

# The Background Investigator

## Your Information Resource

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#### What Is Illinois 1410/710 Probation?

The Illinois Cannabis Control Act and the Controlled Substances Act were enacted in 1971.

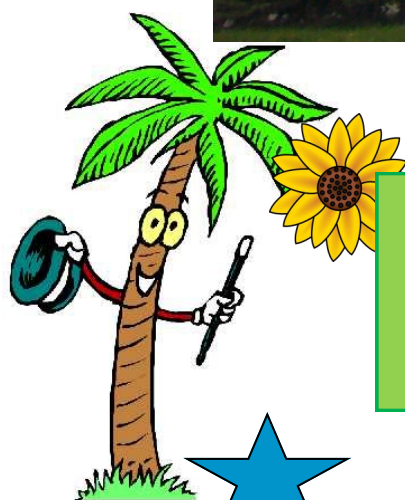
They specify two special types of probation sentences for offenders convicted of possessing either marijuana or other controlled substances.

For those convicted of Controlled Substances Act violations (e.g., possession of less than fifteen grams of cocaine, heroin or morphine), the sentencing option is known as “1410 probation” and for those convicted of marijuana possession or delivery, it is known as “710 probation.”

Only offenders with no prior felony convictions, probations or supervisions, including —  
continued on Page 7



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For a fee, the FBI can provide individuals with an Identity History Summary—often referred to as a criminal history record or a “rap sheet”—listing certain information taken from fingerprint submissions kept by the FBI and related to arrests and, in some instances, federal employment, naturalization, or military service.

If the fingerprint submissions are related to an arrest, the Identity History Summary includes the name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known. All arrest information included in an Identity History Summary is obtained from fingerprint submissions, disposition reports, and other information submitted by authorized criminal justice agencies.

The U.S. Department of Justice Order 556-73, also known as Departmental Order, establishes rules and

regulations for you to obtain a copy of your Identity History Summary for review or proof that one does not exist.

Only you may request a copy of your own Identity History Summary (or proof that one does not exist).

Current processing time is 14-16 weeks. Allow additional time for mail delivery.

# U.S. Department of Justice Order 556-73

Title 28 CFR Part 16 –  
Production or Disclosure of  
material or information

## Subpart-C Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

By order dated September 24, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records

upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and convictions records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose identification record is requested and a processing fee.

Since the FBI Criminal Justice Information Services (CJIS) Division is not the source of the data appearing on the Identification Records, and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state and federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an Identification Record make application to the original contributing agency in order to correct a deficiency.

The Relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of Identification Records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of Identification Records to the subjects thereof.

By Virtue of the order of the Attorney General, dated September 24, 1973, and pursuant to the authority delegated to the Director, FBI, by 28 CFR 0.85(b), 28 CFR Part 16 is amended as follows:

### 16.30 Purpose and Scope

This subpart contains the regulations of the Federal Bureau of Investigation (FBI) concerning procedures to be followed when the subject of an Identification Record requests production of that record to review it or to obtain a change, correction, or updating of that record.

### 16.31 Definition of Identification Record

An FBI Identification Record, often referred to as a “rap sheet,” is listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprints submitted in connection with federal employment, naturalization, or military service. The Identification Record includes the name of agency or institution that submitted the fingerprints to the FBI. If the fingerprints concern a criminal offense, the Identification Record includes the date of arrest or the date the individual was received by the agency submitting the fingerprints, the arrest charge, and the disposition of the arrest if known to the FBI.

## Article continues

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COVER PHOTOGRAPH: Moscow, Russia Courthouse

COVER PHOTOGRAPHER:  
Fred Frankel

**PURPOSE:** “Dedicated to pre-employment screenings everywhere”

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Criminal Record Checks On Prospective Tenants 'Discriminatory,' Says Halifax Lawyer

Some would-be tenants are being turned away by landlords because of their criminal history, according to a Halifax lawyer who says such actions amount to discrimination.

Tammy Wohler said she's dealt with a couple of these cases, where landlords required a criminal record check before they would hand over keys over to a tenant.

"It's essentially an invisible punishment," said Wohler, who works for Nova Scotia Legal Aid. The organization provides legal services to people with low incomes.

People with a criminal record have paid their debt to society and deserve to move on with their lives, she said.

It's in everyone's best interest that people find stable housing because without it, there's a higher chance that they will reoffend as they struggle to get by, she added.

In the cases Wohler's seen, those rejected by landlords were not career criminals, had never been incarcerated and had "convictions that were relatively light on the scale.

"The existence of a criminal record tells you nothing about what an individual is as a tenant. Whether or not they're going to be paying their rent on time or whether or not they'll be a tenant of good behaviour. Past misdeeds don't necessarily tell you what that person's future is going to be," she said.

In one case, Wohler's client wanted to move into a mobile home park, but was turned down because of his criminal record. The case

went before the residential tenancies board. The board sided with Wohler's client and he was allowed to move in.

Wohler said there is nothing in the province's Residential Tenancies Act that addresses criminal record checks as a reason to not rent to someone.

But it is spelled out in the Landlord's Guide on the Access Nova Scotia website. The government website states that landlords can conduct "background checks on prospective tenants."

Jeremy Jackson says criminal record checks do fall under the umbrella of a background check.

He's president of the Investment Property Owners Association of Nova Scotia and vice president of marketing and program management at Killam Apartment Reit.

"Landlords are allowed to ask for it, but I can tell you [in] my experience here at Killam, both on the apartment side and also on the manufactured home community side, it is not our practice to do the criminal records check."

Jackson said most landlords only perform a credit check, then call a prospective tenant's references to gauge what kind of person they are. He doesn't believe many landlords are asking for criminal record checks.

Part of the problem is no one knows exactly how many landlords are asking for the checks, Wohler said. People may simply accept a landlord's rejection and seek out other places to live. Or they may not apply to be a tenant at all if they know they have to undergo a criminal record check, she said.

This, combined with the fact there is no obvious route to appeal a rejected tenancy application, means the problem is not being addressed, said Wohler.

She's encouraging anyone who has been turned away

because of a criminal record check, or because they didn't want to disclose their criminal record, to contact her at nslegalaid.ca or call 902-420-3450.

"A criminal record check is simply too invasive in terms of someone's privacy and too discriminatory. If we allow landlords to say no to someone because they have a past conviction, then the question becomes what does that person do?"

U.S. Department of Justice Order 556-73, continued

All arrest data included in an Identification Record are obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Criminal Justice Information Services Division is not the source of the arrest data reflected on an Identification Record.

16.32 Procedure to obtain an Identification Record.

The subject of an Identification Record may obtain a copy thereof by submitting a written request via the U.S. mail directly to the FBI, Criminal Justice Information Services Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth, and a set rolled-in inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

16.33 Fee for production of Identification Record

Each written request for production of an Identification Record must be accompanied by a fee of \$18 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the

provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each Identification Record requested as specified in § 16.10. Any request for waiver of the fee shall accompany the original request for the Identification Record and shall include a claim and proof of indigence. Subject to applicable laws, regulations, and directions of the Attorney General of the United States, the Director of the FBI may from time to time determine and establish a revised fee amount to be assessed under this authority. Notice relating to revised fee amounts shall be published in the Federal Register.

16.34 Procedure to obtain change, correction or updating of Identification Records.

If, after reviewing his/her Identification Record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections, or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a

record may also direct his/her challenge as to the accuracy or completeness of an entry on his/her record to the FBI, Criminal Justice Information Services Division, Attn: SCU, Mod.D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.


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EU Wants Faster Exchange Of Non-EU Nationals' CriminalRecords

The European Parliament has backed a European Commission plan to create an EU database to enable EU countries to exchange non-EU citizens' criminal records faster.

It follows a call in 2015 by then Home Secretary Theresa May for the EU to safeguard the public by sharing more information about known criminals.

The European criminal records information system (ECRIS) was established in 2012 to enables the efficient exchange of information between member states regarding criminal convictions in the EU.

EU member states currently send around 288,000 requests per year through ECRIS on previous criminal convictions across the EU.

At the moment, most of the information exchanged is on EU citizens. Although it is already possible to exchange information on third-country nationals through ECRIS, there is currently no common European procedure or mechanism in place to do so effectively.

Information on convictions of third country nationals within the EU is not gathered in the member state of nationality, as it is for EU nationals, but only stored in the member state where the convictions have been handed down. A complete overview of the criminal history of a third country national can therefore only be obtained by sending a request to all member states.

By sharing more information about a person's criminal past, law enforcement officers can better manage and monitor any serious criminals they may have in their neighbourhood, thereby increasing the safety of the public.

The ACRO Criminal Records Office is a national police unit in the UK responsible for managing the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) with other EU Member States.

Since spring 2012 UKCA-ECR have been conducting this exchange through secure electronic channels allowing for a quicker, safer and more cost effective exchange process.

UKCA-ECR's main responsibility is exchanging criminal record information with countries in the European Union (EU). This work is carried out on behalf of the UK Government in support of law enforcement and authorised agencies throughout the country.

The EU's plan to create its bloc-wide data base to enable EU countries to exchange non-EU citizens' criminal records faster, were backed by the European Parliament yesterday when the Parliament's Civil Liberties Committee approved plans to create a new centralised database on third country nationals to complement the ECRIS system.

The ECRIS Third Country National (TCN) system, will enable national authorities to establish quickly whether any EU member state holds criminal records on a non-EU citizen. It will contain data such as names, addresses, fingerprints and facial images (in compliance with EU data security and data protection rules).

EU member states' judges and prosecutors, Europol, Eurojust and the future European Public Prosecutor's Office will have access to the ECRIS-TCN system.

The EU sees the system as an important cross-border crime fighting tool for European prosecutors, judges and police forces, who currently often rely solely on data available from their own national criminal record systems.

Rapporteur Daniel Dalton

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"We take criminal records seriously"			

said, "The fast, reliable exchange of information is key in the fight against crime at all levels. This measure will close the loophole allowing third country nationals to hide their criminal records, while protecting peoples' rights and information."

In a gathering of European ministers in 2015, when she was Home Secretary, Theresa May said, "We must work to share more data about criminal convictions, and must accelerate work to consider how we share conviction data proactively. We are making some progress through the Serious Offending by Mobile European Criminals (SOMECE) project on mobile criminals, but there is more to do. We need to ensure that all member states retain and share information about 'spent' convictions for serious offences for appropriate lengths of time".

The European Parliament is expected to give the green light to the proposal in the plenary session, possible as early as this week (w/c Jan 29). Once approved, the proposal will then be further discussed by the Council of Ministers. Once the legislative process

has been completed, the Directive will enter into force one year after publication in the Official Journal.

A written ministerial statement said "The Government has decided to opt in to a new EU proposal for a Regulation to establish a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) ("the draft Regulation").

It said, "This draft Regulation aims to supplement and support the existing European Criminal Records Information System (ECRIS) so that Member

States can more effectively obtain the EU-wide criminality history of TCNs".

"This draft Regulation therefore will increase the efficiency of the process and help ensure that our law enforcement agencies have more information available to them when they encounter TCNs than they do at present" It added.

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About NCIC

The Files: The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; Protective Interest; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System (NICS) Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. The Interstate Identification Index, which contains automated criminal history record information, is accessible through the same network as NCIC.

NCIC Files

The NCIC database includes 21 files (seven property files and 14 person files).

Article File: Records on stolen articles and lost public safety, homeland security, and critical infrastructure identification.  
Gun File: Records on stolen, lost, and recovered weapons and weapons used in the commission of crimes that are designated to expel a projectile by air, carbon dioxide, or explosive action.  
Boat File: Records on stolen boats.  
Securities File: Records on serially numbered stolen, embezzled, used for ransom, or counterfeit securities.  
Vehicle File: Records on stolen vehicles, vehicles involved in the commission of crimes, or vehicles that may be seized based on federally issued court order.  
Vehicle and Boat Parts File: Records on serially numbered stolen vehicle or boat parts.  
License Plate File: Records on stolen license plates.

Missing Persons File: Records on individuals, including children, who have been reported missing to law enforcement and there is a reasonable concern for their safety.  
Foreign Fugitive File: Records on persons wanted by another country for a crime that would be a felony if it were committed in the United States.  
Identity Theft File: Records containing descriptive and other information that law enforcement personnel can use to determine if an individual is a victim of identity theft or if the individual might be using a false identity.  
Immigration Violator File: Records on criminal aliens whom immigration authorities have deported and aliens with outstanding administrative warrants of removal.  
Protection Order File: Records on individuals against whom protection orders have been issued.  
Supervised Release File: Records on individuals on probation, parole, or supervised release or released on their own recognizance or during pre-trial sentencing.  
Unidentified Persons File: Records on unidentified deceased persons, living persons who are unable to verify their identities, unidentified victims of catastrophes, and recovered body parts. The file cross-references unidentified bodies against records in the Missing Persons File.  
Protective Interest: Records on individuals who might pose a threat to the physical safety of protectees or their immediate families. Expands on the the U.S. Secret Service Protective File, originally created in 1983.  
Gang File: Records on violent gangs and their members.  
Known or Appropriately Suspected Terrorist File: Records on known or appropriately suspected terrorists in accordance with HSPD-6.  
Wanted Persons File: Records on individuals (including juveniles who will be tried as adults) for whom a federal warrant or a felony or misdemeanor warrant is outstanding.  
National Sex Offender Registry File: Records on

individuals who are required to register in a jurisdiction's sex offender registry.  
National Instant Criminal Background Check System (NICS) Denied Transaction File: Records on individuals who have been determined to be "prohibited persons" according to the Brady Handgun Violence Prevention Act and were denied as a result of a NICS background check. (As of August 2012, records include last six months of denied transactions; in the future, records will include all denials.)  
Violent Person File: Once fully populated with data from our users, this file will contain records of persons with a violent criminal history and persons who have previously threatened law enforcement.

Obtaining FBI Records

Records Available Now

A large number of FBI records are available for public review on the FBI's electronic FOIA Library (The Vault).

On The Vault website, users can examine a wide variety of FBI records from the comfort of their own computers. Types of records that the FBI provides electronically on The Vault

include, but are not limited to:

Final opinions and orders (no records available at this time);  
Agency policy statements; Administrative staff manuals and instructions; Frequently requested records; and Proactive disclosures. Records on The Vault are organized alphabetically by name or topic. Users may also locate records by browsing various categories such as civil rights, counterterrorism, popular culture, unusual phenomenon, and violent crime. If you would rather receive a physical copy (CD or paper format) of records that are currently available on The Vault, you may submit a FOIA request by fax, standard mail, or through eFOIPA, the FBI's electronic FOIPA portal. Please note that physical copies of these records will be of the same quality as those available on The Vault.

Records Available by Request

To receive records that are not already available on The Vault, you may submit an FOIPA request by fax, standard mail, or through eFOIPA, the FBI's recently deployed electronic FOIPA portal. The eFOIPA system allows requesters to electronically submit and re-

ceive correspondence regarding their FOIPA requests. This system is expected to significantly reduce paper costs, mailing costs, and response times associated with FOIPA records requests.

For complete information on when and how to submit an FOIPA request, please review Requesting FBI Records ([www.fbi.gov/services/records-management/foipa/requesting-fbi-records](http://www.fbi.gov/services/records-management/foipa/requesting-fbi-records)).

To learn what information you will receive, how long it takes, and how to file an appeal, please review What Happens After Making a Request ([www.fbi.gov/services/records-management/foipa/WhatHappens%20After%20Making%20a%20Request](http://www.fbi.gov/services/records-management/foipa/WhatHappens%20After%20Making%20a%20Request)).

If you have questions about preparing or submitting requests, you may e-mail [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov) or call our FOIA Requester Service at Center (540) 868-1535 to hear helpful recorded information.



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# A Popular Algorithm Is No Better At Predicting Crimes Than Random People

In February 2013, Eric Loomis was found driving a car that had been used in a shooting. He was arrested, and pleaded guilty to eluding an officer. In determining his sentence, a judge looked not just to his criminal record, but also to a score assigned by a tool called COMPAS.

Developed by a private company called Equivant (formerly Northpointe), COMPAS—or the Correctional Offender Management Profiling for Alternative Sanctions—purports to predict a defendant’s risk of committing another crime. It works through a proprietary algorithm that considers some of the answers to a 137-item questionnaire.

COMPAS is one of several such risk-assessment algorithms being used around the country to predict hot spots of violent crime, determine the types of supervision that inmates might need, or—as in Loomis’s case—provide information that might be useful in sentencing. COMPAS classified him as high-risk of re-offending, and Loomis was sentenced to six years.

He appealed the ruling on the grounds that the judge, in considering the outcome of an algorithm whose inner workings were secretive and could not be examined, violated due process. The appeal went up to the Wisconsin Supreme Court, who ruled against Loomis, noting that the sentence would have been the same had COMPAS never been consulted. Their ruling, however, urged caution and skepticism in the algorithm’s use.

Caution is indeed warranted, according to Julia Dressel and Hany Farid from Dartmouth College. In a new study, they have shown that COMPAS is no better at predicting an indi-

vidual’s risk of recidivism than random volunteers recruited from the internet.

“Imagine you’re a judge and your court has purchased this software; the people behind it say they have big data and algorithms, and their software says the defendant is high-risk,” says Farid. “Now imagine I said: Hey, I asked 20 random people online if this person will recidivate and they said yes. How would you weight those two pieces of data? I bet you’d weight them differently. But what we’ve shown should give the courts some pause.” (A spokesperson from Equivant declined a request for an interview.)

COMPAS has attracted controversy before. In 2016, the technology reporter Julia Angwin and colleagues at ProPublica analyzed COMPAS assessments for more than 7,000 arrestees in Broward County, Florida, and published an investigation claiming that the algorithm was biased against African Americans. The problems, they said, lay in the algorithm’s mistakes. “Blacks are almost twice as likely as whites to be labeled a higher risk but not actually re-offend,” the team wrote. And COMPAS “makes the opposite mistake among whites: They are much more likely than blacks to be labeled lower-risk but go on to commit other crimes.”

Northpointe questioned ProPublica’s analysis, as did various academics. They noted, among other rebuttals, that the program correctly predicted recidivism in both white and black defendants at similar rates. For any given score on COMPAS’s 10-point scale, white and black people are just as likely to re-offend as each other. Others have noted that this debate hinges on one’s definition of fairness, and that it’s mathematically impossible to satisfy the standards set by both Northpointe and ProPublica—a story at The Washington Post clearly explains why.

The debate continues, but when Dressel read about it, she realized that it masked a different problem. “There was this underlying assumption in the conversation that the algorithm’s predictions were inherently better than human ones,” she says, “but I couldn’t find any research proving that.” So she and Farid did their own.

They recruited 400 volunteers through a crowdsourcing site. Each person saw short descriptions of defendants from ProPublica’s investigation, highlighting seven pieces of information. Based on that, they had to guess if the defendant would commit another crime within two years.

On average, they got the right answer 63 percent of their time, and the group’s accuracy rose to 67 percent if their answers were pooled. COMPAS, by contrast, has an accuracy of 65 percent. It’s barely better than individual guessers, and no better than a crowd. “These are nonexperts, responding to an online survey with a fraction of the amount of information that the software has,” says Farid. “So what exactly is software like COMPAS doing?”

Only Equivant can say, and they’re not revealing the secrets of their algorithm. So the duo developed their own algorithm, and made it as simple as possible—“the kind of thing you teach undergrads in a machine-learning course,” says Farid. They found that this training-wheels algorithm could perform just as well as COMPAS, with an accuracy of 67 percent, even when using just two pieces of data—a defendant’s age, and their number of previous convictions. “If you are young and have a lot of prior convictions, you are high-risk,” says Farid. “It’s kind of obvious.”

Other teams have found similar results. Last year, Cynthia Rudin, from Duke University, showed that a basic set of rules based on a person’s age, sex, and prior convictions—essentially,

an algorithm so simple you could write it on a business card—could predict recidivism as well as COMPAS.

The problem isn’t necessarily that COMPAS is unsophisticated, says Farid, but that it has hit a ceiling in sophistication. When he and Dressel designed more complicated algorithms, they never improved on the bare-bones version that used just age and prior convictions. “It suggests not that the algorithms aren’t sophisticated enough, but that there’s no signal,” he says. Maybe this is just as good as it gets. Maybe the whole concept of predicting recidivism is going to stall at odds that are not that much better than a coin toss.

Sharad Goel, from Stanford University, sees it a little differently. He notes that judges in the real world have access to far more information than the volunteers in Dressel and Farid’s study, including witness testimonies, statements from attorneys, and more. Paradoxically, that informational overload can lead to worse results by allowing human biases to kick in. Simple sets of rules can often lead to better risk assessments—something that Goel found in his own work. Hence the reasonable accuracy of Dressel and Farid’s volunteers, based on just seven pieces of information.

“That finding should not be interpreted as meaning that risk-assessment tools add no value,” says Goel. Instead, the message is “when you tell people to focus on the right things, even nonexperts can com-

pete with machine-learning algorithms.”

Equivant make a similar point in a response to Dressel and Farid’s study, published on Wednesday. “The findings of ‘virtually equal predictive accuracy’ in this study,” the statement says, “instead of being a criticism of the COMPAS assessment, actually adds to a growing number of independent studies that have confirmed that COMPAS achieves good predictability and matches the increasingly accepted AUC standard of 0.70 for well-designed risk assessment tools used in criminal justice.”

There have been several studies showing that algorithms can be used to positive effect in the criminal-justice system. “We’re not saying you shouldn’t use them,” says Farid. “We’re saying you should understand them. You shouldn’t need people like us to say: This doesn’t work. You should have to prove that something works before hinging people’s lives on it.”

“Before we even get to fairness, we need to make sure that these tools are accurate to begin with,” adds Dressel. “If not, then they’re not fair to anyone.

## Who's Who In Criminal Trials

In criminal cases in the plaintiff is always the State because in the eyes of the law, a crime is committed not just against the victim but against society as a whole.

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Legalization  
Retroactive,  
Wiping Out  
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Records For  
Thousands

Thousands of Californians will have their misdemeanor or pot convictions expunged automatically and thousands more may have felony cases re-categorized, after San Francisco District Attorney George Gascón announced plans to make the state’s pot legalization law apply retroactively.

Gascón’s jurisdiction limits his reach here.

Tens if not hundreds of thousands of other Californians unlucky enough to be arrested for weed elsewhere in the state will have to hope officials nearer to them follow his lead — or find the money to pay a lawyer to petition the courts for an expungement.

The San Francisco review will stretch back more than 40 years. More than 3,000 people convicted of a misdemeanor for marijuana possession will have their records erased, according to the San Francisco Chronicle.

Even a misdemeanor criminal record casts a long shadow in job interviews, the search for an apartment, and efforts to draw public benefits like unemployment insurance or food stamps. Gascón’s decision to automate the expungement process will make it far easier for the predominantly black victims of the federal War on Drugs to benefit directly from the passage of Proposition 64, a ballot initiative that legalized marijuana in the state from the start of 2018.

One state lawmaker is looking to automate the expungement process statewide through legislation, though the bill is vague and has not yet received a committee hearing date according to the state

assembly website. Roughly 5,000 Californians have filed a court petition to have their pot records cleared since Prop 64 took effect, according to figures from the non-profit Drug Policy Alliance.

Sponging the drug-war residue off of people’s lives today will make it easier for them to live well tomorrow. But it’s easy to get caught up in that happy news and lose sight of the sheer scale of the disruption these cases caused for Californians year in and year out for decades. Even after partial decriminalization statewide in 1976, police made at between 20,000 and 60,000 arrests for minor pot infractions every single year up until 2011, when possessing less than an ounce became a ticketable offense with no associated misdemeanor charge.

Now that marijuana is fully legal in the state, leaders have a chance to go back and make that right. But it will be an enormous undertaking — not only because records systems are resource-intensive to manage, review, and revise, but also due to the sheer size of the backlog of criminal history in question.

Suppose those 5,000 petitions were all granted tomorrow and Gascón’s 3,000-ish automatic misdemeanor expungements could be done all at once with the push of a button. That would just scratch the surface of the backlog of past misdemeanors — if it even managed to leave a

mark at all.

California law enforcement made 1,457,605 misdemeanor cannabis arrests from 1976 through 2016, California NORML’s Dale Gieringer told ThinkProgress. That doesn’t mean a full 1.5 million individuals still have outdated misdemeanors lingering in a database somewhere, waiting for a potential employer or landlord or happen upon in a background check. Some of those arrests probably never led to a conviction,

and some individuals may account for more than one arrest in Gieringer’s dataset.

But theoretically, those misdemeanor cannabis busts are supposed to disappear automatically after two years.

“Our attorneys say that isn’t happening,” Gieringer said. “You pretty much have to file to get it erased.”

violations (e.g., possession of less than fifteen grams of cocaine, heroin or morphine), the sentencing option is known as “1410 probation” and for those convicted of marijuana possession or delivery, it is known as “710 probation.”

Only offenders with no prior felony convictions, probations or supervisions, including those resulting from previous violations of either Act (or of similar laws in other states or at the federal level), are eligible for 1410/710 sentences (for example, Chapter 570, Sec. 410a of the Illinois Revised Statutes).

In addition to having no felony prior convictions, 1410/710-eligible defendants also must have plead or been found guilty.

The principal incentive for defendants to accept sentences to 1410/710 probation is that at the end of five years following their sentencing date (a period that includes the successful completion of their probation term) they can petition the court for expungement of their conviction.

What Is Illinois  
1410/710  
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Virginia's Improved Access To Criminal Court Information

State lawmakers are considering a bill that would improve public access to information about criminal court cases in Virginia.

The legislation would make the Virginia Supreme Court’s databases of court case information from across the state open to the public, as well as a database containing district court records.

The Daily Press reported that the compromise bill under consideration followed lengthy efforts by the newspaper to obtain a database of circuit court records from the Supreme Court.

The bill won approval from a key House of Delegates panel Jan. 31, the paper reported.

“This bill will definitely open up access to court records,” said Del. Mike Mullin, D-Newport News, who teamed up with Del. Greg Habeeb, R-Salem, to balance clerks’ concerns with those of open government advocates, the paper said.

Currently, cases can be individually accessed online, but only if a case number or person’s name is known.

Cayman Islands Going Online

The Cayman Islands court system has made progress in its efforts to digitize its court records, and online registries are expected to be in place at some point this year. The court system had originally hoped to have the digitized records available to the public by the end of December.

Court administrator Suzanne Bothwell said Tuesday that the court system hopes to have the digitization done by January, and

people will not need a user name or password to see the register online.

“Our intention is that the registers will be publicly available for viewing,” said Ms. Bothwell of bringing Cayman’s court records into the digital age. “This will be a free service. Payment [is] only required for purchasing of documents. This purchase arrangement will be subject to approval by Cabinet.”

The idea for digital access to court records came in the aftermath of a dispute about which records should be available to the public. The Cayman court system notified the public earlier this year that only handwritten notes could be taken when inspecting court records in person, and the court briefly dictated that photocopying records would be prohibited without permission from the clerk of court.

That policy was short-lived, and the court aired concerns about outside publications making a profit by publishing court registries for their paying customers. The courts no longer appear to be concerned about copyright of court registries, though, and aim to increase the public’s access to records.

“Members of the public will have free viewing access to daily postings of the court registers for the years 2017-2009, on the open part of the site,” said Ms. Bothwell of the court’s website at www.judicial.ky. “This forms part of the Court’s initiative [to] provide wider access of court records to the public.”

Visitors to the court’s website are already able to access cause lists, court rules and court hours and locations, and Ms. Bothwell said Cayman is following the lead of several other jurisdictions that have made their court records available online in recent years. Publishing court records online may also allow the court to cut down on the amount of paper it uses to publish daily cause lists during the year.

“Moving forward, we can focus on providing electronic registers for public consumption,” said Ms. Bothwell of improving the court’s efficiency. “Our goal is also to make the registers viewable at a kiosk at the court office..., if members of the public do not have access to a computer at home.”

Former Prostitutes To Sue The Government As Criminal Records Stop Them From Volunteering

Former prostitutes are set to sue the Government over criminal records checks which stop them volunteering with Brownie groups.

A group of women will argue that policies which leave convictions for soliciting on their records are discriminatory and intrude into their private lives.

The women, most of whom are anonymous, say their convictions become known many years after they stopped working as prostitutes and have prevented them from taking up volunteering and job opportunities.

One anonymous claimant said: "It doesn’t matter what it is – trying to help out at my kids’ school or the local brownies’ coffee morning, trying to be a governor or a councillor, applying to education or training or employment – even volunteering in so many fields – with children, with the elderly, in care, with vulnerable people, with youth work, with social work – all need a DBS and then you get treated like some sort of pariah or sex offender.

"But it’s not fair – I never chose that life and I fought hard to get out of it but I’m always being pulled back to it as though that’s who I am, but it’s not who I am.”

The women's case, set to be heard in the High Court later this week, also argues that the policy to retain and

disclose their conviction history goes against the Modern Slavery Act because they were trafficked and forced into prostitution while teenagers.

One claimant, Fiona Broadfoot, who began selling sex after meeting a pimp at 15, has a conviction of loitering for the purposes of being a common prostitute.

"After more than twenty years out of prostitution, I am still having to explain my criminal record to any prospective employer. It feels like explaining my history of abuse," she said.

Harriet Wistrich, solicitor at Birnberg Peirce who is acting for the women, said the current law "continues to punish victims".

The Home Office is understood to be defending the claim. A Government spokesperson said: "It would be inappropriate to comment on ongoing legal proceedings."

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**SPECIAL  
ANNOUNCEMENT!**



**Changes To The  
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Go Live**

he Disclosure and Barring Service (DBS) have launched a new online facility for those who need a basic disclosure check for a job in England and Wales.

Those are applying to the DBS can now use the new online application or, alter-

natively, use a ‘Responsible Organisation’ – a third party registered with DBS – to submit checks on their behalf.

The check will only show convictions that aren’t ‘spent’ under the Rehabilitation of Offenders Act 1974, it costs £25 and the applicant must be 16 or over.

**Find out if you can check someone's criminal record**

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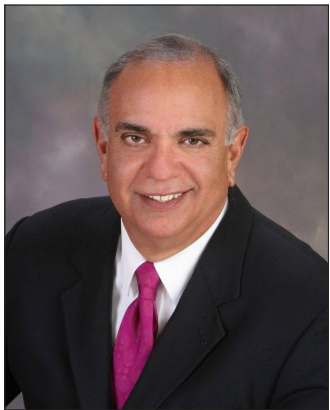
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## Les Rosen's Corner

### A monthly column

By Lester Rosen,  
Attorney at Law



## Millennials Expanding in Workforce Will Make Background Checks More Applicant Friendly in 2018

By Thomas Ahearn

“Millennials” – people aged 18 to 34 in 2015 – numbered 75.4 million and surpassed the 74.9 million “Baby Boomers” aged 51 to 69 in 2015, according to the Pew Research Center. The fact that technically savvy Millennials have overtaken Baby Boomers as the largest segment of the U.S. workforce and will make background checks more applicant friendly is trend number 1 of the “ESR Top Ten Background Check Trends” for 2018 selected by global background check firm Employment Screening Resources (ESR).

The Pew Research Center has established that Millennials were born between 1981 and 1997. The Pew Research Center also revealed Millennials will continue to grow as young immigrants enter the U.S. and are projected to peak in 2036 at 81.1 million when the oldest Millennial will be at least 56 years of age. By 2050 there will be a projected 79.2 million Millennials. Meanwhile, the size of Baby Boomers will shrink as the number of deaths among them exceeds the number of older immigrants arriving in the U.S.

“Employers need to be

sensitive to special issues in hiring and working with Millennials now that they have overtaken Baby Boomers as the largest group in the workforce,” says ESR founder and CEO Attorney Lester Rosen, author of ‘The Safe Hiring Manual,’ a comprehensive guide to employment screening background checks. “Studies and practical experience show Millennials are influenced by different factors than Baby Boomers and are motivated and communicate in different ways.”

In the most general sense, Millennials – also known as “Generation Y” – are defined as “people reaching young adulthood in the early 21st century.” Millennials have been described in both positive (upbeat, receptive to new ideas, and supportive of the rights of others) and negative (lazy, narcissistic, and prone to jump from job to job) ways. Overall, Millennials are the most technically savvy generation to enter the workplace after having grown up with computers and technology in some form since birth.

“Applicant Friendly” is a term used to describe a hiring and background check process leaves a good first impression for job candidates about their potential employers. Built in automation with a “humanizing” approach to hiring can help employers attract more Millennials to job openings. Transparency in the background screening process is a must, and Millennials also need to know that the privacy, security, and confidentiality of their personal information will be protected by the background check provider.

“How subjects of background screens such as applicants, employees, volunteers, and contractors are treated by the screening process is changing,” explains ESR Vice President of Operations Kirk Bogue, who joined the company in September of 2017. “Employers and screening companies are becoming increasingly aware that how the screening process

is handled can adversely affect the relationship between the subject and the company that commissioned the background search.”

Bogue adds that the success of screening companies will increasingly be dependent on the use of technology across all areas of their business. Buyers of background screening will also have to get more sophisticated about the provider they use for screening or risk being exposed to legal consequences. “Too many companies can’t react as quickly as needed in their reaction to more frequently paced regulatory change, leaving their clients legally exposed until solutions catch up,” explains Bogue.

ESR has been a leader and industry innovator in the area of state-of-the-art technology with its use of an online system for applicants to electronically consent to background checks, as well as advanced integration with other HR systems such as Applicant Tracking Systems (ATS). To make the screening experience as easy as possible for Millennials, ESR partnered with many leading ATS providers and offers a whitepaper on “How to Choose an ATS to Work with Your Background Screening Firm” for employers.

In the area of using technology to recruit Millennials, it is critical for employers to distinguish between true innovation and marketing buzz. Employers need to be aware if firms are touting solutions as new and disruptive that have already been in use. ESR has long utilized a cutting edge Background Check API (Application Program Interface) that uses JavaScript Object Notation (JSON) and Representational State Transfer (REST) software architecture to build online background check services that deliver results.

ESR realizes that data breach protection and information security are critical issues for Millennials in the

modern Internet Age. As a result, ESR undergoes an annual SOC 2 audit report to ensure that the firm meets the high standards of the American Institute of Certified Public Accountants (AICPA) to protect the privacy, security, and confidentiality of consumer information used for background checks. More information about the ESR SOC 2 report is available at [www.esrcheck.com/SOC-2/](http://www.esrcheck.com/SOC-2/).

Employers will have to adjust workplaces and hiring processes to suit the more mobile technology and social media oriented behavior of the Millennial generation. The most critical issue employers find with Millennials is that they are the most “wired” generation so far in history. That means an applicant friendly experience is crucial and any software used to accomplish screening must be intuitive, easy to use, and very clear or an employer may find it has an issue attracting millennial candidates.

Much has been written about the generational divide and how Millennials approach employment differently. In terms of background screening, younger millennials may have less information to obtain and a more limited work history and credit history. Given that some millennials strictly use rideshare services such as Uber and Lyft, driving records may not yield much information either. Millennials also make up a large chunk on the emerging “gig economy” by having non-traditional jobs.

“Applicant experience” is a critical consideration for the background check process when it comes to attracting Millennials and should be as comfortable as possible while assuring Millennials that the screening will be accurate, legally compliant, and privacy rights will be protected. The war for talent – and Millennials – requires a background check process that is easy and intuitive. Having Millennials fill out their own data using an Ap-

plicant Generated Report (AGR) system gives them more control.

Employers need to recognize the importance of the applicant experience during the background check process in relation to their employer brand with Millennials. Creating ideal applicant experiences first requires transparency with background check policies and practices. Since a background check can be an uncomfortable process for Millennials, the background check release form should be easy to read and explain the process while providing contact information if the applicant has any questions.

In addition, Millennials need to be made aware that if they want to dispute information on a report, the background check firm will provide them top notch customer service and assistance. Millennials must understand their rights during the background check process under the federal Fair Credit Reporting Act (FCRA), which promotes the accuracy, fairness, and privacy of information in a report. Information about these rights is in “A Summary of Your Rights Under the Fair Credit Reporting Act.”

Millennials also may consider the use of for “social media background checks” to be an invasion of privacy. However, these types of checks will continue to grow as Millennials impact the workforce. According to the 2017 CareerBuilder Survey, 70 percent of employers use social media to screen candidates before hiring, up significantly from 60 percent in 2016. The survey also found that 3 in 10 employers have someone solely dedicated to checking the online presence of job applicants.

Continues previous page



**STRAIGHT  
LINE**



# Government Background Check Review Process Is At ‘High Risk’

The federal government’s sluggish process for clearing workers to handle classified data is drawing new concern from government auditors, industry groups and at least one member of Congress, as an estimated 700,000 people wait for background checks to be completed.

The backlog has become so great that late last week, the Government Accountability Office took the highly unusual step of adding the effort to its list of “high-risk” programs, certifying that the process is in need of concerted action to prevent waste, fraud, abuse and mismanagement.

“A high-quality and timely personnel security clearance process is essential to minimize the risks of unauthorized disclosures of classified information and to help ensure that information about individuals with criminal histories or other questionable behavior is identified and assessed,” U.S. Comptroller General Gene L. Dodaro said in a release. In its report, the agency said the backlog of unfinished clearance investigations is more than 700,000 people, up from about 550,000 at the end of 2016. The Office of Personnel Management, the federal agency charged with doing the background checks, is still without a permanent director more than a year into President Trump’s tenure. The GAO criticized OPM for failing to set long-term goals to address the backlog, saying “renewed and strong top leadership commitment” is needed to solve the problem.

Following the Government Accountability Office’s action, Sen. Jon Tester (D-Mont.) released a statement criticizing the government’s handling of clearance investigations.

“This is flat out unacceptable,” Tester said in a statement. “These are the people responsible for protecting our nation’s most sensitive information. If this process is compromised, our national security is compromised.”

Processing background checks has long been a challenge for federal agencies, as investigators weigh the competing priorities of clearing workers quickly to perform critical work against blocking those who might do harm.

The issue flared up after 2013, when former National Security Agency contractor Edward Snowden leaked classified information despite being cleared. Later that year, a mass shooting by a cleared government employee in the Washington Navy Yard raised further questions about whether candidates were being vetted properly.

For the government contractors, the lengthy clearance process can delay important work and complicate hiring efforts. Some qualified workers must wait a year or more before investigators sign off.

“Companies have contracted, funded work they are trying to get done but they can’t get started because they don’t have the right people cleared,” said David Berteau, president of the Professional Services Council, the government contractors’ trade group.

The long wait times can be difficult for workers caught in the middle. The lucky ones will be paid while they wait on the sidelines, but others might have to wait.

One of those bidding his time is Sagar Dubey, a 31-year-old Indian national who was tapped in 2016 to be a cargo specialist in the Army Reserve through a program meant to recruit skilled workers for the U.S. military. Until the process is complete, he cannot move forward in his desire to earn citizenship. A clearance would also allow Dubey, who works for a

global technology consulting group that he declined to name, to work on federal contracts and advance within his company.

Dubey said some other skilled immigrants recruited through this program are much worse off.

“There are people who have had kids while they were waiting for their security checks to complete,” Dubey said. “There are people who have ailing parents and they can’t go home,” out of concern that the travel would force them to start the review process anew.

Members of Congress have attempted to solve the problem by transferring oversight of clearances handled by the Defense Department — easily the largest source of clearance requests — away from OPM and to the Defense Security Service, a Pentagon subagency. The 2018 defense spending bill did just that, reversing an earlier reorganization that took the process out of the hands of the Defense Department and gave it to OPM.

An implementation plan published by Federal News Radio suggests that the Defense Department wants to solve the problem in large part by switching to a system of “continuous evaluation,” which involves using technology to constantly monitor the workforce for red flags rather than reevaluating people every five years, as is currently the case.

But industry groups say the agency has not spoken about its plans since August, raising questions about how the process is going.

“Until we have a clear path from [the Department of Defense] that we can read and comment on, we have questions about how well that transition will be executed and what will be its impact on investigations that are currently underway,” Berteau said.

# Millennials Expanding in Workforce, continued

The CareerBuilder survey found employers are searching for signs to hire when viewing candidates on social media sites that include information that supports their qualifications for the job (61 percent), if the candidate has a professional online persona at all (50 percent), and what other people are posting about the candidates (37 percent). Also, 69 percent of employers use online search engines such as Google, Yahoo, and Bing to research candidates in 2017, compared to 59 percent last year.

However, the survey also revealed more than half of employers — 54 percent — find content on social media that caused them not to hire a candidate that included candidates posting inappropriate photographs, videos, or information (39 percent) candidates posting information about them drinking or using drugs (38 percent), candidates having discriminatory comments related to race, gender, or religion (32 percent), and candidates bad-mouthing their previous company or fellow employee (30 percent).

Social media background checks can be used for uncovering a treasure trove of information about Millennials. Employers can harvest information from a variety of social media sites such as Facebook, YouTube, LinkedIn, and Twitter, as well as forums, sharing services, and discussion boards. What is overlooked in the rush to use social media background checks is a question that needs to be asked: What are the potential legal risks for employers using the Internet for employment screening?

These potential legal risks for employers using social media background checks on Millennials may include learning too much information (TMI) about applicants that leads to discrimination allegations, learning

too little information (TLI) online about potentially dangerous workers, “computer twins” where two people have nearly identical online identities, deciding what is “fair game” in the Internet, privacy issues in the online world, and issues with credibility, accuracy, and authenticity.

To minimize potential legal risks of using social media background checks on Millennials, employers should first consult their labor attorney to develop a written policy and fair and non-discriminatory procedures designed to locate information online that is a valid predictor of job performance. Employers should focus on objective criteria and metrics, and should have written job descriptions that contain the essential functions for the job as well as knowledge, skills, and ability (KSA) required for the job.

The most conservative approach is to not conduct a social media search on Millennials until after there has been a conditional job offer to demonstrate that all applicants were considered utilizing legal criteria that were neutral when it comes to prohibited criteria. Employers need to be concerned if information found online is potentially discriminatory to job candidates who are members of protected classes based on prohibited criteria such as sex (including pregnancy), race, color, national origin, and religion.

“Caution should be exercised when using the Internet for background checks on Millennials,” says Rosen. “There has yet to be a clear cut law or court cases that set forth how to proceed in this area. In the meantime, employers may want to approach social media background checks with great care before assuming that everything is fair game in the pursuit of job candidates. The bottom line when using the Internet for employment screening background checks is to proceed with caution.”



# Clean Criminal Record Necessary To Work In Jordan, UAE

by Nawal Sayed

Migrant workers wishing to work in Jordan and the UAE must have clean criminal records from their country of origin before entering either of the two Arab countries, according to new regulations set by the Jordanian and Emirati ministries of labor.

“Starting from this January, a clean criminal record is a must for Egyptian workers and employees to obtain a job in Jordan, and it must be issued from the concerned authorities before leaving Egypt,” stated Egypt’s labor attaché at the Egyptian embassy in Amman, Jordan in his report to Minister of Manpower Mohamed Saafan.

Saafan asked all affiliated directorates across the nation to assert to all Egyptians seeking jobs in Jordan to obtain an official criminal record and show it when required by the concerned authorities.

Jordanian news agency PETRA revealed in July that a new system for foreign workers was being developed. Foreign workers, not only Egyptians, must also obtain a medical certificate accredited by the medical authorities in Jordan.

On January 8, Saafan stated that he had delivered a notice to his Jordanian counterpart Ali Thaher al-Ghazawi about a protocol signed between the ministry and Jordan's General Security Directorate to simplify the recruitment and employment procedures regarding foreign workers.

Egypt is considering signing other similar protocols with other countries to allow issuing electronic work permits in order to facilitate the procedures and control illegal practices in this regard.

For the Egyptian workers, the Jordanian Labor Ministry has decided to postpone implementation of a proposed sponsorship system until February so that the border crossings will be ready to apply the new mechanism.

“Of the migrant workers in Jordan, 68 percent of them are from Egypt. Egyptians work mainly in the agricultural sector, in construction, in restaurants, or sometimes as cleaners,” said Linda al-Kalash of Daem, formerly Tamkeen for Legal Aid and Human Rights in Jordan, in an interview with NAMATI in February 2014.

Linda revealed that the Jordanian government issued a regulation in 2013 regarding the freedom of Egyptian workers to exit and enter Jordan, adding, “If an Egyptian worker wants to go back to Egypt, they are required to get permission from their employer first.”

Eight hundred workers were reported to have been deported from Jordan to Egypt in 2016, while 600,000 workers currently face the risk of being deported at any given minute.

The United Arab Emirates has developed its labor system so that migrant workers seeking jobs in the UAE must first have a clean criminal record to get a work visa, according to a report sent to Safaan from the Egyptian embassy in Abu Dhabi on Friday.

The report stated that the criminal record must show the person’s record for the last five years in the residing country and must be accredited by the concerned authorities affiliated to the International Cooperation and Foreign Ministry in Abu Dhabi.

“This decision will be applied on migrant individuals seeking to work in the UAE without their families in their company,” said Egyptian labor attaché in the UAE Yasser Eid.

Eid stressed that the decision will not be applied on

tourism or visitor visas, adding, “This procedure aims at achieving more security measures for persons living in the UAE so it will be a land of peace, happiness and comfort for everyone.”

The UAE’s work classification system was amended in the last year, placing more emphasis on workers’ qualifications and skills.

## Crim-checker IT System Update Fail Has Cost UK Taxpayer

MPs have slammed the IT overhaul behind the UK government's Disclosure and Barring Service (DBS), which is running three years late resulting in a "missed opportunity" to save the taxpayer millions.

The DBS enables employers to check people's background against police databases such as criminal records and government lists of people considered unsuitable to work with children or vulnerable adults.

However, modernisation is three and a half years behind. In October 2012, the Home Office contracted Tata to design, build and run a new IT system for the provision of DBS and transition existing services, including the update service, from Capita.

A new update service was intended to allow employers to check whether there were any changes to the safeguarding information on a cer-

tificate since it was issued. But the update service has not delivered the savings the Home Office intended. Applicants who are using the update service are paying £13 a year rather than the £10 expected in 2012. There has also been significantly lower take-up than hoped.

The first stage was due by March 2014 but was only delivered in September 2017. Modernisation of disclosure certificates is not yet delivered and may not be completed before the current contract with Tata ends in 2019.

Meg Hillier MP, chair of the Public Accounts Committee, said: "It is no wonder the new type of background check has been such a flop. The National Audit Office report shows that government took the unbelievable decision to launch it without testing it on customers first.

"Combine this with an IT overhaul currently running three and a half years late, and the result is a missed opportunity to save schools, hospitals and taxpayers millions of pounds a year.

"I am concerned that although DBS provides employers with the background checks they need to keep children and vulnerable adults safe, the government doesn't check up on how the information is actually used."

According to the report, Tata spent £47m more than expected between December 2012 to 31 March 2017, mostly on higher staff

costs, while revenue increased by £24m, implying Tata bore about half the increase in costs as lower profits and passed the other half to DBS.

"It is not clear if there will be any subsequent modernisation before the initial term of the contract with Tata ends in March 2019. Disclosure certificates will remain paper-based rather than become fully digital, although applications can be submitted electronically.

"The update service provides digital access for employers, but a lack of standardisation of police IT systems means information cannot currently be automatically uploaded into the update service. Instead, DBS must request police forces regularly re-check their data to see whether any new information is available."

DBS recently raised eyebrows by taking the gamble of using the Government Digital Service's extremely shonky online ID system authentication portal Verify.

The service was formed in 2012 by merging the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority.

Some 4 million disclosures have been issued, of which some 260,000 (6.1 per cent) contained information potentially relevant to safeguarding, with 64,000 individuals barred from working with children.

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## A Note From Phyllis Nadel



### Government Does Not Know How Background Check Information Is Used, Report Says

The British Government is in the dark over how many people have been stopped from working with children or vulnerable adults as a result of disclosures made in background checks, a watchdog report suggests.

No checks are made on how employers have responded to details provided by a body that processes requests for criminal records and other information, the National Audit Office (NAO) noted.

The Home Office said it has never been the purpose of the Disclosure and Barring Service (DBS) to record whether or not people go on to be hired.

Established in 2012, the DBS accesses data held on police databases to help organisations make recruitment decisions.

It is widely used in the public, private and voluntary sector, such as schools and care homes, to check prospective staff and volunteers.

The NAO's report said: "There are no checks on how employers use information provided by DBS.

"DBS's role is to process the safeguarding information that the police hold and provide this to employ-

ers on request.

"Employers are responsible for complying with legislation when they make employment decisions.

"There is no check on what employers have done with the information provided by DBS.

"Government does not know how many people this information prevented from working with children or vulnerable adults."

Some four million disclosures were issued in 2016-17, of which 260,000, or 6.1%, contained information that was "potentially relevant to safeguarding", according to figures cited in the assessment.

Meg Hillier, chairwoman of the Commons Public Accounts Committee, said: "I am concerned that although DBS provides employers with the background checks they need to keep children and vulnerable adults safe, the Government doesn't check up on how the information is actually used."

A Home Office spokesman said: "The DBS provides criminal record disclosure certificates and it is for the employer to judge the suitability of the applicant for any particular role.

"It has never been the purpose of the DBS to record whether or not employers hire those with criminal records who are legally entitled to pursue employment.

"As part of their inspections, regulatory bodies such as Ofsted and the Care Quality Commission check that employers have undertaken the appropriate criminal record checks on staff. The NAO makes no recommendation that this system should change."

Adele Downey, chief executive of the DBS, said since its foundation the service has issued more than 22 million disclosure certificates to help employers make safer recruitment decisions and have barred more than 15,000 people

from working with vulnerable groups.

"Ultimately, under current legislation, whatever information a DBS check reveals the decision to employ someone rests with the employer as part of their normal recruitment processes.

"They must carry out their own assessment as to someone's suitability for a particular role but we strongly believe that without the information provided by the DBS this would be a far greater challenge and potentially put society's most vulnerable people at an increased risk."

Elsewhere, the NAO's report said a planned modernisation of the service is currently running more than three-and-a-half years late.

The spending watchdog also found a new product allowing employers to check any changes to safeguarding information has been used less than expected.

### How To Find A Case In A Law Book

The written, published opinions of courts are contained in law books.

These published opinions constitute what is known as case law. Finding a court opinion in a law book is easy.

The opinions in these books are identified by their case citations.

A case citation begins with the name of the case. Next comes the volume number of the book in

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which the opinion can be found, followed by the abbreviated name of the book, followed by the page number.

Last, in parentheses, is the year of the decision.

A citation of State v. Ramseur, 106 N.J. 123 (1987), means that the opinion is in volume 106, on page 123, and that the case was decided in 1987.

### Fair And Square

Taking his seat in his chambers, the judge faced the opposing lawyers.

"So," he said, "I have been presented, by both of you, with a bribe."

Both lawyers squirmed uncomfortably.

"You, attorney Leon, gave me \$15,000.

And you, attorney Campos, gave me \$10,000."

The judge reached into his pocket and pulled out a check. He handed it to Leon ...

"Now then, I'm returning \$5,000, and we're going to decide this case solely on its merits."

### Degrees, Not PHD's

Crimes may be subdivided into several degrees based on the seriousness of the conduct involved.

For example, an assault charge may be first-, second- or third-degree, depending on the extent of the injury, whether a weapon was used, the defendant's intent and the specific conduct involved.

Categorizing crimes in varying degrees is intended to ensure that "the punishment fits the crime."

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### Family Link In Crime?

About 40 percent of adults in jail and prison have a parent, brother or sister in prison as well, according to the Bureau of Justice Statistics.

There are 1.96 million children who have parents or other close relatives in

jail or prison, and another 5 million whose parents are on probation or parole or have been incarcerated in the past.

Some experts worry that children with incarcerated parents are more likely to end up criminals themselves than other children.



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Old- Time  
Lawyer Joke

A gang of robbers broke into a lawyer's club by mistake.

The old legal lions gave them a fight for their life and their money.

when we broke in!"

The gang was very happy to escape.

"It ain't so bad," one crook noted. "We got \$25 between us."

The boss screamed: "I warned you to stay clear of lawyers! We had \$100

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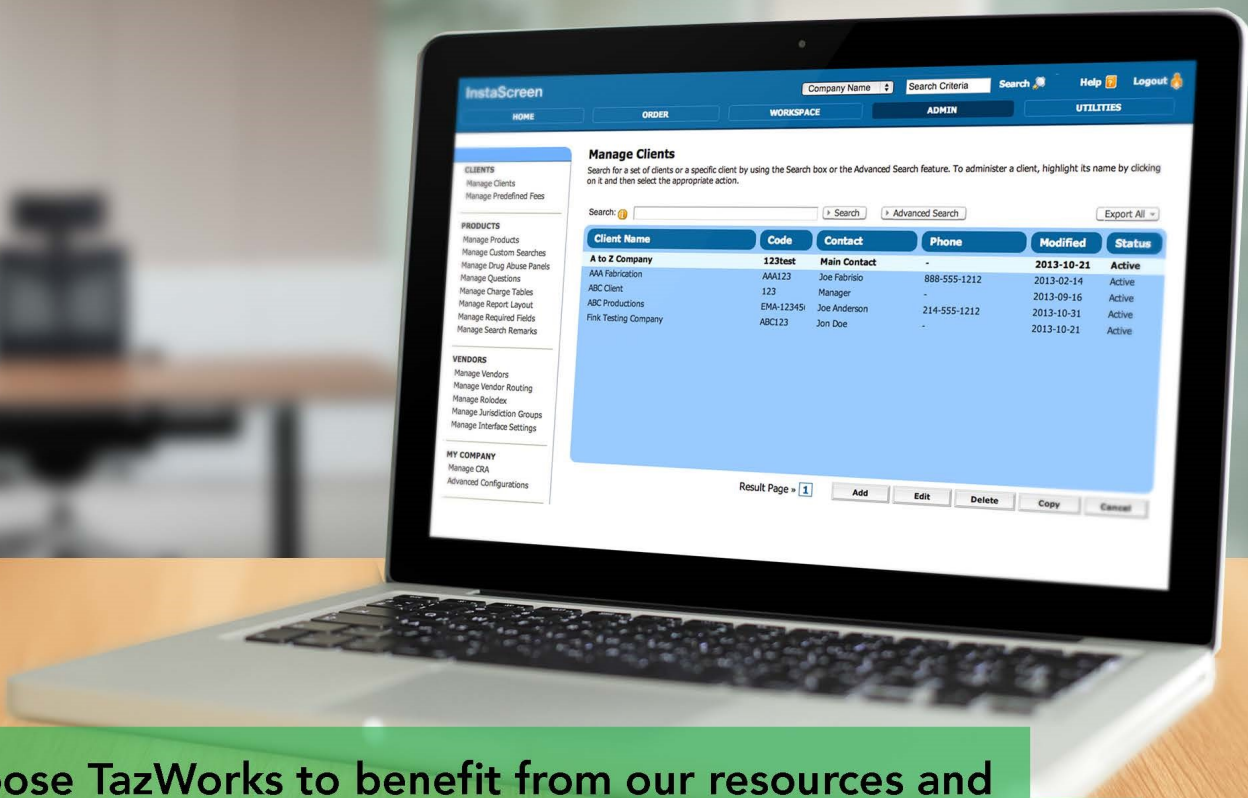
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Selling DUI  
Records?

The highest rates of current and past year illicit drug use are reported by workers in the following occupations: construction, food preparation, and waiters and waitresses.

Heavy alcohol use followed a similar pattern, although auto mechanics, vehicle repairers, light truck drivers and laborers also have high rates of alcohol use.

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