

FAQ's for Churches & Volunteer Groups - Background Checks

✓ Why should a church, or youth or volunteer organization consider background checks?

Employers have become painfully aware of the tremendous consequences of bad hiring decisions. Pre-screening promotes a safe and profitable environment. Screening is an effective risk management tool that significantly reduces the chances of what's called a "bad hire." Just one bad apple can result in a legal and financial nightmare, not to mention bad publicity and the fallout for a Church or Volunteer Organization.

Organizations use pre-employment screening for four reasons:

1. To discourage applicants with something to hide. Simply having a pre-screening program discourages job applicants with a criminal background or falsified credentials.
2. To eliminate uncertainty in the hiring process. Many organizations have discovered the hard way that relying on instinct alone is not enough. Hard information is also an important part of the hiring process.
3. To demonstrate Due Diligence. Churches and volunteer organizations have a reasonable duty of care in the hiring process. This means an employer must take reasonable steps to determine whether an employee is fit for a particular job.
For example, if an employer hires a bus driver and does not make reasonable efforts to determine whether the bus driver has a criminal record, it could be found liable if that driver assaults a passenger and a reasonable background check would have discovered the prior assaults.
4. To encourage honesty in the application and interview process. Employers find that just having a background program will encourage applicants to be more forthcoming about their history.

Performing background screenings is certainly not a guarantee that every bad applicant will be discovered. For the prices charged by pre-employment screening firms, employers cannot expect an in-depth and exhaustive FBI-type investigation. However, just engaging in a screening program demonstrates due diligence and provides an employer with a great deal of legal protection.

It is also important to understand that a pre-employment screening program is aimed at learning how a person has performed in the *public* aspect of their lives. Items such as a criminal records or previous job performance reflect how a person behaved towards others or discharged his/her obligations or responsibilities. Screening is NOT an invasion of privacy, a sign of mistrust, or an act of "Big Brother."

✓ What is a background check?

A background check is the process of acquiring information on an individual to provide the employer with *verification* of the applicant's provided information about their past and an attempt to uncover

information that may not have been provided or was not reported accurately. This could include checking past employment references and the educational diplomas, certificates or degrees listed. It could also involve checking for past criminal activity in locations where the applicant has lived, worked or attended school. Third-party maintained records can be utilized along with checking official records at state motor vehicle departments, county courthouses, state criminal databases, etc.

An example of a private third-party database is the “Safety 1st Database” service.

However, it is critical to understand that there is no one definition of a background check. A background check can range from an economical check of public records all the way to extensive checks that cost thousands of dollars and are the equivalent of a security clearance. It is very important to understand exactly what is being obtained so that an organization does not develop a false sense of security.

✓ **Should we just use fingerprints?**

Contrary to popular belief, it is absolutely illegal for a private company to have access to criminal information databases used by the FBI and law enforcement officials. The exception is firms that are licensed by either the state or federal government, and where a fingerprint check is required by law, such as school teachers, or child care workers.

In California, when a fingerprint check is required, it is done by Live Scan. Live Scan technology allows digitally scanned fingerprints to be submitted electronically. However, few private employers have access to Live Scan.

✓ **IF we don't use fingerprints, what are the alternatives?**

You should utilize the best available information in your state. Only a few states have complete statewide criminal databases. If your state doesn't, you will need to search each county courthouse where you believe the applicant has lived, worked or attended school during the last seven years. Sometimes for individuals who move around a lot, this could involve multiple counties and states.

✓ **What is the Safety 1st Database?**

The Safety1st Database is a special combination of two different services for Churches and Volunteer Groups.

The first is the Social Security Trace (SSTrace) also known as an Address Location Tool, http://www.esrcheck.com/services/services_detail.php#SSN.

The second is the National Multi-Jurisdictional Criminal Database, <http://www.esrcheck.com/multijurisdictionalsearch.php>. Please be sure to read the limitations on this database at the link provided.

Additionally a detailed report on the use of statewide searches co-authored by ESR is located at <http://www.brpub.com/articles/CriminalHistoryDB.pdf>.

The following states either DO NOT provide date-of-birth (DOB) information in their databases or provide incomplete DOB information: **AZ, CA, FL, GA, HI, IN, KS, LA, MA, MS, NV, PA, RI, TX, VA, WA, WI**. This makes it virtually impossible to accurately screen individuals solely based on the National Multi-Jurisdictional Criminal Database alone.

The National Multi-Jurisdictional Criminal Database portion also includes a limited subset of some state's sexual offender information.

✓ What is the value of the Safety 1st Databases?

These databases can be extremely valuable as an **INITIAL** or a **PRELIMINARY** search that indicates whether more in-depth checks are needed.

It is critical to understand the following:

1. These database are **NOT** FBI database searches because that information is strictly limited by law. Searches offered by background firms are drawn from government data that is commercially available or has been made public.
2. Multi-jurisdictional and statewide databases are compiled from a number of sources that may or may not be accurate, complete, or up-to-date. However, a database *is* a valuable research tool in covering a wider area and identifying where to search for more information.
3. In some states, the databases that are available have limited information. Therefore the value of these searches may be very limited in some states. That means searches in those states should be conducted by a single state search in order to locate all possible names. An employer should carefully review what information is available in their state and not merely depend upon a database search.
4. Databases searches are never a substitute for a hands-on search at the county level (or the functional equivalent of a county-level search).
5. The search is based upon matching last name, the date of birth, and the first three letters of the first name in order to eliminate computer matches that are not applicable. Searches in states where date of birth information is not available or limited are of little or no value. In **AZ, CA, FL, GA, HI, IN, KS, LA, MA, MS, RI, TX, VA, WA, WI** there is no date of birth, **PA** and **NV** release the offender's year of birth only.

6. All “possible hits” (possible matches) should be reconfirmed at the county court level to ensure that the information is accurate, complete, and up-to-date at the time it is reported, per Fair Credit

Reporting Act (FCRA) Section §613. Also keep in mind that a criminal record should not be used to automatically disqualify an applicant, without taking into account the EEOC rules as to what is a job-related criminal offense.

Disclaimer: ESR provides its services based upon the information and data provided by the applicant including the true name, Social Security Number and Date of Birth. Neither ESR nor LawRoom is responsible for verifying or confirming the true identity of an applicant. In addition, in the event an ESR report reveals additional names or possible aliases from the Social Security Trace, it is the Church's responsibility to determine whether additional searches are necessary and to place an order for any follow-up searches.

✓ **What about sexual offender searchers in the Safety 1st Database?**

The Sex Offender database currently consists of all 50 states, DC, Guam, and Puerto Rico. These datasets are derived from the state-maintained registries, with some county-maintained registries added, and are updated monthly. Where it is possible, more frequent updates are obtained. While some states utilize a simple numeric categorization, ranking offenders 1, 2, or 3, not all states follow this convention, and instead use descriptors such as “repeat offender,” “violent offender,” “first-time offender,” and so forth. Additionally, each state has enacted policies determining what may be released. While some states will release its registry in its entirety, some will only release those offenders that have been deemed a public threat. On occasion states will redefine policies which can either increase or decrease the offenders that are made available. It is important to note that each update received consists of a full refresh and contains what each originating agency deems to be public information at that time. Where appropriate, the Sex Offender database maintains previously supplied registries in its archive when consistent with applicable state and federal laws.

Finally, each registry determines what data elements are made available, and to that end some do not release an offender’s data of birth at this time. Currently, the states that redact this information are limited to **AZ, HI, IN, LA, MA, VA, WA, WI**, while **PA** and **NV** take a third approach and release the offender’s year of birth only.

ESR does provide a more complete standalone search service (Sexual Offender Search) for each individual state. If a record is found, a URL to the jurisdiction's website is provided, as well as a picture of the offender, when available. Further investigations via statewide criminal record databases or county level research are strongly recommended in those cases.

✓ **Why does the first portion of the Safety 1st Database come back with other addresses and names?**

The Social Security Trace is an address information location index that is used exclusively to identify previous names and addresses that are associated with a Social Security Number (SSN) in various databases. The information is gathered by private organizations and comes from multiple propriety sources.

✓ **What should we do with the other names and addresses in the Safety 1st Database?**

The Public Records and commercially available data sources used in this system may have errors and should not be relied upon as definitively accurate. Search results may not be used directly for employment purposes.

However, the results may be used to broaden the scope of employment-related background checks to include additional names and jurisdictions to be searched. Also, the record may contain a date of birth, which can be useful if this was not provided. The results of these expanded background checks may then be used for making employment decisions in accordance with the Fair Credit Reporting Act (FCRA) and applicable state and local statutes.

✓ **What happens if the first part of the Safety 1st Database doesn't return any names?**

On occasion, there are no names or addresses associated with a SSN. This can occur when a person has never applied for credit, so there is no history in the credit bureau files for the header information, or the SSN does not belong to the applicant.

✓ **The second part of the Safety 1st Database reports back that we have possible matches. What does this mean?**

In this case, ESR has interpreted the results and has determined that possible matches to the applicant need further checking using statewide and/or local county courthouse records searches. These results from the Safety 1st Database search should not be relied upon as definitively accurate and cannot be to make a hiring decision without follow-up searches on possible matches.

✓ **How do we order additional searches based on either the first or second part of the Safety 1st Database?**

When ESR returns a report it is critical for the Church to review and decide whether any additional searches are needed. This can occur if:

1. The report shows other addresses in different states or counties that were not part of the original search.
2. The report shows other names or variations of the applicant's supplied name (aliases).

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3. The report shows a *possible* criminal hit in some other jurisdictions or in a state where the sexual offender database does not contain a date of birth.

In these situations, the Church representative in charge of the program needs to enter the ESRnet Online System and request the supplemental searches. ESR Customer Service will assist in training and proper use of the system.

✓ **Does the federal Fair Credit Reporting Act (FCRA) apply to volunteer searches?**

Yes. It is very clear that the federal Fair Credit Reporting Act (FCRA), as well as applicable state laws, applies to volunteers. Even though a volunteer is not an employee in the traditional sense, there is widespread agreement that the purpose of the FCRA is to protect consumers from being victimized by information that is incorrect or incomplete. The FCRA has special rules when it comes to the use of criminal databases. For that reason, the FCRA must be followed.

✓ **What are the special rules the FCRA requires we follow?**

Under FCRA rules, the following apply when accessing a database (*Safety 1st Database*):

FCRA §613 - Public record information for employment purposes [15 U.S.C. § 1681k](a) In general A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall

[1] at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

[2] maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

This section becomes of importance when a database search returns a potential hit. It can either be from the Safety 1st National Database portion or from a state court records search.

In either case, ESR must:

1. Send a copy of the report to the applicant with the potentially negative information, OR
2. Pull the actual data from the court to determine whether the case belongs to the applicant and whether the information is current and up-to-date.

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If ESR sends a report, an applicant with a negative record may contact ESR and/or the Church. If the applicant calls and demands a re-investigation, ESR must either pull the court files, OR reissue the report and delete the negative information. If ESR pulls the court files, that means the Church will need to pay for the cost of pulling any files.

The other option is to have an agreement with the Church that ESR will automatically order any court files if potentially negative information is found during the initial search.

Also, Churches should be aware that when ESR get other addresses that may be searched, ESR is not looking at each report to suggest to the church if they should or should not do additional searches. The solution is for the church to either review themselves or then order additional information that may be needed OR to have us automatically full files.

✓ What conclusions can be drawn from these special FCRA rules?

The Church needs to understand its legal obligations for using background checks.

1. The initial database search is just a preliminary search of millions of records. If someone is clear, then the inquiry stops there.
2. However, if there is any negative information, then the Church needs to choose between pre-authorizing ESR to conduct the necessary additional searches, or ESR must send the negative report to the applicant.
3. If an applicant disputes the information in the report, then ESR needs to charge the Church the cost of pulling court files in order to determine whether the information is applicable to the applicant. If ESR discovers that the initial information does not match the applicant, ESR must correct the report and issue copies to the Church and applicant.
4. If there are additional addresses in other states to search, or alias names to search (from the SSTrace portion of the Safety 1st search), the Church needs to decide whether it wants ESR to conduct the search, or whether it wants to review the report first and then decide what to order. An authorized Church representative can access the ESRnet Online Order System and place additional orders.
5. Finally, keep in mind that some states **DO NOT** provide a date of birth in their sexual offender searches (Safety 1st search, National Database portion). Churches need to decide whether they want ESR to examine those states as well, since this would require a manual search process at the actual state sexual offender registry. **Those states that DO NOT provide a date of birth are: AZ, CA, FL, GA, HI, IN, KS, LA, MA, MS, NV, PA, RI, TX, VA, WA, WI.**

✓ **Where can we find additional information on FCRA rules?**

Special Report: Complying with the Fair Credit Reporting Act in Four Easy Steps.

This special report by ESR reviews the steps that employers need to take to comply with the Fair Credit Reporting Act in conducting pre-employment background screening of job applicants through a Consumer Reporting Agency such as Employment Screening Resources. Reprinted from HR.com.

<http://www.esrcheck.com/articles/article9.php>

Special Report: Obtaining and Using Background Screening Information for Applicant Background Screening.

This article reviews some of the laws affecting pre-employment screening, such as the Fair Credit Reporting Act and the Americans with Disabilities Act, as well as special considerations concerning criminal records, credit reports, date of birth, and age and other matters.

<http://www.esrcheck.com/articles/article10.php>

Working with the Fair Credit Reporting Act

An article on the FCRA for Loss Prevention and Internal Security Departments covering the role of internal security in doing pre-employment screenings and investigation of current employees under the FCRA.

<http://www.esrcheck.com/articles/article11.php>

Fair Credit Reporting Act Major Links

<http://www.ftc.gov/os/statutes/fcrajump.shtm>

Only in California: The Strange Saga of AB 655 – Critical New Rules Affecting Safe Hiring in California

Article by ESR President and Attorney Les Rosen on the history and status of the legislation passed in California in 2002 drastically changing background screening. Prepared for the monthly magazine published by the *Northern California Human Resources Association*.

<http://www.esrcheck.com/articles/AB655-California.php>

California Office of Privacy Protection

http://www.oispp.ca.gov/consumer_privacy/default.asp

IMPORTANT NOTICE: The Safe Hire Screening Program is NOT the same as an FBI search or state fingerprint program. State (public) and private proprietary databases are compiled from a number of sources and may not be accurate or complete. The appearance of a person's name is not an indication that the person is a criminal any more than the absence of name indicates that the person is not a criminal. Any positive match **MUST** be verified by reviewing the actual court records. Any lack of a match does not mean the person is "cleared." Alias names are not included in any of the services mentioned and need to be searched independently.

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