

Types Of Background Checks On Volunteers

John M. Sadler, JD, CIC

(April 3, 2006)

Every reasonable effort should be made to protect youth sports participants from adults in the program who have a history of unacceptable criminal activity. It is estimated that 9.6% of all volunteers screened have a criminal record and 2.9% of would be coaches have had convictions involving sex offenses, violence, or other felonies. (Source: Southeastern Security Consultants, Inc.) For starters, volunteer screening including background checks is a critical part of an effective abuse & molestation risk management plan.

Background checks on volunteers, (as well as paid staff), especially those with repeated access to youth players, are an important part of the volunteer screening program in youth sports. All volunteers should be notified prior to acceptance of their duties that they will be subject to a favorable background check and must provide their consent via a Volunteer Application. Such notification should also explain the steps that are being taken to safeguard their privacy and rights should any unfavorable information be found. Only one league administrator should be in charge of collecting and reviewing Volunteer Applications, receiving the results of the background checks, and making the disqualification decisions in order to reduce the chances of a release of confidential information. An unfavorable background check should disqualify a volunteer from participation if it falls within a sports organization's predetermined, written disqualification criteria.

The term "background check" represents a broad category of different types of checks that range from the most basic Sexual Offender Registries to the more complicated FBI 10 Point Fingerprint Check. Background checks from different sources vary by the following criteria:

- **Cost-** Ranges from free to \$70 (depending on accuracy and thoroughness) per volunteer to be checked.
- **Geographic Region Searched-** Varies by county, state, or national database.
- **Accuracy And Thoroughness-** Varies greatly depending on the input procedure of the source, how often the source is updated, if the source is the most likely one to yield results for a particular volunteer based on his/her address history, the number of sources that are checked, if the social security number is verified, and if an address trace is performed.
- **Waiting Period To Receive Results -** Varies from immediate to an 84-day waiting period to view results.
- **Your Administrative Time Required Per Volunteer-** Varies from thirty seconds to several minutes per volunteer record to be checked. This does not include the additional time to interpret raw court data.
- **All Criminal Records Checked?-** Some sources may not reveal all types of criminal records as some are limited to sexual crimes only.
- **Your Legal Liabilities For Mistakes Made-** Varies depending on the services that are outsourced to a background check provider. Liabilities can result from mismatch between volunteer and record received, improper interpretation of record, Fair Credit Reporting Act violations for failure to provide required legal notices, illegal use of information protected by First Offender Act, and by slander actions resulting from inappropriate release of confidential information. Even though these potential liabilities

exist, the absence of any reasonable attempt to screen unsuitable volunteers presents a far more serious vulnerability to legal liability.

To follow is a basic description of the characteristics and strengths/weaknesses of the most common types of background checks ranging from the least accurate and thorough to the most accurate and thorough.

Sexual Offender Registry Checks (SOR)

SOR checks are currently available for free on the internet on state government websites in 43 states. There are even some free websites that combine the results that are reported from all of the states that post free results.

The advantages of SOR's are that they are free, do not require permission from the volunteer, take very little administrative time to input names, the results are immediate, and the Fair Credit Reporting Act and related administrative notice burdens do not apply.

The disadvantages of SOR's are that the geographic territory is limited to a single state (unless a website is accessed that combines SOR records from all states), there is no Social Security Number verification to assure the volunteer has not provided an alias, the input source is a third party (instead of being input automatically as a part of the judicial process), the websites may not be frequently updated, and SOR's only reveal sex crimes but not all criminal offenses.

Each state determines its own definition of what constitutes a sex offender. As a result, some states only list high-risk sex offenders. SOR's rely on a third party to input the information and recent media accounts indicate that SOR's in some states are more than 50% incomplete. SOR information only goes back to the mid 1990's in most states. SOR's will never indicate other serious criminal history such as murder, armed robbery, etc.

On the other hand, criminal background checks (as opposed to SOR's) will provide all misdemeanor and felony information (not just sex offenses) that a sports organization may want to take into account in the disqualification process. Criminal background checks show offenses that go back a minimum of 7 years, but much longer in most cases. Also, criminal background checks do not rely on third parties to enter information into the database as this happens automatically as part of the judicial process.

Local Law Enforcement

Local law enforcement is often contacted as a potential "free" source of criminal background checks. However, local law enforcement agencies are increasingly declining such requests due to limited manpower. When making requests to local law enforcement, you should specifically inquire as to which source will be used to run the criminal background check.

If law enforcement uses a single county record check as a source, this will not reveal criminal offenses which may have occurred in a different county. If they use a state database as a source (compiled from single county courthouse records), this will not reveal criminal offenses which may have occurred in a different state. Generally, local law enforcement does not confirm information provided by the volunteer (Name/dob/ss#/address) and provides raw court data with no interpretation of information.

The best source available to local law enforcement is the National Crime Information Center (NCIC) electronic database which lists arrest records on a national basis compiled from various federal, state,

and local sources, and is necessary to screen sexual predators who freely cross county and state lines.

One limitation of the NCIC database is that it will only indicate if there has been an arrest, but it won't indicate the disposition of such arrest. This can be a problem because some arrests never result in charges and other arrests result in reduced charges or no conviction. Those volunteers with an arrest record under NCIC must be run through another criminal background check source in order to receive complete details before a disqualification action can be taken.

Another potential problem with the NCIC database is that many local law enforcement departments will refuse to access it unless a crime needs to be investigated. Of course, this would eliminate the use of NCIC as a source to check the arrest records of volunteers who are merely attempting to be involved with youth sports programs.

The advantages of using local law enforcement is that there is generally no direct cost involved as fees may be absorbed by the local law enforcement agency, there is little administrative time required of the youth sports provider, the results can be immediate (depending upon the priority given of the local law enforcement agency), the results indicate all criminal offenses, the Fair Credit Reporting Act does not apply, and all criminal records are revealed (not just sex crimes).

The disadvantages are that the geographic territory may be too limited unless the NCIC database can be accessed and the legal liabilities of mismatched name, improper interpretation, use of information protected by various state First Offender Acts (prohibit the rejection of an applicant based on criminal background protected under state act), and slander can't be transferred or outsourced to another party, as may be the case when a third party vendor is used.

Separate from the issue of considering local law enforcement for criminal background checks, an administrator from the sports organization should always establish a "point person" contact with local law enforcement in the event that a situation arises that requires police action or input. For example, law enforcement can provide assistance in the case of a suspicious volunteer coach or if an adult "fan" has begun to suspiciously linger after practices or games.

Third Party Vendors

Various third party vendors offer criminal background checks on a fee basis that range from "do it yourself" low cost national database checks to "full service" higher cost multiple source checks with Social Security Number verification, address trace, and other add ons.

Before choosing a third party vendor, you need to access the cost and services based on the following basic criteria:

1. Cost- Ranges from \$2.50 to \$23.00 per volunteer to be checked based on which one of the below services are provided.
2. Your Administrative Time Required Per Volunteer- Varies per vendor. Some vendors require you to input data (name, addresses, SSN) into their internet screens and to retrieve results. The "do it yourself" model can take several minutes of administrative time per volunteer. On the other hand, other vendors may simply require that you fax the signed volunteer applications (which collect the appropriate information) and they handle all input and retrieval of results.

3. **Waiting Period To Receive Results-** Most vendors take up to five days to receive results unless a national database is the only source that is to be checked. Results from a national database search can be instant.
4. **Social Security Number Verification-** This check is used to verify the identity of the applicant. A match between the name that is provided on the application and the name that is on file for the Social Security Number that was provided on the application protects against the applicant's providing a wrong Social Security Number in order to evade a background check.

Note: Even if a Social Security Number is not received, it is still possible to run a criminal background check based upon a name, date of birth, and county of residence.

5. **Address Trace-** Verifies addresses listed on the volunteer application over the past 7 years with database records as a basis for determining the best sources of records to search for a particular location or court jurisdiction.
6. **Social Security Number Address Trace-** Pulls prior addresses from public records with utility companies and credit card bureaus that have the applicant's Social Security Number on file. This service provides an independent source to verify past addresses that may not be listed on an application.
7. **Intelligent Choice Of Sources To Be Searched-** Based on the prior addresses indicated in 3. or 4. above, the third party vendor can make an intelligent choice of which county courthouse records should be searched based on the most recent and/or longest county of residence.
8. **Single County Courthouse check-** Many vendors will send a researcher to check for criminal records in the county courthouse or courthouses where the applicant has lived most recently and/or for the longest period of time.
9. **National Database Check-** A number of national sources have negotiated agreements with a large percentage of counties and state databases throughout the US to collect criminal background records by electronic means. National databases collect a huge number of records on a national level to help detect predators and other criminals that move from one state to the next. However, many experts believe that they should not be the only source of a background check since many counties and some states refuse to share their information and those that do share information may update records with a 60 day lag time.

Some vendors access multiple national databases when running a criminal background check to help offset the reliability problems with any single national database.

10. **Sexual Offender Registry Checks (SOR)-** An additional search may be provided based on a national database that combines records from all 50 state sexual offender registries.
11. **Terrorist Database Check-**
12. **Fair Credit Reporting Act (FCRA) Compliance-** Compliance with the FCRA requires the following steps to be taken:

-- Obtain a signature from the volunteer authorizing the criminal background check to be performed. (This authorization should be a part of the Volunteer Application).

- Those volunteers who are to be disqualified based on their background check must receive a copy of the background check report, the "Summary Of Your Rights Under The FCRA" document, and a written communication that they have been disqualified based on their background check.

Failure to comply with the FCRA can result in civil penalties and liabilities for the individuals within the sports organization administering the criminal background checks. This liability can be shifted to the third party vendor if they offer the FCRA compliance service.

13. First Offender Act Compliance- Third party vendors can offer an additional service to filter out any criminal record that is protected under the First Offender Act. Failure to comply can result in civil liabilities for the individuals within the sports organization administering the criminal background checks.
14. Disqualification Decision: Green Light / Red Light- Some third party vendors will provide the additional service of determining whether the volunteer is disqualified based upon your predetermined disqualification criteria (the vendors can assist with the development of these criteria on your behalf). Transferring the disqualification decision to the third party vendor shields the sports organization and its administrators from liabilities arising out of a mismatch between the volunteer and the record received, improper interpretation of the nature of a criminal record and resulting wrongful disqualification decision, FCRA compliance, First Offender Act Compliance, and potential slander actions resulting from intentional or accidental release of confidential information.

Please note that the potential liabilities for these mistakes are outweighed by the potential liability for not making a reasonable attempt to screen out unsuitable volunteers.

Are FBI Fingerprint Checks The Ultimate Solution To Catch Predators With Stolen Identities?

Much attention has been given to the fact that it is possible for a predator to assume the identity and Social Security Number of another person in order to avoid detection.

It is assumed that the non-fingerprint based criminal background vendors will let these predators slip between the cracks and that only FBI 10 Fingerprint Check will detect their true criminal backgrounds. These assumptions are not necessarily true.

First, some of the quality vendors of non-fingerprint based criminal background have checks in place to protect against fabricated or stolen Social Security Numbers. Such vendors can run a social security verification to confirm that the applicant / volunteer is indeed attached to the SSN.

Such a verification will return the names of others who have used that SSN, DOB, age, historical addresses, time span for those addresses, and counties of residence. This verification information can then be compared to the same information that was indicated on the Volunteer Application. Any discrepancies would be a "red flag" for a stolen identity.

Second, while the FBI 10 Fingerprint Check can be an almost foolproof verification of the volunteer's identity, it has several drawbacks. The major drawback is that the turnaround time on receiving the results can range from 6-12 weeks or more. It is not uncommon for the fingerprint card to be returned for re-fingerprinting due to a smudge. Generally, in addition to the charge for the FBI check, an additional charge is levied by the agency collecting the fingerprint. Also, it could be cumbersome to coordinate the fingerprinting with the schedules of the volunteers. In addition, the FBI database

shows arrests only and does not indicate the disposition of the case. Another limitation is that the FBI database only has approximately 60 million records on file.

Summary

There is no one best type of background check that will offer the best results across the board on all criteria. The background check standard for youth sports volunteers that is being developed through most common practices includes: A search for all misdemeanors and felonies in the applicant's longest most recent county of residence along with a national criminal record and sex offender search.

Naturally, the most accurate and thorough types of background checks tend to be the most expensive. Individual sports organizations will need to weigh their budgetary constraints against what the courts are requiring in terms of "due diligence" when screening volunteers.

© 2006 Sadler & Company, Inc. All Rights Reserved