

BACKGROUND SCREENING



PROPOSED STANDARD FOR BACKGROUND SCREENING – HANDOUTS!

- Draft Standard Specifications
 - Appendix I – Charge Categories
 - Appendix II – Severity Matrix
 - Appendix III – Attorney Larry Henry Opinion Letter

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PROPOSED STANDARD, APPENDIX I, APPENDIX II



RECOMMENDED STANDARD FOR: **BACKGROUND SCREENING**

1. Background and Purpose

Right from the outset, PIRC meetings have been dominated by discussions about the effort and expense of maintaining compliance with multiple carriers and/or TPAs' different background screening requirements. The primary objective of each carrier or TPA is to protect the insured, and that isn't changing. Our goal is to provide a streamlined standard that will minimize effort and cost for the contractor while still giving the insured the highest level of protection. Many service providers suggest that the duplication of effort and cost involved could be streamlined by a standardized format. Introducing a standard would help solve problems caused by differing requirements among insurers and third-party servicers, as well as inconsistencies in how vendors implement these requirements.

Challenges with the current system include:

- confusion, subjective interpretation and risk caused by multiple approaches
- disparate client requirements, and varying interpretations
- no consistent background screen review process



Overview of Standard Changes

- 1) Why one standard is good, versus today no standard
- 2) Age and frequency of charges reviewed case-by-case, versus blanket requirements
- 3) Depth of years for reporting to standard 7 years, versus varied
- 4) Rescreening 3 years, same as most requirements today

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Steps and Processes to implement the standard



<ul style="list-style-type: none"> > Gather current requirements from as many insurers as possible 	<ul style="list-style-type: none"> > Analyze and compare these requirements > Propose a combined summary 	<ul style="list-style-type: none"> > Combined summary > Meet requirements of most insurers > Address outliers > Clarify any matters not called out 	<ul style="list-style-type: none"> Agree how to manage; > Severity > Age, > Quantity, of each charge and/or combination of charges 	<ul style="list-style-type: none"> > Grading depending on rules > Not a simple Pass or Fail 	<ul style="list-style-type: none"> > Have the BGC Co. do this > Based on the standard provided > Managed by a Co. or body > Leads to consistency and lower costs 	<ul style="list-style-type: none"> > Allocate a unique ID to all involved > Enable cross industry movement > While maintaining confidentiality
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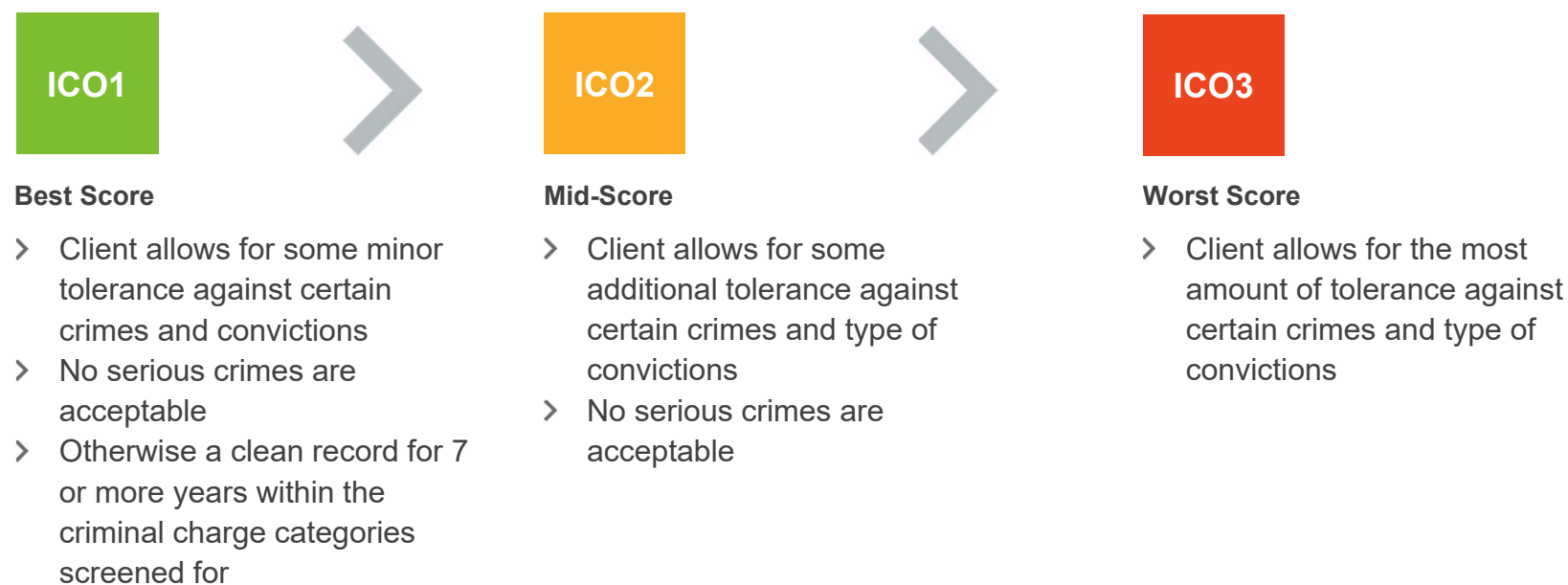


RECOMMENDED STANDARD FOR: BACKGROUND SCREENING

Appendix 1: The Criminal Charge Categories and Recommended Grading

Immigration	Transporting Aliens Within The US, Harboring Illegal Alien, Re-Entry of Deported Person, Entering Marriage to Evade Immigration	Do not Consider - IC01
Terrorism/Terroristic Threats	Terroristic Threats / Acts, Threaten Violence with Intent to Terrorize, Bomb Threat, Hostage Taking	Always Report - IC03
Treason	Treason, Attempt Sabotage / Sedition	LEVEL C - Grade based on Age and Quantity
Sex Crimes		
Sex - Child Related	Child Molestation, Indecency with A Child, Lewd Act on A Child, Statutory Rape, Sexual Assault on A Minor	Always Report - IC03
Sex - Miscellaneous	Public Indecency, Lewd Conduct, Obscene Material, Pornography, Peeping, Voyeurism, Indecent Exposure	Always Report - IC03
Sex - Offender	Failure to Register, Violate Conditions / Requirements	Always Report - IC03
Sex - Prostitution	Patronizing A Prostitute; Offering Prostitution; Solicitation for Sex Act; Pandering	Always Report - IC03
Sex - Unlawful Contact	Offensive Touching, Incest, Carnal Knowledge, Unlawful Voluntary Sexual Relations, Touch Intimate Part of Another Person	Always Report - IC03
Sex - Violence	Rape, Sexual Assault, Gross Sexual Imposition, Sexual Battery	Always Report - IC03
Substance Abuse		
Drugs - Distribution	Distribute / Manufacture / Possess with Intent to Sell	Always Report - IC03
Drugs - Possession	Possession of Any Drug Except Marijuana, possession-Controlled Substance Without Prescription, Buy Controlled Substance, Narcotic Drug Violation	LEVEL A - Grade based on Age and Quantity
DUI - Alcohol & Unspecified	DUI Or Equivalent If Alcohol Is Stated or If No Contributing Intoxicant Is Listed	LEVEL A - Grade based on Age and Quantity
DUI - Drug Related	DUI Or Equivalent If 'Drug Related' Is Specified (Or Any Specific Drug)	LEVEL A - Grade based on Age and Quantity
Intoxication - Alcohol & Unspecified	Publix Intoxication, Under the Influence, Public Drunk, Drunk & Disorderly, Intoxicated & Disruptive	LEVEL A - Grade based on Age and Quantity

Levels Of Compliance



Note 1: In Appendix I, a criminal charge categorized as “Grade based on age or quantity” with a felony in the past 7 years can only be scored ICO3.

Note 2: All of the above are limited as far as records and the law permits in each case

And now **APPENDIX III - HANDOUTS**



Points from the Attorney Opinion From Larry D. Henry...

...an attorney with 38 years of experience with the Fair Credit Reporting Act (“FCRA”), as well as state and local consumer screening laws. I also have prior background in employment law and criminal law. Within the screening community I am well known. I have provided a wide variety of services over the years: general compliance, contractual relationship with screening partners, designing of products to provide services to end users, handling consumer disputes and defending FCRA claims across the country.

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Points from the Attorney Opinion

Executive Summary

The background screening landscape is changing quickly which requires an assessment of existing practices. The emergence of a new wave of litigation based upon ultra-technical interpretations of the Fair Credit Reporting Act (“FCRA”) mandates a review of current processes. Finally, with most FCRA claims being brought as class action, the financial risk of FCRA claims has become magnified.

The following proposes modifications to existing processes that address obvious risks and creates a uniform system that will make the screening process more streamlined, thus encouraging more contractors to become certified.

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Points from the Attorney Opinion

Expanding Legal Risks

In my 38 years of doing this work, the first 30 years was rather uniform; however, the last 8 years has been a revolution in regard to issues and traps in FCRA compliance. The typical claim today is a class action based upon a perceived technical violation of the FCRA. Today there are several law firms that operate nationally that specialize in FCRA law suits. **Bottom line: times are changing rapidly and those involved in screening and using screening products must part with “how we have always done this.” Complacency will only lend to the eventuality of a class action lawsuit, and as we all know, insurance companies are a natural large target of such lawsuits. These lawsuits are generally in the eight figure range.**

One successful case came down to the misuse of a semicolon rather than the use of a comma in a sentence. Another successful claim dealt with the verb tense in a document.

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Points from the Attorney Opinion

Are These Employment Reports?

In addition to changes in the FCRA environment, the EEOC is putting pressure on the use of criminal background checks and states, counties and cities are passing ban-the-box laws and other restrictions on the use of information. All this represents a movement to limit the use of criminal records and focus upon offender rights. **A question that arises in this examination is whether these insurance industry reports on contractor employee clearances is for an FCRA employment purpose or not. Clearly, the insurance company is not hiring these individuals. There is no decision to be made in this process to hire someone for the insurance company directly. However, at the same time, the process does relate to the employment of these people with their contractor employers. The employee must be cleared in order to be able to work on insurance company projects. This affects their employability. This sounds like employment related reporting and use. At best, this is a grey area, and even if it is not strictly “employment”, it is “employment like”**

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Points from the Attorney Opinion

Are These Employment Reports?



Thus, to protect the insurance companies, we will treat the clearing process as employment, and working with “employment purpose” safeguards will lessen exposure, but still provides the results that meet the industry’s needs.

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Points from the Attorney Opinion

Factors to be Considered When Evaluating a Criminal Record

The *Green* court held the following: first a blanket no convictions, no felony conviction, etc. work rule was illegal; second, it established three factors that were relevant for employer to consider when determining if a prior conviction should disqualify an applicant: how serious was the offense, how job related is it, and how long ago did it happen. The last factor makes it difficult for employers to use very old convictions to disqualify an individual, especially if the person has held past jobs without the issue surfacing. The exception would be a very serious crime that is directly related to a job, e.g., child molestation for someone seeking work to care for children.

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Points from the Attorney Opinion

Depth of Background Screen

FCRA and State Laws

In summary, a reasonable search from a legal and practical view point is a traditional 7 year search. With the exception of 7 year states, such search will provide all the relevant and legally usable information that is needed to assess a risk related to employment.

Requesting more information is difficult, if not impossible, depending upon location, to obtain, and if possible, such a search becomes very expensive. In fact, if an agency is saying they performed a “back to the age of 18” search on all searches that likely is not correct.

While the consumer reporting agency may be legally able to report convictions back to the beginning of time under the FCRA, the employer may be restricted by state law in many ways so they cannot consider all information that is available to be reported under the FCRA.

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Points from the Attorney Opinion

Frequency of Follow Up Reports

Obviously, individual review must be performed over time to make the screening relevant. I am informed that the current process calls for a follow up report every three (3) years. This proposal does not seek to change this part of the current program. However, I would advise the industry to examine this in light of the risk posed by those screened. There is no bright line to follow for follow up on existing reports. **Shortening this period to two (2) years, would in my opinion, create a tighter system and provide a more defensible position that the background screening was reasonable. While contractors' overall expense will go up with more frequent reports, the creation of a uniform system is a good balance for such expenses.**

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Points from the Attorney Opinion

Conclusion

The proposal provides a consistent process to maximize consistent evaluation of individuals who perform work for the insurance industry to restore damage to insureds property by providing uniform evaluations for similar records. The process protects the insured from physical and monetary harm. **Finally, the scope of the search is reasonable and even on the high side of reasonable, which provides good protection for the insureds, contractors and the insurance companies.** Adoption of this process is all on the positive side and will eliminate some current issues associated with the current process.

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Real World Example

- DUI Alcohol, 3 years ago
 - Felony
 - Automatic ICO3
 - Misdemeanor
 - Variable criteria for repeat offenses – can be a ICO1, 2 or 3 depending

Adjudication done by the Background Screening company, not the Contractor themselves

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Steps to take...

- Personally, join the committee
- Review the documents provided
- Share with Insurers and TPAs for feedback, then implementation
- Ask questions! Give feedback!
- We are awaiting insight...

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