



INFORMATION MEMO

Background Checks: The ABCs of BCA Data

Learn appropriate ways for the city to access the Bureau of Criminal Apprehension (BCA) criminal history information database. Understand what will and will not be included in results. This memo links to a model policy meeting requirements for using the database for non-criminal purposes such as employment background and license checks.

RELEVANT LINKS:

[Minn. Stat. § 13.87.](#)

I. Bureau of Criminal Apprehension data access

City police departments generally have access to the state's database of criminal history information maintained by the Bureau of Criminal Apprehension (BCA) for the purpose of carrying out law enforcement duties. However, access to the database has proven useful for other city functions such as criminal history background checks on prospective city job applicants, liquor license applicants not covered by Minnesota Statutes, section 340A.402, 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.

II. Statutory restrictions

A. Public v. private data

Criminal history data compiled by the BCA is generally classified by law as either private or public, as shown below.

1. BCA criminal history private data

Private data includes:

- Fingerprints
- Photographs and identification data
- Arrest data
- Criminal court data
- Custody and supervision data

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[BCA public criminal history information website.](#)

[Minn. Stat. § 13.87, subd. 3.](#)

[Minn. Stat. § 299C.46.](#)

[Minn. Stat. § 299C.72.](#)

[Criminal History Background Checks for Employment and License Applicants, LMC Model Policy.](#)

2. BCA criminal history public data

Public data includes:

- Conviction data for 15 years after discharge of sentence.
- Sentence information for 15 years after discharge of sentence.
- Confinement information for 15 years after discharge of sentence.

B. Public website 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 website access. However, only conviction, sentence, and confinement information for 15 years after the discharge of the sentence will appear. No arrest data without a conviction is available using the website. The website 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, for example, the website tool will not be able to distinguish between them.

Cities that use this website tool for employment background checks must notify the applicant for employment that it intends to do the background check using the website.

C. Police department access

Police departments can have access to the BCA criminal history data only to perform the duties that are required by law, and generally this means performing law enforcement duties.

However, as of Aug. 1, 2013, police departments are statutorily authorized to use this data for employment background and certain license checks. The law requires that the law enforcement agency must receive the informed consent of the individual whose criminal history is being investigated and that the data must be maintained securely in the police department. However, the agency can share whether there is a criminal history that would prevent hire or issuance of a license to the appropriate decision makers within the city.

The League has developed a model policy that will help the city comply with the provisions of this law and ensure that the city has a well-considered process in place, including:

Information about the specific categories (e.g., job types) subject to the checks. For employment purposes, this can include employees, applicants for employment, volunteers, and independent contractors. For licensing purposes, this can include individuals applying for various types of city licenses. (Note that Minn. Stat. Sec. 340A.401 subd. 2, provides its own authority for police chiefs to conduct background checks on applicants applying for retail liquor licenses).

RELEVANT LINKS:

[Informed Consent, LMC Model Form.](#)

[Minn. Stat. § 299C.61.](#)
[Minn. Stat. § 299C.62.](#)

[BCA background check fees.](#)

Listing the licenses or applicants subject to the background checks is not required by Minnesota law; however, it is a good practice that will help the city make sure all applicants are treated consistently.

- 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 or other decision maker for purposes of issuing a license.
- Language that complies with the Minnesota Government Data Practices Act, including a requirement for an informed consent.
- 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.

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, and adult arrest information resulting in a conviction. 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.

When the BCA conducts an audit of the police department's usage of Minnesota criminal history data for these background checks, the auditor will ask the police department for the following documents: the ordinance requiring the license for the occupation/activity and the informed consent of the applicant for employment or licensure.

To ensure that a police department successfully completes its next BCA audit, it is encouraged to keep copies not only of the criminal history that was retrieved under section 299C.72, but also copies of all related documents through the next audit cycle.

D. Child protection workers

The Child Protection Background Check Act 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 Background Check 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 Background Check 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 consent for POR data.

RELEVANT LINKS:

[BCA background check fees.](#)

[Minn. Stat. § 299F.035.](#)

[BCA background check fees.](#)

BCA/Minnesota Justice
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[A.G. Op. 852 \(Oct. 6, 2006\).](#)

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.
- 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 \$32.00 for employees and \$30.75 for volunteers.

E. Firefighters

As of Aug. 1, 2013, the requirement to conduct background checks on firefighters was codified in state law.

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.
- Juvenile adjudication data.

In this case, a copy of the Minnesota criminal history record must be given by the local police department to the fire chief.

The statute 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 an executed informed consent and fingerprints to the BCA, along with the fee of \$32.00.

An appropriate informed consent form must be signed by the firefighter applicant, regardless of whether the city is using the local police department to conduct the check or the BCA. The city should contact the BCA directly to obtain their consent form for a firefighter background check.

F. Elected Officials

From time to time, cities will ask whether background checks may be conducted on city council candidates running for office, and the short answer is no. The Minnesota Attorney General noted that candidates for election to public office by the voters are not considered “applicants for employment” under the Minnesota Government Data Practices Act.

RELEVANT LINKS:

[BCA background check fees.](#)

See Appendix A: Criminal History Employment Checks at a Glance.

[BCA background check fees.](#)

This is based on the fact that these city council member candidates are elected by the voters, and all persons who meet basic qualifications specified in the Constitution are eligible to seek election. Cities may not impose additional qualifications on council candidates. Further, the Minnesota Attorney General is not aware of any authorized government program under which it would be necessary or appropriate for city officials to delve into the backgrounds of persons seeking election to city offices for purposes of obtaining information that would reflect negatively on their eligibility or qualifications for office.

III. Using 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). 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.
- 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 more and 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. It generally takes about a week for a background check to be completed.

RELEVANT LINKS:

[Minn. Stat. § 299C.72.](#)

IV. Other issues

A. Records maintenance

The law prohibits dissemination of records obtained from the system by the local law enforcement agency for city employment or city licensing background checks 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 and include them in an approved records retention schedule.

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.

B. 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.

C. Out-of-state criminal history

The BCA data base—whether accessed through the local police department or through the BCA—will not contain 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.

RELEVANT LINKS:

To obtain business partner records access agreement forms:
DVS.DataServices@state.mn.us
651.201.7775
[Driver and Vehicle Services.](#)

800.925.1122
651.281.1200
HRbenefits@lmc.org

The city will receive national criminal history information on workers covered by the Child Protection Background Check Act and firefighters by submitting fingerprints and paying the required fees to the BCA.

D. 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, via the BCA, 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 employment or licensing is 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 DVS is the best source for information on driving records of Minnesota residents. The division does offer cities (and other organizations) the option of entering into a "business partner records access agreement." Cities can obtain driving records online (currently without charge) by signing this agreement.

E. 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.

V. Further assistance

If you have any additional questions, please contact the League's Human Resources and Benefits Department.

Appendix A: Criminal history employment checks at a glance

	Child Protection Act Workers	Firefighters	All other Employees (through PD or BCA)	All other Employees (using BCA web site)	Driver's License Checks
Statutes/Laws	Minn. Stat. 299C.61 & 62	Minn. Stat. 299F.035	Minn. Stat. 299C.46 Minn. Stat. Chapter 364	Minn. Stat. 13.87, subd. 3	Minn. Stat. Chapter 13; United States Code, title 18, section 2721
Agency	Can only be done by BCA. A fee will be charged	Can be done by BCA or by local police department. As of 8/1/2013, criminal history checks are required for MN firefighters.	Can be done by BCA, local police department*, or outside agency	Can be done by hiring authority or police department* – requires name and date of birth	Can be done through business agreement with DVS <u>not by local police department</u> . No fee currently required for government agencies.
Criminal History Results – Minnesota Only	Conviction data, juvenile adjudication data for specific crimes listed in the Child Protection Act, arrests resulting in conviction and arrest data from the past year with no disposition	Adult arrests less than one year old with no disposition, adult arrest info resulting in conviction, and juvenile adjudications	MN adult arrests less than one year old with no disposition; adult arrest info resulting in conviction. No juvenile data, adult arrest data older than one year with no disposition, or dismissal data.	Only public information: conviction, sentence and confinement information for 15 years after discharge of sentence	Ticketed traffic violations, accident information and status of license
Criminal History Results - National	National records check can be done only by BCA for additional fees; requires fingerprints	Requires national records check to be done for applicants who have been MN residents less than 5 years. Can only be done by BCA for an additional fee; requires fingerprints	Not authorized by law. Only available for Child Protection Act workers and firefighters.	Not authorized by law. Only available for Child Protection Act workers and firefighters.	None – Minnesota only
Consent Form	Special form supplied by BCA that lists all of the crimes that will be checked.	Form required by State Fire Marshal Plan when using BCA (available on web site). League recommends use of consent form when using local police dept.	League recommends use of consent form in all cases. Call League for sample if using local PD or BCA if using their services.	Requires notice to individual that this check will be performed.	Form required. Call League for sample. See information memo for contact person at DVS.

*Local PD is no longer required to have an ordinance as of 8/1/2013. However, League recommends the city adopt a policy with similar provisions.