National Criminal Database: Myth or Reality?

Let’s cut to the chase. There’s no “magic box” that contains information from every available source with consumer criminal records. Period.

No single, easily accessible, complete and accurate database. No national criminal database. This may come as a surprise since the term “national criminal database” is used in a variety of contexts.

The truth is that there are a variety of places where criminal records are stored. Some at the state level, others at the county level and still more at the municipality level. Yet, there is no “national criminal database.” Confusing, right?

Severe crimes or multiple serious crimes committed may result in a consumer being incarcerated in a state penitentiary. Those offenders’ offenses, sentencing and probationary details are typically managed by a state’s department of corrections.

Some states aggregate criminal records that are provided from their county courts. Records are maintained by the administrative office of the courts or the department of public safety. The administrative offices typically maintain pending and disposed records, while public safety departments maintain conviction records.

And, while records associated with registered sex offenders are typically maintained on each state’s public website, with some access restrictions, the information is also provided through registrant reporting at local law enforcement agencies.

Counties also maintain criminal records in their own systems and do not share or provide access through a state channel. County records can include both felony and misdemeanor cases in various stages of adjudication.

In addition, municipalities can store criminal records for misdemeanors, traffic infractions and ordinance violations that were committed in their jurisdictions.

Do each of these sources hand over their criminal records to a single national database? Again, the answer is NO. State, county and municipality repositories are independent from each other and from any central source.

National criminal database – myth busted.

Why is it so hard to get this information?

Access to comprehensive criminal information is challenging due to a variety of case management systems and federal and state laws, as well as public record retrieval restrictions. This limits access for businesses and other organizations that need this critical information.

True, criminal records are catalogued. Unfortunately, they’re not easily accessible since the records are in a variety of places. The term “public record” suggests that these records are available to the public, and they are ... just not electronically “in bulk.”

The primary problems with access to criminal records are:

• Number of sources
• Variations in personal identifiers associated with criminal record documentation
• Varied and outdated record management and retrieval systems
• Differing opinions or methods of allowed access to public records by each state, county and court
So, who needs access to criminal data anyway?

- Employers
- Schools and daycare centers
- **Rental housing providers**

Our focus here is on rental housing provider risks and the need to properly qualify applicants before admitting them to a community.

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.

More than 43 million U.S. consumers are renters.

Because of the high amount of people with criminal records and large quantity of renters, liability risk to rental housing providers and safety risk to non-criminal residents is significant. Renters, of course, assume that those from whom they rent are taking the necessary steps to adequately screen all applicants before allowing them into the community. And business owners want the appropriate tools in place to protect their renters and their properties. **They want comprehensive, accurate and easily accessible criminal data.**

Resident screening companies struggle to deliver this desired comprehensive information due to a lack of a central and easily accessible criminal records database. Compounding the problem is that the application fee renters are accustomed to paying – or that the housing provider is willing to pay to the screening company – is well below the cost of securing comprehensive criminal records.

Take Kentucky, for example, which no longer provides bulk electronic court criminal records to third-party screening providers. Inmate records were available in bulk from the Kentucky Department of Corrections until 2007, but a technology update has delayed reimplementation of the state’s public record file.

For now, access to Kentucky court records is available through an online public website. In 2013, the state’s budget reduction plan implemented a fee of $20 per person (plus processing charge) for criminal records accessed through this method via [https://courts.ky.gov/aoc/criminalrecordreports/Pages/default.aspx](https://courts.ky.gov/aoc/criminalrecordreports/Pages/default.aspx).

This current online criminal search system provides a revenue stream for Kentucky’s technology projects. But does the state’s access method serve the needs of the rental housing industry? It does not.

First, it slows down the applicant screening process. Second, it increases the wait time for rental applicants to learn if they are eligible for housing. And third, it raises costs for both the rental housing provider and the consumer. This can create an extreme hardship for low-income applicants.

The costs of a fractured system

Our world revolves around INSTANT everything. That includes rental application decisions. Consumers expect to apply online and quickly receive a housing providers’ answer about their application status. Without instant, comprehensive

> “Residents and employees who live or work in our apartment communities rely on the criminal checks we performed to be accurate. In response to the U.S. Department of Housing and Urban Development (HUD), our organization has implemented an appeals process when a denial occurs based on a criminal record. If the information is inaccurate or not updated, the negative impact is felt by both the landlord and the applicant. In addition, as a property owner, we could be subject to disparate impact discrimination.”

Jennifer VanVactor  
PMR Companies
criminal record access, rental housing providers in certain geographic markets are unable to meet that demand. **Lost applicants = lost revenue.**

But there are other costs resulting from this fractured system:

- The lack of truly efficient application processes through resident screening companies often increases the time an applicant is without a home or in an unsavory situation.
- The difficulty in accessing criminal records hinders rental housing providers in meeting state and federal compliance requirements (i.e., Fair Housing and HUD).
- Inefficiencies in the criminal record delivery system increase admission of high-risk applicants, housing delinquencies, evictions, and safety risks to surrounding residents.

These risks are issues not just for businesses, but for all of us who live in, or who have a friend or loved one living in an apartment community. Improving the system, on the other hand, could result in higher business profitability, boosted tax payments and increased hiring…all benefits to the state.

Whether through legislative efforts or technology advancements, better access to data is critical.

**So, what can be done?**

In Kentucky, a movement has begun. Local property owners and operators have become more aware of these challenges. The Louisville Apartment Association (LAA), Greater Lexington Apartment Association (GLAA) and Greater Cincinnati Northern Kentucky Apartment Association (GCNKAA) included this as a topic at the 2018 Legislative Days in Frankfort. Representatives from AmRent were on hand to present the screening company perspective to legislators and lobbyists. We hope the message was heard.

**But Kentucky is just one state.** There is no federal law that mandates states and counties to provide criminal records to a central database or to third parties. Associations, lobbyists and rental housing providers need to work among themselves and with their state legislators to encourage change. Here are some things that can be done:

- **Spread the word.** More apartment associations will need to be educated. More rental housing owners and operators will need to understand these challenges and decide if the inability to obtain comprehensive criminal data places a high burden on their business operation, profitability and reputation. Rental housing associations across the country can assist in offering and promoting educational sessions.

“Due to access challenges of criminal records in our state, Kentucky landlords often approve high risk renters. We have experienced several thousands of dollars in damages, vacancy loss and increased legal expense due to evicting renters with unknown previous criminal histories. As the property owners, we must recoup our expenditures from consumer forcing higher rents. Easier access to criminal records would improve operating costs allowing for more affordable leases and improve the quality of our renters.”

**Jesse Brewer**
Cincy Area Properties

“Awareness and education about criminal record challenges are critical initial steps in helping to protect both the financial and safety interests of Kentucky rental housing providers. LAA’s members desire secure communities. I will continue to support legislative discussions surrounding this topic and look forward to an effective solution.”

**JD Cary, CAM**
Executive Director
Louisville Apartment Association
by qualified speakers. Spreading the word throughout the ranks of members will make the industry more knowledgeable.

Resident screening providers also should educate their rental housing partners about alternative options for criminal record obtainment in challenged markets. Although some records may not be available in bulk or electronically, a court may offer the option for a physical visit to evaluate their dockets for criminal records. If this is a viable option for rental housing providers, the tolerance level will need to expand for longer turn-around times and costs associated with gathering the records.

• **Evaluate your needs.** Rental housing providers should request more transparency from their screening partners about criminal coverage options and the associated costs of obtainment. If the value of criminal data is important, property management companies and owners should consider obtaining more comprehensive criminal searches (even if through physical court visits).

• **Work with state and county clerks.** As further education on this topic evolves, more rental housing providers, associations and legislators should stress the need for change at the state and county criminal repositories. Although this process will be time consuming, the effort will yield a higher quality of criminal records available to third-party screening providers.

• **Take legislative action.** A legislative effort from association leaders and large rental housing providers would certainly bolster the undertaking. Leaders in the industry need to heighten awareness of related state and local legislation being introduced, such as [Colorado H.B. 1127](https://leg.colorado.gov/bills/1127), the Rental Application Fairness Act. If passed, this law would restrict landlords in Colorado from using certain types of criminal records and limit the timeframes associated with use of credit and rental information.

In the meantime, it’s imperative that screening providers eliminate the term “national criminal database” from marketing efforts, conversations and sales presentations. The more the myth is repeated, the less open we are as an industry to rental housing providers. This ambiguity doesn’t serve our purpose of helping rental housing providers quickly, but effectively, qualify applicants.

### Gaze into our crystal ball

Rental housing providers will continue to request criminal reports as part of the applicant screening process. The question is how much value will be placed on the accuracy and availability of this critical data?

As we look to the future, technology and legislation will likely drive advancements in criminal record availability. Technically,
the process is likely to become more sophisticated and immediate, but legislative barriers will surely surge and potentially slow progress.

Consumer privacy concerns will play a role. Civil rights advocacy groups will engage more in the conversation.

More and more states will introduce and potentially pass legislation that restricts landlords from access of or use of criminal record information. Some will be as simple as “Ban the Box,” where a rental application cannot ask whether an applicant has a criminal record. Others will be more intrusive and limit types and length of time a landlord can consider criminal records. Some of this change is already occurring. In April 2016, HUD announced a policy on use of criminal histories by housing providers as it relates to disparate impact liability. Those recommendations sent ripples through the industry as businesses tried to figure out how to adjust resident selection plans to balance safety risks while adopting the spirit of the guidance. Today, many companies are left with uncertainty about their policies and how they may hold up in court. Other legislation attempts to eliminate criminal record searches completely. In February 2017, Seattle passed an ordinance that prohibits landlords from accessing criminal records Seattle Municipal Code (SMC) 14.08.

Perhaps demands and new trends from rental housing consumers will lead to a solution. In the short term, education of the current challenges and understanding by housing providers will lead more informed individuals to demand technology, public record and legislative changes to improve criminal record delivery.

**Take action**

If you are a member of a housing association, I encourage you to introduce this topic to your executive director or current association president. Ask them to create a workgroup of interested parties or discuss the subject as an agenda item at the next legislative committee meeting.

Talk with your third-party screening provider. Engage them in the discussion of your market.

*However you decide to take action, at minimum, we encourage you to educate yourself.*

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References

Kathleen Williams - Williams & Edelstein, P.C., and The Fair Housing Institute, Inc., kathi@fairhouse.net, 770.840.8483.
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Sources
