

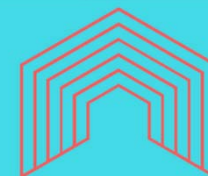
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# BACKGROUND SCREENING COMMITTEE

# BACKGROUND SCREENING

## PROPOSED RECOMMENDED STANDARD FOR BACKGROUND SCREENING - HANDOUTS!

- Standard Specifications
  - Appendix I - Charge Categories
  - Appendix II - Severity Matrix
  - *Additional Information* - 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



- › Gather current requirements from as many insurers as possible

- › Analyze and compare these requirements
- › Propose a combined summary

- › Combined summary
- › Meet requirements of most insurers
- › Address outliers
- › Clarify any matters not called out

- › Agree how to manage;
- › Severity
- › Age,
- › Quantity, of each charge and/or combination of charges

- › Grading depending on rules
- › Not a simple Pass or Fail

- › Have the BGC Co. do this
- › Based on the standard provided
- › Managed by a Co. or body
- › Leads to consistency and lower costs

- › Allocate a unique ID to all involved
- › Enable cross industry movement
- › While maintaining confidentiality

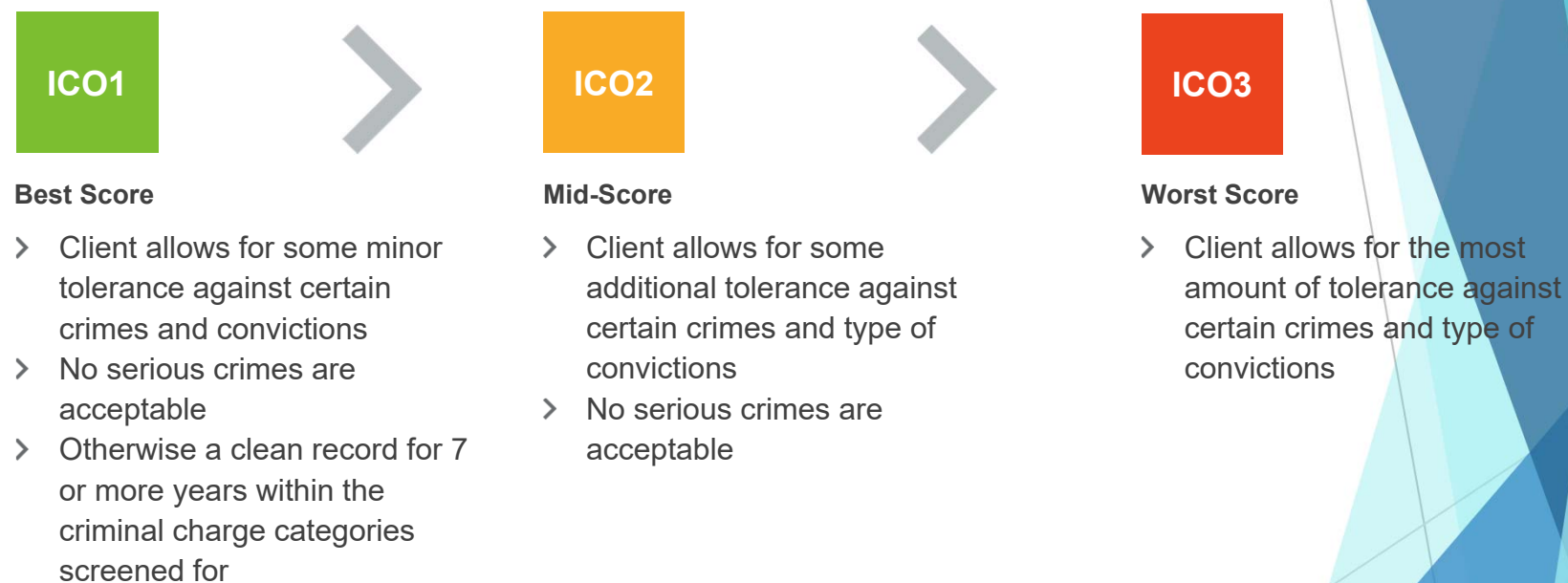


## RECOMMENDED STANDARD FOR: BACKGROUND SCREENING

### Appendix 1: The Criminal Charge Categories and Recommended Grading

<b>Immigration</b>	Transporting Aliens Within The US, Harboring Illegal Alien, Re-Entry of Deported Person, Entering Marriage to Evade Immigration	Do not Consider - IC01
<b>Terrorism/Terroristic Threats</b>	Terroristic Threats / Acts, Threaten Violence with Intent to Terrorize, Bomb Threat, Hostage Taking	Always Report - IC03
<b>Treason</b>	Treason, Attempt Sabotage / Sedition	LEVEL C - Grade based on Age and Quantity
<b>Sex Crimes</b>		
<b>Sex - Child Related</b>	Child Molestation, Indecency with A Child, Lewd Act on A Child, Statutory Rape, Sexual Assault on A Minor	Always Report - IC03
<b>Sex - Miscellaneous</b>	Public Indecency, Lewd Conduct, Obscene Material, Pornography, Peeping, Voyeurism, Indecent Exposure	Always Report - IC03
<b>Sex - Offender</b>	Failure to Register, Violate Conditions / Requirements	Always Report - IC03
<b>Sex - Prostitution</b>	Patronizing A Prostitute; Offering Prostitution; Solicitation for Sex Act; Pandering	Always Report - IC03
<b>Sex - Unlawful Contact</b>	Offensive Touching, Incest, Carnal Knowledge, Unlawful Voluntary Sexual Relations, Touch Intimate Part of Another Person	Always Report - IC03
<b>Sex - Violence</b>	Rape, Sexual Assault, Gross Sexual Imposition, Sexual Battery	Always Report - IC03
<b>Substance Abuse</b>		
<b>Drugs - Distribution</b>	Distribute / Manufacture / Possess with Intent to Sell	Always Report - IC03
<b>Drugs - Possession</b>	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
<b>DUI - Alcohol &amp; Unspecified</b>	DUI Or Equivalent If Alcohol Is Stated or If No Contributing Intoxicant Is Listed	LEVEL A - Grade based on Age and Quantity
<b>DUI - Drug Related</b>	DUI Or Equivalent If 'Drug Related' Is Specified (Or Any Specific Drug)	LEVEL A - Grade based on Age and Quantity
<b>Intoxication - Alcohol &amp; Unspecified</b>	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



# 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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## 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

Scoring done by the Background Screening company, not the Contractor themselves - *This is for information purposes, the Hiring decision is made by the Contractor*

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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

## 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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# Approve the Recommended Standard

## The committee seeks approval of the Recommended Standard

- Still to come:
  - Implementation strategies
  - Scoring Sheet "Template" (Explanation and Disclaimer for Hiring)
  - Industry Feedback on application

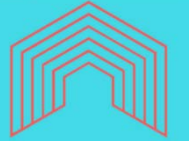
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## Steps YOU can take...

- Personally, join the committee
- Review the documents provided
- Share with Insurers and TPAs for feedback
- Ask questions! Give feedback!

We are awaiting insight...

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