





Protection Act or non-governmental entities authorized under State statutes enacted pursuant to Public Law 92-544. Instead, the States must designate State agencies to make fitness determinations and forward them to the applicant noncriminal justice agencies.

We urge the Department of Justice to include in its recommendations to the Congress a recommendation that the States and the FBI be authorized, as an option, to make criminal history records disseminated by the FBI or accessed by a State from the FBI available to nongovernmental agencies, such as private employers and agencies that deal with children, the elderly and disabled persons. We believe these agencies are able to make their own fitness determinations concerning their applicants as an alternative to State agencies that may not be familiar with all of the circumstances concerning applicants' duties and the environments in which they will be employed or may volunteer. This recommendation is not intended to abrogate governmental determinations relating to regulatory responsibilities associated with licensing or certification for various positions.

We recognize that some private noncriminal justice agencies may need training or instructions to help them interpret and understand criminal history records. We recommend that such agencies be required to enter into user agreements that contain such requirements as training, security and perhaps making the criminal history records reviewed during applicant processing available to the applicants themselves to help ensure that they are accurate and complete. Applicants should be given the opportunity to correct erroneous information and to appeal adverse decisions. We believe that this approach recognizes and is consistent with privacy protections and consumer rights. Such agreements should also require compliance audits and provide penalties for noncompliance.

Further, we believe that the criminal history record databases maintained by the FBI and the State repositories should continue to be the basis for national criminal history searches for noncriminal justice purposes. While some applicant agencies may wish to obtain criminal record searches from the commercial databases compiled by private vendors, we believe that those databases should not be a part of a national system authorized by the Congress, since they are not based on positive identification -- fingerprint-based identification. In his testimony to Congress in May 2000, former Assistant FBI Director David Loesch shared the results of an analysis conducted by the Bureau of the 6.9 million records submitted for employment and licensing purposes in Fiscal Year 1997. According to Loesch, 8.7 percent or just over 600,000 of the prints produced "hits." Loesch further noted that 11.7 percent of the "hits" or 70,200 civil fingerprint cards reflected different names than those listed in the applicants' criminal history records. These individuals would have been missed entirely by name-only background checks. This and other studies have repeatedly substantiated that background checks based on names rather than positive identification consistently miss a substantial number of criminal records while erroneously associating applicants with criminal record information that does not relate to them.

Criminal information databases maintained by private vendors are also not as complete as the official records maintained by State and Federal criminal record managers. Official records are populated with information from all segments of the criminal justice process, from arrest, trial, adjudication and correctional activity. Information in private databases is often collected from only one or two of the justice process components, such as courts or corrections. Further, access to records that are sealed or expunged from official databases is often provided in commercial databases, interfering with public policy efforts to give former offenders an opportunity to rebuild their lives.

Finally, we would advise the Department of Justice to utilize the findings of the National Task Force on the Criminal Record Backgrounding of America, co-sponsored by the Bureau of Justice Statistics and SEARCH. The task force is attempting to bring clarity to processes through which criminal histories are reviewed to determine suitability for certain jobs, licenses and other opportunities. Task force members represent a wide range of participants in the criminal record check process, from Federal and State justice agencies, public and private providers of background check services and subject matter experts to end-users from the public and private sectors and from volunteer organizations. Their collective wisdom would greatly inform the Department's discussions about what should be recommended to Congress.

We are confident that the concepts, processes and procedures described above would contribute significantly to a noncriminal justice background check system that provides the public with maximum safety benefits while ensuring the viability of all justice entities that contribute criminal record data. Once again, we appreciate the opportunity to provide these comments, and we urge you to contact us if we can provide additional information concerning this vitally important matter.

Sincerely,

RONALD P. HAWLEY  
Executive Director  
SEARCH