

V O L U N T E E R
S C R E E N I N G



T H E C O M P A N I O N G U I D E

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Introduction

Organizations that use volunteers to support their mission must often use a screening program to ensure the safety and security of the people and places that they support; whether it's a nonprofit, charity, government institution, or otherwise. The purpose of this guide is to establish the reasons for screening volunteer applicants, the different types of background checks, and compliance guidelines that volunteer screening programs are required to follow.

This guide is for the overall implementation of a volunteer screening program. Our objective is to provide the necessary information for volunteer managers to be able to successfully create a volunteer screening program that is compliant and protects their mission. If you already have some form of volunteer screening program in place, use this guide as a means to audit your program – ensuring that your program is following best practice standards.

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Why run background checks?

Background checks serve an important function in your organization's mission, though they are often not considered until after they become a legal requirement or an incident occurs. It's understandable that nonprofit organizations avoid background checks because of the perceived detriments to their mission.

A common complaint against background checks is the added cost to running a volunteer program when volunteers are required to have background checks run on them. While the easiest way to offset the cost is to have the volunteers pay for their own background checks, it may deter some people from joining your team as volunteers.

There is also the complaint that many volunteers find it impertinent to have a background check run on them. Since most people volunteer as a way to give back or support a cause, they can't understand why their character would come into question when offering their help.

Despite these common objections, background checks hold an important function within your volunteer mission. We find that explaining the legal requirements and mission necessity helps volunteer applicants to understand that background checks are not meant to call their character into question. They are merely a means to ensure that the people and causes that they are trying to support are protected from unnecessary risk.

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LEGAL REQUIREMENTS

Most states have laws for organizations that support vulnerable groups. These laws require them to use some form of background check to minimize the chances of hiring an individual that could be a potential threat.



RISK MANAGEMENT

There is no absolute method for ensuring your volunteers are all model citizens. At minimum, background checks ensure that your volunteers don't have a history of behavior that would put your mission at risk.



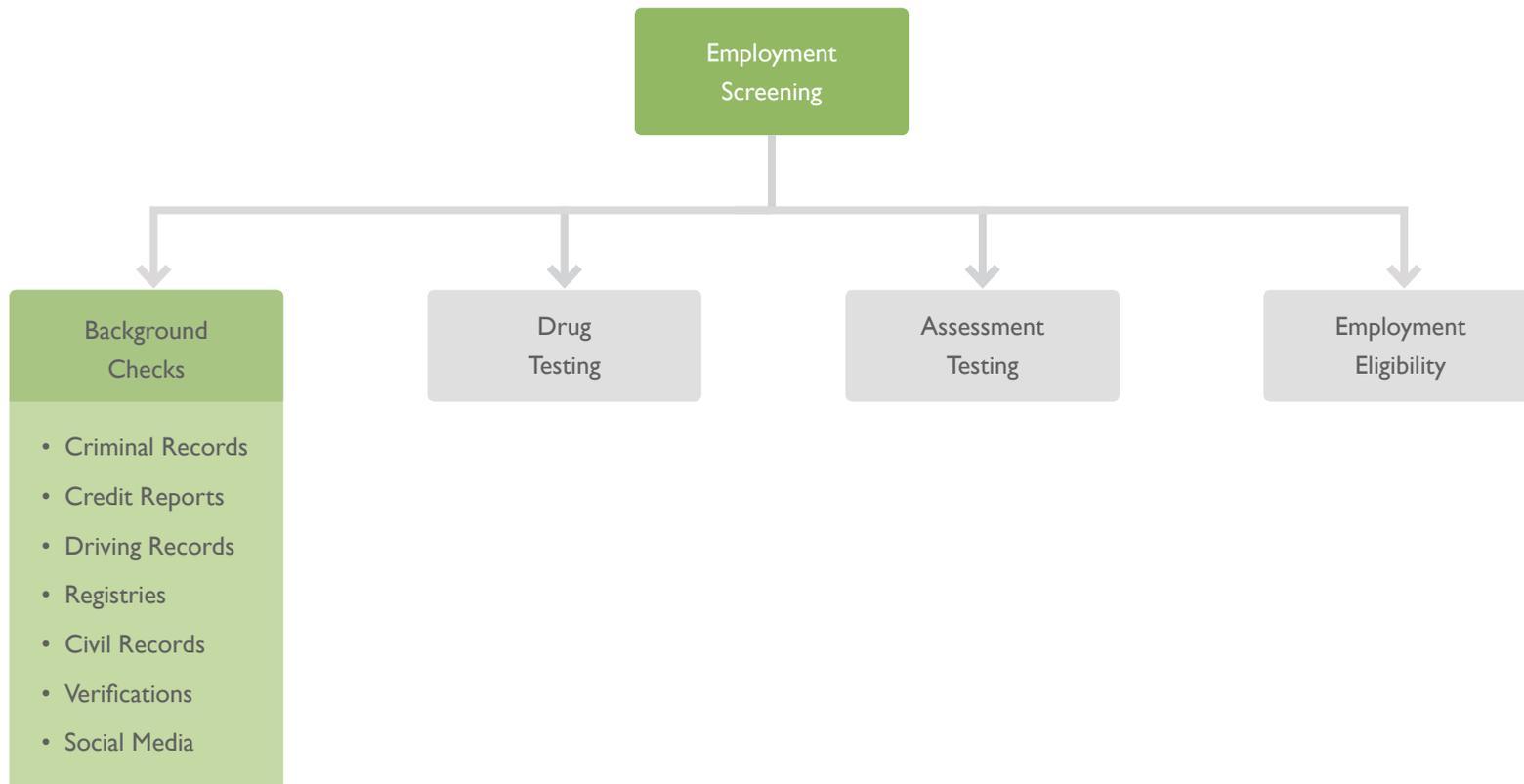
MISSION SUPPORT

Many nonprofit organizations require the help of donors and volunteers in order to support their mission. Bad PR hinders an organization's ability to support the people they are trying to help.

The Different Types of Background Checks

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Within the employment screening umbrella, there are several different tools in an employer's arsenal that help screen applicants to find the right person for placement. These are things like background checks, drug testing, assessment tests, etc. However, volunteer programs operate differently from standard employment practice. In this section, we will go over the different types of background checks and important factors to consider when choosing the type of background checks you will conduct on your volunteers.



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CRIMINAL RECORDS

For someone who is new to using background checks in their screening process, criminal records can be a mystery. Where does the information come from? What type of information is included? The truth is that there is no single source where criminal records originate.

Court records are compiled at the local, state, and federal levels. These court records may have different types of convictions that vary in levels of severity.

MUNICIPAL COURT RECORDS

These records are the lowest level infractions and include things like noise ordinance violations, jaywalking, and other trivial offenses. In most instances, municipal court records will not be included in a background check because they are not worth the time and money required to collect them.

- Lowest level offenses
- Not cost effective to search
- Not normally used in background checks

COUNTY COURT RECORDS

The bulk of information in a background check will come from county court records and as such they are the most commonly used records for this purpose. The county court system is often broken into a multi-tiered court system based on severity of offenses – e.g. traffic violations, misdemeanors, and felonies.

- Multi-tiered system
- Majority of records in background checks
- Records stored locally at the county court

FEDERAL COURT RECORDS

Crimes that are committed across state lines, over the internet, or on federal land fall within the jurisdiction of the federal court system. Federal court records carry a wide variety of offenses and can be as severe as kidnapping/transporting across state lines or as minor as littering at a national park.

- Cross-jurisdictional cases
- Varied levels of severity
- Digitized record keeping system

The industry standard for a basic background check includes county court records dating back seven years.

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LIVE RESEARCH VS DATABASES

There are two separate types of criminal record searches that a volunteer manager should be aware of – Live research and database searches. These two forms of collecting criminal records are very different. They both have positive and negative aspects, but it will be up to you to decide which would be the best fit for your program. The important thing is that you know what you are getting.

DATABASES

As more and more counties continue to digitize their records, it is becoming easier to find ways to collect information from multiple counties. Several businesses have taken the opportunity to compile databases of all the digitized county court records available, then sell access to that information.

The result is a criminal record search that is nearly instantaneous. However, databases are only as reliable and timely as their sources. Database records can go some time before being updated. If a new record is created in the court system, it may not show up in a database search for months.



Quick



Cheap



Inaccuracies



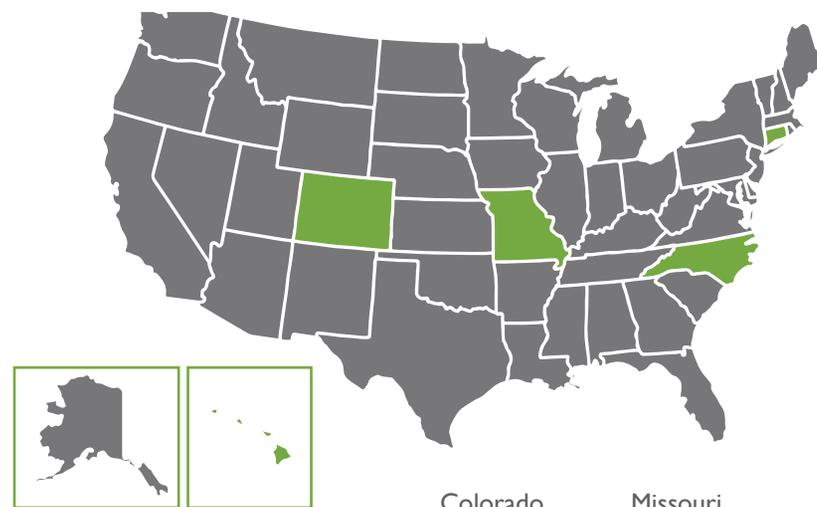
Sometimes
non-compliant

¹ Database searches can be a non-compliant source of information if they include information like arrest records or warrants in situations where they cannot be reported. Databases are also non-compliant with the FCRA if they do not include live-research to verify criminal records when they are found.

STATE REPOSITORIES

Another form of database search is the state criminal record repository. Most states have a centralized data archive that contains criminal record information from county courts. The problem is that not every county participates. 13 states reported that 20% or more of all dispositions received could not be linked to the arrest information in the state criminal record databases. 14 states were unaware of how many cannot be linked.² As a result, the information within many of the state repositories cannot be relied on as a single source for criminal records.

We have compiled a list of states that have repositories that we've deemed reliable:



Colorado Missouri
North Carolina Hawaii
Connecticut

² Facts About the Accuracy and Completeness of Criminal Records at the State Agency Criminal Record Repositories, <http://www.prrn.us/documents/CrimArt.pdf>

WHAT IF THE STATE REQUIRES ME TO USE ITS REPOSITORY?

Some states require that certain nonprofit organizations use its state repository as part of their background screening process. If this situation applies to you and your state isn't one of the five listed above, we'd suggest supplementing the state repository search with additional services. This will help limit gaps in the research done on your volunteer applicants.

LIVE RESEARCH

The gold standard for compliant and accurate criminal information involves going directly to the "live" county court records to search for any information on the person who is the subject of a background check. Since this information comes directly from the court's record system instead of a third party, it can be trusted as more accurate and timely. If there is a criminal conviction tied to an applicant's name, the chances of it being missed in a live search are slim.



Accurate and
Timely



Compliant



Slower
Turnaround



More
Expensive

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WEIGHING COST AND COMPLIANCE



As a volunteer manager for a nonprofit organization, it may be tempting to choose databases for background screening since it costs less and has a quicker turnaround time. This may be the only option for certain organizations with little to no budget. The important thing to remember when choosing between the two types of background screening processes is that you get what you pay for. Databases may seem like a better investment in the short term, but using less accurate information invites risk and may lead to a negative impact on your organizations mission.

Consider having your applicants pay for their background checks if your organization cannot afford the cost.

Sex Offender Registries

In 1994, the Jacob Wetterling Act created requirements for each state to maintain a system to monitor sex offenders. In 1996, Megan's Law amended the Wetterling Act to include public notification – giving community access to the state sex offender registries. Using sex offender registry searches as part of your screening process helps ensure that the vulnerable groups that you support are protected from those that might want to harm or take advantage of them.

Common offenses included in the sex offender registry:

- Sexual assault
- Rape
- Incest
- Child sexual abuse
- “Sexting”
- Prostitution
- Corrupting a minor
- Public urination ³



50 states



4 US Territories



50+ Native
American Tribes



National Dru
Sjodin Portal

State sex offender registries are divided into a three-tiered system based on the severity of the crime committed. Not every state sex offender registry will report Tier I offenses.

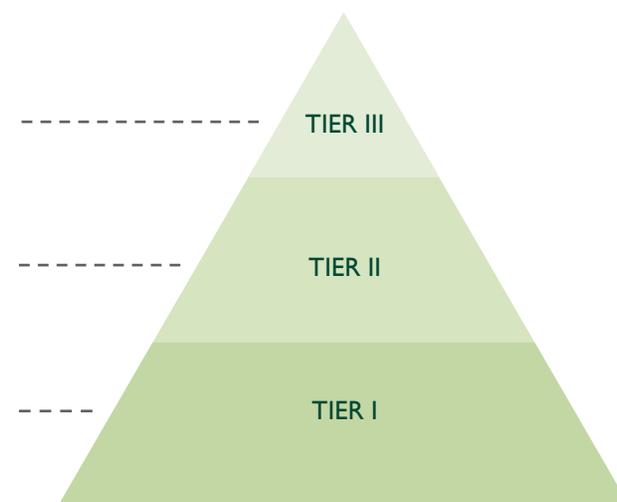
³ Not every state will include public urination offenses in the sex offender registry. States that do include it, may not make that information available to the public.

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Violent sexual acts of acts that involve an unconscious person or a minor under 12.

More serious offenses including sexual offenses involving a minor.

"Catch all" tier for offenses that are less serious and don't fall within other categories



Background screening providers are able to access each of the state databases at once – saving you time and effort. They also employ research specialists who are trained to verify identities to ensure that the record is referring to the right person. If there is a John Smith in the database, you need to know without a doubt if it is the same John Smith who wants to volunteer for your organization. Nothing is worse for an applicant than being mislabeled as a sex offender.

Background screeners have access to both the public sex offender registry databases and historical registry data. However, a background screener is not able to report historical data “as-is”. Instead, they use the historical data as a trigger to search for court conviction records associated with the offense. If the associated conviction record fits within the legally reportable window (typically 7 years, depending on the state), then they will provide that information to you – the end user.

Driving Records

Driving record searches should be considered as a risk management tool for volunteer positions that would require the transportation of others. They ensure that the volunteer has a valid driver's license and is a safe driver.



Parent volunteering to drive for a school fieldtrip



Volunteer driving for senior citizens

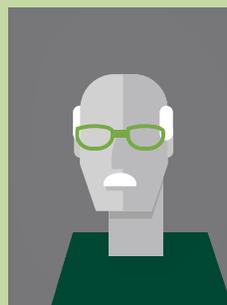


Kid's mentor who will be driving them to different locations/activities.

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WHAT'S IN A DRIVING RECORD?

DRIVING LICENSE



- Basic information identifying the individual (name, date of birth, address, gender)
- Driver's license number and state of issuance
- License classifications and endorsements
- Driver's license status (valid or expired) and expiration date
- Traffic violations and convictions
- Points, fines, suspensions, or revocations
- Collisions

A FEW THINGS TO NOTE WITH DRIVING RECORDS

Driving records are state-level searches with very little overlap. When running a driving record search on a volunteer applicant, you will not be seeing their full driving history – just the history associated with their current license. E.g. if someone just recently moved to a new state and renewed their license, running a driver's license check will only pull information related to that new license. Old traffic violations from their previous state wouldn't be included.

Driving records also have a variable reporting period depending on the state. The average reporting period for most states is three years, but some will report five years or more. It's important to note that with older records, you'll need to consider the age of the violations and the severity when deciding whether or not they would bar someone from driving for your organization.

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SERVICES TO STAY AWAY FROM

There are plenty of different types background checks that volunteer managers can use as part of their screening process. For those who aren't familiar with background screening compliance, there are a few types of background checks you should know to stay away from.

PEOPLE SEARCHES

"People searches," or "people search engines," are popular tools for looking up information on people within our community. These searches contain information from a variety of sources including public records, white page listings, and even social media. The problem is that these types of searches aren't permissible to use for "employment purposes" under the Fair Credit Reporting Act (FCRA). The FCRA includes volunteer positions within its definition of employment. Examples of people searches include Spokeo, Intelius, BeenVerified, and Instant Checkmate.

SOCIAL MEDIA SEARCHES

Social media searches have been gaining popularity in the last few years due to social media's increasing integration into our work lives. With social media we are able to see into the personal lives of volunteer applicants to view different kinds of information that would normally be inaccessible through a background check. Whether conducting the search yourself or through a third party, using social media as a screening tool opens you up to areas of risk that may not be worth the trouble.

Social media information cannot be considered to be reliable due to the need to interpret contextual situations and the difficulty of verifying certain information's legitimacy. Furthermore, if you are only using social media to screen your applicants, you are very unlikely to find any type of information that would identify someone as a safety risk.

Integrating Background Checks into Your Volunteer Program

In order to use background checks as part of your volunteer screening process, there are some legal requirements that you are going to have to learn to follow. The hiring process is regulated by a long list of state and federal laws. In many instances, volunteers that fill positions within your organization will not fit within the definition of an employee. As such, they are not protected by all of the same employment regulations as a paid employee. This is very much dependent on particular volunteer positions and how they fit within the legal criteria of employment (e.g. an unpaid intern isn't categorized the same way as a food drive volunteer). Despite this, the legal requirements for running background checks on volunteers are the exact same as for employees.

FCRA COMPLIANCE

The Fair Credit Reporting Act (FCRA) provides the fundamental requirements for employment screening practices. It was adopted as a means to establish regulatory standards for the employment screening industry, as well as give specific protections to applicants, employees, volunteers, and contractors when dealing with consumer reporting agencies.

Employers who screen employees, applicants, volunteers, or contractors using a CRA are required to follow the end user requirements of the FCRA. Basically, any time you run a background check on an individual for employment purposes (including volunteers), the FCRA applies. We'll get into the specifics of this a little further on.

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Consumer – An individual who is the subject of a consumer report. This would be an applicant, employee, volunteer, or contractor that you would be running a background check on.



Consumer Report - It is the compiled report of information collected by a Consumer Reporting Agency that may include credit or other information used to evaluate an individual for employment purposes. Basically, this is the background check or background report.



Consumer Reporting Agency (CRA) – An organization that collects and compiles information on a consumer for the purpose of creating a consumer report.



End User – The individual or organization that will be using the consumer report to evaluate a consumer for employment purposes. In other words, this is you.

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STEP I: CREATING YOUR POLICY

Before starting the background screening process, it is crucial that you create a policy that outlines the purpose and scope of your volunteer screening program. The following questions are meant to help shape the foundation of your policy, but are potentially not enough by themselves to create a legally defensible policy.

PURPOSE

Why do you need to run background checks on your volunteers?

SCOPE

Which volunteers will have a background check run on them and how often?
 What types of background checks will you run? (Criminal history, sex offender registries, credit history, etc.)
 How will the information be used?
 How will it affect volunteer eligibility?
 Will you use a CRA for your background checks? If so, which agency?
 How will you handle disputes and verify the accuracy of information in a report?

Always consult legal counsel before implementing a new employment screening policy. We advise that you consult with an attorney who is well versed in the Fair Credit Reporting Act and Labor/Employment Law

PROCEDURES

You will also want to list out the compliance steps for following the Fair Credit Reporting Act. (Don't worry, we'll get to that)

EEOC GUIDELINES

In April 2012 the EEOC released a consolidated guidance on the use of arrest and conviction records.⁴ This guidance outlined what the EEOC considers discriminatory practices in employment screening. When putting together your volunteer screening policy, there are a few important things to note from this guidance.

ARREST VS CONVICTION RECORDS

The EEOC strongly discourages the use of arrest records in a screening program. An arrest record doesn't necessarily mean that the individual was convicted of a crime. If there isn't a conviction record associated with the same incident, an organization shouldn't assume that the person with the arrest record actually committed the crime.

JOB RELATEDNESS AND CONSISTENCY WITH BUSINESS NECESSITY (JRBN)

The EEOC states that any criminal information that is used for screening purposes should be "job related and consistent with business necessity." There are three relevant factors to consider when trying to figure out if an offense is job related:

- Nature and gravity of the offense
- Time that's passed since the offense or completion of the sentence
- Nature of the job held or sought

JRBN will impact both the decision making process when considering criminal records and what types of background checks you should use for your applicants.

⁴ "Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964" (No 915.002) – Approved April 25, 2012

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Consider a scenario where you are given a criminal record that is 20 years old. Is a 20-year-old DUI really relevant to the position?

With criminal records that fall within the questionable area of JRBN, it never hurts to consult legal counsel.

THE DECISION MATRIX

The EEOC guidance dictates the need for a consistent screening standard that applies the same decision making process for everyone. They also emphasize that each criminal record needs to be examined and considered on a case-by-case basis. Their suggested tool for accomplishing this is the decision matrix.

Since each offense should be considered on a case-by-case basis, it's important to never have an automatic rejection or "Red" category in your decision matrix. There are some organizations that are exceptions to this rule. If your organization is regulated by a federal law that requires certain exclusions (e.g. FDIC), then those laws supersede the EEOC guidance. For state laws that conflict with the EEOC guidance, consult legal counsel. The most common scenario is an organization that is required by the state to bar sex offenders from volunteering with organizations that work with vulnerable groups.

	Executive Leadership	Directors	Managers	General Employees
CRIMES AGAINST PERSONS				
Sample Crime				
Assault Related Offenses				
Family Related Offenses Nonviolent				
Kidnapping/Abduction Related Offenses				
Sex Related Offenses Forcible				
All Other Person Related Offenses				
CRIMES AGAINST PROPERTY				
Arson Related Offenses				
Bad Checks Related Offenses				
Burglary/Breaking and Entering Related Offenses				
Motor Vehicle Theft Related Offenses				
Counterfeiting/Forgery Related Offenses				
Destruction/Damage/Vandalism Of Property Related Offenses				
All Other Property Related Offenses				
CRIMES AGAINST SOCIETY				
Purposely Obstructs Impairs Or Perverts The Law				
Disorderly Conduct Related Offenses				
Drug/Narcotics Related Offenses				
Traffic Violations While Operating A Motor Vehicle				
Trespass On Real Property Related Offenses				
Weapons Law Related Offenses				
Drug/Narcotic Related Offenses Involving Sale Or MFG				
All Other Society Related Offenses				

DISPARATE TREATMENT

According to the EEOC guidance of 2012, an employer violates Title VII if they treat the criminal history of one individual differently than another based on race or national origin. This again hits on the point that your organization's screening policy needs to be consistent and well outlined in a decision matrix. This makes it more difficult for disparate treatment incidents to arise.

Disparate treatment cases can also arise when a background check includes information that gives an employer information that identifies an individual as a member of a protected class – if it impacts their decision to hire an individual.

DISPARATE IMPACT

If an organization's volunteer screening policy disproportionately impacts a protected group in a negative way and fails to prove that the practice is job related and consistent with business necessity, then it is considered disparate impact. The organization's policy can be neutral in nature and still be discriminatory within the realm of disparate impact.

TRAINING

Once you've created a comprehensive background screening policy, you'll need to train those who will be involved in the screening process on how to follow it. For volunteer managers and coordinators, it's especially important to train anyone who will be involved in the screening process on how to appropriately interpret background information in a way that doesn't violate your policy.

Consistency is key. You don't want to have your volunteer managers subjectively determining the severity of different offenses.

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STEP 2: INITIAL NOTICE

Once you have a completed policy and are ready to begin conducting background checks on volunteer applicants for your organization, the first step is the initial notice. An initial notice of a background check can be a statement in job boards or other recruiting tools stating that your organization conducts background checks. It can be a sign outside of the volunteer manager's door or a letter given to volunteer applicants. Most commonly, the initial notice is given in writing with the disclosure form.

Areas with "Ban the Box" laws may have specific requirements for the language within your initial notice - E.g. you may not be able to have a statement that says if a criminal conviction will preclude someone from being eligible for a position. Not all of these laws will affect volunteer screening programs, in is completely dependent on the individual jurisdiction that has implemented a "Ban the Box."

STEP 3: DISCLOSURE AND AUTHORIZATION

The purpose of the Disclosure and Authorization documents are to ensure that the applicant or employee understands that they will have a background check run on them as a condition for being allowed to volunteer with your organization. The Disclosure and Authorization documents must be given to an applicant or employee and a signed copy received back before a background check is initiated on them. It isn't enough to just tell the applicant that your organization runs background checks, it must be in writing beforehand.

The FCRA has very specific requirements on how the Disclosure and Authorization are supposed to be presented and what documents should be included. Here are a few checklist items to ensure that your Disclosure and Authorization is compliant:

- Disclosure and Authorization are stand-alone documents
- Disclosure and Authorization documents doesn't include erroneous information
- Disclosure and Authorization doesn't include a release of liability statement, nor is there a release of liability statement that applies to the background screening process anywhere in an application.

Also ensure that you include the following supplementary documents with the Disclosure and Authorization.

- [Summary of Your Rights under the Fair Credit Reporting Act](#)
- [Remedying the Effects of Identity Theft](#) (under FACTA guidance⁵)

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The “Remedying the Effects of Identity Theft” document isn't required as part of the Disclosure and Authorization process, it satisfies legal requirements under the FCRA if a consumer later believes they have been the victim of identity theft or fraud.

The disclosure and authorization should both be standalone documents.

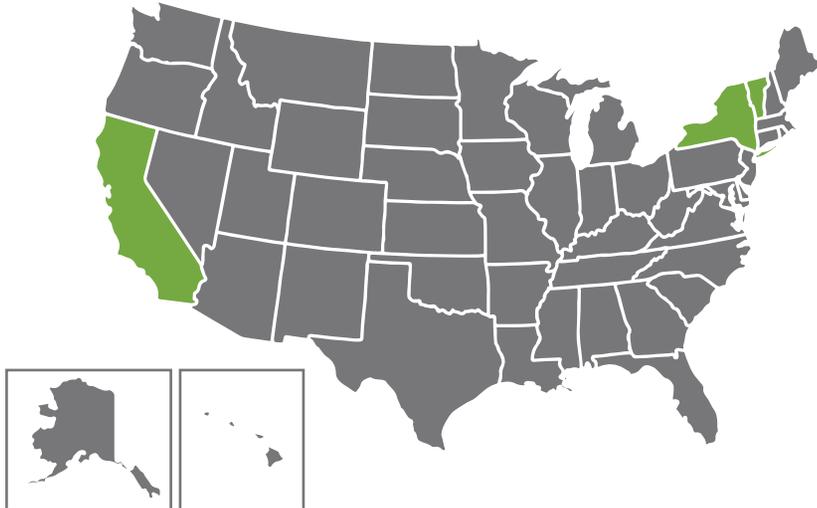
Though it is legally compliant to have a combined Disclosure and Authorization document, we have recently seen the combined documents challenged in courts. As mentioned earlier, the focus of this guide is to help you craft a program that not only keeps you legally compliant, but also keeps you away from the defense table by removing murky areas where you can be hit by legal fees and settlements, regardless of whether or not your process is non-compliant.

⁵ The Fair and Accurate Credit Transaction Act of 2003 is an amendment to the Fair Credit Reporting Act that is aimed at preventing identity theft, improve the dispute resolution process, and improve the accuracy of consumer reports.

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STATE-SPECIFIC REQUIREMENTS

Certain states have specific disclosures that must be given to the applicant in addition to the standard Disclosure and Authorization documents. As the volunteer manager, you should provide these documents if your organization or applicant is located in one of the states.



- California - [Notice Regarding Credit Checks Per California Law](#)
- Los Angeles - [Fair Chance For Hiring Ordinance](#)
- New York - [Article 23-A of NY Correction Law](#)
- Vermont - [Notice Regarding Credit Checks Per Vermont Law](#)

STEP 4: SUBJECT NOTIFICATION

If a considerable amount of time has passed between when the Disclosure and Authorization documents were signed, and when you begin the actual background check, you may want to notify the individual that a background check has been initiated. This can help keep an applicant from thinking that a background check is being run on them without their consent.

Example: An applicant applies for a volunteer position electronically. You do not currently have a need for volunteers in this capacity but keep them in an applicant pool for later consideration. Six months later you decide to invite the individual to volunteer on the condition that they pass a background check. Since a considerable amount of time has passed since they signed the Disclosure and Authorization documents, the subject notification serves as a reminder of their rights and that they signed the documents.

While this is an optional step, it helps to create a transparent process where the subject is aware of what is going on and is less likely to claim that you didn't properly disclose your intent to run a background check.

Making Decisions Based on Background Screening Results

The FCRA and other applicable laws weigh in on the decision making process. Once you've completed all of the necessary steps to run a background check on a volunteer, you are then able to submit their information for a background check. The results of the background check will be returned in the form of a consumer report. When making a decision based in-whole or in-part on the information provided by a consumer report, you will need to follow the next series of steps.

STEP 5: REVIEWING YOUR POLICY

Before making any decisions based on the information in a consumer report you should first take a minute to review your organization's volunteer screening policy. This will help to ensure that you make consistent decisions based on the information presented in the consumer report.

WHAT HAPPENS WHEN THE CONSUMER REPORT RETURNS WITH A CRIMINAL RECORD?

The most important thing to remember if a consumer report comes back with a criminal record is to not react impulsively to the information. If there is a criminal record in the volunteer applicant's report, you will need to review your policy and decision matrix to determine whether or not the offense in the report would preclude the person from joining the team.

If the offense isn't in your "green column" for acceptable convictions, then you will need to proceed to the next step – considering the individual offenses and the circumstances surrounding them. Remember, these are things that fit within the category of "job relatedness and consistency with business necessity." You will want to consider:

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- Nature and gravity of the offense
- Time that's passed since the offense or completion of the sentence
- Nature of the job held or sought

Once you've reviewed your policy, considered the specific case, and perhaps even seek legal counsel, you may determine whether or not the offense would preclude the individual from the volunteer position. You are not deciding if the applicant will be denied the position at this time – only if the information on their consumer report could have that result.

STEP 6: PRE-ADVERSE ACTION

Before you commit to any Adverse Action based on negative information in a person's consumer report, you must first notify them of the information in their consumer report and the potential adverse impact that it could have.

Adverse action is defined as any action that would negatively impact the consumer. It can be a termination, denial of volunteer assignment, change of job assignment, loss of contract, or any other decision that could feasibly have a negative impact.

WHY IT'S IMPORTANT

There are circumstances in which the information on a background check could be incorrect. Most consumer reporting agencies have a very high accuracy rate based on the information given by the courts. The problem is that the physical records in the courts may be wrong or simply not updated.

WHY IT'S IMPORTANT

There are circumstances in which the information on a background check could be incorrect. Most consumer reporting agencies have 99.9% accuracy based on the information given by the courts. The problem is that the physical records in the court can be wrong, themselves.



Applicant has a criminal conviction on his record expunged months before applying for a volunteer position at the ABC Foundation.



When the ABC Foundation runs a background check on Joe, the report comes back showing the expunged criminal record.

There are two reasons why this could happen

1. The information hasn't been updated in the record yet because it's relatively recent.

2. Someone in the process forgot to sign or file a document to expunge the record.

Either way, the information is actually expunged and cannot be used against the individual in a hiring decision.

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As you can see through the example, there are instances in which false positives can occur. This is why it's important to first give the individual a chance to review and dispute the information in their consumer report before making any sort of adverse decision.

HOW IT WORKS

The Pre-Adverse action step should be done in writing in the form of a letter or email. In this communication, you will want to let the applicant know that their background check was reviewed and evaluated on a case-by-case basis in accordance with applicable law and EEOC guidance – outlining that there is information on the consumer report that would preclude them from a volunteer position.

Include the following documents:



[Copy of the volunteer applicant's consumer report](#)



[Summary of Your Rights under the Fair Credit Reporting Act](#)



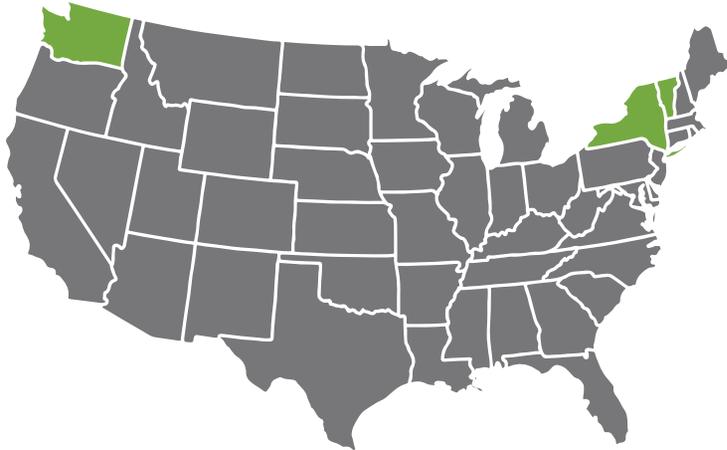
[Remedying the Effects of Identity Theft](#)

Always ensure that the volunteer applicant is aware that they are entitled to a free copy of their background check. If requested, the end-user and CRA must provide a copy of the report to the consumer.

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STATE-SPECIFIC REQUIREMENTS

New York, New Jersey, and Washington each have their own documents that are required to be given to volunteer applicants along with the Pre-Adverse action letter. You will need to give these document to an individual if your organization or the individual resides in that state.



- Washington - [Summary of Your Rights Under the Washington Fair Credit Reporting Act](#)
- New York - [Article 23-A of the NY Correction Law](#)
- New Jersey - [Summary of Your Rights Under the New Jersey Fair Credit Reporting Act](#)

Since the applicant is entitled to dispute the information of the report, you must include the source of the consumer report in the Pre-Adverse action letter. Include the name of the consumer reporting agency and their contact information. If your applicant chooses to dispute, the consumer reporting agency will re-investigate the record in question to ensure it is accurate. Lastly, give a set amount of time for the

applicant to dispute the information in the consumer report before taking any adverse action.

STEP 7: WAITING PERIOD

The Fair Credit Reporting Act only dictates that an organization should wait a “reasonable amount of time”⁶ between Pre-Adverse and Adverse Action. We recommend a minimum five-business day waiting period (accounting for mailing time).

To clarify, this is giving the applicant five days to communicate their dispute to the background screening provider. If they decide to dispute the information, you must wait for the information to be re-investigated and a new report sent to you, before proceeding.

San Francisco, CA; Montgomery County, MD; and Prince George’s County, MD require a seven-day waiting period between pre-adverse and adverse action steps.

STEP 8: ADVERSE ACTION

The final step in the Adverse Action process is the Adverse Action Notice; communicated by letter or email. Organizations are required by law to provide an Adverse Action Notice to an applicant when adverse action has been taken, based in whole or in part on information contained in a consumer report.

HOW IT WORKS

Much like the Pre-Adverse Action Notice, the Adverse Action Notice will outline that there was certain information on the applicant’s consumer report that will keep them from being placed. With the Adverse Action Notice, you are now telling the

applicant that you have given them the chance to dispute the information and will now act upon the information within the report.

In the Adverse Action Notice you will need to include text that details what the Adverse Action will be (e.g. denied a volunteer position). You will need to explain that the decision was made in part or in whole because of information contained within their consumer report - including the name and contact information for the agency that provided the report.

It's important to indicate to the volunteer applicant that your organization made the adverse decision, not the consumer reporting agency you used to supply the information.

Once an Adverse Action Letter has been sent, an applicant still has the right to request a copy of their report from you or the consumer reporting agency that provided it. They may also dispute the accuracy of the information, though it may not impact the hiring decision.

Include the following additional documents with the Adverse Action Notice when sending it to the applicant:



Copy of the applicant's consumer report



Your Rights Under the Fair Credit Reporting Act



Remedying the Effects of Identity Theft*



Any state-specific documents

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*While the "Remedying the Effects of Identity Theft" document isn't a required piece of the Adverse Action step; we recommend providing it as supplemental information for the applicant.

STATE-SPECIFIC REQUIREMENTS

It is important to take note that state laws are subject to change and your organization should be in continuous review of those applicable laws. California and Massachusetts are good to mention because both states have laws requiring additional disclosures when background checks include credit information.



California Notice Regarding Credit Checks



Massachusetts Notice Regarding Credit Checks

The following jurisdictions have laws that require the Adverse Action letter to detail the specific items contained within the report that contributed to the Adverse Action decision: San Francisco, CA, Chicago, IL, Montgomery County, MD, Prince George's County, MD, Seattle, WA.

While it isn't strictly necessary to detail the specific offenses in other jurisdiction, it is a good idea to include it anyway. It's an extra step, but helps keep the process transparent so that your volunteer applicant doesn't think you are holding erroneous information against them.

⁶ Procedure in case of disputed accuracy, 15 U.S.C. § 1681i

Administrative Requirements

Once you've completed the background screening process, there are a couple additional things to also be aware of in your record keeping processes.

STEP 9: DATA RETENTION

You will need to retain a copy of every volunteer applicant's consumer report and their signed Disclosure and Authorization documents – regardless of whether or not they are given a position. We suggest that you maintain a filing system for your background-related documents that is separate from other personnel files. This helps ensure limited access to the information - keeping it private.

The statute of limitations for the Fair Credit Reporting Act is five years after the date of the consumer report, though there are some other common law and background screening related statutes that can have up to a six-year statute of limitation. Records must be retained for a minimum of five years. We recommend retaining background screening related documents for six years to meet these additional circumstances.

Retain background screening related documents for 6 years after the date of the consumer report.

STEP 10: DATA DISPOSAL

The Fair and Accurate Credit Transaction Act of 2003 (FACTA) was enacted to help consumers in the fight against identity theft. A few of the byproducts of FACTA are the "Remedying the Effects of Identity Theft" document and redacted Social Security Numbers in consumer reports. FACTA also had specific guidance for the proper disposal of consumer report information.

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SHRED



PULVERIZE



INCINERATE

The information contained within a consumer report is sensitive in nature. It is important to ensure that when you dispose of records after the six-year retention period, they are disposed of in a way so that they cannot be read or reconstructed. This applies to both paper and electronic documents.

Final Thoughts

Between the added cost and compliance steps, integrating background checks into your volunteer screening process can seem like a lot to deal with. However, there is a positive return on your investment. By using background checks, you limit your organization's exposure to risk and in return strengthen the organization's mission.

As a background screening provider, we are here to help support you and your cause – both through background screening services and the expert compliance knowledge that we are able to provide. There are plenty of additional places where you can find great information to keep yourself compliant. Take a look at the additional resources section for links to other great information on the screening process.

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Additional Resources

BACKGROUND CHECKS:WHAT EMPLOYERS NEED TO KNOW

Joint publication of the EEOC and FTC

DISPOSING OF CONSUMER REPORT INFORMATION? RULE TELLS HOW

FTC guidance on disposal of consumer report information

ARREST AND CONVICTION RECORDS IN EMPLOYMENT BROCHURE

EEOC best practices guidelines for use of arrest and conviction records in employment

THE FAIR CREDIT REPORTING ACT 15 USC § 1681 ET SEQ

Printable text of the Fair Credit Reporting ActF

CRA 50 STATE COMPLIANCE PACKET

List of state-level FCRA requirements created by SeyFarth Shaw LLP

PREVENTING DISCRIMINATION IS GOOD BUSINESS

EEOC fact sheet on employment screening best practices for small businesses

BAN THE BOX: U.S. CITIES, COUNTIES, AND STATES ADOPT FAIR HIRING POLICIES

National Employment Law Project's Guide to Ban the Box. While it has some bias, it is the most in-depth guide to "Ban the Box" legislation.

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COMPLIANCE DOCUMENTS

SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

REMEDYING THE EFFECTS OF IDENTITY THEFT

ARTICLE 23-A OF THE NY CORRECTION LAW

LOS ANGELES FAIR CHANCE HIRING ORDINANCE

NOTICE REGARDING CREDIT CHECKS PER CALIFORNIA LAW

NOTICE REGARDING CREDIT CHECKS PER VERMONT LAW

SUMMARY OF YOUR RIGHTS UNDER THE NEW JERSEY FAIR CREDIT REPORTING ACT

SUMMARY OF YOUR RIGHTS UNDER THE WASHINGTON FAIR CREDIT REPORTING ACT

INFORMATION CONCERNING THE PROCESS FOR CORRECTING A CRIMINAL RECORD IN MASSACHUSETTS

VALIDITY

screening solutions

Go Directly to the Source

