

City of Houston Criminal History Background Checks:

Discussion points 4/7/15

Despite assurances from TNCs that commercial background companies conduct criminal background checks at least comparable to the ones run by municipalities, but usually even more thorough, in fact these background checks are incomplete. Following are the specific deficiencies in these private criminal history checks:

- **NOT National Background Checks:**
 - Hirease “national criminal search” check does not include Delaware, Massachusetts, South Dakota, Wyoming
 - Sterling Infosystems “state criminal records search” does not cover California, Louisiana, Mississippi or Wyoming
 - Do not search every county, creating potential gaps
- **DO NOT use truly unique search identifiers, i.e. fingerprints**
 - Many are name-based; or they use the basic identifiers used for credit checks, i.e. social security numbers, past counties of residence, voter records. These are basically skip trace and credit check companies.
 - Because they do not use a biometric identifier, these companies miss applicants that use aliases. For example, a recent TNC driver, **who had been cleared by Hirease**, underwent a City of Houston fingerprint background check and it turned out she **had 24 alias names, 5 listed birth dates, 10 listed social security numbers, and an active warrant for arrest.**
 - Even Hirease, the company that performs commercial third party background checks for Uber, admits that fingerprint-based checks are more secure because “*fingerprinting helps uncover criminal history not discovered through traditional means, offers extra protection to aid in meeting industry guidelines, and helps prevent fraud*” (www.hirease.com/fingerprinting).
 - **In the three months since Houston’s ordinance became effective, the City’s fingerprint-based FBI background check found that several applicants for TNC driver’s licenses – who had already been cleared through a commercial criminal background check – had a prior criminal history. The charges include indecent exposure, DWI, possession of a controlled substance, prostitution, fraud, battery, assault, robbery, aggravated robbery, possession of marijuana, theft, sale of alcohol to a minor, traffic of counterfeit goods, trademark counterfeit, possession of narcotics, and driving with a suspended license.**
 - TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.

National Background Checks

The background checks conducted by firms such as Hirease and Sterling are NOT true national checks. Commercial background checks are based on the personal information of the applicant, including name and social security number. These companies typically use the applicant's social security number to identify past counties of residence. The company then searches the courthouse records of these and surrounding counties. However, as these checks do not search every county, they create a huge potential gap where crimes go undetected.

In order to supplement these county checks, commercial background companies often rely on commercial "national databases" composed of records collected from the various state criminal record repositories. However, these databases do not contain information from all states and pale in comparison to the scope of the background check conducted by the FBI. For example, the "national criminal search" conducted by Hirease does not cover Delaware, Massachusetts, South Dakota, or Wyoming. The "state criminal records search" conducted by Sterling Infosystems does not cover California, Louisiana, Mississippi, or Wyoming. **The FBI provides the only true nationwide check.** TNCs claim that regional processing times mean that the FBI database is not always 100% up-to-date and therefore imply that background checks conducted through the FBI cannot be trusted. However, the US Attorney General's Office concludes that the FBI database, "*while far from complete, is the most comprehensive single source of criminal history information in the United States.*" More so, neither the TNCs nor their commercial background check providers have demonstrated that their commercial databases are immune to these same criticisms. In fact, the US Attorney General's Office goes on to point out that "*in many instances the criminal history record information available through a commercial check is not as comprehensive as an [FBI] check because many states do not make criminal history records available to commercial database compilers.*" Both Hirease and Sterling have failed to demonstrate the efficacy of their non-fingerprint based criminal history checks.

Fingerprint Background Checks

Commercial background check companies do not use biometric identifiers to match an applicant with his or her record. This substantially increases the twin risks of false positives (when a person with a common name is associated with another person's record) and false negatives (when a record is missed because an individual provides false identifying information). A national taskforce compared the efficacy of name-based and fingerprint-based background checks using the FBI Interstate Identification Index database. The taskforce found that "*based on name checks alone, 5.5 percent of the checks produced false positives and 11.7 percent resulted in false negatives.*" (U.S. Dept. of Justice 2006, p. 25).

The City of Houston's TNC ordinance has been effective since November 4, 2014. In the approximately 3 months since the ordinance went into effect, **the City's fingerprint-based FBI background check found that several applicants for TNC driver's licenses – who had passed a commercial criminal background check – had a prior criminal history. The charges include indecent exposure, DWI, possession of a controlled substance, prostitution, fraud, battery, assault, robbery, aggravated**

robbery, possession of marijuana, theft, sale of alcohol to a minor, traffic of counterfeit goods, trademark counterfeit, and driving with a suspended license. TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.

All criminal justice record information ultimately originates from one of four primary government sources: law enforcement agencies, the courts, corrections agencies, and prosecutors. Although commercial background check providers claim to obtain data from multiple private databases, these extra databases do not necessarily add value to the background check process. If a single database, like the FBI database, reliably gathers information from these primary sources, then searching further databases is unnecessary and redundant. Commercial background check companies search multiple databases in order to pad their resume in comparison to the FBI's comprehensive database. Private databases may not reliably and regularly collect information from all primary sources in all states.

COMPARISON OF MUNICIPAL CRIMINAL HISTORY CHECK VS. PRIVATE SECTOR COMPANIES				
Scope of Record Review	MUNICIPAL*	Hirease	Sterling	Note
50-state National Criminal Records Search	✓	Excludes Delaware, Massachusetts, South Dakota, Wyoming	Excludes California, Louisiana, Mississippi, Wyoming	Many states do not make criminal history records available to commercial
Search of all counties	✓	X	X	
*Houston requires a fingerprint criminal background check through the DPS which gets information from the FBI database. For the most up-to-date local arrest information, Houston requires driver applicants to present themselves at the Municipal Courts for a warrant check. Houston's national search through the DPS includes the national sex offender registry.				