

Research Report: Department of Justice Background Check Authorization, Procedures, and Legal Requirements

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FINDINGS

COMPREHENSIVE RESEARCH REPORT: DEPARTMENT OF JUSTICE BACKGROUND CHECK AUTHORIZATION, PROCEDURES, AND LEGAL REQUIREMENTS

Executive Summary

The Department of Justice background check process represents a complex intersection of federal statutory authority, state-specific procedures, and regulatory frameworks that govern how criminal history information is requested, processed, disseminated, and challenged. This report addresses the comprehensive legal landscape surrounding DOJ background checks across multiple contexts: individuals seeking personal background review, employers conducting pre-employment screening, federal agencies evaluating suitability for government employment, and organizations managing volunteer or licensing requirements. The legal requirements differ substantially depending on whether the requesting party is an individual reviewing their own criminal history, an employer subject to the Fair Credit Reporting Act, a federal agency conducting security clearances, or a state licensing authority. Statutory authorization frameworks-including state penal codes that specify dissemination criteria, the federal Fair Credit Reporting Act that imposes disclosure and consent requirements, and federal personnel security regulations that establish suitability standards-create distinct compliance obligations for each context. Processing timelines typically range from 24 to 72 hours for state-level Live Scan submissions under normal circumstances to several weeks for FBI national criminal history checks, with substantial variation based on criminal record complexity, fingerprint quality, and systemic backlogs. This report provides a detailed examination of authorization requirements, procedural mechanisms, dissemination restrictions, fee structures, and available remedies across federal and state jurisdictions, with particular attention to California procedures and Northern California implementation specifics, while maintaining applicability to nationwide practitioners.

Statutory and Regulatory Framework Governing DOJ Background Checks

The authority to conduct and disseminate criminal background checks rests upon a layered statutory framework that varies substantially by jurisdiction and purpose. At the federal level, the Fair Credit Reporting Act of 1970 establishes baseline requirements for any third-party or employer use of consumer reports that include criminal history information, imposing affirmative notice and written authorization obligations before any background check may be conducted.[2] The federal statute defines "consumer reports" to include information "bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living," which encompasses criminal history records when used for employment, housing, credit, insurance, or licensing determinations.[2] The Fair Credit Reporting Act requires that employers provide prospective employees or current employees with a clear and conspicuous written disclosure-in a document that consists solely of the FCRA-mandated disclosure-stating that a consumer report may be obtained.[2][5] Following this disclosure, employers must obtain the individual's written authorization before requesting the background check.[2][5]

State statutory frameworks establish which agencies are authorized to request criminal history information, what specific categories of individuals or entities may receive such information, and the dissemination criteria that apply to different types of requesters. The California Penal Code establishes that the California

Department of Justice maintains the statewide criminal record repository and processes fingerprint-based background checks authorized by statute, with dissemination criteria varying by applicant type (employment, licensing, certification, volunteer status).[14][31] Under California Penal Code Section 11105, the DOJ applies statutorily mandated dissemination criteria based on the nature of the applicant—for example, the dissemination rules applicable to law enforcement applicants differ from those applicable to child care workers, which differ from those applicable to applicants for private sector employment.[14][31] Texas Government Code Chapter 411 similarly authorizes the Texas Department of Public Safety to conduct fingerprint-based background checks and establishes the statutory framework for fingerprint submission, processing, and dissemination of results.[8][11] Federal regulations codified at 28 CFR § 20.33 establish rules for dissemination of criminal history record information contained in the Interstate Identification Index System and the Federal Information Relay System, specifying that such information may be made available only to criminal justice agencies for criminal justice purposes, authorized noncriminal justice agencies, or individuals authorized by statute, ordinance, executive order, court rule, court decision, or court order.[40]

The statutory framework also establishes different investigative standards and lookback periods depending on the sensitivity and risk level of the position or purpose for which the background check is being conducted. Federal law does not impose a universal seven-year limitation on criminal conviction reporting; rather, the Fair Credit Reporting Act restricts reporting of certain nonconviction arrest records to seven years and certain civil judgment information to seven years, but does not place time limitations on reporting of criminal convictions.[27] However, many states have enacted their own restrictions on reporting of older criminal convictions. California prohibits consumer reporting agencies from reporting convictions older than seven years under California Civil Code Section 1786.18(a)(7), though certain exemptions apply.[27] Hawaii restricts felony convictions to seven years and misdemeanors to five years under Hawaii Revised Statutes Section 378-2.5.[27] Massachusetts, Montana, New Hampshire, New Mexico, New York, and Washington State each have enacted variations of seven-year rules for reporting of convictions.[27] Additionally, multiple states have enacted "clean slate" laws that automatically seal or expunge certain criminal records after specified periods, preventing consumer reporting agencies from reporting such records regardless of age.[27]

The Fair Credit Reporting Act: Statutory Requirements for Employers and Third-Party Background Check Providers

The Fair Credit Reporting Act establishes a comprehensive regime of pre-screening, notice, authorization, adverse action, and recordkeeping requirements that employers and third-party background screening companies must follow when conducting background checks for employment purposes. The statute defines "consumer reporting agencies" as entities that regularly engage in assembling or evaluating consumer credit information or other information on consumer reports and furnishing such reports to third parties.[2] When an employer or organization uses a third-party consumer reporting agency to conduct a background check—whether that background check includes criminal records, credit history, employment verification, education verification, driving records, or other information—the employer becomes subject to Fair Credit Reporting Act compliance obligations.

The first critical requirement is that employers must provide prospective employees or current employees with a clear and conspicuous written disclosure of the intention to obtain a background check before requesting such a report.[2][5] The statute specifies that this disclosure "must consist solely of the disclosure"—meaning employers cannot combine the Fair Credit Reporting Act-mandated disclosure with other forms, acknowledgments, waivers, or state-mandated language in a single document without violating the statutory

requirement.[5][60] The Ninth Circuit Court of Appeals addressed this requirement in *Gilberg v. California Check Cashing Stores*, holding that a disclosure form that combined federal Fair Credit Reporting Act language with state-mandated disclosures violated the FCRA's "standalone document requirement" because it included extraneous information and therefore did not comply with the statutory language that the disclosure must "consist solely" of the required disclosure.[60] The court held that combining federal and state disclosures created confusion and violated the FCRA's "clear and conspicuous" requirement, even though the form was technically "conspicuous" through use of bold text, capitalization, and underlining.[60] The practical consequence is that employers must use completely separate documents for the Fair Credit Reporting Act disclosure and any additional state-mandated or organizational disclosures.

The Fair Credit Reporting Act disclosure must describe the types of consumer reports or investigation that might be sought, provide the individual with a summary of their rights under the statute, and obtain the individual's written authorization to conduct the background check.[2][5] The authorization may be included in the same document as the disclosure, provided the disclosure itself is not combined with extraneous information.[5] The statute requires that employers certify to the background check company that they have provided the required disclosure, obtained written authorization, complied with Fair Credit Reporting Act requirements, and will not use background information in violation of federal or state equal opportunity laws.[2][5]

After receiving the background check report, if the employer intends to take adverse employment action based wholly or partly on information in the report—such as declining to hire the applicant, terminating employment, or denying promotion—the employer must follow specific adverse action procedures.[2][5] Before taking the adverse action, the employer must provide the individual with a pre-adverse action notice that includes a copy of the background check report, a copy of the FTC's "A Summary of Your Rights Under the Fair Credit Reporting Act" document, and a reasonable opportunity for the individual to review and dispute the accuracy or completeness of information in the report.[2][5] After allowing a reasonable time for the individual to respond to the pre-adverse action notice and dispute information, if the employer still intends to proceed with the adverse action, the employer must provide a final adverse action notice that explains the decision was based in whole or in part on information in the background check report, provides the name, address, and phone number of the background check company, clarifies that the background check company did not make the hiring decision, explains that the individual has the right to dispute accuracy or completeness of the report, and notes that the individual may request an additional free copy of the report from the background check company within 60 days.[2][5] Notably, employers should not include language in the pre-adverse action or adverse action notices that purports to require the individual to acknowledge that hiring decisions are based on non-discriminatory reasons, as such language is beyond the scope of what the Fair Credit Reporting Act permits and may create compliance violations.[5]

Recordkeeping obligations under the Fair Credit Reporting Act require that employers maintain records of the disclosure provided, the authorization obtained, the background check report received, any pre-adverse action and adverse action notices provided, and documentation of the employer's compliance process for a specified period. The Fair Credit Reporting Act and implementing Equal Employment Opportunity Commission guidance generally require that employers maintain such records for at least one year from the date of the personnel action.[41]

State-Specific Statutory Authorization and Dissemination Criteria

Background check authorization and dissemination procedures vary substantially across states, reflecting different legislative determinations about which agencies should be authorized to request criminal history information and what categories of information should be released to different types of requesters.

Understanding state-specific procedures is essential because DOJ background checks must be requested through authorized state agencies using state-mandated forms and procedures, and the scope of information released depends on the statutory authorization under which the request is submitted.

California DOJ Background Check Procedures

California has established a comprehensive system for fingerprint-based background checks administered by the California Department of Justice Bureau of Criminal Information and Analysis. California law authorizes approximately 45,000 agencies to perform background checks, and the DOJ processes approximately 2 million state-level background checks and 1.2 million federal-level background checks annually.[14][31] The background check process begins when an authorized applicant agency provides an applicant with the BCIA 8016 form titled "REQUEST FOR LIVE SCAN SERVICE," which the applicant completes with personal information and takes to a Live Scan operator.[43] In California, fingerprinting must be performed by a certified fingerprint roller or qualified law enforcement personnel, not by private entities without proper certification.[43] The Live Scan operator verifies the applicant's identification, inputs the applicant's personal descriptor information, captures fingerprints electronically, and transmits the data to the DOJ, providing the applicant with an Applicant Transaction Identifier (ATI) number.[43]

Once the transaction is received by the DOJ, the fingerprint images are automatically searched against the fingerprint database. If there are no matching fingerprints, the transaction is generally processed electronically within 48 to 72 hours without technician intervention.[43] Under normal circumstances, Live Scan results are returned within 24 to 72 hours in California.[21] However, if an applicant's fingerprints match fingerprints in the database (indicating possible criminal history), the associated RAP sheet (Rap sheet stands for "Record of Arrest and Prosecution") must be reviewed by a DOJ technician to ensure there is a corresponding disposition for each arrest.[14][43]

The DOJ applies statutory dissemination criteria based on the applicant type to determine what information is released. California Penal Code Section 11105 establishes different dissemination standards for different categories of applicants.[14] A DOJ technician reviews the RAP sheet, determines whether there is a corresponding disposition for each arrest, and applies the statutorily mandated dissemination criterion for the applicant type to prepare a background check response.[14] If there is no corresponding disposition, the DOJ may contact the District Attorney's office, the court, or the probation department to perform what is termed a "genuine effort" to obtain missing disposition information, which is labor-intensive and may cause delays.[14][31]

If a federal-level background check is requested (indicated by "FBI" in the "level of service" field), the fingerprint images are forwarded to the FBI for searching against the national criminal history database.[14][43] If the FBI identifies a match, it sends the DOJ a cumulative RAP sheet containing information from any states or federal agencies that have reported the information to the FBI, and the DOJ must again perform the "genuine effort" to obtain missing disposition information.[14] Once all disposition information has been obtained, a DOJ technician reviews the updated RAP sheet, applies the statutory dissemination criterion, and prepares the background check response.[14] The response is sent electronically or via hard copy mail to the authorized applicant agency, not directly to the applicant.[14][31]

California law establishes specific procedures for individuals seeking to obtain and review a copy of their own criminal history record. Under California Penal Code Section 11142, individuals are prohibited from giving a

copy of their criminal record to unauthorized third parties.[24] Under California Penal Code Section 11125, individuals cannot be required by an employer or agency to provide a copy of their own criminal record or proof that a record does or does not exist.[24] If an applicant wants to review their own criminal history following a background check, they may request a "Record Review" through completion of form BCIA 8016RR, which allows individuals to obtain a copy of their complete California criminal history record, not just the portions released to the authorized agency.[43] Following receipt of the record review copy, applicants should review the record carefully for incomplete, inaccurate, or missing court information, and follow up directly with the court where their case was held to request corrected information be submitted to the DOJ.[43]

California law specifies that the DOJ will not notify applicants when their background check is received or processed; instead, the results are matched with the incoming license application upon submission.[43] Applicants are not required to submit fingerprints until within 30 days of submitting their license application, as fingerprints submitted more than 30 days before application submission may be destroyed.[43] Additionally, if an adverse employment, licensing, or certification decision is made based on results of a criminal history background check, California Penal Code Section 11105(t) requires that the applicant agency immediately provide the applicant with a copy of the background check results.[14][31]

Texas Department of Public Safety Fingerprint Procedures

Texas establishes fingerprint background check procedures through Texas Government Code Chapter 411. The Texas Department of Public Safety administers an electronic fingerprinting system called FAST (Fingerprint Applicant Services of Texas), which operates through the Identogo vendor. Individuals seeking a personal review of their criminal history may request a "Personal Review" background check using service code 11FT12.[8][11] The Personal Review process can be initiated either online through the Identogo website (uenroll.identogo.com/servicecode/11FT12) or by telephone at 1-888-467-2080.[8][11]

For online scheduling, applicants must have the Personal Review FAST form (also called the CR-63 form) before calling, and they will be prompted to enter the service code.[8] Alternatively, applicants can visit an Identogo location in person and select "Electronic Submission" (Option A) to have fingerprints captured and submitted electronically.[8] The service code for personal review in Texas is 11FT12, which is unique to individual applicants seeking their own background check.[8][11]

The Texas DPS requires completion of specific biometric information on the fingerprint card or during electronic submission, including the applicant's printed last name, first name, middle name, and any alias names; sex, race, and date of birth; and social security number (optional but required to have the Social Security number printed on the Criminal History results).[8] The Complete legible set of fingerprints must be submitted on a DPS-approved fingerprint card or through electronic capture.[8]

For fingerprints submitted electronically through Identogo, results are typically returned within 14 days, though processing can take up to 30 days in some cases.[8] The DPS will not process fingerprints that are over 30 days old, so applicants should contact the DPS within 14 days if they have not received results.[8] Results are mailed or emailed to the address provided by the individual.[8]

Texas law also requires written authorization for background checks. The CR-63 form includes a background check authorization section in which applicants certify that all information provided is true and accurate, authorize the Texas DPS to access Texas and Federal criminal history record information, authorize submission of fingerprints to the FBI, and understand the fingerprints will be searched by the FBI's Next Generation Identification (NGI) system and that the FBI may retain fingerprints and related information in its

permanent collection.[8][11]

Federal employment suitability determinations

Federal background investigations for employment with the Department of Justice, Department of Defense, and other federal agencies follow distinct statutory frameworks established by the Office of Personnel Management and agency-specific policies. For attorneys and law students applying for positions at the Department of Justice, the Office of Attorney Recruitment and Management (OARM) reviews the suitability of every applicant based on completed security forms, fingerprint checks, credit checks, a full field FBI background investigation, and for attorney applicants, tax and bar checks.[1][38] The background investigation covers a period of seven to ten years depending on the nature of the position.[1][38] In making suitability determinations, OARM considers a candidate's tax filing and payment history, credit history, candor, and any history of controlled substance usage.[1][38]

Under 5 CFR § 731, suitability determinations for federal civilian employees must be based on the presence or absence of specific factors related to the individual's character and conduct.[26] Criteria that may be considered as basis for finding an individual unsuitable for service include misconduct or negligence in employment, criminal or dishonest conduct, lack of candor with employers or government investigators, misuse of government property or position, alcohol or substance abuse, mental or emotional instability, and refusal to cooperate with background investigation.[26] When evaluating suitability, agencies consider the nature of the position for which the person is applying, the nature and seriousness of the conduct, the circumstances surrounding the conduct, the recency of the conduct, the age of the person involved at the time of the conduct, contributing societal conditions, and the absence or presence of rehabilitation or efforts toward rehabilitation.[26]

Fingerprinting Methods, Technical Requirements, and Quality Standards

The fingerprinting process represents the foundational step in all DOJ background checks, and the quality of fingerprints substantially affects processing timelines, the likelihood of rejection and resubmission, and the accuracy of the criminal history check. Two primary methods exist for fingerprint submission: electronic Live Scan capture or manual ink-based card submission.

Live Scan Electronic Fingerprinting

Live Scan is an electronic fingerprinting process that captures fingerprints digitally, transmits them electronically to the state DOJ and potentially to the FBI, and replaces traditional ink-based fingerprinting in many jurisdictions. The successful electronic capture of fingerprint images requires technical competence from the Live Scan operator, adherence to specific biometric standards, and proper data entry of biographic information. The Live Scan device captures both rolled impressions of all ten fingerprints (taken individually by rolling the finger from one side of the nail to the other) and plain impressions of all ten fingerprints (taken simultaneously by pressing the fingers flat onto the scanning surface).[51] The Live Scan operator must verify the quality of the captured images before submitting, as poor quality prints-characterized by smudging, faint ridge detail, uneven impressions, or incomplete nail-to-nail coverage-frequently result in rejection by the DOJ or FBI.[52]

Common fingerprinting rejection triggers include low ridge detail caused by faint, smudged, or uneven impressions that cannot be compared confidently; incomplete or incorrect capture of fingerprints; missing required biographic fields on the submission form; card completion problems such as stray marks inside

impression boxes or improper rolling technique; and submission of previously used fingerprint cards instead of freshly collected sets.[52] In 2026, enforcement of the "previously used fingerprints" prohibition appears to be increasing, with some submitting systems now reporting stricter interpretation of this rule and rejecting resubmissions of fingerprint images taken in prior engagements.[52]

When a Live Scan submission has no data or quality errors and does not result in possible criminal history matches, the submission is processed automatically and responded to electronically by the DOJ.[37] Most Live Scan submissions in California are responded to electronically, though electronic mail response may not be available in all cases, in which case responses are provided via U.S. mail.[37]

Fingerprint Card Submission and Manual Fingerprinting

Manual fingerprint cards remain an option for applicants in certain jurisdictions or circumstances. The standard fingerprint card used by federal agencies is the FD-258 (Federal Fingerprint Card), which is also accepted by many state DOJ agencies.[51] Some federal agencies, including the Defense Counterintelligence and Security Agency (DCSA), now preferentially accept or require the SF-87 (Standard Form 87) for federal employee/applicant, military, contractor, and volunteer fingerprinting; as of January 1, 2026, DCSA will only accept the January 2025 version of the SF-87.[25]

When fingerprints are taken manually by ink and card, the individual must provide fingerprints with all ten fingers captured, including both rolled impressions (each finger rolled from one side of the nail to the other) and plain impressions (all ten fingers pressed flat simultaneously).[51] The card must be completed with the individual's full name, date of birth, and place of birth; such information is required because the FBI uses positive fingerprint identification to verify identity and avoid misidentification with individuals who share the same name.[51]

If the quality of manually-submitted fingerprints is rejected by the DOJ or FBI due to poor print quality, the applicant may resubmit within one year of the case closing date without incurring additional cost.[25] However, if resubmission is required to be included in the prior closed investigation, the reopen request must be submitted within one year of the case closing date and within 120 days of the reprint results.[25]

Common Quality Issues and Best Practices

Fingerprint rejection due to quality issues frequently causes substantial delays in processing, particularly when applicants are on tight timelines for employment, licensing, or immigration purposes. Common quality issues include smudging or "flat" rolling (characterized by dark, blended ridges or incomplete nail-to-nail coverage), which can be reduced by using an experienced technician with slow, consistent pressure and proper nail-to-nail rolling technique.[52] Card completion problems such as missing required fields, improper impression blocks, stray marks inside impression boxes, or prohibited marking practices (such as highlighting) trigger immediate rejection.[52]

If fingerprints are rejected more than once, the FBI recommends that applicants consider submitting multiple fingerprint cards to allow for backup sets in case initial submissions encounter additional quality issues.[52] Additionally, applicants with a history of fingerprint rejections should evaluate whether to change variables beyond simply resubmitting the same fingerprints—for example, by seeking fingerprinting at a different location with different equipment or by a different technician, or by ensuring the applicant's hands are clean and dry at the time of capture to maximize ridge detail transmission.[52]

Processing Timelines, Fees, and Administrative Procedures

Processing timelines for DOJ background checks vary substantially depending on whether the submission is state-only or includes a federal FBI search, the complexity of the criminal history (if any), the quality of the fingerprints submitted, the current volume of applications at the DOJ, and whether any discrepancies trigger additional investigation.

California Processing Timelines

Under normal circumstances, Live Scan results in California are returned within 24 to 72 hours.[21] However, some submissions can take up to 7 days or longer depending on several factors.[21] The California DOJ is generally efficient with processing, especially when fingerprints are clear and there are no matches to criminal records.[21] If an applicant has a criminal record or past arrests, the DOJ and/or FBI must perform a more thorough review, which could extend processing timeframes.[21] Additionally, if fingerprints are of poor quality or unclear, the DOJ may have difficulty processing the data, which can lead to delays, and in some cases, applicants may be asked to resubmit.[21]

High volume periods, such as peak hiring seasons or times of increased demand from licensing renewal periods, can cause the DOJ to experience backlogs that slow down processing.[21] Additionally, agency processing times (the time required for the requesting agency to receive and review the results from the DOJ) may cause additional delays beyond the DOJ's processing time.[21]

Applicants can check the status of their submission online using the Automated Transaction Identifier (ATI) number located at the bottom of the Live Scan form, combined with their date of birth, to track the submission on the California DOJ website.[21] If it has been more than seven business days and the applicant has not heard back from the requesting agency, it is advisable to contact the requesting agency to determine if they have received the results, call the DOJ's Applicant Processing Unit for an update, or confirm that correct information was submitted at fingerprinting.[21]

The California DOJ allows a minimum of thirty days before making a status inquiry on a background check submission.[24] Applicants should check first with the applicant agency that requested the background review, since the DOJ sends results directly to the applicant agency, not to the individual.[24] Poor quality fingerprints, records that contain criminal information, erroneous information submitted on the fingerprint transaction, and individuals born before 1920 who have submitted manual fingerprints in the past may delay reporting of results.[24]

The California DOJ does not offer an expedited process for additional charge, so applicants cannot pay to accelerate processing.[24]

FBI National Criminal History Check Processing

FBI national criminal history checks typically require several weeks for processing.[39] The FBI processes requests as quickly as possible, but applicants should allow several weeks, and can obtain an estimate of the current processing time by calling the FBI's Criminal Justice Information Services (CJIS) Division Customer Service Group at (304) 625-5590.[39] For FBI Identity History Summary Checks (requests by individuals for personal review of their own records under Departmental Order 556-73), applicants should allow approximately 13 weeks for processing upon receipt by the FBI.[51]

When fingerprints are submitted electronically through state channels or through FBI-approved channelers, electronic submission generally improves efficiency and timeliness compared to hard-copy submissions.[25]

Fee Structures

DOJ background check fees vary substantially depending on the state, the type of application, and whether federal-level checking is requested. In California, fees are determined based on the type of application and the requesting agency, with different fees for different categories of applicants (employment, volunteer, licensing, etc.).^[53] For example, as of August 17, 2012, California's fee schedule included State CORI fees ranging from \$0 to \$42 and Federal CORI fees of \$0 to \$17, depending on the applicant category and whether it was an initial submission or renewal.^[53] These fees are subject to change.

In Texas, the fee for a Personal Review background check through Identigo is \$24.95, payable by credit card or by mail-in check or money order made payable to MorphoTrust USA.^[11] Additional state agency fees may also apply depending on the purpose of the check.

For FBI Identity History Summary Checks (Departmental Order 556-73) requested by individuals for personal review of their own records, the government fee is \$18, which is standard nationwide and payable by certified check, money order, or credit card.^{[50][51]}

For individuals applying for federal positions or seeking federal security clearances, the background investigation costs are typically absorbed by the federal agency and are not directly charged to the applicant.

Handling Errors and Resubmissions

Once a Live Scan form has been submitted and processed, applicants generally cannot make changes to the information.^{[33][49]} If a mistake was made on the form, the applicant should contact the agency that requested the background check to advise on next steps and whether a resubmission is required.^{[33][49]} If the mistake involves critical information such as the ORI number (Organization Record Identifier) or applicant details, a resubmission may be necessary.^{[33][49]} In California, to initiate a resubmission, applicants need to reference the Original ATI number and possibly provide a letter of rejection from the requesting agency.^[33] The requesting agency may issue a letter requesting a resubmission, and the applicant will need to complete the fingerprinting process again.^[33]

If FBI fingerprints are rejected a second time due to poor print quality, the requesting agency must request an FBI name check instead of proceeding with a third fingerprint submission.^{[31][49]} The form BCIA 8020, titled "REQUEST FOR APPLICANT NAME CHECK BY THE FEDERAL BUREAU OF INVESTIGATION (FBI)," must be submitted to the DOJ's FBI Response Unit by the applicant agency to request a name check of the FBI national criminal history database.^{[31][43]} The FBI name check request must be received by the DOJ within 75 calendar days of the second rejection notice, or the applicant will need to be reprinted and the FBI fingerprint background check process will start over.^{[31][43]}

Accessing, Reviewing, and Challenging Your Own Criminal History Records

An important distinction exists between the background check report that is disseminated to the requesting agency (employer, licensing authority, etc.) and the complete criminal history record that an individual may access for their own review. Individuals have statutory rights to access, review, and challenge the accuracy of their own criminal history records, whether state or federal.

Requesting and Obtaining Your Own Record

Individuals may request a copy of their own state criminal history record through a formal request process

separate from employer-initiated background checks. In California, individuals seeking to obtain a copy of their complete California criminal history record complete form BCIA 8016RR, which is available online.[43] This record review allows individuals to obtain the complete information on their criminal history record, not just the limited portions that are released to a specific authorized agency under dissemination criteria.[43]

For FBI records, individuals may obtain a copy of their FBI Identity History Summary (commonly called an "identification record" or "rap sheet") by sending a written request to the FBI's Criminal Justice Information Services (CJIS) Division in Clarksburg, West Virginia, along with payment of the \$18 processing fee and a current, original tenprint fingerprint submission.[39][51] The individual may also obtain an FBI Identity History Summary through an FBI-approved channeler such as Identigo, which will securely capture and transmit fingerprints to the FBI and provide electronic access to the federal background check results.[54]

Procedures for Challenging Inaccurate or Incomplete Records

Individuals have specific statutory rights to challenge the accuracy or completeness of their criminal history records. Under federal regulations 28 CFR § 16.34 and privacy laws, individuals have the right to challenge the accuracy or completeness of their FBI Identity History Summary.[20] This is a formal process that is essentially an appeal of the FBI record, often referred to as an "Identity History Summary Challenge."

To initiate a challenge, individuals should gather supporting documentation establishing what information is inaccurate or incomplete. Types of documentation that support challenges include court records (dockets, minute orders, final judgments) showing the outcome of a case; expungement or sealing orders signed by a judge, if an arrest or conviction needs to be removed; and prosecutor or police letters if available confirming they reported incorrect data.[20] If a charge is listed incorrectly (for example, showing "Burglary" when the actual charge was "Trespass"), the individual should obtain a copy of charging documents or court abstracts showing the correct charge.[20]

Individuals may challenge an inaccurate FBI report either by using an online system or by sending a written challenge request directly to the FBI.[20] For written challenges by mail, the individual should send a letter to the FBI CJIS Division, Attention: Correspondence Unit (formerly Correspondence Group), 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, clearly stating that the individual is challenging the Identity History Summary and detailing what information is inaccurate or incomplete.[20] The letter should include the individual's personal details (full name, date of birth, and possibly a copy of the FBI report or the Reference Number from it) so the FBI can locate the record. The individual should attach photocopies of all supporting documents.[20] It is helpful to organize the challenge by each item, for example: "Challenge Item 1: Arrest on [DATE] in [STATE]-this case was expunged, see attached court order dated [DATE]"; "Challenge Item 2: Arrest on [DATE] in [STATE]-charge should be misdemeanor Trespass, not felony Burglary, see attached disposition." [20]

Upon receiving the verification from the original source (such as a state criminal justice agency or court), the FBI CJIS staff will make necessary changes to the Identity History Summary, which could include adding missing details (like entering a dismissal or completion of sentence), modifying incorrect data (such as fixing a date or charge level), or removing an entry (such as an expunged case or a record that didn't actually belong to the individual).[20] The FBI will align the record with the information supplied by the contributing agency.[20]

Similarly, in California, if an individual believes there is a discrepancy in their criminal history record, they may obtain a copy of their California criminal history record by completing form BCIA 8016RR.[31] Following receipt of the Record Review copy, applicants should follow the instructions included in the letter

with the criminal history record for disputing inaccuracies.[31] Applicants may also designate their legal counsel to receive a copy of the criminal history record pursuant to California Penal Code Section 11124.[31]

Remedy for Inaccurate Background Check Results

The Fair Credit Reporting Act provides specific remedies for individuals who receive inaccurate background check results from a consumer reporting agency. If a background check report contains false or misleading information that results in an employment, licensing, or certification denial, the individual may dispute the accuracy or completeness of the report directly with the background check company at no cost.[23] The individual has the right to know what is in their file and the right to dispute incomplete or inaccurate information.[19] If the results of a background check prompt an employer to consider not hiring an applicant, the employer must notify the applicant by sending a pre-adverse action notice that includes a copy of the report and the FTC's "Summary of Your Rights Under the Fair Credit Reporting Act." [5]

Additionally, individuals have the right to request an additional free copy of the report from the reporting agency if requested within 60 days of receiving the adverse action notice.[5] The individual can also file complaints with the Federal Trade Commission and state consumer protection agencies if they believe the background check company has violated Fair Credit Reporting Act requirements.

Employer Compliance, Organization Authorization, and Record Management

Organizations and employers seeking to conduct background checks on employees, volunteers, or applicants must first ensure they are authorized under state law to request criminal history information, establish proper authorization channels, and implement Fair Credit Reporting Act-compliant procedures for disclosure, authorization, adverse action notification, and recordkeeping.

Obtaining Authorization to Request Background Checks

In many states, not all employers are automatically authorized to request criminal history background checks; rather, authorization depends on the specific statutory authority under which the request is being made. In California, organizations seeking to conduct background checks must complete an authorization application with the California Department of Justice.[37][44] For youth-serving organizations and human resource agencies, the organization must complete the "REQUEST FOR AUTHORIZATION TO RECEIVE STATE SUMMARY CRIMINAL HISTORY INFORMATION PURSUANT TO PENAL CODE SECTION 11105.3," which requires submission of organizational documents demonstrating nonprofit or for-profit status, explanation of the specific purpose for which criminal history information will be used, and identification of the organization's "Custodian of Records"-the individual designated as responsible for hiring decisions, security, storage, dissemination, and destruction of criminal records.[37][44]

Additionally, organizations must have an Organization Record Identifier (ORI) number, which is obtained by completing form "REQUEST FOR CONTRIBUTING AGENCY ORI AND/OR RESPONSE MAIL CODE (BCII 9001)." [44] The organization must also designate a Custodian of Records and complete the "NOTIFICATION OF ORI, MAIL CODE AND/OR BILLING NUMBER ASSIGNMENT (BCIA 9003)" form.[44] The designated Custodian of Records must undergo a fingerprint-based background check through Live Scan and pay the associated fees (historically \$49 for state/federal background check plus \$30 confirmation fee, totaling \$79, though fees are subject to change), as California Penal Code Section 11102.2(b) requires that no person may serve as an agency Custodian of Records unless they have been confirmed by the DOJ.[37][44]

Incomplete applications are returned unprocessed, and organizations should not submit fingerprints from applicants until the DOJ has granted authorization.[37][44] The process of obtaining authorization generally takes several weeks.

In California, effective January 1, 2022, Assembly Bill 506 (now known as Business and Professions Code Section 18975) requires that all youth-serving organizations meet oversight standards to protect vulnerable populations, including conducting background checks on administrators, employees, and regular volunteers.[44] Organizations must provide specialized training, maintain records of such training, implement safe physical environments and operational practices, and conduct appropriate background checks.[44]

Fair Credit Reporting Act Compliance Procedures for Organizations

Organizations conducting background checks on employees, volunteers, or applicants through third-party consumer reporting agencies must implement specific Fair Credit Reporting Act procedures. These procedures include providing initial notice of the intention to conduct a background check (in a standalone document separate from any job application), obtaining written authorization to conduct the background check, and following specific adverse action procedures if background check results prompt employment decisions.

The initial notice must be clear and conspicuous, must consist solely of the FCRA-mandated disclosure language (without combination with other forms, state-mandated disclosures, or organizational policies), must describe the types of consumer reports or information that might be sought, and must provide the individual with a Summary of Rights under the FCRA.[2][5][60] The authorization can be combined with the disclosure in the same document, provided the disclosure itself is not combined with extraneous information.[5][60]

When the background check report is received and the organization intends to make an employment decision based wholly or partly on the report, the organization must provide a pre-adverse action notice that includes a copy of the background check report, the FTC's "Summary of Your Rights Under the FCRA," and a reasonable opportunity for the individual to dispute information in the report.[2][5] After a reasonable time has passed, if the organization still intends to proceed with the adverse action, it must provide a final adverse action notice explaining that the decision was made based in whole or in part on information in the background check report.[2][5][41]

Organizations should maintain documentation of each step of the Fair Credit Reporting Act compliance process, including the initial disclosure provided, the authorization obtained, the background check report received, any pre-adverse action and adverse action notices provided, and the timeframes between each step.[41] The Fair Credit Reporting Act requires that organizations maintain such records for at least one year from the date of the personnel action, though the Department of Labor extends this requirement to two years for state and local governments and for federal contractors with at least 150 employees and a government contract of at least \$150,000.[41]

Volunteer Background Check Compliance

Organizations conducting background checks on volunteers are subject to the same Fair Credit Reporting Act requirements as those applicable to employee background checks, despite the fact that volunteers are often not classified as employees.[57] The fair credit Reporting Act's disclosure, authorization, adverse action, and recordkeeping requirements apply to volunteer screening with equal force as to employee screening.[57] Organizations must provide the same standalone FCRA disclosure, obtain written authorization, provide pre-adverse action notice if information in the report might lead to an adverse decision, wait a reasonable time for the volunteer to dispute information, provide final adverse action notice if the adverse decision proceeds, and maintain records of the process.[57]

Ban the Box and Fair Chance Hiring Laws

An increasing number of jurisdictions have enacted "Ban the Box" or fair chance hiring laws that regulate when employers may inquire about criminal history during the hiring process and how such information may be used in employment decisions. These laws generally prohibit employers from asking about criminal history at the application or initial interview stages and instead require that background checks be conducted only after a conditional job offer has been made.

California's Fair Chance Act

California's Fair Chance Act (also known as "Ban the Box"), codified in Government Code Section 12952 and related provisions, took effect on January 1, 2018, and applies to employers with five or more employees.[58] The law generally prohibits employers with five or more employees from asking a job candidate about conviction history before making a job offer.[58] Additionally, California state law has, since 2013, prohibited public sector employers from inquiring into an applicant's criminal history until the applicant has met all other qualifications for a job.[55]

Employers must remove questions such as "Check yes or no: Have you ever been convicted of a crime?" from job application forms and must not ask questions about criminal history during the interviewing stage, focusing instead on determining whether the candidate is otherwise qualified for the position.[55] Employers can still conduct criminal background checks, but they generally must wait until after making an applicant a conditional job offer.[55] If a job-relevant conviction history is discovered after the conditional offer is made, the job offer may be rescinded, subject to various requirements intended to ensure fairness.[55]

Employers are exempt from Ban-the-Box requirements when hiring for positions where any state, federal, or local law requires a criminal background check or restricts employment based on criminal history.[55] For example, individuals with violent, sex, or drug crime convictions are typically barred from working with children, so employers hiring for such positions would not be subject to the Ban-the-Box delay requirement.[55] Similarly, in the financial services industry, a felony conviction involving dishonesty or breach of trust can be a statutory barrier to employment.[55]

The California Fair Chance Act explicitly states that its employee protections apply in addition to (not in place of) other laws and local ordinances, so business owners should check for any county or city requirements that might apply in addition to state law.[55]

Nationwide Ban the Box Laws

Over 180 states, cities, and counties enforce Ban the Box or fair chance hiring laws in some form.[15][45] These laws vary substantially in their scope, timing, and specific requirements. Some jurisdictions prohibit employers from asking about criminal history until after a conditional offer is made; others prohibit such inquiries only at the application stage but allow inquiries during interviews; some apply only to public employers; and some apply to both public and private employers above a certain size threshold.[45] Many jurisdictions impose specific lookback periods, requiring that employers may only consider convictions within a certain time period or only convictions related to the specific job duties.

Understanding the Ban the Box laws applicable in a particular jurisdiction is essential for employers to ensure Fair Credit Reporting Act compliance while also complying with state and local fair chance requirements. When both Fair Credit Reporting Act requirements and Ban the Box laws apply, employers must follow the

more restrictive requirements to ensure compliance with both frameworks.

Special Considerations: Immigration, Licensing, and Other Regulatory Contexts

DOJ background checks operate in distinct regulatory contexts beyond employment screening, including immigration proceedings, professional and occupational licensing, adoption and foster care, and volunteer work with vulnerable populations. Each context may have distinct authorization frameworks, dissemination standards, and procedural requirements.

Immigration-Related Background Checks

Individuals applying for immigration benefits such as naturalization, visa sponsorship, or adjustment of status often require DOJ background checks or FBI name checks as supporting documentation. The specific requirements depend on the type of immigration benefit being sought. Form I-864, Affidavit of Support, may require the sponsoring employer to conduct a background check on the principal beneficiary. Form I-539, Application to Extend/Change Nonimmigrant Status, may require background check documentation. Employment-based visa categories and family-based immigration applications frequently require criminal background checks as part of the background investigation conducted by Customs and Border Protection or the Department of Homeland Security.

In these contexts, applicants typically must obtain a clean background check report or documentation that no criminal record exists. The specific form of documentation required may vary by immigration benefit type and by the specific USCIS service center or consulate processing the application.

Professional and Occupational Licensing

Many states condition professional licensure in regulated occupations on successful completion of background checks conducted through state licensing agencies. Professions commonly requiring background checks include law, nursing, teaching, accounting, real estate, and child care. The statutory authorization for such checks may be found in state licensing statutes specific to the profession. Background check requirements for licensure often include both state criminal history checks and federal fingerprint checks submitted to the FBI.

Different states have enacted varying "clean slate" laws and conviction reporting restrictions that affect what information licensing agencies can report and consider. Some states prohibit licensing agencies from denying licensure based on convictions older than a certain period (commonly 5-10 years), unless the conviction is directly related to the occupation. Other states allow longer consideration periods or have no temporal restrictions on conviction consideration.

California's state-level licensing agencies process large volumes of background checks for teachers, nurses, accountants, social workers, and other licensed professions. Understanding the specific statutory dissemination criteria applicable to a particular profession in a particular state is essential for applicants to understand what information will be reported and how licensing decisions may be affected.

Adoption, Foster Care, and Child Care Background Checks

Individuals seeking to adopt children, become foster parents, or work in child care facilities typically must undergo background checks that comply with state and federal statutory frameworks. Federal law, including the Volunteers for Children Act (Public Law 105-251) and the Adam Walsh Act (Public Law 109-248), authorizes and in some cases mandates fingerprint-based national criminal history record checks for

qualifying entities caring for children and vulnerable adults.[32] The specific criteria for disqualification from child care, adoption, or foster care work vary by state and federal law, but typically include convictions involving violence, sexual offenses, child abuse, or drug trafficking.

In California, individuals applying to work in child care or foster care settings may be required to obtain DOJ background checks as part of Child Abuse Index (CAI) clearances and Trustline Registry certifications. Certain types of convictions may permanently bar an individual from such work, while other convictions may be subject to waiver or exemption processes. Understanding the specific disqualification criteria is essential for applicants seeking to work in these regulated fields.

Federal Employee Suitability Reviews and Security Clearances

Federal background investigations and suitability reviews follow distinct procedural frameworks established by the Office of Personnel Management and individual federal agencies. The suitability review process determines whether an applicant or employee has the character, reliability, and stability required for federal employment.

Suitability Determination Process

Upon completion of the appropriate level background investigation, applicants and employees undergo suitability and security reviews.[26] Civilian employees and applicants must undergo a suitability determination for federal employment, as defined by 5 CFR Part 731.[26] Suitability determinations must be based on the presence or absence of one or more specific factors established by the Office of Personnel Management.[26]

The specific criteria that may be considered as basis for finding an individual unsuitable for service include misconduct or negligence in employment; criminal or dishonest conduct; lack of candor with employers or government investigators; misuse of government property or position; alcohol or substance abuse; mental or emotional instability; and refusal to cooperate with background investigation.[26] When evaluating suitability, agencies consider the nature of the position for which the person is applying, the nature and seriousness of the conduct, the circumstances surrounding the conduct, the recency of the conduct, the age of the person involved at the time of the conduct, contributing societal conditions, and the absence or presence of rehabilitation or efforts toward rehabilitation.[26]

Reciprocity and Mutual Acceptance

When a person has already been determined to be suitable or fit based on character or conduct in a prior position with a federal agency, other agencies may accept that prior determination on a reciprocal basis rather than requiring a new suitability investigation.[26] This principle of reciprocity saves time and resources by preventing duplicative investigations. However, reciprocity depends on the level of the prior investigation being equivalent to or higher than the level required for the new position, and some circumstances (such as a break in federal service exceeding two years) may require an updated investigation.[26]

Defense Counterintelligence and Security Agency Fingerprint Procedures

The Defense Counterintelligence and Security Agency (DCSA) administers background investigations for most federal employees and contractors requiring security clearances. DCSA recommends submission of electronic fingerprints rather than hard-copy cards, as electronic submission improves efficiency, timeliness of results, and quality of prints.[25] Electronic fingerprint submissions are scheduled to the FBI as a Special

Agreement Check (SAC), Case Type 92, with results furnished to the designated Statement of Interest (SOI) as soon as the SAC is completed.[25] The SAC results can be used to satisfy fingerprint requirements of a higher-level investigation request for 120 days.[25]

For hard-copy fingerprint submissions, DCSA accepts the January 2025 version of Standard Form 87 (SF87) for federal employee/applicant, military, and volunteer fingerprinting, as well as contractors; DCSA will continue to accept the FD-258 form until further notice.[25] When submitting hard card fingerprints to satisfy fingerprint requirements of a higher-level investigation, the hard card fingerprints must be received by DCSA within 14 days from when the electronic application was released to DCSA.[25] If hard card fingerprints are not received within this timeframe, the application request will be returned to the agency as "Unacceptable." [25]

If the FBI is unable to make a classifiable determination because fingerprints are illegible and a search of the FBI criminal history records cannot be completed, the FBI deems the submission "Unclassifiable." [25] A reprint may be submitted within one year of the case closing date to obtain a classifiable determination without incurring additional cost.[25]

Conclusion and Strategic Considerations for Stakeholders

The Department of Justice background check process operates at the intersection of federal statutory authority, state-specific procedures, and regulatory frameworks that create distinct compliance obligations and substantive rights depending on the stakeholder's role. For individuals seeking personal review of criminal history records, understanding the procedures for requesting records through state channels, accessing complete criminal history files through formal request processes, and challenging inaccurate or incomplete information through established dispute mechanisms is essential to maintaining accurate records and protecting privacy rights. Individuals should be aware that they have the right to obtain their own criminal history records at minimal cost, that they can formally challenge inaccurate information, and that they should proactively review their records periodically to identify errors before such records are accessed by employers, licensing agencies, or other entities.

For employers and organizations, Fair Credit Reporting Act compliance represents a substantial but manageable set of obligations that-when properly implemented-reduce litigation risk and ensure fair hiring practices. Employers must provide standalone, clear and conspicuous disclosures of their intention to conduct background checks; obtain written authorization before requesting reports; provide pre-adverse action notice with opportunity to dispute if information may lead to adverse action; wait a reasonable time for response; and provide final adverse action notice if adverse decisions proceed. Employers must maintain documentation of each step for at least one year and should consider implementing compliance management software or seeking outside counsel to audit their processes regularly. Additionally, employers must be aware of Ban the Box requirements in their jurisdiction, which typically require that background checks not be requested until after a conditional job offer has been made, and must understand any statutory authorization requirements in their state for requesting criminal history information.

For federal agencies and authorized state entities, statutory authorization requirements establish the scope of criminal history information that may be requested and the specific dissemination criteria that must be applied. Organizations should ensure that they maintain current ORI numbers, designate compliant Custodians of Records, and implement proper procedures for handling, storing, and disseminating criminal history information. Background rechecks should be conducted on a regular schedule (typically every five years

minimum for authorized personnel) to ensure that records remain current.

For individuals seeking to clear or improve their criminal records for employment, licensing, or immigration purposes, understanding state-specific procedures for expungement, sealing, or record modification is essential. Many states now offer mechanisms through which individuals can petition for expungement or sealing of convictions or arrests, or can obtain record modifications that allow access to certain employment or licensing opportunities. These procedures vary substantially by state and often require filing motions in the original court where cases were prosecuted.

The DOJ background check system serves important public safety and integrity functions in employment, licensing, volunteer, and federal service contexts. When properly administered and used in compliance with Fair Credit Reporting Act and state law requirements, background checks protect public safety by identifying individuals unsuitable for positions involving public trust, vulnerable populations, or sensitive information. When implemented with appropriate attention to accuracy, fairness, and individual rights to challenge and correct records, the background check system furthers legitimate employer and state interests while protecting individual privacy and due process interests.

Legal Framework: Foundational Statutes and Regulations

The legal authorities governing DOJ background checks encompass federal statutes, implementing regulations, state statutes and regulations, and case law interpreting these authorities. The foundational federal statute is the Fair Credit Reporting Act (1970), 15 U.S.C. § 1681 et seq., which establishes baseline requirements for consumer reporting agencies and users of consumer reports. State statutory frameworks vary, with examples including California Penal Code § 11105 (criminal record dissemination criteria), Texas Government Code § 411.001 et seq. (criminal justice information), and Pennsylvania Crimes Code § 9102 (criminal history record information). Federal regulations include 28 CFR Part 20 (criminal justice information system) and 5 CFR Part 731 (federal employee suitability). Case law interpreting these authorities includes *Gilberg v. California Check Cashing Stores*, 940 F.3d 1189 (9th Cir. 2019) (FCRA standalone disclosure requirement) and numerous state court decisions addressing record dissemination and privacy rights.

Summary of Key Findings

The Department of Justice background check system represents a comprehensive, multi-layered regulatory framework that establishes different authorization requirements, procedural mechanisms, and substantive rights depending on whether the check is being conducted for personal review, employment screening, federal employment, volunteer work, or professional licensing. Processing timelines typically range from 24 to 72 hours for state-level Live Scan submissions to several weeks for FBI national criminal history checks, with substantial variation based on fingerprint quality, criminal record complexity, and systemic volume. Fair Credit Reporting Act compliance obligations require employers and third-party background check providers to maintain comprehensive procedures for disclosure, authorization, adverse action notification, and recordkeeping. State-specific statutory frameworks establish which entities are authorized to request criminal history information, what information must be disseminated to different categories of requesters, and procedures for individuals to access, review, and challenge their own records. Federal suitability determination standards establish character and conduct criteria that federal agencies use to evaluate fitness for federal

employment. Understanding these distinct frameworks and ensuring compliance with applicable requirements is essential for employers, individuals, and authorized entities seeking to navigate the DOJ background check process effectively.