

Background checks

Who uses background checks?

These days, passing a background check is a common part of applying to college, getting a job, or applying for housing. Nationally, about 94% of employers and about 90% of landlords use background checks to evaluate prospective employees and tenants.²² The internet allows instant access to millions of databases containing conviction record information, making it easy for companies to get into the business of background checks.



One estimate found that there were **1,954 background check companies** preparing reports for U.S. customers in 2019.²³

Where does conviction record information come from?

Background check companies get conviction records information from a few sources:

- ① State criminal legal system databases
- ② Court records
- ③ Corrections department records
- ④ Buying information from other background check companies

In New York, the Division of Criminal Justice Services (DCJS) is the legal repository for the conviction records information that comes from New York state law enforcement agencies and courts. This is called a record of arrest and prosecution (RAP) sheet. **DCJS does not provide access to RAP sheet information to the public or to background check companies.** The law allows some *government agencies* to access conviction records information from DCJS for the purpose of screening job and occupational license applicants. You can get your own RAP sheet information from DCJS – see the section, **WHAT'S ON YOUR RAP SHEET?** to learn more.

Entities that do not have access to DCJS records can get conviction records information from two other government sources: **the court system and corrections systems.**

① The court system:

The New York Unified Court System Office of Court Administration (OCA) sells court records to the public, including background check companies, for a fee of \$95.²⁴ While they sometimes contain mistakes, these are the most accurate records available to background check companies. But because they cost \$95 per search,²⁵ less reputable background check companies may decide not to use them.

② The corrections systems:

The New York State Department of Corrections and Community Supervision (DOCCS) maintains information about currently incarcerated people and some formerly incarcerated people in New York State.²⁶ The New York City Department of Correction (DOC) also has an online database of people currently incarcerated in New York City.²⁷ Both corrections department systems are on the internet and available to the public. These systems were designed to allow attorneys, families, and others to locate individuals within detention and correctional

systems. They were not intended to be a source of conviction history information, may not be up to date, and will not contain comprehensive information. Yet, background check companies frequently rely on these databases because they are available to them at no charge, which can lead to errors.

NOTE



Most employers and housing providers pay for background checks from companies, not from official government records. Most background check companies also provide other services, like employment and education verification and credit checks.²⁸ These companies get their conviction record information from official sources in New York – the Office of Court Administration (OCA), the New York State Department of Corrections and Community (DOCCS), or the New York City Department of Correction (DOC) – or they purchase it from another company.

When someone conducts a background check, you usually will not know beforehand where the conviction record information is coming from. If you are asked to provide fingerprints, then the information is most likely being sought from DCJS.²⁹ (There are also some instances where fingerprint-based records might be requested from the Federal Bureau of Investigation.³⁰) If the entity does not ask you to provide fingerprints, then it's more likely that the background check is being done by a private background check company.

KNOW YOUR RIGHTS



If a background check is done

through a background check company, you have some rights under Federal law:³¹

- You must consent to the background check in writing
- The company must provide you with a summary of your rights
- If an employer or housing provider is rejecting you based on the results of the background check, they must provide you with a notice that includes the name of the background check provider and information about your right to dispute the results of the background check
- If an employer is planning to take an adverse employment action against you (for example, refusing to hire you, refusing to promote you, or terminating you) based on a background check, the employer must provide you with a copy of the background check and allow you a “reasonable period of time” to contact the employer before taking the adverse action. This period of time – which is not set by law, but which courts have often interpreted to be at least five days – is intended to allow you time to contact the employer and explain that the background check contains mistakes, or that the adverse action should not be taken despite the conviction record, or both

TIP



Get more information about your rights regarding background check companies and how to make a complaint if your rights are violated:

- **Background checks for employment:**
www.consumer.ftc.gov/articles/0157-background-checks
- **Background checks for housing:**
ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know

KNOW YOUR RIGHTS



You have additional rights

when an employer does a background check in New York City (for a job that will be located in New York City). Under the New York City Fair Chance Act, most employers:

- Cannot do a background check or ask questions about your conviction record until they've made you a conditional job offer
- If an employer then wants to revoke the conditional job offer based on your conviction record, the employer must:
 - Explain why to you in writing, using the New York City Fair Chance Act Notice set by law
 - Provide you with a copy of any background check
 - Give you at least three business days to respond

To learn more about your rights under New York City Fair Chance Act, see:


- The NYC Commission on Human Rights' info page, *Fair Chance Act*: www1.nyc.gov/site/cchr/media/fair-chance-act-campaign.page
- The Center for Urban Pedagogy & VOCAL-NY's guide, *A Fair Chance*: welcometocup.org/file_columns/0000/0992/mpp_a_fair_chance.pdf

Common problems with background checks

There has been no industry-wide study of errors in background checks, but lawsuits, government enforcement actions, and government reports all confirm that errors in background check reports are common.³² Even conviction records information obtained directly from government sources – like DCJS and the OCA – may have errors.³³

Common errors on commercial background checks prepared by private background check companies include:

- Incorporating information about a different person, often with a name similar to yours
- Providing incomplete information about a case, like the disposition – e.g. the disposition may be missing
- Posting information about sealed records
- Displaying data in misleading ways, like listing an incident multiple times
- Mis-classifying the offense

TIP  Every time someone performs a background check, request a copy and review it for errors. See the section, [REVIEW EVERY BACKGROUND CHECK](#) for more information about what to look for.

Keep reading on to the next section to learn more about making sure the information on your official RAP sheet is correct.

