

A black and white photograph of a wooden gavel resting on a wooden scale, symbolizing justice or law.

Federal versus State Criminal Records

Question:

Should employers conduct criminal record searches at both the state and federal level?

Response & Analysis:

Yes. It is a best practice for employers to search both state and federal criminal records because some crimes may only be prosecuted on a federal level and thus only appear when federal courts are searched (and vice versa). Thus, to receive a comprehensive report on an applicant's entire criminal record, both state and federal records should be searched.

Most criminal prosecutions occur on the state level and are for alleged violations of various state laws. Typically, state crimes are investigated by county sheriffs, state agents or local police officers, and are prosecuted by state district attorneys or city attorneys at county courthouses in that state. Records of these criminal offenses will show up when county or statewide searches are conducted. However, in addition to prosecutions under state law, there are also federal criminal laws that are passed by Congress, prosecuted by the United States Attorney's Office and investigated by federal officers, such as FBI or DEA agents. These laws typically relate to some federal or national interest, such as interstate trafficking in contraband, federal tax fraud, mail fraud or crimes committed on federal property. Federal prosecutors are increasing the number of actions they bring in federal courts, and are focusing on higher profile and emerging crimes, such as child pornography, hacking and other cybercrimes.

If a crime is prosecuted at the state or county level, records of the crime will likely only be found through a county courthouse or statewide repository criminal records search. If an employer chooses to only conduct a federal criminal search, then records of any crimes prosecuted on the state level will be missed. Likewise, there are many serious crimes that are prosecuted on a federal level, and records of such crimes would be missed if an employer's criminal record search is limited to only the county or state level. Employers may choose to supplement county or state-level searches with a criminal

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database search, such as through the National Criminal Database (NCD), however, these database searches will only include state records and generally do not cover federal criminal records. Thus, employers should strongly consider searching criminal records on both the state and federal level to ensure that they are reviewing an applicant's complete criminal history.



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