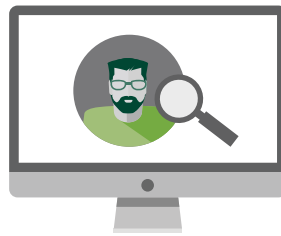


VOLUNTEER SCREENING



THE COMPANION GUIDE

Contents

Introduction	
Disclaimer	3
Why Run Background Checks?.....	4
The Different Types of Background Checks.....	5
Criminal Records	6
Live Research vs Databases	7
Sex Offender Registries.....	9
Driving Records	
What's in a Driving Record?	10
Integrating Background Checks into Your Volunteer Program	
FCRA Compliance	11
Step 1: Creating Your Policy EEOC Guidelines	12
Training Step 2: Initial Notice	14
Step 3: Disclosure and Authorization	15
State-Specific Requirements Step 4: Subject Notification	16
Making Decisions Based on Background Screening Results	
Step 5: Reviewing Your Policy Step 6: Pre-Adverse Action	17
Step 7: Waiting Period Step 8: Adverse Action	19
Administrative Requirements	
Step 9: Data Retention Step 10: Data Disposal.....	21
Additional Compliance Considerations	
Social Media Background Checks Fair Chance and "Ban the Box"	22
"Clean Slate" And Expungement Data Privacy Conclusion	23
Final Thoughts	24
Additional Resources	
Compliance Documents.....	25

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 to audit your program – ensuring that your program is following best practice standards.

DISCLAIMER

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

The content herein may contain links to third party websites and resources. Because Validity Screening Solutions has no control over these sites and resources, Validity Screening Solutions is not responsible for the availability of such external sites or resources, does not endorse, and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.

Why run background checks?

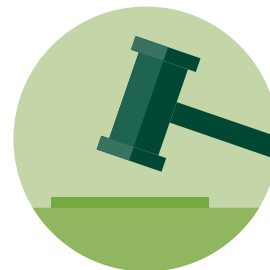
Background checks serve an important function in your organization's mission, though they are often not considered until they become a legal requirement or an incident occurs. It's understandable that nonprofit organizations avoid background checks because of the perceived detriments to their mission.

A common complaint against background checks is the added cost to running a volunteer program when volunteers are required to have background checks. 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 to give back or support a cause, they do not 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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.



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.



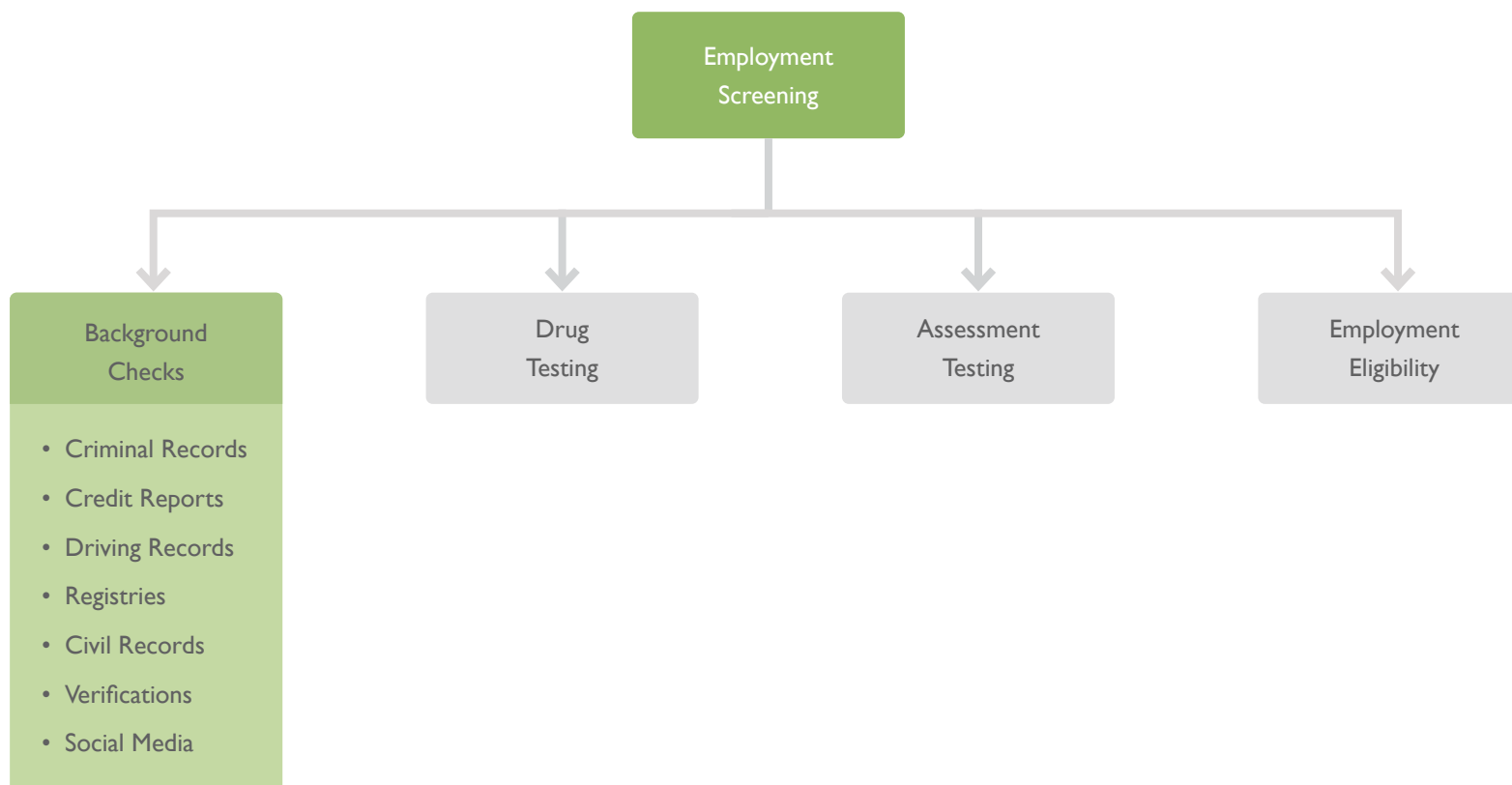
MISSION SUPPORT

Many nonprofit organizations require the help of donors and volunteers 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

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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.



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, 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 minor 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.

County court records are frequently accessed through the online public access terminal (PAT) of the respective county. However, some states implement a statewide PAT, where all counties are required to participate rather than maintain their own individual terminals. Searches conducted within these states are referred to as statewide searches and differ from state repository searches. Statewide searches utilize a state's PAT to search all counties of that particular state.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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

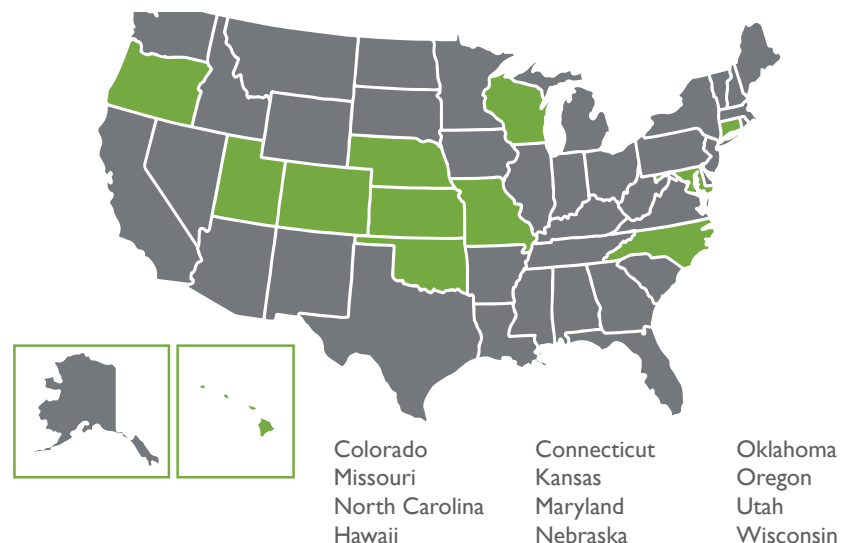
FEDERAL COURT RECORDS

Crimes that invoke federal law, 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.

We conduct statewide searches in the following states:



This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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. 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 exist for an extended period of 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.¹

STATE REPOSITORIES

Another form of a database search is the state criminal record repository, also referred to as state police checks. Most states have a centralized data archive that contains criminal record information from county courts. The problem is that not every county participates. As a result, the information within many of the state police checks cannot be relied on as a single source for criminal records.



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.

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, 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

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 organization's 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. In 2006, the Sex Offender Registration and Notification Act (SORNA) strengthened nationwide requirements and closed potential loopholes that existed under previous laws. 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 ²



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.

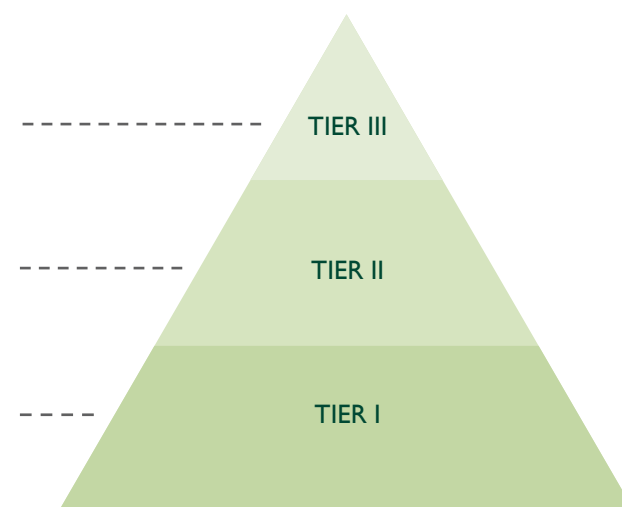
² Not every state will include public urination offenses in the sex offender registry. States that do include it, may not make that information available to the public.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

Violent sexual 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 can 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 seven (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 field trip



Volunteer driving for senior citizens



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

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

WHAT'S IN A DRIVING RECORD?

DRIVER'S 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.

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 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 exactly the same as for employees.

FCRA COMPLIANCE

The Fair Credit Reporting Act (FCRA) provides the fundamental requirements for employment screening practices. It was adopted to establish regulatory standards for the employment screening industry, as well as give specific protection 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 further on.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.



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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

STEP 1: 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 FCRA and Labor/Employment Law

PROCEDURES

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

EEOC GUIDELINES

In April 2012, the Equal Employment Opportunity Commission (EEOC) released a consolidated guidance on the use of arrest and conviction records.³ 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.

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

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

³ "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 <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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				

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

DISPARATE TREATMENT

According to the EEOC Guidance of 2012, an employer violates Title VII of the Civil Rights Act if they treat the criminal history of one individual differently than another based on race or national origin. This again refers to 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 given to an employer 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.

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, it is completely dependent on the individual jurisdiction that has implemented a Ban the Box ordinance.

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 ran 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 regarding 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 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 guidance⁴)

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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 stand-alone documents.

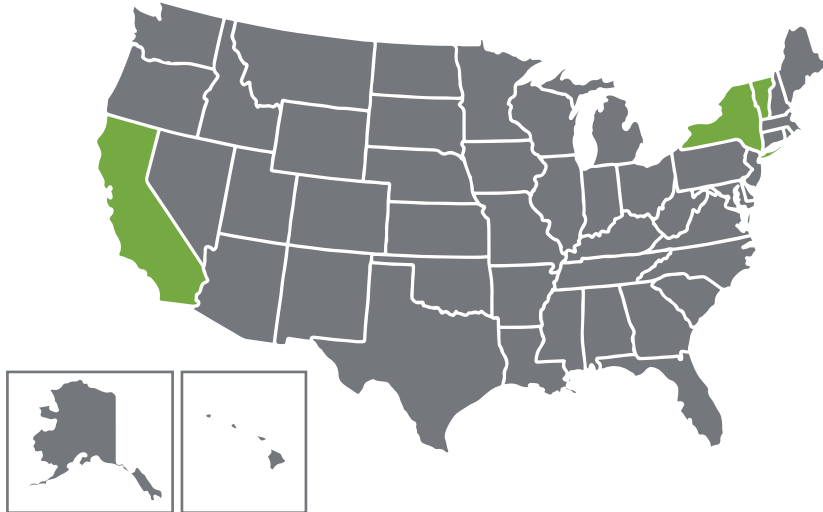
Though it is legally compliant to have a combined Disclosure and Authorization document, we have recently seen the combined documents challenged in courts. As mentioned earlier, the focus of this guide is to help you craft a program that not only keeps you legally compliant, but also keeps you away from 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.

⁴The 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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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 these states.



- California - [Notice Regarding Credit Checks Per California Law](#)
- 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 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 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:

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

Once you've reviewed your policy, considered the specific case, and perhaps even sought legal counsel, you may determine whether 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 CRAs 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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.



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

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.



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

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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](#)

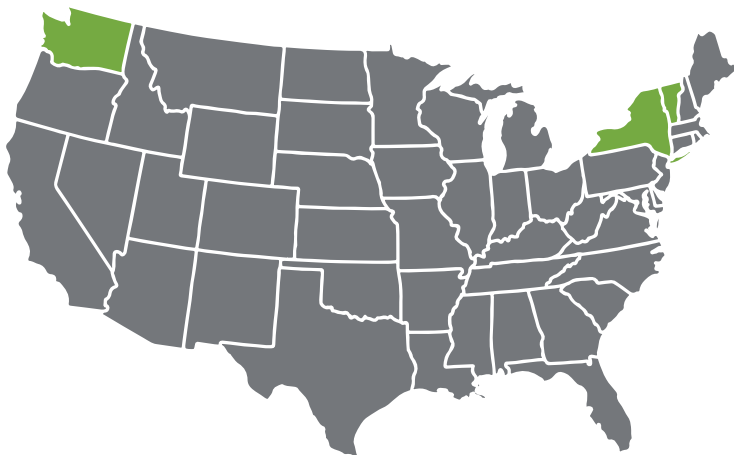


[Remedying the Effects of Identity Theft](#)

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

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 documents 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 information within the report they believe to be inaccurate or incomplete, 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 file a 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 review and/or dispute the information in the consumer report before taking any Adverse Action.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

STEP 7: WAITING PERIOD

The FCRA only dictates that an organization should wait a “reasonable amount of time”⁵ between Pre-Adverse and Adverse Action. We recommend a minimum five to seven-business days waiting period (accounting for mailing time). Check with your legal counsel to determine the best waiting period for your organization based on applicable state laws.

To clarify, this is giving the applicant five to seven business 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 to be sent to you, before proceeding with issuing the Adverse Action notice.

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 review the report and/or dispute any inaccurate information, and that you will now act upon the information within

⁵ Procedure in case of disputed accuracy, 15 U.S.C. § 1681i

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 of information contained within their consumer report - including the name and contact information for the CRA that provided the report.

It's important to indicate to the volunteer applicant that your organization made the adverse decision, not the CRA 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 your organization or the CRA that provided the report. 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



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



[Remedying the Effects of Identity Theft*](#)



Any state-specific documents

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

*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 Pre-Adverse Action or Adverse Action decision: California (Statewide), Los Angeles County, CA, San Diego County, CA, San Francisco, CA, Illinois (Statewide), Chicago, IL, Montgomery County, MD, Prince George's County, MD, Portland, OR, Philadelphia, PA, Seattle, WA.

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

Administrative Requirements

Once you've completed the background screening process, there are a couple 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 they are given a position. We suggest that you maintain a filing system for your background screening-related documents that are separate from other personnel files. This helps ensure limited access to the information - keeping it private and secure.

The statute of limitations for the FCRA is five (5) years after the date of the consumer report, or two (2) years from when a consumer becomes aware of the issue, whichever is less. However, there are other common law and background screening-related statutes that can have up to a six-year statute of limitations. Records must be retained for a minimum of (5) five years, which is also the recommended retention period by our organization.

Retain background screening related documents for a minimum of five (5) 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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.



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 recommended retention period, that they are properly disposed of so they cannot be read or reconstructed. This applies to both paper and electronic documents.

Additional Compliance Considerations

While it would be impractical for us to try and cover everything that could impact employment screening practices in your organization, there are a few additional considerations that employers should at least be aware of.

SOCIAL MEDIA BACKGROUND CHECKS

In June 2011, the Federal Trade Commission (FTC) granted approval for CRAs to offer social media background checks to organizations. The FTC stipulated that any organization that uses social media background checks must comply with the already existing FCRA regulations. This means that the process needs to be treated exactly as a criminal record check.

The truth is that most employers will not use a third party to run a social media background check on their applicants. Instead, most social media searches are done behind the scenes by the person responsible for hiring the applicant, whether that is the HR team or a supervisor. The problem is that these clandestine social media searches open organizations up to a lot of risk.

The main issue with using social media content as a screening tool is that it is very difficult to judge the accuracy of the information.

- Can you verify that the social media account belongs to your applicant?
- Can you determine for certain that you understand the context of text and images (is the information sarcastic or satirical?)
- How do you un-ring the bell once you see protected class information such as religious affiliations?

Organizations that choose to conduct social media searches on their applicants need to be careful with the information they capture. With social media, you gain access to not only information about the individual's character, but also possibly protected information that cannot be used as part of the hiring process.

Social media has become the norm in many organizations. While the easiest way to avoid this issue is to stay away from it, we understand that may no longer be possible for some organizations at this point. The best defense is to outline clear

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

policies and procedures on how social media can be used for employment and screening purposes.

FAIR CHANCE AND "BAN THE BOX"

Fair Chance Ordinances, also referred to as "Ban the Box", have been sweeping the nation over the last few years. Over 37 states and over 150 cities and counties have enacted Ban the Box laws and the number of jurisdictions enacting legislation is growing at an exponential rate.⁶

The goal behind these legislative trends is to remove barriers for individuals with criminal records to give them a better chance at finding employment after completing their sentences. The long-term goal is to decrease the rate of recidivism.

Lawmakers are trying to accomplish this by forcing employers to remove the Yes or No box that accompanies the question commonly seen on job applications that asks about an individual's criminal history. The assumption is that when someone checks Yes in that box, their application will be automatically excluded regardless of qualifications.

Some Ban the Box laws only limit an employer's ability to ask about a criminal conviction in an employment application. For these areas, the employer's ability to run background checks is unaffected. Other Ban the Box laws can impact if and when a background can be run on new applicants. A few recent laws have gone even further by limiting an employer's ability to search for information on social media or through public records.

The important thing for employers to know about Ban the Box legislation is that each jurisdiction that enacts new legislation has its own spin. New laws may impact everyone in that jurisdiction or perhaps just government employees. They may state that you cannot ask about criminal convictions at all or maybe you have to wait until after the initial interview.

⁶ "Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies," <https://www.nelp.org/insights-research/ban-the-box-fair-chance-hiring-state-and-local-guide/>

Since there is very little standardization between the different laws, it is impossible to have a “one size fits all” compliance guide on the subject. If and when Ban the Box is passed in your area, you will need to consult with legal counsel to assess how your screening program will be impacted.

“CLEAN SLATE” AND EXPUNGEMENT

Over recent years, more states have enacted laws that allow for the expungement of certain criminal offenses. A number of these laws involve a process that would automatically expunge eligible offenses; therefore, removing the manual process of applying for expungement via the court system. These laws are commonly referred to as “Clean Slate.” As of January 2025, 12 states have enacted [Clean Slate laws](#)⁷. Like Fair Chance and Ban the Box, Clean Slate aims to reduce the barriers that individuals with criminal history often encounter when applying for jobs, housing, and education.

Ideally, the automatic expungement of records would result in a reduced turnaround time for criminal searches. However, certain states have encountered the opposite issue. In the absence of effective implementation plans for expunging eligible records, Clean Slate can contribute to court delays as court clerks and other personnel identify and expunge eligible convictions.

Like Fair Chance and Ban the Box laws, it is impossible to have a “one size fits all” compliance guide. If and when a Clean Slate law is passed in your jurisdiction, consult with qualified legal counsel to assess the possible impact on your background screening program.

DATA PRIVACY

Another area of legislation gaining traction across the nation is data privacy. Generally speaking, data privacy laws govern how personal data is collected, used, and stored. These laws aim to protect individuals by establishing legal framework

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

that ensures they have control over their data. Additionally, these laws also ensure businesses handle personal data responsibly.

Pertaining to the background screening industry, data privacy laws may establish requirements for retentions policies, access controls, security measures, and additional consent and disclosure obligations. Certain states have implemented additional privacy laws affecting background checks. In May 2021, the California Court of Appeals ruled that California Rules of Court, Rule 2.507 mandates the redaction of an individual's full date of birth and driver's license information from public [records](#)⁸. Consequently, several California courts have removed dates of birth from online public access terminals, resulting in significant delays for public record searches.

As data privacy remains a prominent topic among state legislatures, employers should stay informed about any new laws in their jurisdiction. If a data privacy law is passed in any of the jurisdictions your company operates, please consult with qualified legal counsel to review policies and procedures.

CONCLUSION

As with any area of legal compliance, employment screening compliance can be a moving target. We strive to provide you with necessary compliance and legislative updates to help maintain compliance with federal, state, and local laws. Ultimately though, it is up to your organization to make sure your program stays compliant. Because of things like social media and Ban the Box, a policy that an attorney signed off on five years ago may be already out of date. The steps outlined in this compliance guide are meant to help you follow that moving target, giving your program a foundation to build on. As the legal landscape changes, you will be able to flexibly move along with it.

⁷ “Clean Slate in States,” <https://www.cleanslateinitiative.org/states>

⁸ “Another Privacy Headache for California: Court of Appeal Ruling Will Slow Down Criminal Background Checks Throughout California,” <https://www.littler.com/news-analysis/asap/another-privacy-headache-california-court-appeal-ruling-will-slow-down-criminal>

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 organization's 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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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 Act - Revised May 2023

[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.

This guide is provided with the intent to be general information only. Its contents should not be construed as legal advice or content of any kind. It is advised that you consult your own legal counsel to discuss your company policies and practices.

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](#)

[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 | info@validityscreening.com | 866.915.0792