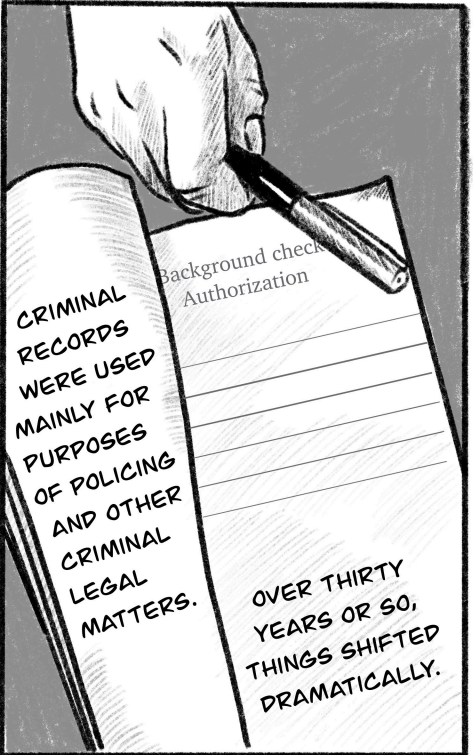


*The rise
of criminal
background
screening in
employment*

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BEFORE THE 1970'S, CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT WERE RARE.



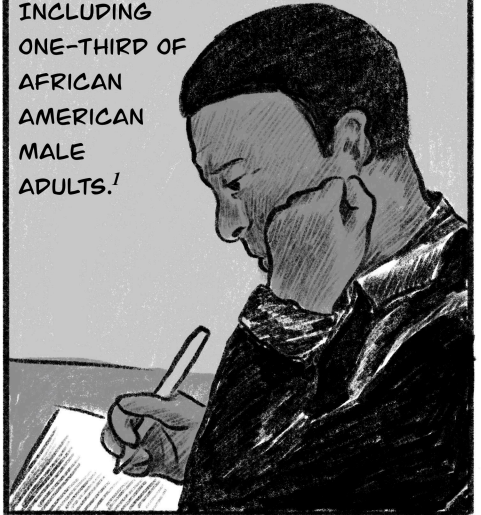
TODAY, MAJOR EMPLOYERS CONDUCT CRIMINAL BACKGROUND CHECKS AS A MATTER OF ROUTINE AND DISCRIMINATE ON THEIR BASIS.

Have you ever been convicted of a felony?

Yes

No

THIS SEVERELY LIMITS JOB PROSPECTS AND ACCESS TO LONG-TERM CAREERS FOR APPROXIMATELY 19.8 MILLION US ADULTS WHO ARE ESTIMATED TO HAVE A FELONY CONVICTION, INCLUDING ONE-THIRD OF AFRICAN AMERICAN MALE ADULTS.¹



1. Shannon, Sarah K. S., Christopher Uggen, Jason Schnittker, Melissa Thompson, Sara Wakefield, and Michael Massoglia. "The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010." *Demography* 54, no. 5 (October 2017): 1795–1818. <https://doi.org/10.1007/s13524-017-0611-1>.

HOW AND WHY DID THIS HAPPEN?


A NUMBER OF FACTORS CAME TOGETHER TO MAKE CRIMINAL RECORDS ACCESSIBLE, MAKE EMPLOYERS WANT TO USE THEM, AND MAKE IT POSSIBLE TO DO SO EFFICIENTLY AND EFFECTIVELY.

IT'S A STORY OF


AVAILABILITY,

MOTIVATION,

AND CAPACITY.




IT STARTED WITH CHANGES IN
POLICING BEGINNING IN THE LATE
1960'S IN CITIES ACROSS THE
UNITED STATES...



...IN THE WAKE OF URBAN
UPRISINGS AND
INCREASINGLY
MILITANT
POLITICAL
ORGANIZING.



THE
FEDERAL
GOVERNMENT
ESTABLISHED
THE LAW
ENFORCEMENT
ASSISTANCE
ADMINISTRATION
(LEAA) TO 'IMPROVE'
POLICING THROUGH
MODERNIZATION AND
PROFESSIONALIZATION.



THIS INCLUDED EXPANDING THE SCOPE AND
VOLUME OF CRIMINAL INTELLIGENCE
AND INVESTIGATION DATA AND
DIGITALLY CONSOLIDATING
AND AUTOMATING CRIME
DATABASES.



THERE WAS ALSO GROWING DESIRE TO INTERGRATE POLICE, PROSECUTION, COURT AND CORRECTION RECORDS NATIONALLY. TOWARD THAT END, THE NATIONAL CRIME INFORMATION CENTER (NCIC) WAS ESTABLISHED IN 1967, ENABLING INFORMATION-SHARING AMONG LAW ENFORCEMENT AT LOCAL, STATE AND FEDERAL LEVELS. IN 1969, THE NATIONAL CONSORTIUM FOR CRIMINAL JUSTICE INFORMATION AND STATISTICS (SEARCH) WAS CREATED TO MODERNIZE AND INTEGRATE CRIMINAL RECORDS.



IN 1972, STATES WERE FUNDED TO CREATE COMPUTERIZED REPOSITORIES INTO WHICH LOCAL COURTS, POLICE, PROSECUTORS, PROBATION AND CORRECTIONS DEPARTMENTS COULD FEED INFORMATION. IN 1983, SEARCH LAUNCHED THE INTERSTATE IDENTIFICATION INDEX (III), AN FBI DATABASE LINKING FEDERAL AND STATE CRIMINAL RECORDS SYSTEMS.

IN 1993, A PROVISION TO THE BRADY LAW REQUIRED THAT THE U.S. DEPARTMENT OF JUSTICE DEVELOP A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) THAT COULD PRODUCE RESULTS FOR FIREARMS DEALERS WITHIN THREE DAYS. THIS TRIGGERED FEDERAL INVESTMENT OF NEARLY HALF A BILLION DOLLARS TO UPGRADE AND IMPROVE POLICE AND COURT RECORDS.² MEANWHILE, DRAMATIC IMPROVEMENTS IN COMPUTING POWER AND DATA STORAGE FACILITATED UNPRECEDENTED ELECTRONIC ACCESS TO PUBLIC COURT RECORDS.



BACKGROUND CHECKING WAS BECOMING:



2. Jacobs, James, and Tamara Crepet. "The Expanding Scope, Use, and Availability of Criminal Records." *New York University Journal of Legislation and Public Policy* 11, no. 2 (2008): 177-214

AT THE SAME TIME THAT THE GOVERNMENT WAS DEVELOPING NEW SYSTEMS FOR SHARING DATA, IT ALSO DELIBERATELY GRANTED ACCESS TO NEW USERS OUTSIDE THE CRIMINAL JUSTICE SYSTEM.

WE'LL GET SUED.

IT'LL LOOK BAD TO OUR DONORS.

OVER TIME, CONGRESS AUTHORIZED ACCESS TO FBI RECORDS FOR LOCAL GOVERNMENTS AND OTHER PUBLIC ENTITIES,

OUR RESIDENTS WILL FEEL UNSAFE.

AS WELL AS AN INCREASING NUMBER OF INDUSTRIES, BUSINESSES, AND VOLUNTARY ASSOCIATIONS.³

MOMENTUM FOR ACCESS WAS ALSO GENERATED BY A SERIES OF MID 90'S LAWS REQUIRING REGISTRATION FOR PEOPLE CONVICTED OF SEX OFFENSES AND THE CREATION OF A NATIONAL SEX-OFFENDER DATABASE.

THINK ABOUT THE CHILDREN!

DEMAND FOR BACKGROUND CHECKS HAS ALSO BEEN DRIVEN BY THE THREAT OF LIABILITY.



MR. CUERVO, WERE YOU AWARE THAT YOUR EMPLOYEE HAD A DUI PRIOR TO HIRING HIM?

LAWYERS HAVE ADVOCATED FOR AN EXPANDED THEORY OF "NEGLIGENT HIRING" TO HOLD EMPLOYERS LIABLE FOR FAILING TO DO A BACKGROUND CHECK.⁴

BUT IT'S MORE THAN A PROBLEM OF CHANGING LAW.⁵

BACKGROUND SCREENING PROFESSIONALS STARTED SELLING THE IDEA THAT UNIVERSAL PRE-EMPLOYMENT BACKGROUND CHECKS WERE THE SOLUTION TO THESE LAWSUITS BY HIGHLIGHTING A FEW SENSATIONAL CASES.




BREAKING NEWS:
LOCAL PIZZERIA UNDER FIRE AFTER CAR CRASH

WE RECOMMEND PRE-EMPLOYMENT CHECKS FOR ALL POSITIONS

AND BECAUSE BACKGROUND SCREENING HAS NOW BECOME ROUTINE IN SO MANY INDUSTRIES AND CRIMINAL HISTORY INFORMATION IS CURRENTLY EASY TO ACCESS, SOME COURTS ARE STARTING TO HOLD THAT AN EMPLOYER HAS THE DUTY TO OBTAIN IT.

4. North, John C. "Responsibility of Employers for the Actions of Their Employees: The Negligent Hiring Theory of Liability," 1977 (see page 721).
5. Courts generally do not require criminal background checks. See for example Flores v. AutoZone W., Inc., 161 Cal. App. 4th 373, 376, 74 Cal. Rptr. 3d 178, 180 (2008)



GOVERNMENTS HAVE ALSO INCREASINGLY ALLOWED - AND SOMETIMES REQUIRED - CRIMINAL RECORDS TO BE USED TO DISCRIMINATE.

STATE OCCUPATIONAL LICENSING RESTRICTIONS ROSE FROM 1,948 IN THE EARLY 70'S⁶ TO 27,000 BY 2017.

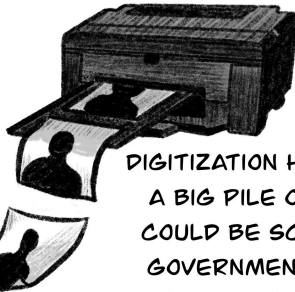
MORE THAN 19,000 OF THESE ARE PERMANENT DISQUALIFICATIONS AND MORE THAN 11,000, MANDATORY.⁷

MILLIONS OF NEW BACKGROUND CHECKS AND RESTRICTIONS WERE IMPLEMENTED POST 9/11 FOR AIRPORT WORKERS, AIRLINE PERSONNEL, PORT WORKERS, TRUCK DRIVERS AND MANY OTHERS. A SPILL-OVER EFFECT CAUSED MANY NON-MANDATED INDUSTRIES TO INCREASE THEIR USE OF BACKGROUND CHECKS.⁸

6. Hunt, James W. "Laws, Licenses and the Offender's Right to Work: A Study of State Laws Restricting the Occupational Licensing of Former Offenders." Washington, D.C: National Clearinghouse on Offender Employment Restrictions, 1973.

7. Avery, Beth, Maurice Emsellem, and Phil Hernandez. "Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions." National Employment Law Project, 2017. <https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v4-2019.pdf>.

IN THIS CONTEXT OF FEAR AND LITIGIOUSNESS, BACKGROUND SCREENING CAME INTO THE MAINSTREAM. THE 1997 E-SIGN ACT ENDED THE TIME-CONSUMING PROCESS OF FAXING CONSENT FORMS BACK AND FORTH. PEOPLE STARTED SEEING THEY COULD MAKE MONEY FROM BACKGROUND SCREENING.



DIGITIZATION HAD PRODUCED A BIG PILE OF DATA THAT COULD BE SCRAPED FROM GOVERNMENT WEBSITES, PURCHASED CHEAPLY IN BULK, OR OBTAINED EASILY VIA FOIA, BUT HELP WAS NEEDED TO MAKE IT POSSIBLE TO CONDUCT EFFICIENT, COST-EFFECTIVE, ACCURATE, MULTI-STATE, BACKGROUND CHECKS.⁹



A COMMERCIAL INDUSTRY, BOLSTERED BY HR PROFESSIONAL ORGANIZATIONS AND WORKPLACE LAW FIRMS AROSE TO FACILITATE BACKGROUND SCREENING ON A SCALE NEVER SEEN BEFORE.

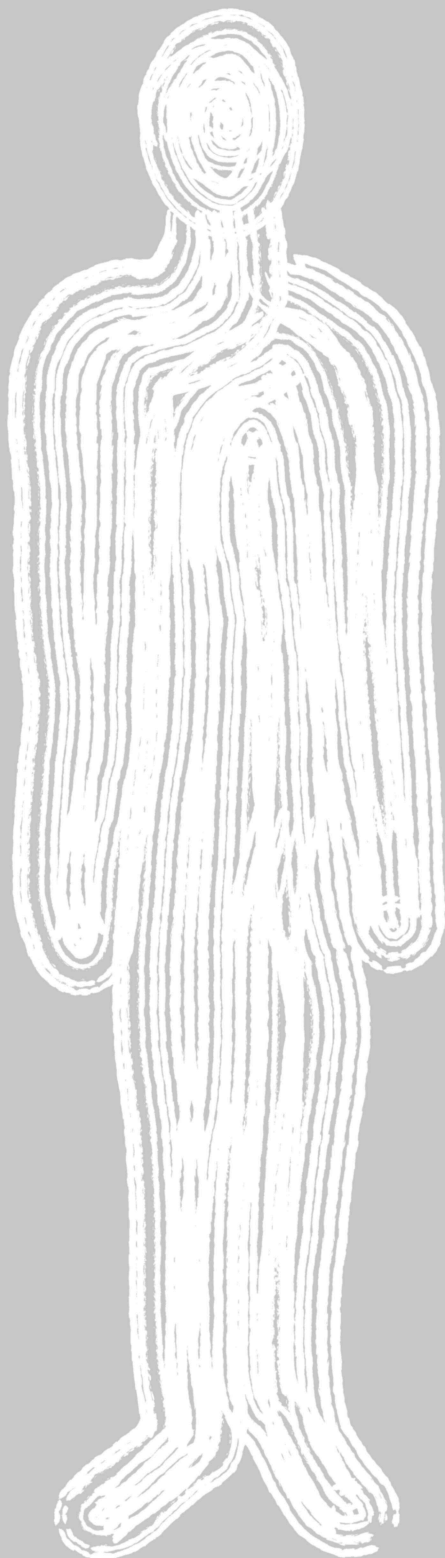


AS OF NOVEMBER 2020, AN ESTIMATED 2,534 BACKGROUND SCREENING FIRMS PRODUCED APPROX 3 BILLION IN REVENUE AND EMPLOYED MORE THAN 25,000 PEOPLE.¹⁰

8. SEARCH Group. "Report of the National Task Force on the Commercial Sale of Criminal Justice Information." The National Consortium for Justice Information and Statistics, 2005.

9. Lageson, Sarah Esther. Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice. 1st Edition. New York, NY: Oxford University Press, 2020 (see page 69).

10. IBIS World, Jacqueline Hiner. "US Specialized Industry Report OD6058. Background Check Services.



This comic was created with support from the University of Michigan Carceral State Project's Documenting Criminalization and Confinement Initiative.

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