



# Criminal Background Checks

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**They're Not All the Same**

*Kristen Anderson*

Background screening is just one component in the child-protection toolbox. It should not be relied on as the sole basis to keep children safe, but it must not be discounted as a risk-management tool. If a child is victimized and it turns out the offender had a history that could have been flagged, no amount of explanation or rationalization will repair the damage done to the child. The credibility of the person or organization responsible for that child's well-being may never be regained.

- Background and summary of data from Child Safety Pilot Program
- Discussion of screening options for YSO's including pros and cons of name vs. fingerprint-based checks and nationwide vs. state-based checks
- Other screening considerations, including legal issues and the establishment of disqualification criteria

# Child Safety Pilot Program

- The Child Safety Pilot Program was established in response to the PROTECT Act of 2003.
- The purpose of the pilot program was to provide national fingerprint-based background checks to youth-serving nonprofit organizations at a reduced rate with a rapid turnaround time as well as supply fitness determinations based on a set criteria established by the nonprofit organizations.

# Child Safety Pilot Program

- The Child Safety Pilot Program was designed to assist youth serving organizations by providing fingerprint-based criminal history checks and fitness determinations for volunteer applicants based upon the results of those criminal history checks.
- The Child Safety Pilot Program was not designed to provide any other screening services; the participating organizations bore responsibility for reference checks, applicant interviews, observations of applicant behavior and all decisions regarding whether or not the applicant would be hired or retained.

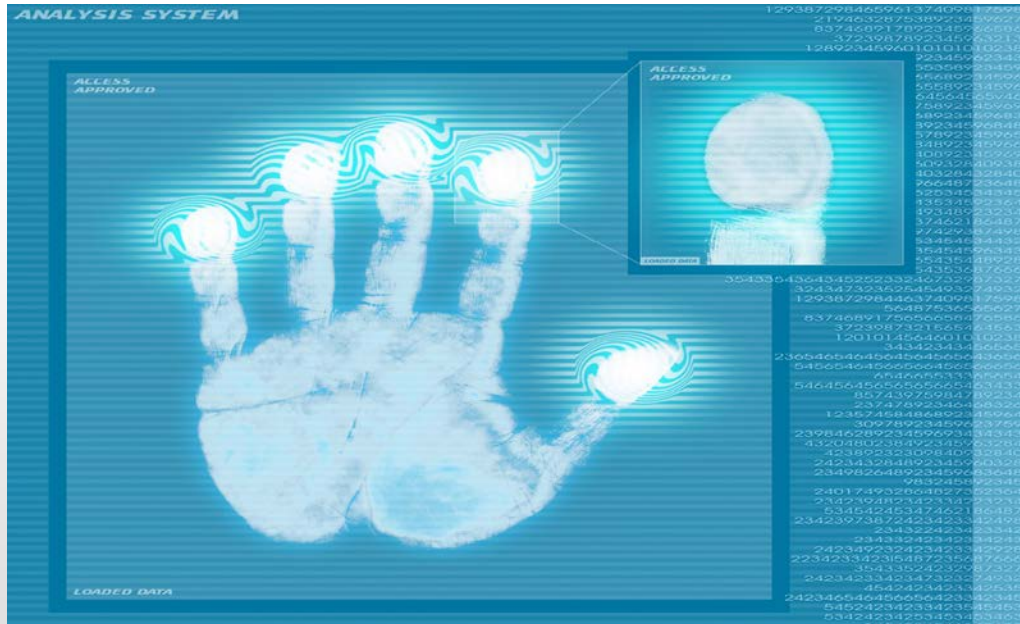
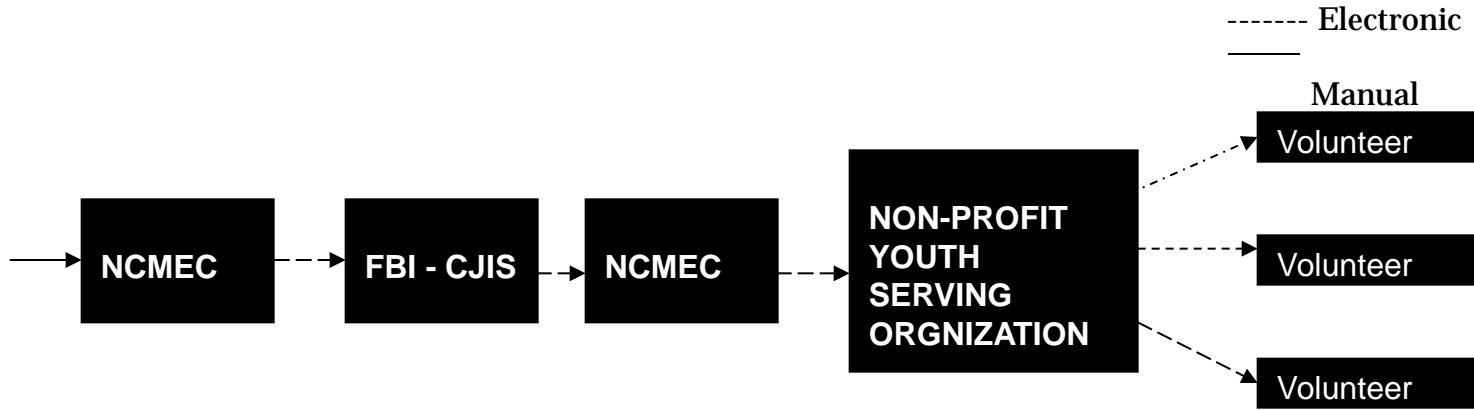
# Child Safety Pilot Program

- Originally established as an 18-month pilot. Due to the success of the program it was extended multiple times over the course of 8 years and expired March 31, 2011.
- When the program launched in 2003, the FBI was charging the nonprofit organization \$18 per fingerprint check and when the program concluded in 2011, \$13.25 per fingerprint check.
- Turnaround time from submission to fitness determination was no more than 2 days.
- NCMEC did not charge for their services.



# Background Check Process

Volunteers are Fingerprinted



# Determinations



- ✓ Conviction of any criterion offense
- ✓ Registered sex offender
- ✓ Any crime that results in a sentence over 1 year including imprisonment, probation, and parole

- ✓ **Arrested of a criterion offense but no disposition**
- ✓ **ANY charge related to a child – even if the disposition is favorable**
- ✓ **Exact nature of the charge is unknown or original offense is not listed**

- ✓ No criminal history
- ✓ Arrested or convicted of a non-criterion offense
- ✓ Charge was dismissed or found not guilty

Consistent with the provisions of the PROTECT Act, NCMEC and the nonprofit organizations determined that a conviction for any of the following five crimes will prompt a determination that an applicant “does not meet” the criteria to serve as a Volunteer:

# Criterion Offenses

- Any felony conviction and/or any crime punishable by confinement greater than 1 year
- Any lesser crime involving the use of force or threat of force against a person
- Any lesser crime in which sexual relations or sexual misconduct is an element, including “victimless” crimes of a sexual nature
- Any lesser crime involving controlled substances (not including paraphernalia or alcohol)
- Any lesser crime involving cruelty to animals

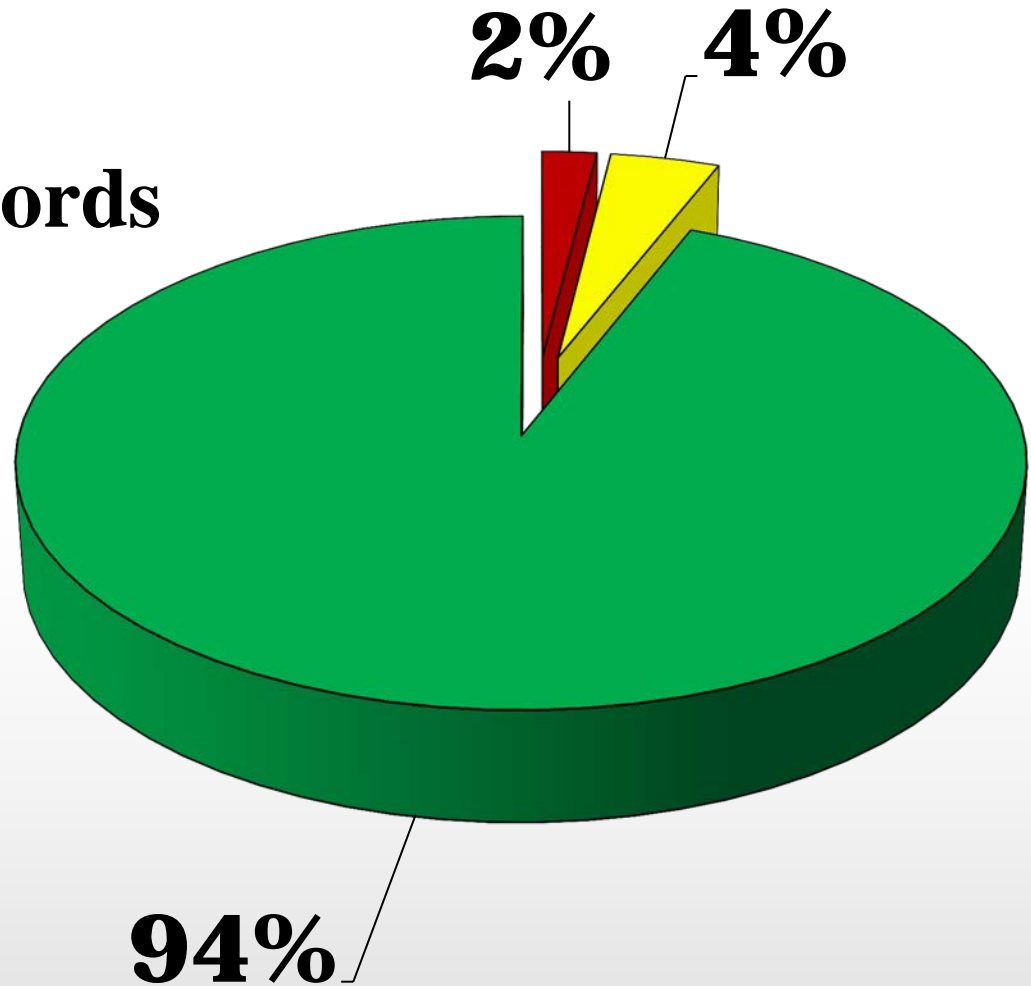
Any charge found to exist against the applicant with respect to an offense relating to or involving children, where the determination of the reviewing court was FAVORABLE to the applicant, resulted in a “may not meet” determination by NCMEC

Out of **100,000+** records processed:

**Red Light: (2%)**

**Yellow Light: (4%)**

**Green Light:  
(94%)**



# Examples from criminal histories

**The charges below were revealed in the criminal histories of individuals applying to work with children:**

- Cruelty to a child
- Child endangerment
  - Enticing a child
- Abuse and neglect of a child
- 1<sup>st</sup> degree child sexual abuse
- Endangering the welfare of a child
- Contributing to the delinquency of a minor

- Prostitution
- 1<sup>st</sup> degree rape
- Sexual assault
- Public lewdness
- Commercial sex – patronizing a prostitute
- Indecent exposure to minors and adults
- Criminal sexual penetration

- Vehicular homicide
- Homicide/Willful kill
- Attempted murder
- Hit and run – death or injury
- Robbery with a deadly weapon
- Attempted capital murder

- Assault causing bodily injury to a family member
- Assault and battery on a police officer
- Inflicting corporal injury to a spouse
- Aggravated cruelty to animals
- Assault and battery on a pregnant woman

Applicants with criminal records raised particular concerns:

**42%** of applicants had a record in a different state

**23%** of applicants applied with a different name

**6%** of applicants applied with a different date of birth

**\*53.4%** of applicants indicated they did not have a record, but one was uncovered

\*Percentage based on statistical information taken from 1,638 applicants from a youth serving organization which provided personal information during a study period and have records containing criterion offenses (Information based on CJIS and public record databases).



# Screening Options for Youth Serving Organizations

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## The Great Debate

Fingerprint-based checks can help properly identify someone who is using an alias and attempting to avoid detection.

Name-based checks offer greater accessibility and timeliness of results.

Because there are pros and cons to both types of checks, it is recommended you use a combination of these resources (if available) to minimize the challenges inherent to both types of searches.

The nationwide fingerprint check is a search of the FBI's master fingerprint file which can be accessed through state law-enforcement agencies. The check involves searching the official state repositories of criminal-history information.

These checks will generally include criminal records going back to the beginning of the applicant's history.

# These searches include

- Arrest records
- Convictions
- Warrants
- Juvenile records (if provided by the state)
- Dismissed charges or not-guilty verdicts
- Sex offender registry information
- Physical characteristics (i.e., height, weight, hair, tattoos and eye color)
- Aliases

# These searches may NOT include

- Some misdemeanors
- Some case dispositions

Any database is only as good as what is put into it. Fingerprints are not taken/submitted in every arrest, and case dispositions are not always entered by the court.

If a nationwide search is not an option, make the effort to check every state in which the applicant is known to have worked and resided.

# Private vendors

Private vendors allow you to run name-based searches of public court records, state correctional facilities and state criminal history record repositories. The companies buy the information from the states and create their own proprietary databases. You supply the applicant's name, date of birth and social security number, and they will provide your results in a report.

# Private vendors

Private vendors can provide results quickly, but not all states sell their criminal-history information to commercial databases, even if the report says it is a nationwide check. When choosing a private company, ask about the sources of the information and how often the data is updated. Commercial databases may also be missing important disposition information that is relevant to determine whether an individual was only arrested for versus convicted of a particular offense.

# Private vendors

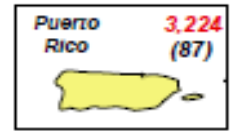
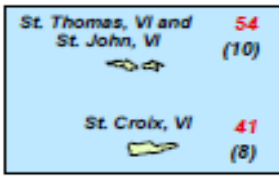
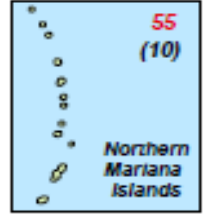
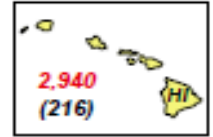
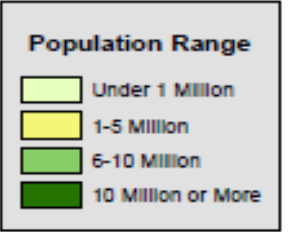
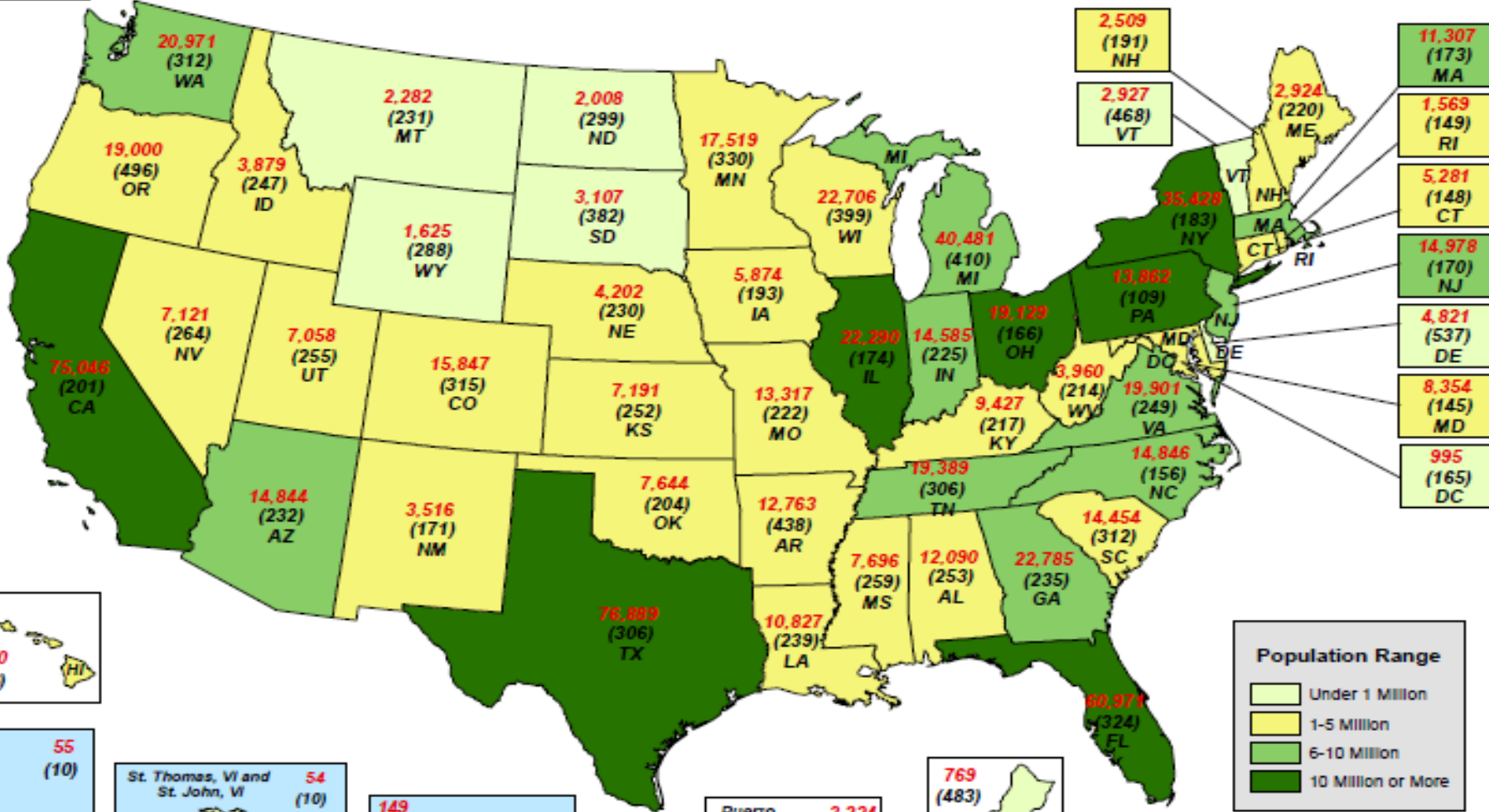
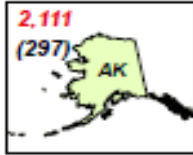
These checks will generally go back only seven years in accordance with the FCRA.

Be sure to consult your legal counsel as there are certain requirements organizations must meet in order to protect an individual's privacy rights and ensure fair use of the information, including compliance with the Fair Credit Reporting Act (FCRA) and state consumer reporting laws.

# Sex offender registry searches

## REGISTERED SEX OFFENDERS IN THE UNITED STATES AND ITS TERRITORIES PER 100,000 POPULATION

Total - 751,538 (Per 100,000 Population - 240)



The Department of Justice maintains an online national public sex offender registry (NSOPW) and every state/U.S. territory maintains their own online registry sites. These sites contain sex offender data and are easily searchable by anyone with access to the Internet.

*It is important to search both the national website and the websites in every state in which the applicant has worked, resided or attended school.*

The NSOPW and most state registries provide limited information, including:

- Personal information, such as name and any aliases, age, physical description and current photos
- Home address, work address and employment status
- Convictions, jurisdiction of convictions, dates of conviction, relevant state statute and age of victim(s) if known

The criminal history found in a sex offender record goes back as far as the conviction(s).

Additional details may be obtained from the court. Adult court records are public information unless sealed by court order.

**NOTE:** Not all registered sex offenders are on the NSOPW. The NSOPW is the state portal site that allows the public to conduct nationwide searches. State laws dictate which offenders are made public.

For example, it is possible someone who committed a lower-level sex offense will come up on a fingerprint check, but will *not* be listed on the public website due to the requirements of the state.

**NOTE:** 14 states include offenders on their sex offender registries who have committed non-sexual offenses. Most of these are offenders who have committed violent crimes and/or crimes against children.

If you have questions about the NSOPW, contact the U.S. Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking at:

<http://www.ojp.usdoj.gov/smart/>

# Other screening considerations

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# Establishing criteria

Screening criteria should be relevant to the needs of your organization and type of work the applicant may be performing. Consider:

- \* Automatic disqualifiers vs. conditional disqualifiers
- \* History of violence or any sexually exploitative behavior, including acts against adults
- \* Terminations from a paid or volunteer position for misconduct with a child
- \* Lying about criminal history

# Beyond criminal history

- State child abuse registries
  - In-person interviews
  - Reference checks
- Observation of the applicant

# Post-hire policies

- Re-screening policies
  - Safeguarding
    - Training
  - Reporting

# Post-hire policies

- How and to whom are incidents reported?
- Organizational leadership vs. law enforcement
  - Is reporting mandatory?
- By witnesses and those with knowledge?
  - Who investigates?

# Reality check

The most thorough background check will not eliminate the risk of harm to children and should not be viewed as the universal remedy to child protection. A comprehensive screening program includes training, reporting procedures, criminal history checks, in-person interviews and reference checks. Whatever combination of sources used, it is important to know what each search actually provides and that time is taken to understand the content and quality of the searches being run.



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