driving under the influence within the preceding 3 years may be accepted for other volunteer positions...

Criminal History Background Checks & Disqualifying Criteria

Do’s and Don’ts
DO:

Comply with Legal Requirements

1. Are background checks required for some, or all positions?
2. Does your state prohibit discrimination against applicants with criminal histories unless there is a nexus between the position and the conviction?
3. Is your process FCRA Compliant?
   - Prior notice of intent to conduct a background check
   - Permission to conduct the check
   - Notice (orally, in writing, or electronically) to any applicant whose consumer report was the reason for disqualification (info on reporting company, statement that reporting company did not make the decision, notice of right to dispute)
   - Delivery of “Summary of Your Rights Under the Fair Credit Reporting Act”

HAWAII & NEW YORK

- Hawaii prohibits employment discrimination by all non-federal employers based on applicants’ criminal records. Employers may consider convictions if they are rationally related to the position. Hawaii also forbids employers from inquiring about applicants’ criminal records until they have extended a conditional offer of employment, and employers may only consider convictions that occurred within the past 10 years.

- New York’s Human Rights Law states than an applicant may not be denied employment due to a conviction record unless there is a DIRECT RELATIONSHIP between the offense and the position sought, or unless hiring would create an unreasonable risk to property or to public or individual safety. The law applies to organizations with 10+ employees. Upon request from the rejected applicant, an employer must provide, within 30 days, a written statement of the reasons for the rejection.

DO:

- Create a strong link between the job and the disqualifying criteria
- Establish, maintain & publish specific criteria
- Screen applicants consistently
DON’T:
• Over-rely on background checks
• Check now, decide later
• Assume a “clean” record is all you need
• Ignore your policies
• Use the same criteria for all

Risk Resources:
• National Council of Youth Sports *Recommended Guidelines, Second Edition*
  – Overview of background checks and using them appropriately

• Background Checks, Screening and Your Nonprofit

• FAQs – Screening and Background Checks
  [www.nonprofitrisk.org/advice/faqs/screening.shtml](http://www.nonprofitrisk.org/advice/faqs/screening.shtml)
Other Resources:

The Staff Screening Notebook

Our Website

Questions?

Nonprofit Risk Management Center

Find the answer here | nonprofitrisk.org