

Providing Private Database-Only Criminal Records

I'm telling you, every time I run across a CRA that is providing private database-only searches without verification, I get a sickly premonition akin to watching old footage of Patsy Cline singing "I Fall to Pieces."

This practice of database-only criminal record reporting made news again recently in Chicago. A Chicago Tribune report revealed that a new ride sharing company, Uber, "did not check some of the criminal records of its drivers, allowing thousands of drivers to ferry passengers for months, despite not knowing whether or not they had felony convictions."

The Tribune later determined that "the driver had a 2010 Cook County felony conviction for residential burglary, which should have barred him from partnering with the company". Uber acknowledged their multistate background checks have missed an "unknown" number of county-level criminal convictions, including the Chicago ride-share driver's felony.

Missing critical information is one thing that can go wrong for a CRA or employer when employing a database-only search. The other thing that can go wrong, the other side of the coin, is not missing offenses, but reporting information that should not be reported.

Employers are increasingly using criminal records in the pre-employment screening process. Job applicants are increasingly learning that this is done, and that a criminal record may put them at a disadvantage for some jobs relative to someone without a criminal record. So job applicants are taking more steps to seal or expunge criminal record offenses than previously. In addition, a significant number of states have programs that prevent an offense from appearing on the criminal record if the offender satisfactorily completes a post-offense program of law abidance.

So it happens way too often in a database-only search that an offense is reported that should not be reported. And a job applicant who has spent money to ensure a criminal offense does not show on his record, or who has diligently completed a state program to ensure their offense is not permanently recorded is, in my experience, one righteously indignant, motivated person.

And while job applicants have been learning, so have attorneys. There are many more attorneys that are educated and dialed in to the FCRA in general and this practice in particular, that are happy to represent indignant, motivated job applicants.

To be clear, providing a database-only criminal record is not illegal if contemporaneous notice is provided to the applicant at the time of the reporting.

However, that doesn't make it a good idea even if everyone agrees on the definition of contemporaneous, and to that end, there is a group of professional CRAs and industry

associates, dedicated to promoting a better practice. ConcernedCRAs (www.ConcernedCRAs.com) now has over 200 members and is dedicated to protecting the consumer—both as regards private database-only criminal records and, the offshoring of consumer information.

You may self-certify that you hold yourself to a higher standard and become a member if you are concerned about this issue for our industry. (Disclosure: I am a member of ConcernedCRAs, but have no other affiliation with them.)

I had to grimace while reading the Chicago Tribune article. There in the advertising space, next to an article exposing defects in database-only record checks, was an ad for a database-only search that said:

“CAUTION: This background report is very graphic. We do not censor our reports. We trust you to use this information responsibly. Please do not abuse this tool, or we could be forced to take it offline. The content of the report might shock you, so please prepare yourself for the unexpected.”

If you are a professional background screener and that ad doesn't bother you, well, that bothers me. As one drop of oil can contaminate approximately 75,000 gallons of water, one company can contaminate a lot of companies doing a lot of good.

If you are a CRA providing database-only searches, I hope you fully informing your clients what this means, but further, are transitioning to verifying any information found in a database search.

Derek Hinton began his career with a CRA in 1984 and is President of CRAzoom, a company providing a complete NAPBA accreditation package and CrimApollo, a criminal record assessment and EEOC compliance service wholesaled to CRAs for their employer clients.