



RISK MANAGEMENT INFORMATION

**BACKGROUND CHECKS: THE ABCS OF BCA DATA**

**Background**

City police departments generally have access to the state’s data base of criminal justice information maintained by the Bureau of Criminal Apprehension (BCA) for the purpose of carrying out law enforcement duties. However, access to the data base has proven useful for other city functions such as criminal history background checks on prospective city job applicants, liquor license applicants, and peddler license applicants.

Using the city’s police department to run these criminal history checks can save the city both money and time. However, it is important for the city to access the data appropriately and to understand what will – and will not – be provided in the way of criminal history information.

**Statutory Restrictions**

**Public vs. Private Data.** Criminal history data compiled by the BCA is generally classified as either private or public by Minnesota Statutes 13.87 as shown below:

<b>BCA – Criminal History PRIVATE Data</b>	<b>BCA – Criminal History PUBLIC Data</b>
Fingerprints	Conviction data – for 15 years after discharge of sentence
Photographs and identification data	Sentence information – for 15 years after discharge of sentence
Arrest data and prosecution data	Confinement information – for 15 years after discharge of sentence
Criminal court data	
Custody and supervision data	

**Public Web Site Conviction Data.** If a city wishes to access public information for an employment or license background check, it can do so by using the BCA’s free internet web site access. However, only conviction, sentence, and confinement information for 15 years after the discharge of the sentence will appear. No arrest data is available using the web site. The web site search tool requires an exact match of name and date of birth. If there are multiple cases of “John Smith” with the same date of birth, the web site tool will not be able to distinguish between them.

Cities that use this web site tool for employment background checks must notify the applicant for

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Consult your attorney for advice concerning specific situations.

employment that it intends to do the background check using the web site. (See Minn. Statutes 13.87, subd. 3.)

**Police Department Access.** Police departments can have access to the BCA criminal history data only to perform the duties that are required by law (Minn. 299C.46) and generally this means performing law enforcement duties. Since a city ordinance is a law, however, an ordinance can be used to allow the use of this data for non-criminal purposes such as employment background and license checks. As the agency responsible for maintaining the security of the criminal history data, the BCA has directed that each local ordinance should contain:

- A requirement that the police department conduct the criminal history check
- The specific category (e.g., job type) subject to the checks (for employment purposes, this can include employees, applicants for employment, volunteers and independent contractors; for licensing purposes, this can include owners of liquor establishments or applicants for peddler's licenses)
- A requirement that the data be maintained by the police department and only a summary of the criminal history record is provided to the hiring authority
- Language that complies with the Minnesota Government Data Practices Act
- A provision that requires notice to the applicant of the reason for denial if the denial is based on data obtained from the criminal history check

If the local ordinance does not contain the above requirements, the BCA may require the agency to discontinue access for the ordinance checks until an ordinance is adopted or updated to meet BCA audit requirements for access. LMC has a model ordinance for cities to adopt that complies with these requirements.

When local police departments access BCA data for employment or city licensing checks, the data they will receive includes Minnesota adult arrests less than one year old with no disposition, adult arrest information resulting in a conviction, and adult conviction and sentencing data for 15 years after discharge of the sentence. No juvenile arrest or adjudication data, adult arrest data older than one year with no disposition, or dismissal data will be returned for these checks.

**More Information**

Download the LMC model ordinance for cities to adopt that complies with BCA requirements. *Ordinance Relating to Criminal History Background for Applicants for City Employment and City Licenses* is available in the Resource Library of the LMC web site at **[www.lmc.org](http://www.lmc.org)**.

The League recommends the city obtain an appropriate consent form from the applicant for employment prior to conducting the criminal history check.

**Child Protection Workers.** The Child Protection Background Check Act (Minn. Stat. 299C.61 & 62) allows employers to conduct special background checks of individuals who work with children in various settings (care, treatment, education, training, instruction, or recreation). Since many cities have recreational opportunities for children, this statute would apply to most of those workers and to any volunteers in those programs.

Only background checks conducted in accordance with the Child Protection Act allow for the release of certain criminal data – juvenile adjudication data that cannot be obtained using the city’s police department. In order to obtain this type of criminal history data, the background check must be submitted to the BCA using a specific informed consent form. The fee for Child Protection Act background checks is \$15. Please note that Predatory Offender Registration (POR) data may also be included in the background check if the consent form specifically includes a consent for POR data.

The data a city will receive, if it uses the BCA to conduct a background check under the Child Protection Act, includes the following Minnesota information:

- Conviction data,
- Juvenile adjudication data for specific crimes listed in the Act,
- Arrests resulting in conviction, and
- Arrest data that has occurred in the past year with no disposition.

The city also can request a national background check by submitting fingerprints to the BCA along with a fee of \$24.25.

**Firefighters.** Background checks on firefighters are another special situation allowed under Minnesota Statutes 299F.035. Because Minnesota statute specifically permits background checks on firefighters, an ordinance is not needed to have the background checks done by the local agency. These background checks use a different code than “regular” employment background checks and will include the following Minnesota data:

- Adult arrests less than one year old with no disposition,
- Adult arrest information resulting in a conviction, and
- Adult conviction and sentencing data for 15 years after discharge of the sentence, and juvenile adjudication data.

In this case, a copy of the Minnesota criminal history record can be given by the local police department to the hiring authority (Clerk, Administrator, HR, etc.).

The statute also requires the Department of Public Safety to determine a process for the background checks in cooperation with the State Fire Marshall. The Fire Marshal’s plan requires background checks be done on all firefighters. It also requires a national background check for anyone who has been a resident of the state for less than five years and is optional for residents of the state longer than five years.

National checks can be obtained by submitting fingerprints to the BCA along with the fee of \$24.25 for paid firefighters and \$20.25 for volunteer firefighters.

LMC recommends that an appropriate informed consent form should be signed by the firefighter applicant when using the local police department to conduct the check. The State Fire Marshal’s plan requires that an informed consent form be used when using the BCA to conduct the firefighter background check.

**Use of BCA for Background Checks.** A city that does not wish to use its own police department for employment background or license checks may access the BCA for this purpose by paying an established fee (\$15.00). The city will need to understand which statute applies to the individual being checked in order to use the appropriate consent form and access the appropriate data through the BCA.

Using the BCA for background checks has some advantages over using the local police department, even when the city is not required to do so, including that the BCA has:

- Extensive experience with background checks, the relevant statutes, and the associated consent forms. They also have the ability to match up “suspense” records (dispositions that come from the court but are not matched with a given criminal history yet) to the appropriate individual’s record. In other words, if a suspense record exists that contains a conviction, the BCA will attempt to resolve the reason for the suspense so the court disposition can be moved to the individual’s criminal history before the record is released.
- Experience resolving situations where there may be a “questioned identity” – two individuals have the same name and the same date of birth.
- The ability to do additional checks – such as Predatory Offender Registration (POR) checks if the consent form specifically authorizes the release of the POR data – the local police department may not be able to perform.

Therefore, the city may receive better information with which to make hiring decisions by going through the BCA. However, the city will need to pay a fee of \$15, and may have to wait somewhat longer for background checks through the BCA than it would by using the city’s own police department, however more information will be obtained. It generally takes about a week for a background check to be completed.

## **Other Issues**

**Records maintenance.** The BCA prohibits dissemination of records obtained from the system by the local law enforcement agency for ordinance checks (city employment or city licensing) outside the police department, therefore the information must be maintained by the local police department –not by any other city department.

The police department must establish an appropriate records management process for these records. The records should be locked and only police department employees with a business reason for handling the information should have access. In addition, the police department will need to consult with the city’s administrative staff (city administrator, clerk, or other records management staff) to decide how long the records will be maintained. Generally, records of persons not hired are kept for one year after the position is filled, records of persons on eligibility lists are kept for two years (or the length of eligibility if longer), and records of persons who are hired are kept for five years after termination of employment.

**Conveying information.** When a city uses the local police department to conduct background checks, the police department will be responsible for conveying the appropriate information to the city department that will determine whether to hire the applicant or not. The police department should provide a summary of the information from the criminal history check and assist the

decision-maker in understanding what the data means. Ideally, the hiring authority has determined in advance which types of crimes will be disqualifying and conveyed that to the police department before the background check is done. When questions arise, the police department and decision-making authority should discuss together whether any crimes or arrests are related to the job for which the individual is applying.

**Out of State Criminal History.** The BCA data base – whether accessed through the local police department or through the BCA – will not contain most criminal history that occurred in another state, even a neighboring state. If the city wishes to obtain that information, it should contact the neighboring state to find how to access their information. The city will receive national criminal history information on workers covered by the Child Protection Act and firefighters by submitting fingerprints and paying the required fees to the BCA.

**Driver's License Checks.** The League generally recommends checking the driving records of applicants for employment and current employees who will be driving for the city on a routine basis. These checks should be done to ensure the employee or applicant does not have a record of reckless or drunk driving, traffic violations, or a high number of accidents that could expose the city to liability if the employee is involved in a traffic accident.

Local police departments have access to Minnesota Driver and Vehicle Services (DVS) data on driving records for law enforcement purposes only. Therefore, access to DVS data through BCA systems for non-criminal justice employment or licensing is generally prohibited. The reason for this is that police departments have access to private data that is only authorized by Minnesota statute to be used for law enforcement purposes (for example, home addresses of persons who fear for their safety and have specifically asked to not have it released, medical data, or other private data).

The Driver and Vehicle Services Division is the best source for information on driving records of Minnesota residents. They do offer cities (and other organizations) the option of entering into a “business partner records access agreement.” Cities can obtain driving records on-line (currently without charge) by signing this agreement. Contact information for the Driver and Vehicle Services is found at the end of this memo.

**Using an Outside Service.** There are several private companies that conduct criminal history checks as part of an overall background checking fee-based service. These companies likely have access only to public conviction data and the data may not be up to date. While these companies can save the city time and effort, the city will want to question the company about what data they will be receiving as part of the criminal history check and how often it is updated.

## **Contact Information & Other Resources**

### Driver & Vehicle Services

To obtain business partner records access agreement forms:

Tami Bartholomew

651-201-7630

<http://www.dps.state.mn.us/dvs/>

### Bureau of Criminal Apprehension/Minnesota Justice Information Services

For information about background checks through local agencies:

Kris Rush

651-793-2602

[Kris.Rush@state.mn.us](mailto:Kris.Rush@state.mn.us)

For information about background checks through the BCA:

Julie LeTourneau Lackner

651-793-2480

[Julie.LetourneauLackner@state.mn.us](mailto:Julie.LetourneauLackner@state.mn.us)

<http://www.bca.state.mn.us/CJIS/Documents/cjis-intro.html>

Public criminal history information:

<https://cch.state.mn.us>

Informed consent forms:

<http://www.bca.state.mn.us/Forms/Documents/cjis-infmdcon.pdf>

MN Public Access to Court records:

<http://www.mncourts.gov/default.aspx?page=1927>

Laura Kushner, March 2009