



Criminal Background Screening for Nonprofits Serving Justice-Involved Individuals

LOSS CONTROL

Navigating Criminal Histories in Nonprofit Recruitment

Nonprofit organizations that serve justice-involved individuals often face a unique challenge: how to responsibly screen applicants with criminal histories—many of whom are graduates of their own rehabilitation programs—while protecting clients, staff and the organization’s reputation. This guide offers practical, legally informed guidance for nonprofit leaders navigating this complex issue.

Key Principles for Fair and Effective Background Screening

Mission Alignment

Recognize that your mission may include rehabilitation and reintegration. Screening policies should reflect this by not automatically disqualifying individuals with criminal records.

Individualized Assessment

Avoid blanket bans. Instead, assess each applicant individually, considering the following:

- Nature and severity of the offense
- Time elapsed since the offense
- Relevance to the role
- Evidence of rehabilitation

Ensuring Legal Compliance

To help ensure compliance, employers must follow all applicable federal, state and local laws related to background checks. Always consult legal counsel or a compliance expert to ensure your screening practices align with current laws in your jurisdiction. Review your screening policies and practices annually to stay current with evolving laws.

Federal Fair Credit Reporting Act (FCRA)

- FCRA requires disclosure and written consent before conducting a background check.
 - Employers must provide a copy of the background report and a summary of rights before taking any adverse action. This applies to all employers using third-party screening services.
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Federal Equal Employment Opportunity Commission (EEOC) Guidance

State and Local Ban-the-Box Laws

- Many states and cities have “ban-the-box” laws, which restrict when and how employers can inquire about criminal history.
- Employers should be aware of local laws that may limit the timing or use of criminal background information in hiring decisions.

State and Local Clean Slate and Fair Chance Laws

- Several states have implemented or expanded Clean Slate laws, which automatically seal or expunge certain criminal records after an established period of good behavior.
- This means some criminal records may no longer be accessible, even with comprehensive screening. This is especially important for organizations working with vulnerable populations.

Technology Use Laws

- Some states are regulating the use of AI in hiring, which may include automated background screening tools.
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California-Specific Compliance Requirements

AB 506 – Mandatory Background Checks for Youth-Serving Nonprofits

- **Who it applies to:** Any nonprofit that works with children.
- **Requirement:** Volunteers and employees who spend 16 hours/month or 32 hours/year with children must undergo a Live Scan fingerprint background check.
- **Purpose:** To help ensure individuals with serious offenses (especially involving children) are not placed in positions of trust.

California Fair Chance Act (*Expanded as of October 1, 2023*)

Employers must conduct a “fair chance” individualized assessment* before making adverse decisions based on criminal history.

New required evaluation factors include the following:

- Nature and context of the offense
- Time since the offense and/or incarceration
- Age at the time of the offense
- Evidence of rehabilitation or mitigating circumstances (e.g., trauma, addiction, mental health)
- Relevance of the offense to the specific job duties

All of Us or None v. Hamrick Decision

This court ruling limits access to certain identifiers (like date of birth and driver's license numbers) in court records, which may affect the accuracy of background checks.

Nonprofits using Live Scan or similar services must ensure their vendors are compliant with this ruling and still able to verify identities accurately. Suggested practices for California nonprofits using Live Scan include the following:

- **Ensuring Live Scan compliance:** Use DOJ-approved vendors and maintain documentation of all screenings.
- **Updating your background check policy:** Reflect the new Fair Chance Act evaluation criteria.
- **Training hiring managers:** On how to conduct individualized assessments and avoid blanket disqualifications.
- **Maintaining confidentiality:** Handle background check data in compliance with California privacy laws.



Selecting the Most Appropriate Screening Tool

Most comprehensive background screens begin with a Social Security Number (SSN) rather than a driver's license number (DLN). The SSN is used to trace an individual's address history and identify aliases, which is critical for uncovering criminal records across multiple jurisdictions.

If your screening process relies solely on a state-issued DLN, you may miss critical information, including the following:

- Criminal history under previous names or aliases
- Offenses committed in other states or counties
- Federal offenses not tied to a state database

There are many different types of screening products available, and it can sometimes be difficult to understand which one is right for your agency. The adage of "You Pay for What You Get" is true with background screens. In many cases, cheaper is not better.

Understanding Your Screening Options

There is no single, unified database for all criminal records. Criminal data is stored at the county, state and federal levels, and not all jurisdictions share information consistently. In addition, some law enforcement agencies may choose not to report to national databases.

As a result, the strongest background screen is one that is comprised of multiple layers, including the following:

- Multi-state criminal background check
- County criminal records search (in all counties where the individual has lived, worked or studied within the last 7 to 10 years)
- Social Security Number trace
- National sex offender registry check

Remember: If the source of data feeding the screen isn't comprehensive, the screen could be worthless.

Balancing Your Budget and Risk

Comprehensive background screenings are more expensive, but they provide a higher level of protection. Many nonprofits opt for cheaper screenings that meet the following requirements:

- Only check one state
- Do not include county-level searches
- Only go back 1-2 years
- Only verify one known identity

This can leave your organization vulnerable, especially when your programs and services include the following:

- Working with vulnerable populations
- Unsupervised one-on-one interactions with no direct line of sight into a room
- Overnight trips
- Residential programs (e.g., camps, shelters, housing, etc.)

To optimize costs and maintain appropriate levels of safety and compliance, implement basic background screening for low-risk roles and comprehensive screening for high-risk roles. Clearly define the criteria for each category by considering factors such as the level of supervision, the vulnerability of clients served, and the specific duties associated with the position.

Choosing the Right Screening Frequency

In general, below are the recommended intervals:

- Continuous employees and volunteers: Every two years
- Seasonal employees and volunteers: Annually

Screening frequency should be adjusted based on the following:

- Individual employee supervision needs or ongoing employment concerns
- Recent criminal history found in a prior screening
- Assigned risk level of the position

Your organization should conduct a risk assessment for each role and establish screening protocols accordingly. High-risk roles may require more frequent checks.



Retaining Background Screening Records

Reviver statutes are laws that reopen the window for legal claims that were previously time-barred by statutes of limitations. These laws are increasingly used to allow survivors to file lawsuits years or even decades after the alleged incident occurred. This can include survivors of the following:

- Child sexual abuse
- Institutional misconduct
- Negligent hiring or supervision

Many states, including California, New York and New Jersey, have enacted or extended reviver statutes, particularly in response to public pressure for accountability in schools, religious institutions and nonprofits.

For this reason, **background screening records should be kept indefinitely** by your organization.

Why Indefinite Retention is Critical

Federal laws like the Fair Credit Reporting Act (FCRA) and EEOC guidelines typically require background check records to be retained for 1–2 years. However, these minimums are insufficient in the context of reviver statutes, which may allow claims to be filed decades later.

If your organization is named in a lawsuit under a reviver statute, background check records may be your only defense. These records can accomplish the following:

- Prove due diligence in hiring or volunteer screening.
- Demonstrate compliance with internal policies and legal standards.
- Refute claims of negligent hiring or supervision.

Without these records, your organization may be unable to show that it took reasonable steps to protect vulnerable populations. By retaining these records indefinitely, your organization can achieve the following:

- Preserve critical evidence for future legal defense.
 - Reduce exposure to liability under revived claims.
 - Demonstrate a culture of accountability and transparency.
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Recommended Practices for Indefinite Retention

- Digitize and securely store all background check records.
- Include metadata such as date of screening, scope and results.
- Restrict access to authorized personnel only.
- Review retention policies annually in consultation with legal counsel.

Determining Acceptable vs. Unacceptable Offenses

This matrix provides a structured framework for evaluating the eligibility of applicants with criminal records. Final hiring decisions should take into account the full context of the individual's background, including the nature and severity of the offense, evidence of rehabilitation and the specific risks related to the role. Once a decision is made, the rationale should be thoroughly documented.

Evaluating the Eligibility of Applicants with Criminal Records			
Offense Type	Time Since Conviction	Acceptable for Employment?	Notes
Non-Violent Drug Possession	> 2 years	Yes	Especially if related to past addiction and followed by treatment
Theft (petty)	> 5 years	Yes, with supervision	Consider role sensitivity (e.g., not in finance or inventory roles)
DUI (no injury)	> 3 years	Yes, if not driving-related	May require proof of treatment or license reinstatement
Violent Felony (e.g., assault)	> 10 years	Possibly, case-by-case	Consider rehabilitation, role risk, and references
Sex Offense (registered)	Any	No	Generally disqualifying, especially for roles involving vulnerable people
Financial Fraud	> 7 years	Possibly, not in finance roles	Consider restitution, rehabilitation, and role relevance
Domestic Violence	> 7 years	Possibly, case-by-case	Consider counseling, references, and role sensitivity

Additional Offense Categories

Building on the primary offense matrix above, the following section offers a deeper look at specific types of offenses that nonprofits might see in background checks along with guidance on how to assess them in the context of employment or volunteer work.

Additional Offense Matrix and Guidance				
Offense Category	Specific Examples	Time Since Offense	Acceptability	Considerations
Substance-Related	Drug possession, public intoxication	> 2 years	Often acceptable	Especially if followed by treatment or recovery program participation
Property Crimes	Shoplifting, vandalism, trespassing	> 3–5 years	Often acceptable	Depends on role (e.g., not in inventory or facilities management)
Driving Offenses	DUI, reckless driving	> 3 years	Conditional	Acceptable if not in driving roles; may require proof of license reinstatement
Violent Crimes	Assault, battery, robbery	> 7–10 years	Case-by-case	Consider rehabilitation, therapy, and role sensitivity
Sexual Offenses	Sexual assault, indecent exposure	Any	Not acceptable	Especially disqualifying in roles involving vulnerable populations
Financial Crimes	Embezzlement, credit card fraud, identity theft	> 7 years	Conditional	Not acceptable in finance/admin roles; consider restitution and references
Domestic Violence	Spousal abuse, child endangerment	> 7 years	Case-by-case	Consider counseling, court outcomes, and role sensitivity
Weapons Offenses	Illegal possession, unlawful discharge	> 5–10 years	Case-by-case	Consider context, rehabilitation, and role risk
Gang-Related Activity	Participation in gang activity, intimidation	> 5–10 years	Often acceptable	Especially if applicant has completed a reentry or mentorship program
Public Order Offenses	Disorderly conduct, loitering	> 2 years	Often acceptable	Typically, not disqualifying unless part of a pattern

Developing a Background Screening Policy

Now that you have made the necessary considerations and decisions, it is time to develop a policy. A well-crafted background screening policy is essential for ensuring consistency, fairness and legal compliance. Nonprofits should develop a written policy that includes the following components:

Purpose and Scope

Define the goals of the policy (e.g., protecting clients, staff and organizational integrity). Specify which roles require background checks and the level of screening needed.

Screening Criteria

Outline acceptable and unacceptable offenses, including timeframes and role-specific considerations. Emphasize individualized assessments over blanket exclusions.

Screening Procedures

Describe the steps for obtaining consent, conducting checks and handling results. Include procedures for adverse action in compliance with the FCRA.

Frequency and Re-Screening

Set intervals for re-screening based on role risk (e.g., every 2 years for ongoing staff, annually for seasonal roles).

Confidentiality and Recordkeeping

Details on how background check data will be stored, who can access it, and how long it will be retained.

Legal Compliance

Reference applicable federal, state and local laws. Include a commitment to update the policy as laws evolve.

Training and Oversight

Require training for hiring personnel on fair chance practices and individualized assessments. Assign responsibility for policy enforcement and periodic review.

Managing the Policy

To help ensure your background screening policy remains effective and aligned with organizational practices, it must be actively managed and regularly reviewed.

- Ensure everyone in your organization consistently follows the policy.
- Monitor the policy for gaps. Perform regular audits of the procedures against your policy to identify any gaps between policy and practice that develop over time.
- Close gaps found during the audit. Address the gaps through retraining, coaching or disciplinary action as needed.
- Follow up to ensure the gap remains closed.

Put It Into Practice: Your Ready-to-Use Background Screening Checklist

This checklist is designed to serve as a practical, ready-to-use tool for nonprofit organizations. It summarizes the key action items covered in the full guide and helps ensure that your organization's background screening policy is thorough, legally compliant and aligned with best practices. Use this checklist as a reference when developing, implementing or reviewing your screening procedures.

Legal Compliance

- ☐ Follow the Fair Credit Reporting Act (FCRA) for disclosure, consent and adverse action procedures.
- ☐ Adhere to EEOC guidance and state/local "ban-the-box," Clean Slate and Fair Chance laws.
- ☐ In California, comply with AB 506 and the expanded Fair Chance Act.

Screening Process

- ☐ Prioritize SSN-based screens over DLN-only checks.
- ☐ Include multi-layered checks: SSN trace, county-level searches, national sex offender registry and multi-state databases.
- ☐ Avoid low-cost, limited-scope screens for high-risk roles.

Individualized Assessment

- ☐ Avoid blanket disqualifications.
- ☐ Incorporate individualized assessments that consider rehabilitation and role relevance.
- ☐ Use offense matrices to guide decisions, but always assess context.
- ☐ Document rationale for hiring decisions involving criminal history.

Documentation

- ☐ Digitize and securely store background check records indefinitely.
- ☐ Limit access to authorized personnel and include metadata for traceability.

Ongoing Review

- ☐ Screen continuous staff/volunteers every 2 years; seasonal staff annually.
- ☐ Increase frequency for high-risk roles or when new concerns arise.
- ☐ Educate staff on individualized assessments and legal compliance.
- ☐ Update internal policies to reflect current laws and best practices.
- ☐ Review screening policies and practices annually with legal or compliance experts to stay current with evolving laws.

Policy Development

- ☐ Define the goals of the background screening policy.
- ☐ Specify which roles require background checks and the level of screening needed.
- ☐ Outline acceptable and unacceptable offenses, including timeframes and role-specific considerations.
- ☐ Emphasize individualized assessments over blanket exclusions.
- ☐ Include procedures for obtaining consent, conducting checks, and handling results.
- ☐ Set intervals for re-screening based on role risk.
- ☐ Detail how background check data will be stored, who can access it, and how long it will be retained.
- ☐ Reference applicable federal, state and local laws.
- ☐ Commit to updating the policy as laws evolve.
- ☐ Require training for hiring personnel on fair chance practices and individualized assessments.
- ☐ Assign responsibility for policy enforcement and periodic review.

You're Walking Away Ready to Serve Safely and Stay True to Your Mission

By adopting a thoughtful, mission-aligned approach to background screening, nonprofits can help protect their communities while offering meaningful second chances to those who have worked hard to rebuild their lives. This balance can not only be ethical but also essential to the transformative work many nonprofits strive to achieve.