

The Background on Background Checks

An excerpt from...

Safer Online Dating[®]



A Comprehensive Guide from an Investigator's View
Online Safety for Daters and All Internet Users

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The Background on Background Checks

The Problems with Conducting Your Own Background Searches

You see the commercials on television all the time. You cannot open a browser without some company trying to protect you or your child by selling background search services. Find a lost love. Know who you are dating or who is watching your children. Be protected by typing in your credit card number for a subscription service that will automatically renew and charge your credit card again. Do not get me wrong. Properly vetting some of the people in your life is important. You need to protect your children, the seniors in your life and your assets. You need to protect yourself.

I hear the same statement all the time, “I checked him or her out on this or that service and he or she came back with nothing.” Then, after they have been victimized, I do professional research and find that the individual has a history of the behavior being complained about – not always, but often. Let us take a look at “backgrounding”, more commonly referred to in my world as “running” someone.

The scope of a “background check” differs depending on the application and the budget of the requestor. Online companies that offer these services use very general terms, which give the requestor a **false sense of security**. A prime example of this is the use of the terms, “nationwide” and “statewide” and come-ons such as “find out everything” about the person you are researching. There are no comprehensive nationwide or statewide search products. While there are deficiencies in all of the offered records data (liens, judgments, assets, etc.), this chapter focuses on criminal histories.



Of criminal records, felony convictions are most commonly reported. Most often not reported in these online searches are misdemeanor convictions which include most domestic violence and child victimization cases as well as petty theft, disorderly conduct, public drunkenness, curfew violations, loitering, prostitution-related offenses, driving under the influence, driving with a suspended license, resisting arrest, minor assault, under-

age possession of alcohol, and minor controlled substance and paraphernalia offenses – a partial list. The National Center for State Courts estimates that the total number of misdemeanor prosecutions in 2006 was about 10.5 million, which amounts to 3.5 percent of the American population.²⁵

USSearch.com, one of the more popular online search companies, is such an offender. As a professional researcher who has spent three decades in the public records business, I know how to perform the inquiry and then read and interpret these online reports. Occasionally, I use USSearch.com and other online resources as tools in my toolbox. Just like a tool in your garage, it has no value if you do not know how to use it. The problem, however, is that you are not fixing the lawn mower. You are researching an individual to protect yourself, your loved ones and your assets. This online search company (frankly, they are all the same) touts a service that will give you, at best, a **false sense of security**.

“US Search's People Search and Background Check reports are the quickest and easiest way to find the person you're looking for and to **confirm your trust**. We help millions of people find lost loved ones, old classmates...anyone! **Looking for more information about a potential date who you've met online or perhaps thinking of going into business with?** US Search's Background Check includes state criminal records and **nationwide** criminal records, as well as address history, bankruptcies, tax liens, marriage records, and home valuation records.” -- www.ussearch.com

When True.com or nanny sites suggest that they run a background check on their members, this statement needs to be taken with a large pillar of salt. What do they consider to be a background check? What database do they use for their criminal searches? Match.com acquiesced during recent litigation, now washing their roles through the National Sex Offender Registry. The experienced background professional looks askance at this proposal with the knowledge that every jurisdiction has its own threshold for reporting to the registry. Add the vast number of plea bargains – 90 percent – that would keep offenders out of jail and the real number of offenders is hard to ascertain. Using such black and white background strategies presents another **false sense of security**.

It is important to have some understanding of the criminal justice system. An estimated 31% of all persons convicted of a felony in state courts were not sentenced to a period of confinement. In 2006, the likelihood of receiving a state prison sentence was only 37% for persons convicted of one felony. Felonies are widely defined as crimes with the potential of being punished by more than 1 year in prison.²⁶ Of the 3.1 million household burglaries in 2009, 65.1% of the perpetrators were not strangers.²⁷ Crime reporting on the state and federal level is highly disconnected. The public often believes that the FBI has the resources to know everything about all criminals. This is hardly the case. It is common for federal and state agencies or intra-state agencies to be incapable of matching criminals. One case I consulted on was a breaking and entering

where the primary suspect had felony convictions in an adjacent county. Though the felon was convicted for the earlier crime, that county never took his fingerprints. Without the fingerprints, the local law enforcement agency handling the B&E refused to interview the suspect. The FBI has certified approximately 26 state programs for National Incident Based Reporting System participation. Twelve state programs are in the various stages of testing NIBRS. Eight other state agencies are in various stages of planning and development.



It is also important to have a framework of the scope of record keeping in the United States. Records are kept in over 50,000 locations. In addition to federal record locations, there are 3068 counties and 19,429 municipal governments in the United States. One can never know everything without going through great expense. The fact that records are lost in fires, floods and data destruction (intended and unintended) add to the difficulty of record procurement. Record retention policies differ in every jurisdiction. Freedom of Information Act (FOIA) requests are often necessary for the release of records. Overworked clerks say “no,” hoping the researcher will just go away.

Many home health aides, assisted living and nursing home employees are recent immigrants. There is no reliable way to background these people. If their agency has claimed that these agents have passed background checks, ask them to describe the background check and the methodology. If they want to put one of their agents in your home, you are entitled to ask them to show you the report with the name of the data provider. If they are unwilling to prove that this person has been backgrounded, then move on.

An analysis of the website for USSearch.com shows how incomplete the data is that their customers rely on to protect loved ones, homes and businesses. Incomplete data in the hands of amateur sleuths yields ineffective and often very problematic results. There is very little difference from one online background information company to the next as they all buy the same data from other companies or the jurisdictions. Here are some important highlights from the USSearch.com website:

- **Criminal records of 14 states are entirely unavailable.**
- Criminal records of 22 states and the District of Columbia are only from state Department of Corrections records. These are only records of felons sentenced to prison confinement. These records do not include every incarceration at every institution, nor arrests and misdemeanor convictions.
- Only 15 states report data in addition to Department of Corrections information. Of these states, there is no uniformity in reporting. Some states only report information as far back as 1998, others further. Some states report arrest data and others report convictions. Some states include traffic infractions in the criminal file. Some states expunge records and others do not. Only 12 of California's 58 counties report criminal data. Record updates are completed monthly, quarterly, semi-annually and, in the District of Columbia which stopped reporting in 2002, never.
- More states are limiting the amount of information available to protect offenders and victims from identity theft. These redactions often hide necessary information used to verify the parties.



To protect your loved ones and your assets or figuring out the details of who is victimizing you, simply giving a company your credit card and reading a report does not offer the protection and knowledge you need. If the report comes back with a positive result such as a criminal record, a professional still must verify the data. In this area, police departments do not have the resources or authority to help you. Knowledge is your friend. It is helpful to consult a professional and never rely solely on internet service background reports.

Match.com & the National Sex Offender Registry - A False Sense of Security

In response to a lawsuit filed by a woman who was sexually assaulted by a man she met on Match.com, the dating company announced that they would begin cross-checking their membership roles through the National Sex Offender Registry. This will create more problems than it solves as members will equate this action with a “background check” and make the assumption that the dating site is now somehow safer.

Match.com had balked at this idea for good reason. It is arguable that Match.com had fault in the assault that led to the lawsuit. It is also arguable that Match.com and its parent company, IAC, which operates almost three dozen dating sites all over the world, will see further lawsuits for false advertising. Prior to the lawsuit, Match.com customers agree, through the Terms of Service, to hold the company harmless and that the user understands the risks. That did not keep the member-complainant from having standing and the lawsuit from moving forward.

Match.com took the appropriate position when they balked at the idea of comparing their members against the sex offender registry. Company president Mandy Ginsberg stated that they hesitated to implement screenings because of their “historical unreliability.” Match.com believes that this policy is still fraught with problems.

Ginsberg warned, "It is critical that this effort does not provide a false sense of security to our members. With millions of members, and thousands of first dates a week, Match.com, like any other large community, cannot guarantee the actions of all its members. Match.com is a fantastic service, having changed the lives of millions of people through the relationships and marriages it has given rise to, but people have to exercise common sense and prudence with people they have just met, whether through an online dating service or any other means."

Statistics indicate that sexual assaults are more likely to be committed by those not on the sex offender registry. Due to plea bargaining and a host of other factors, some who possibly should be on the registry are not. A 2010 research report for The National Institute of Justice reported, “Defendants were more likely to have charges reduced from sex to nonsex crimes over time, with a 9% predicted probability of reduced charges from 1990-1994..., a 15% predicted probability of reduced charges from 1995-1999...and a 19% predicted probability after 1999.”²⁸

There are numerous reasons why the Match.com pre-screening plan will not work while giving trusting members a false sense of security. One of these problems is with the name verification process itself. Verifications require the member’s legal name. If the member’s name that he was arrested under was Robert Steven Jones, for example, he may be registered with the name on his credit card which could be R. Steven Jones. There is nothing to preclude an offender from registering under a name he or she assumed as a result of identity theft. Likewise, Maryanne could be Marianne. There are countless permutations.

Due to common names, any “hit” would have to be verified. Verifying criminal records becomes even more difficult as identity theft concerns are addressed in all areas of public records. Necessary identifiers for verification are often redacted from the records. The Attorney General’s Report on Criminal History Background Checks reports, “Federal and state courts have recently been adopting rules limiting the inclusion of personal identifying information about case parties, such as their date of birth and Social Security Number, in case dockets. The intent of these rules is to prevent the use of the information for identity theft. A possible unforeseen downstream consequence of this, however, is that background screeners attempting to confirm the currency of a record may not be able to confirm a match of an individual with the court records.”²⁹ If the member, Michael Smith, was located on the list, this does not mean that this is the actual person searched for. When this name was searched in the National Sex Offender Registry, over fifty results were returned. The Michael Smith with no record would then be suspect and have to prove to the online dating company that he is not a sex offender.

With verification severely curtailed, let’s look at further limitations of criminal records searches including the National Sex Offender Registry as illuminated in the following sections of the Attorney General’s report:

“Although the FBI maintains criminal history records submitted by all states and territories with criminal records on more than 48 million individuals, FBI criminal history records are not complete. Only 50 percent of arrest records in the Interstate Identification Index (III) have final dispositions. State repositories are a more complete and accurate source of aggregated criminal history information within a particular state. The records maintained at the state level, for example, have a higher percentage of arrest records with final dispositions, ranging between 70 and 80 percent, than those available in the III.

In addition, the FBI will not accept records from a state where the fingerprints do not meet its standards for inclusion in the III. States may also maintain sex offender records that do not qualify for entry into the National Sex Offender Registry file and are then only available through a check of the state repository.

Most private employers’ demand for criminal history background checks is currently met by private sector enterprises that provide professional background screening services and/or commercial databases that aggregate criminal records that are available to the public from government agencies. The commercial databases are not complete because not all states, and not all agencies within individual states, make their records available to such databases; nor does the FBI make its federal or state criminal records available to such databases. In addition, the information in the commercial databases may only be updated periodically. The commercial databases may also be missing important disposition information that is relevant to a conviction record’s use for employment suitability purposes, such as sealing and expungement orders or entry into a pre-trial or post-trial diversion program.”³⁰

Alan's Case Files - Don't Call This Rapist a Child Molester

I was asked to look into a homeless man with numerous drug convictions who was working at a children's summer camp. Charlie Marks was known around town as being active in his drug use. I was also told that he was convicted for molesting a child, though my client had no proof of that conviction. He mentioned only that he remembered a newspaper interview years earlier where Marks admitted the arrest. I advised him to never mention the matter in case it is not true. This could lead to a slander suit.

I found out that Marks was arrested in another state for having sex with a minor who was 16 years old. At the time, Marks was in his mid-30's. The family chose not to prosecute as Marks was leaving the state. This information was disappointing to the group who wanted Marks out of the children's summer camp. Marks did mention the arrest in the newspaper interview I found in archives. The reporter did not dig down on that issue. Without the conviction, however, there was not much anyone could do about the matter.

If you perform your own background checks, you will often come across snippets of information. It would have been very easy to assume a conviction since the arrest record was in an old file but the complete record was not available. Marks' behavior warranted concern. With no conviction, the matter was moot.

Diligent inquiry led me to an arrest in yet another state. Marks was convicted of rape in that matter but that offense never made it into the sex offender registry. The company under investigation refused to remove Marks from the summer camp. This was indicative of the type of people running the organization. More importantly, there was now enough verified information to make parents of the children aware of Marks' background so they could decide the proper course of action for their families.

Another problem with performing your own background checks is that you might not know where to look or how to verify the information. You are either going to assume incorrectly or you may not obtain the full information. The online search companies are neither complete nor accurate. They claim to have a nationwide criminal record search product but there is no such thing. Hiring a professional researcher can help you get the information you are looking for and help you to decipher it.



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- ²⁵ National Center for State Courts, Criminal Caseloads Report, 2007
- ²⁶ Felony Sentences in State Courts, 2006–Statistical Tables
U.S. Dept. of Justice, Bureau of Justice Statistics, Dec. 2009.
- ²⁷ Victimization During Household Burglary
U.S. Dept. of Justice, Bureau of Justice Statistics, Sep. 2010
- ²⁸ Letourneau , Elizabeth J., Ph.D.,
Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for
Reducing Sexual Violence against Women, Final Report for National Institute of Justice, 2010
- ²⁹ The Attorney General’s Report on Criminal History Background Checks
U.S. Department of Justice, Bureau of Justice Statistics, June 2006
- ³⁰ Ibid.