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Public Records Search

A public records search is usually performed at the request of a private-sector employer or other private entity (e.g., rental-property managers, colleges). The vast majority of these searches are done by consumer reporting agencies (CRAs), which rely on information found in on-line databases, court records or criminal databases that are sold by the state agency responsible for storing and maintaining this information.

Most employers typically perform a background check after making a conditional job offer.

CRAs are regulated by the federal Fair Credit Reporting Act (FCRA). According to the FCRA, if a CRA is hired to perform a background check, the employer must obtain written permission from the applicant before conducting the background check. The FCRA imposes no restrictions on reporting criminal convictions. As long as the conviction has not been sealed (access to it is withheld from the public), a CRA is free to report it.

The FCRA does impose limitations on a CRA's ability to report arrest records. As a general rule, a CRA cannot report arrests that are more than seven years old. This restriction does not apply if the job in question pays a salary of \$75,000 or more.

Although Illinois law prohibits employers from asking about arrest history, as previously noted, CRAs are not required to withhold this information from Illinois employers. Thus, if you have an arrest history, you should assume that a private employer will see this information if a CRA is performing the background check.

If an employer decides to withdraw a job offer due to information it receives in a CRA background-check report, the employer must notify the job applicant as to why it is withdrawing the offer and provide the applicant with a copy of the report so the applicant can verify the accuracy of the information it contains. However, employers often ignore this requirement.

Because searches are done using your name and possibly a birth date, if you have a common name there is a risk that information about someone else could end up on your background report.



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If you know your report will include criminal-history information (arrests or convictions), and the employer withdraws the job offer, make sure you ask for a copy of the report if the employer fails to give it to you. You should do this even if the employer gives you a “neutral” reason for the withdrawal (e.g., “We decided to go in a different direction” or “We no longer have a job opening”).

When the employer’s own staff conducts the background check, as opposed to hiring a CRA, FCRA requirements do not apply.

Fingerprint/Live-Scan Search

In Illinois, fingerprint/live-scan searches are conducted by the Illinois State Police (ISP), which collects and maintains arrest and conviction records.

Additionally, the FBI conducts fingerprint/live-scan background checks. In many cases, if you are required by law to undergo a fingerprint/live-scan background check, your prints may be submitted to both the ISP and FBI criminal databases. Unlike the ISP database, the FBI database includes information from all U.S. states.

Individuals seeking employment in law enforcement or in fields such as education, nursing or caring for the elderly or disabled, are usually required to undergo a fingerprint/live-scan criminal background check. The same goes for obtaining certain professional or occupational licenses. Not surprisingly, applicants seeking employment in a field where being able to carry a firearm (e.g., security guard, private investigator) is a requirement, will also need to submit to a fingerprint/live-scan check.

There is one critical difference between the information that the ISP has access to versus what information is in the public record. If someone has sealed a conviction, this information remains in the ISP database but is only released under strict statutory guidelines. Under no circumstances does the ISP release information regarding someone’s history of arrests. It doesn’t matter if the arrest(s) were previously sealed or not.