

New Jersey Criminal Records... An Inconvenient Truth

Employers, employment screening companies, and private investigators are not aware of a problem that exists in New Jersey that could very easily lead to problems, including negligent hiring lawsuits.

Today, New Jersey provides two options for obtaining a statewide criminal record search—

1. New Jersey State Police (NJSP) State Bureau of Identification System
2. Statewide record searching on the Promis/Gavel Public Access (PGPA) terminals found in the NJ Superior Courts

Employers represent the biggest user group of criminal record data. Employers are usually represented by an employment screening firm, known technically as a consumer reporting agency (CRA). Many private investigators act as CRAs.

Each System Has Definitive Pluses and Minus

#1) The good news about the NJSP system is the database contains all crimes and offenses as reported by New Jersey's 21 county superior courts and the 530+ municipal courts. Records are reported back to the 1950s. Records without dispositions are disclosed. If the disposition is missing, the researcher must go to the court of record to verify if, in fact, the case is open or closed. Submission of fingerprints is not required to obtain an individual's record.

However, the NJSP system is somewhat restrictive and turnaround time is slow. Non-government requesters must be one of the following: an employer, attorney, private investigator, or an approved volunteer group. The requester must submit a signed release (Form 212B) from the subject. Turnaround time is anywhere from 2 to 6 weeks. A select group of pre-approved, ongoing requesters with a hard-to-obtain deposit account are permitted to access records within 2 to 7 days. These account holders are permitted to access records for consumer reporting agencies.

#2) Originally developed for county prosecutors, the Promis/Gavel is an automated criminal case tracking system that provides the function of docketing, indexing, noticing, calendaring, statistical reporting, and case management reporting, etc. for court personnel and prosecutors. Promis/Gavel is interactive with the courts as well as with the NJSP.

But rules do not allow the public to access the complete Promis/Gavel system. Only a filtered version—known as the Promis/Gavel Public Access (PGPA) system—is available on the public access terminals in the courts. Also, the PGPA does not include contain offenses or petty offenses recorded in 530+ municipal courts, unless those offenses are filed with indictables. The more serious of these petty offenses include drug offenses, violence, theft, sexual assault, and pedophilia.

Also, the PGPA data can be found outside of the courts; the data is sold in bulk format. For example, recently a news story circulated about a New Jersey-based newspaper publisher and criminal record access. *The Asbury Park Press* added New Jersey criminal record data to their collection of free searchable NJ records at www.app.com/DataUniverse. The criminal records data, purchased from the New Jersey Administrative Office of the Courts, is the same content found in the PGPA. Does this sound too good to be true for those wishing to use this free interface for background checks? We think so. The Investigations Editor of *TheAsbury Park Press* indicated to BRB that he does not know if and when PGPA updates will ever be added to their database.

Comparing the Two Systems

Consider a recent study performed by Adam Safeguard Inc., a New Jersey-based pre-employment screening company. Adam Safeguard took 100 subjects that produced hits for criminal records on the NJSP system and performed a similar criminal record search using PGPA.

100 Subjects with Known Criminal Records	NJSP	PGPA
Subjects Identified with Criminal Record	100	28
Subjects with Record from Superior Court	37	28
Subjects with Record from Municipal Court	92	0
Total Number of Superior Court Records (cases)	61	41
Total Number of Municipal Court Records (cases)	127	0
Total Number of Cases Found	188	41
Subjects Found with AKA Records	6	2

The results overwhelmingly indicate that reliance on using only the Promis/Gavel Public Access System produces an incomplete criminal record search.

Of course, one may ask if the Adam Safeguard study above was an anomaly. I did. I asked Adam Safeguard to repeat their study and randomly pull an additional 100 case files of subjects with known criminal records. The statistics shown above are from the study that had the BEST results for PGPA.

Herein lies the dilemma—The system of choice for parties doing pre-employment screening is the PGPA. Although screening companies know that a record search of the PGPA may be lacking at times, screening companies may not know (to the extent shown above) how inadequate these searches truly are.

So, why is there such a discrepancy between these two systems? Consider the facts below about the NJSP and the PGPA systems.

Facts About the Searches From the New Jersey State Police (NJPS)

- Provides “names used” at each arrest, one search can include:
 - Maiden names, nick names, all spellings, and matches on multiple dates of birth and Social Security Numbers on the same search.
- Provides a list of multiple Dates of Births used.
- Provides a list of multiple Social Security Numbers issued.
- Provides the name of the county or municipal court of record for each charge with associated docket information and dispositions.
- Has all reported data back to the 1950s.

Facts About Searches From the Promis/Gavel Public Access System (PGPA)

- Requires an exact name match only. The following must be searched individually:
 - Misspellings, middle initials, nick names, maiden names, and AKA’s.
- Does not contain Social Security Numbers.
- Does not contain offenses or petty offenses as recorded in 530+ municipal courts, unless the offense is filed with an indictable.
- Is limited to records contained in the system by dates of entry. While all 21 counties report indictable charges back to 1994, only 5 counties’ data goes back to 1989.
- A 2005 press release from the AOC about the Public Access portion of Promis/Gavel states, “The court records obtained from Promis/Gavel do not constitute a criminal history records check, which must be obtained through law enforcement.”

One fact that stands out in the PGPA list is the throughput of the records. All 21 counties are online since 1994 for indictable charges, while *some* counties' data goes back to 1989. Therefore, if you want to check the "complete" criminal record of a subject who is over 36 years of age, an in-person search of the index beyond the computer index of PGPA is required.

Crimes, Offenses, and Disorderly Person Offenses

Let's muddy the waters even more. There is a unique situation in New Jersey involving the definition by NJ State Law of the words **crimes** and **offenses**. New Jersey is one of the few states placing specific definitions in laws affecting CRAs.

Per New Jersey state law 2C:1-4, disorderly persons offenses and petty disorderly offenses are not classified as **crimes**. Yet, these offenses can carry a jail time up to and including six months. The more serious of these offenses include drug offenses, violence, theft, sexual assault, and pedophilia. These lesser offenses are usually tried in the Municipal and not in a Superior Court, except when they are related to a "crime" or are a result of a crime having a downgraded disposition.

As a result, some attorneys have taken the position that if an employment application asks, "Have you ever been convicted of a '**crime**'" - the screening company can only provide the NJ employer with indictable charges and NOT with disorderly persons **offenses** or petty disorderly persons **offenses**. To correct this situation, one suggested way to word an employment application is "Have you ever been convicted of a crime, **offense** or violation, other than a minor motor vehicle charge?"

Conclusions

If the objective of an employer or CRA is only to perform a 7 to 10 year search, realizing municipal court records and any serious crimes older than 10 years are missing, then the PGPA makes an attractive alternative to the access restrictions, cost, and turnaround times associated with the New Jersey State Police system. Using the PGPA could also be a two-step process. Because of the NJSP system delay, an initial PGPA search could be followed up with either an NJSP search or with searches in any relevant counties where the subject has lived, worked, or attended school.

However, the truth is that the PGPA was never designed to be the primary method for employers and consumer reporting companies to perform an FCRA-compliant search. An Administration Office of the Courts (AOC) press release about the PGPA states: "The court records obtained from Promis/Gavel do not constitute a criminal history records check, which must be obtained through law enforcement." The Fair Credit Reporting Act (FCRA) does not judge the reliability of the databases used in consumer reports, but does advise a consumer-reporting agency to follow reasonable procedures to assure the maximum possible accuracy. This is hard to do when both the NJ State Police and the State Court Administration do not want to be the furnisher of information for a consumer report.

Using the Promis/Gavel Public Access system as the only criminal history search vehicle for employment or license screening purposes is borderline inadequate. The truth is that

So, Here is What We Suggest

The following are some suggestions that we believe should be considered.

1. Both CRAs and end-users of the data should be provided some level of awareness.
 - The AOC should issue a Surgeon General-type warning to all who access the PGPA system on the system's limitations.
 - CRAs should inform the end-user of the drawback of using just the PGPA.

2. If an applicant is applying for a job that entails a high level of security or responsibility, the NJSP searches should be conducted along with a search at the local county courts. If desired, a search of the PGPA should be conducted as a supplemental search.
3. The employment application used by New Jersey employers should contain the proper language to comply with New Jersey State Law 2C:1-4.

A last word of caution—Entities that advertise/market a PGPA search should be careful not to issue a misleading statement that they are providing a **complete** New Jersey statewide criminal history, otherwise they could be placing their accounts in harm's way for a negligent hiring lawsuit.