

# Background Screening

## Name-Based Searches vs. Fingerprinting

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By Todd R. Carpenter  
IntelliCorp President

If you follow the news and listen to politicians, it can be easy to assume that a single fingerprint database exists for organizations to submit searches and receive accurate and comprehensive results. In many instances, the Federal Bureau of Investigation (FBI) fingerprint database is referenced to as the “gold standard,” (particularly by various government agencies).

It’s important to remember the original intent of the database was to store investigative leads for law enforcement, not as a background screening tool. The FBI database contains fingerprints from arrest records along with their corresponding court dispositions. The fingerprint database system depends on a process in order to function as intended. First, local law enforcement agencies and departments must gather and provide arrest and disposition information to their respective state level fingerprint database. The state level fingerprint database then compiles all of that information submitted by local law enforcement departments and submits it to the FBI fingerprint database. Fingerprint database results can play an important role in a comprehensive background check; however, it’s important to understand the deficiencies in the system and why name-based searches should remain a vital part of any background check.

### **What to consider when using the FBI fingerprint database**

It’s widely known that inconsistencies plague the system. Gaps have been identified within the information that exists in FBI databases. According to the Department of Justice, the FBI fingerprint database is missing final disposition information for approximately 50% of its records. In fact, they recommend users may also want to check other record sources (such as local courthouses) to obtain the most up-to-date information.

For many years, it was mandatory to only report felony convictions to the FBI and various fingerprint state repositories. As such, misdemeanor convictions, information that may be important to your organization’s policies or hiring guidelines, may not be included in the FBI fingerprint database. FBI fingerprint database checks also lack consumer protection; there is no adherence to the Fair Credit Reporting Act (FCRA) requirements of consumer disclosure, consent and adverse action.

Also, the FBI does not have an obligation to ensure the information collected is accurate or is updated. In a dispute situation, applicants must provide the FBI with court documents or other proof of information in order to correct their record. It may take months to resolve a dispute, which can impact the hiring or volunteer recruiting process. Finally, employers need to know that fingerprint checks are still subject to all federal and state employment law.

### **Differences between name-based and fingerprint database searches**

Professional background screening companies (Consumer Reporting Agencies (CRAs)) conduct name-based criminal background checks. The reports CRAs compile can contain information gathered from multiple sources (i.e. state, county, local, municipal). Searches are generally performed using a subject’s personal identifiers such as name, address history, date-of-birth and Social Security number.

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This information is used to establish search criteria. A background screening provider then checks with various sources of data to compile a report. For criminal history, county court searches are often conducted to confirm any disposition information. No direct verification of the information source is done when relying on a fingerprint background check. Another benefit of using a name-based search includes the various laws, guidelines, and policies that govern it. Professional background screening companies and employers must abide by consumer protection laws such as the FCRA and any other state consumer protection laws. Additionally, CRAs are regulated by both the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB). The benefit of this regulation helps ensure that these searches are held to a high standard for quality.

Some of the requirements for background screening companies and employers that help boost the quality of the search include:

- Employers must disclose that a background check may be ordered and obtain consent from the applicant. A stand-alone form with a clear and conspicuous purpose is recommended.
- According to the FCRA “background screeners “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual”.
- Inform applicant of any information that may negatively impact a hiring decision and provide a copy of the report. An employer must provide a pre-adverse action disclosure that includes a copy of the individual’s consumer report and a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act”.
- The FCRA also requires that an employer conduct an individualized assessment prior to taking adverse action.
- Employers need to disclose to an applicant that an adverse action has taken place and provide the applicant time to dispute any inaccurate or incomplete information prior to the employer making a hiring decision.
- Correct any inaccurate information if dispute is successful.

**It should be noted that just doing fingerprint database background checks does not absolve you of following federal and state employment law.**

### Conclusion

The FBI fingerprint database was designed to track criminals using matching fingerprints as an identifier and then become an instrument for law enforcement to generate leads based on fingerprint evidence. The historical purpose of the FBI database is different than the record repositories that would be used in a named-based search. So even though the database is useful, there are systemic issues with accuracy and completeness. Therefore, if you are in an industry that is mandated by law to utilize the FBI fingerprint database, it is vital for you to understand that the information you receive from the database may not provide you with a complete picture of your applicant. Name-based searches are designed to return the relevant information employers require to help make quality hiring decisions. Take the steps to protect not only your business, but your employees and clients. Include a name-based background screen for all prospective employees.

This information is not meant to provide legal advice of any kind. Legal advice should be sought from your attorney or corporate counsel.

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