



Safety, Effectiveness & Best Practices for Vehicle-for-Hire Criminal Background Checks

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City of Houston
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Exhibit I: City of Houston Research Summary on Criminal History Background Checks



City of Houston
Administration & Regulatory Affairs Department
Criminal History Background Checks:
Research Summary as of 4/7/2015

Introduction

Despite assurances from TNCs that commercial background companies conduct criminal background checks at least comparable to the ones run by municipalities, but usually even more thorough, in fact these background checks are incomplete. Following are the specific deficiencies in these private criminal history checks based on our research and the commercial background check providers' website information:

- **NOT National Background Checks:**
 - Hirease “national criminal search” check does not include Delaware, Massachusetts, South Dakota, Wyoming
 - Sterling Infosystems “state criminal records search” does not cover California, Louisiana, Mississippi or Wyoming
 - Do not search every county, creating potential gaps

- **DO NOT use truly unique search identifiers, i.e. fingerprints**
 - Many are name-based; or they use the basic identifiers used for credit checks, i.e. social security numbers, past counties of residence, voter records. These are basically skip trace and credit check companies.
 - Because they do not use a biometric identifier, these companies miss applicants that use aliases. For example, a recent TNC driver, **who had been cleared by Hirease**, underwent a City of Houston fingerprint background check and it turned out she **had 24 alias names, 5 listed birth dates, 10 listed social security numbers, and an active warrant for arrest.**
 - Even Hirease, the company that performs commercial third party background checks for Uber, admits that fingerprint-based checks are more secure because “*fingerprinting helps uncover criminal history not discovered through traditional means, offers extra protection to aid in meeting industry guidelines, and helps prevent fraud*” (www.hirease.com/fingerprinting).



- Since Houston’s ordinance became effective, the City’s fingerprint-based FBI background check found that several applicants for TNC driver’s licenses – who had already been cleared through a commercial criminal background check – had a prior criminal history. The charges include:
 - Murder
 - Assault
 - Battery
 - Racketeering
 - Indecent exposure
 - DWI/DUI
 - Possession of a controlled substance
 - Prostitution
 - Fraud
 - Robbery
 - Aggravated Robbery
 - Larceny
 - Violation of Probation
 - Sale of alcohol to a minor,
 - Traffic of counterfeit goods
 - Unlawful carry of a weapon
 - Reckless Driving
 - Public intoxication
 - Driving with a suspended license
 - Unauthorized use of vehicle
 - Sexual Assault
- TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.

National Background Checks

The background checks conducted by firms such as Hirease and Sterling are NOT true national checks. Commercial background checks are based on the personal information of the applicant, including name and social security number. These companies typically use the applicant’s social security number to identify past counties of residence. The company then searches the courthouse records of these and surrounding counties. However, as these checks do not search every county, they create a huge potential gap where crimes go undetected.

In order to supplement these county checks, commercial background companies often rely on commercial “national databases” composed of records collected from the various state criminal record repositories. However, these databases do not contain information from all states and pale in comparison to the scope of the background check conducted by the FBI. For example, the “national criminal search” conducted by Hirease does not cover Delaware, Massachusetts, South Dakota, or Wyoming. The “state criminal records search” conducted by Sterling Infosystems does not cover California, Louisiana, Mississippi, or Wyoming. **The FBI provides the only true nationwide check.** TNCs claim that regional processing times mean that the FBI database is not always 100% up-to-date and therefore imply that background checks conducted through the FBI cannot be trusted. However, the US Attorney General’s Office concludes that the FBI database, “*while far from complete, is the most comprehensive single source of criminal history information in the United States.*” More so, neither the TNCs nor their commercial background check providers have demonstrated that their commercial databases are immune to these same criticisms. In fact, the US Attorney General’s Office goes on to point out that “*in many instances the criminal history record information available through a commercial check is not as comprehensive as an [FBI] check because many states do not make criminal history records available to commercial*



database compilers.” Both Hirease and Sterling have failed to demonstrate the efficacy of their non-fingerprint based criminal history checks.

Fingerprint Background Checks

Commercial background check companies do not use biometric identifiers to match an applicant with his or her record. This substantially increases the twin risks of false positives (when a person with a common name is associated with another person’s record) and false negatives (when a record is missed because an individual provides false identifying information). A national taskforce compared the efficacy of name-based and fingerprint-based background checks using the FBI Interstate Identification Index database. The taskforce found that “based on name checks alone, 5.5 percent of the checks produced false positives and 11.7 percent resulted in false negatives.” (U.S. Dept. of Justice 2006, p. 25).

The City of Houston’s TNC ordinance has been effective since November 4, 2014. In the approximately 10 months since the ordinance went into effect, **the City’s fingerprint-based FBI background check found that several applicants for TNC driver’s licenses – who had passed a commercial criminal background check – had a prior criminal history. The charges include: murder, assault, battery, racketeering, indecent exposure, DWI/DUI, possession of a controlled substance, prostitution, fraud, robbery, aggravated robbery, larceny, violation of probation, sale of alcohol to a minor, traffic of counterfeit goods, unlawful carry of a weapon, reckless driving, public intoxication, driving with a suspended license and unauthorized use of vehicle.** TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.

All criminal justice record information ultimately originates from one of four primary government sources: law enforcement agencies, the courts, corrections agencies, and prosecutors. Although commercial background check providers claim to obtain data from multiple private databases, these extra databases do not necessarily add value to the background check process. If a single database, like the FBI database, reliably gathers information from these primary sources, then searching further databases is unnecessary and redundant. Commercial background check companies search multiple databases in order to pad their resume in comparison to the FBI’s comprehensive database. Private databases may not reliably and regularly collect information from all primary sources in all states.

COMPARISON OF MUNICIPAL CRIMINAL HISTORY CHECK VS. PRIVATE SECTOR PROVIDERS				
Scope of Record Review	MUNICIPAL*	Hirease	Sterling	Note
50-state National Criminal Records Search	✓	Excludes Delaware, Massachusetts, South Dakota, Wyoming	Excludes California, Louisiana, Mississippi, Wyoming	Many states do not make criminal history records available to commercial database compilers
Search of all counties	✓	X	X	

*Note: The City of Houston requires a fingerprint background check through the State DPS which gets information from the FBI database. For the most up-to-date local arrest information, Houston requires driver applicants to present themselves to our Municipal Courts for a warrant check. Houston's national search through the DPS includes the national sex offender registry.



Exhibit II: Assertions vs. Facts – What Transportation Network Companies Traditionally Assert About Criminal Background Checks



Assertions vs. Facts: Transportation Network Companies and Criminal History Checks

TNC Assertion: The FBI background check does not check the National Sex Offender Registry.

Fact: The National Sex Offender Registry (NSOR) is a government database available only to law enforcement that is maintained by the FBI's Criminal Justice Information Services Division. Thus the FBI already has complete access to information on sex crimes and has no need to search a separate database. It is also impossible for any private entity to search the NSOR.

Because the NSOR is only available to law enforcement, the Department of Justice also maintains the National Sex Offender Public Website (NSPOW). Unlike the NSOR, which contains complete information on sex offenders, the NSPOW only contains publicly available information. Several states have laws that allow sex offenders to apply for an exemption from being reported on the publicly-available website. For instance, the NSPOW omits approximately 25% of the registered sex offenders in California.

A private company can only search the publicly available information in the NSPOW. It cannot search the NSOR maintained by the FBI. The FBI has no need to search a separate database, because it already has records on this information.

TNC Assertion: Commercial criminal history checks include a “multi-database” or “multi-layer” search and are superior to the FBI criminal history check.

Fact: Commercial criminal history checks often tout that they conduct a “multi-database” or “multi-layer” search, implying that they are therefore superior to the FBI database. The FBI database, however, is the single most comprehensive source of criminal history information in the nation. The FBI has no need to search multiple databases, because they already gather information from the primary originators of criminal history information—courts and law enforcement agencies.

TNC Assertion: The FBI database is missing information and is thus unreliable.

Fact: It can take several years for a court case to work its way through the criminal justice system. If a record is missing final disposition information, in many cases it is because final disposition does not yet exist for that record. More so, because the FBI database has complete access to criminal history information final disposition information is not needed to protect public safety. The presence of an arrest record alone is enough to flag an applicant for further investigation.

TNC Assertion: Commercial database companies have access to the same criminal history information as government agencies.

Fact: Private companies can only get access to information in the FBI and state criminal history databases that has been made publicly available. This means that they do not have the ability to view all records, including unadjudicated arrests and juvenile records. Government agencies, on the other hand, have the



ability to see this information and take it into account during the licensing process. The only way for a vehicle-for-hire driver to undergo this type of check is if a government body acts as a regulatory authority.

TNC Assertion: Commercial criminal history checks are true national checks.

Fact: Commercial criminal history companies represent themselves as conducting nation-wide checks. They claim that these checks are national in scope because they search county courthouse records in combination with multi-state databases. Commercial background check companies use non-biometric identifiers, such as the applicant's name, social security number, and date of birth, to identify past counties of residence. The commercial background check provider then searches the records for these counties. They do not search the records of all counties for all applicants. A crime committed in a county in which the applicant did not reside may go unreported.

The commercial multi-state databases used to supplement these piecemeal county checks are also not truly national in scope. The "national criminal search" conducted by Hirease, one of Uber's commercial background check providers does not cover Delaware, Massachusetts, South Dakota, and Wyoming. The "state criminal records search" conducted by Sterling Infosystems, Lyft's commercial background check provider, does not cover California, Louisiana, Mississippi, or Wyoming. These gaps lead to serious According to the District Attorney's Office in San Francisco, Uber's background check approved a driver who was convicted of felony exploitation of children in Wyoming on November 7, 2005.



Exhibit III: What does the U.S. Attorney General Really Say about Criminal History Checks?



What Does the US Attorney General Really Say About Criminal History Checks?

Background

The City of Houston believes that, to the greatest extent possible, regulations regarding the use of fingerprint background checks vs. name-based or other background checks should be based on empirical data and objective facts. As such, the City extensively researched the efficacy of various criminal history checks. Although actual data comparing the failure rate of various checks was scarce, the US Attorney General's Office issued a report in June 2006 that, to the City's knowledge, is one of the best resources on fingerprinting and the efficacy of various criminal history checks.

Being familiar with this report is important not only because it can serve as a guide to drafting better regulations for public safety, but because marketing materials routinely distributed by Transportation Network Companies (TNCs) selectively cite the report to imply support for their policy positions. When read in its entirety, however, the report's conclusions are clear. The Attorney General recommends expanded use of the FBI data, not less. The report does not recommend the use of private criminal history databases in lieu of a check conducted by the FBI.

The Importance of Fingerprints

The report consistently stresses the importance of basing criminal history checks on positive biometric identification, such as fingerprints. Criminal history checks "have generally been required to be supported by fingerprints in order to substantially reduce the twin risks posed by name checks [non-biometric checks], which can result in false positives or false negatives.¹" A study conducted in Florida in 1998 confirmed this risk. The study "found that based on name checks alone, 5.5 percent of the checks produced false positives and 11.7 percent resulted in false negatives. These results would have translated into large absolute number of false positives and false negatives if the 6.9 million civil applicant background checks processed by the FBI in 1997 had been processed by...name checks alone."² Due to this risk, the report officially recommends that "checks should be based on fingerprints."³

Commercial Criminal History Databases

Although commercial criminal history databases can act as a valuable supplement to a check conducted through the FBI database, the report identifies several shortcomings that make them unsuitable as the only source of criminal history information. "Searches of commercially available databases are name-based [non-biometric] and do not provide for positive identification through a fingerprint comparison. As a consequence, the matching of individuals to a record is not as reliable as a fingerprint check."⁴ The laws governing the information available to a commercial database also vary from state to state. "In many

¹ Page 3

² Page 25

³ Page 7

⁴ Page 53



instances, the criminal history record information available through a commercial check is not as comprehensive as an [FBI] check because many states do not make criminal history records available to commercial database compilers. Also, states that do contribute criminal history records to commercial databases may not do so on a regular basis. As a result, some information in commercial databases may not be as timely as the information available through the [FBI].⁵

The FBI Database

The report acknowledges that no criminal history database is perfect. The report finds, however, that “nevertheless, the [FBI database]...is the most comprehensive single source of criminal history information in the United States, and provides users, at a minimum, with a pointer system that assists in discovering more complete information on a person’s involvement with the criminal justice system.⁶” At no point does the report advocate for using a commercial background check database in lieu of the FBI database. In fact the report officially recommended that access to the FBI’s criminal history information be offered to private employers. The Office of the Attorney General “think[s] that the fingerprint-based criminal history information maintained by the FBI and state record repositories should be one of the authorized sources of information for this purpose, as system capacity allows.⁷” Ultimately the report recommends increasing the use of the FBI database, not replacing it.

Conclusions

The report acknowledges that both the FBI database and commercial databases have a role to play in conducting criminal history checks. “A check of both public and commercial databases and of primary sources of criminal history information such as country courthouses would, perhaps, provide the most complete and up-to-date information.⁸” The value of the FBI database, however, is not contested by the report and at in no way can the report be construed as advocating a minimized role for the FBI database or for fingerprinting. Because governmental agencies are the only organizations with complete access to the information in the FBI database, it is important that regulatory bodies require this check of anyone who intends to provide transportation service to the general public.

⁵ Page 54

⁶ Page 17

⁷ Page 7

⁸ Page 54



Exhibit IV: Excerpt from San Francisco False Advertising Suit