



## Accuracy in Criminal Records

by Dianna Muldrow

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### Key Points

- Criminal records can impede finding employment, finding housing, serving in the military, or owning a gun.
- There are many inaccuracies in current criminal records—both government and private—that create complications for innocent citizens.
- Reforms to update records continuously, and to restrict the release of arrest information without further action, can benefit both individuals and employers affected by criminal records.

### A Criminal Record Closes Doors

Over two-thirds of employers conduct criminal background checks on potential employees ([Society for Human Resource Management](#), 2). Landlords routinely check for a criminal background when reviewing applications for housing and are actually required to conduct criminal background checks in some municipalities (Utah Housing Coalition, 3; [Illinois Association of Realtors](#), 2-3). Many professions bar licensure to individuals with certain criminal convictions, such as electricians with felony convictions in Connecticut, barbers in Texas, or physical therapists in California ([Coppolo](#); [Dexheimer](#); [Physical Therapy Board of California](#)). In Georgia, by statute, any state-issued license is subject to potential revocation or denial based on any felony committed by the applicant (Georgia Code). Other rights and privileges are also impeded through criminal conviction, such as gun ownership and the ability to join the armed services (18 U.S.C. 922(g); [Department of Justice 2006](#)).

These restrictions are imposed for a variety of reasons, such as general public safety or maintaining the integrity of professional reputations. There are clear reasons for this, as no one would want, for example, a child molester teaching a classroom full of children. Still, these restrictions are serious and could limit an individual in obtaining gainful employment or reputable housing even—in some cases—when the record is inaccurate or out of date.

### How are Criminal Records Created and Disseminated?

Final convictions are not the only information provided in a criminal record. These histories also include a record of an individual's interactions with law enforcement and the court system, including arrests and sometimes outstanding warrants ([Equal Employment Opportunity Commission](#)). Some criminal background checks will include information about driving records and past drug test records as well ([Sahadi](#)).

Officially, a criminal record is not one comprehensive document. Instead, to obtain a complete picture of someone's criminal background from the state, an individual would have to obtain information from several sources. For example, police departments have information about arrests and warrants. Courts, on the other hand, have the records for convictions and sentencing. If an incident is a federal offense instead of a state offense, then the respective federal agencies would need to be canvassed as well. Any one person could have records in multiple districts or in completely different states. The resources required to check all potential locations for a criminal record is much higher than the average individual or even business is able to afford regularly. This is why many people and businesses contract with private companies that often obtain this information in bulk and provide a searching service to find the desired information.

There are many companies that provide this service. These companies obtain their information either directly from the state agencies or purchase the information from other companies. This is usually performed "in bulk," meaning that an entire database may be downloaded by the requester. Once this information has been aggregated from numerous sources, these companies can then offer individuals or businesses the opportunity to search through the service for a fee, or offer the information to companies trying to create their own database. This saves employers and individuals from using massive resources checking every original database themselves.

Once these databases have been created, many companies continue to update and supplement their information. However, they are receiving this information from many different sources, because there are so many state and federal locations that could hold new information, making it difficult to regularly update each entry. Currently, most criminal background database companies are members of the National Association of Professional Background Screeners. This association created an accreditation program that intended to certify compliance with accuracy standards; however, only 36 of their 300-plus members have become certified ([Smith](#); [Human Resource Employment Screening](#)).

### When the System Goes Wrong

Daniel Johnson, a retired police officer who spent 25 years serving the public, found himself having to fight to have his record cleared after it was reported that he had been convicted of an offense in years past ([Michels](#)). The correction was issued, but not until after he lost a job as a security guard. This mistake was due to confusion between names; Daniel Johnson is a common name, and he was confused with another individual who did in fact have a criminal record. Johnson is not alone, as there have been several such stories of mistaken identity surfacing in the news.

Another incident shows a different route to a similar end. Russ F. was a port worker in Philadelphia for 33 years with no complaints, until newly mandated criminal background checks turned up an arrest from almost 40 years before ([Neighly](#)). The case file was incomplete, requiring him to get a correction in the record showing that he was never charged or prosecuted before he could return to work. Helen Stokes had a similar story, but with a key difference ([Palazzolo](#)). Stokes had two arrests on her record—both in relation to domestic disputes with her now-estranged husband—but no convictions, and after several years she obtained a lawyer and had her record expunged. However, when she applied for space at two different nursing homes, she was denied entrance upon examination of her record. The company who was performing the check had not updated their records since the expungement.

Criminal records impose serious limitations on an individual, which is why accuracy is important in the dissemination of criminal records ([Laird](#)). As the examples cited demonstrate, there is room for error in the criminal records system today. A thorough study to determine how many records today are inaccurate has not been conducted, unfortunately. However, as the anecdotal stories indicate, there are areas in the field that show potential for records to be inaccurate or out of date. There are several ways in which this could happen.

First, and perhaps most well documented, is the possibility that the official record is out of date or incomplete. The U.S. attorney general released a report that states that only 50 percent of the records in the FBI's criminal records database have final dispositions included. This could mean simply that the case is undergoing appeal and the final information is not yet available, but there are other possibilities that could lead to unfor-

tunate results as those shown above. Out-of-date records may not have a final disposition when one is available, revealing the individual's innocence. These partially complete records may not show that an arrest occurred, but did not result in prosecution at all. These are possible results from available incomplete official records.

Another possible way in which incomplete or out-of-date records can be spread is through background companies that download records from various official databases. These records (as stated in the previous paragraph) can be incomplete or out of date even when immediately taken from the official database. Once acquired, even if regularly updated, they are not immediately updated, leaving the possibility that these records can be less regularly updated than the official record.

Further, while incomplete and out of date records are concerning, there is still a possibility that the record is completely inaccurate. As Daniel Johnson discovered, name-based criminal records databases run the risk of confusing individuals with the same or similar names. It is difficult to tell if errors in public or private criminal records are a widespread or systemic issue, because there has been little thorough research of the subject. What has been identified is the potential for error and anecdotal cases of dated or inaccurate records. For example, cases in which either someone with no criminal record is being attributed one, someone who came into tangential contact with the criminal justice system is being haunted by it later in life, or someone who was actually convicted of a crime and then petitioned the court for a change to the record is then followed by the remnants of it in other databases.

### Recommendations

Federal agencies should consider mimicking reforms that have occurred in several states, such as Indiana, which recently passed legislation allowing a petition to the court once a year had passed since an arrest without prosecution or conviction, in order to seal the record and prevent it from being disseminated to private companies or publicized.

Further, employers should be aware that when they look into a potential employee's background, things may not be as they seem. Errors in a background check can remove potentially valuable employees from their consideration. Using a database that is not solely name-based or one that has highly rated accuracy is a good practice for ensuring that all valuable applications are considered.

### Conclusion

Background screening provides a valuable service. State and federal agencies should provide the most accurate information as possible to screening companies. In turn, those companies should seek to provide accurate information to their consumers, and employers should be aware of the best, most accurate, information when they consider new additions to their companies. ★

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