



The Value of Incarceration Data in Continuous Monitoring Solutions

Brian Kelly | The TotalVerify™ Data Hub from Equifax





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Continuous Monitoring and Employee Assistance

Reducing Insider Threat and Helping Your Employees at the Same Time

As employers seek to ensure the safety and integrity of their work-places, customers, and communities, the background screening industry has explored more efficient ways to monitor workforces and mitigate person-based risk. In recent years, background screening companies have begun utilizing true continuous monitoring solutions that provide alerts immediately following an incarceration, court appearance, or conviction. Continuous monitoring is the process by which employers can proactively identify and manage potential problems within their organization – a solution that strengthens company brands, protects employees and customers, and encourages consistent, positive communication between employers and their employees. Screening providers through the various healthcare-related databases is a complex process, and navigating the exclusion lists maintained by different government agencies can be challenging. An overview of the exclusions lists and reporting processes most relevant to CRAs will provide a framework for understanding why it is important for employers to perform initial screens of providers and practitioners.

Beyond a pre-hire background screen or a post-hire periodic rescreen, continuous monitoring allows employers to be informed at the earliest point of possible intervention about an employee arrest. Rather than re-search an employee's name against a national criminal file ("nat-crim"), entire employee lists can be uploaded into systems that produced an alert when a new entry in the nat-crim dataset matched employee information in the uploaded list.

Timely incarceration alerts, or the initial report of potential criminal activity collected from correctional agencies, give employers the opportunity to identify "yellow light" events and provide counseling, training, and other forms of assistance to their employees.

One benefit of continuous monitoring is the employer's ability to identify and mitigate insider risk among their workforce – identifying the bad actors who can hurt others and damage a company's brand. But continuous monitoring can benefit businesses beyond just keeping threats out. It can be a tool for improved communication with employees and an impetus for employee assistance in appropriate cases. Background screeners can do more than manage and reduce workforce risk. Timely incarceration alerts, or the initial report of potential criminal activity collected from correctional facilities, give employers the opportunity to identify "yellow light" events and provide counseling, training, and other forms of assistance to their employees.



A Holistic Approach to Employee Monitoring

What Can an Employer Do After Getting an Incarceration Alert? Moving Beyond Adverse Action

When an employer receives an initial incarceration alert, the employer must first ensure legal compliance requirements are fulfilled. It is important for employers to have established practices that will help them remain compliant with industry regulation and guidance, such as the Fair Credit Reporting Act (FCRA), Equal Employment Opportunity Commission (EEOC), and applicable state laws. This may include providing a “clear and conspicuous” disclosure in writing to the employee before requesting a consumer report, as well as obtaining the employee’s written authorization for ongoing screenings.

Incarceration alerts can sometimes be an indication of a legitimate problem with an employee, such as inexcusable behavior directly related to the employee’s role, incarceration, criminal charges, or eventually a criminal conviction. In these cases, many employers take meaningful action to protect stakeholders and avoid “negligent retention” employment claims – a legal claim that an employer failed to terminate or discharge an employee who the employer knew or should have known has a propensity to injure members of the workforce or the public, such as a propensity toward violence, harassment, or dishonesty. However, not every incarceration leads



to a conviction, and some employers will not take adverse action based on an incarceration alert alone. It is important for employers to consult with their legal counsel to determine if federal or state laws may alter their preferred course of action. In the majority of cases, the initial incarceration alert is simply an early indicator that an employer should begin talking with an employee to address potential problems – not the basis for adverse action against the employee.

An incarceration alert is triggered by a match of the first name, last name, date of birth, and Social Security number provided by an employer to a comprehensive incarceration data network with a broad reach in coverage and strong data sources. This incarceration alert is not triggered based solely on a match of publicly available arrest booking information – which often has gaps in geographic coverage and is sometimes not continuously updated with new data – but is drawn directly from incarceration facilities and is available well before a case is adjudicated in court.



Monitoring for the Earliest Indicator of Risk: Incarceration Alerts



CURRENT WORKFORCE POPULATION

A roster managed by a CRA and/or an employer, this population list is kept up to date, often through an integration with an HRIS system.



INCARCERATION ALERT

Triggered by a jail booking that matches a watch containing an employee's PII, an incarceration alert informs an employer in near-real time of an incarceration event.



DATA VALIDATION

An individual's identity is confirmed, along with any charges and their relevance to the individual's job function.



INVESTIGATION & INTERVIEWS

The employer can begin conversations with the employee, evaluate the relevance of the alert to the role, and explore non-adverse action responses.



INTERVENTION

The conclusion of an employee investigation may result in discipline, such as suspension or termination, but employee assistance, counseling, and training are preferable options.

The earlier an employer finds out about an employee's arrest, the more effective an intervention can be. An earlier incarceration alert can initiate earlier employee assistance – before an arrest even goes to court.

Informing an employer at the earliest point of intervention encourages the organization to move from a *punitive* mindset to a *holistic* mindset. The event of an arrest does not prove that criminal conduct has occurred.¹

In many cases, an employee's arrest is not related to their area of work and is not considered relevant by the employer. Although an arrest can be an indicator of employee conduct that needs to be addressed, in the current political environment, many arrests are not indicators of poor employee conduct. If an employee is arrested at a peaceful demonstration, for example, the alert can initiate an approach of employee assistance, not adverse action – further strengthening an employer's role as a force for meaningful social good.²

Many organizations may prefer to be alerted only if an incarceration leads to an active court case and/or a conviction.

An early incarceration alert can also be the impetus for more accurate and efficient court research of the available data. If the case is not yet available because there is a latency period between the arrest and court proceedings, the employer can receive a “heads up” a case may be coming.

Termination: A Last Resort

Termination costs both the employer and the employee and should be a last resort. The total cost of losing an employee is significant. Global HR industry analyst Josh Bersin estimates that turnover costs employers³ between tens of thousands of dollars to 1.5-2 times the employee's annual salary. Even the lowest

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estimates indicate significant losses: According to the Work Institute's 2017 Retention Report, replacing an employee costs a company at least 33% of a worker's salary, or \$15,000 when applied to the median employee annual compensation.⁴ Even replacing an hourly employee costs an average of \$1,500, according to SHRM.⁵

There are soft costs as well. Not only do organizations lose money recruiting, onboarding, and training a replacement, they also lose the employee's knowledge and expertise, are often forced to overwork the remaining team members, and see their company culture suffer.

Costs of Employee Turnover

- As high as **1.5-2X** an employee's salary
- **\$15,000** per employee making \$45,000 annually
- **\$1,500** per hourly worker⁶

How Timely Incarceration Data is Already Helping CRAs

Numerous background screeners are now providing continuous monitoring solutions and benefit from timely, detailed incarceration data. They have found that timely arrest alerts, drawn from incarceration facilities with insight into a large percentage of the U.S. population, enrich their criminal monitoring solutions. One CRA has reported in a one-year lookback that the incarceration alert rate of a monitored workforce dropped by 65%, leading to a safer employee group. This report also found that before the use of employee continuous monitoring, two-thirds of incarceration alerts were misdemeanors, the most common of which was substance abuse. Identifying incarceration events like this in the workforce can help organizations guide employees to assistance programs and do a great deal of good – but only if these events are identified early in the process.

Hire Right

HireRight employs several complementary continuous or ongoing monitoring solutions, including **Arrest Record Monitoring** and **Criminal Record Monitoring**. Arrest Record Monitoring provides charge details from an issuing agency, while Criminal Record Monitoring provides verified court case details on confirmed criminal activity on a monthly basis. Each of HireRight's monitoring services provide systematic checks based on validated criminal history data equipping employers to initiate conversations with employees as early as possible.

Learn more: <https://www.hireright.com/services/monitoring-services>



First Advantage

First Advantage's **Criminal Records Watch** solution utilizes real-time criminal justice data across the United States, alerting employers to reportable criminal records and providing them the opportunity to intervene as early as possible. First Advantage's FCRA-compliant monitoring tool sends alerts to employers whenever an employee or contractor has a reportable criminal record charge, keeping the workplace safe and lowering enterprise risk.

Learn more: <https://fadv.com/criminal-records-monitoring/>





SJV Data Solutions

SJV Data Solutions leverages their proprietary platform alongside TotalVerify's incarceration data to provide CRAs a streamlined platform for monitoring their clients' employees for new incarcerations. SJV's solution, called **Continuous Criminal Monitoring**, provides continuous, real-time insights into workforce risk based on trustworthy, direct-sourced data and insight into more than 85% of U.S. incarceration facilities.

Learn more: <https://www.sjvdata.com/continuous-criminal-monitoring>

Safe Hiring Solutions

Safe Hiring Solutions provides a range of services designed primarily for volunteer organizations, such as schools and churches. Because their customers are responsible for the security of some of the most vulnerable populations, Safe Hiring's **ArrestAlert** solution provides immediate alerts on new criminal activity to the end-user. Safe Hiring also advises that "no adverse action should be taken on the alert," instead specifying that the alert should "initiate [the client's] internal policies and investigation.

Learn more: <https://www.safehiringsolutions.com/blog/arrestalert-a-new-tool-for-your-hr-tool-box>

Sterling

Sterling was the first background screening provider to offer a comprehensive post-hire monitoring program to manage workforce risk. Their **Workforce Monitoring** solution provides ongoing protection to end users, utilizing the nation's largest incarceration database to gain insight into 80% of the U.S. population.

Learn more: <https://www.sterlingcheck.com/services/monitoring/>

Conclusion

True continuous monitoring solutions – which regularly screen incoming booking data against employee rosters and inform employers about their workers' arrests in near real-time – benefit both businesses and their employees. They are enriched by timely incarceration alerts, which can in turn initiate more cost-effective court research and inform employers of critical arrest information as soon as possible, leading to earlier intervention and more positive outcomes for employees. These early alerts allow an employer to be proactive after an employee's arrest, potentially preventing the need for adverse action later.

Best-in-Class Incarceration Data



Timely

Incarceration alerts are provided in near-real time, allowing the employer to start conversation with their workers at the earliest point of intervention.



Exclusive

The proprietary datasets available in our continuous monitoring solution have insight into 90% of the U.S. population – more jurisdictions than any other commercial dataset.



Accurate

Beyond what is publicly available through nat-crim files, incarceration data reduces false positives thanks to a high fill rate on date of birth, driver's license number, and sometimes social security number.

Footnotes

- 1 <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>
- 2 <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/what-to-do-if-an-employee-is-arrested-during-a-protest.aspx>
- 3 Employee Retention Now a Big Issue: Why the Tide has Turned, <https://www.linkedin.com/pulse/20130816200159-131079-employee-retention-now-a-big-issue-why-the-tide-has-turned/>
- 4 Workforce Institute 2017 Retention Report <http://info.workinstitute.com/retentionreport2017>
- 5 To Have and To Hold, <https://www.shrm.org/hr-today/news/all-things-work/pages/to-have-and-to-hold.aspx>
- 6 Josh Berson, "Employee Retention Now a Big Issue: Why the Tide Has Turned," WorkforceInstitute 2017 Retention Report, "To Have and To Hold" (SHRM)
- 7 HireRight Product Launch webinar: "Rescreening or Monitoring?" <https://www.hireright.com/resource-library/view/product-launch-webinar-rescreening-monitoring>
- 8 "Criminal Records Watch: Ongoing Post-Hire Monitoring Solution." <https://fadv.com/solutions/criminal-records-monitoring/>
- 9 <https://www.safehiringsolutions.com/arrestalert>
<https://www.safehiringsolutions.com/blog/arrestalert-a-new-tool-for-your-hr-tool-box>

About Brian Kelly

Brian Kelly is the Vice President of Marketing and Business Development at Equifax. He leads the go-to-market strategy development and execution of all revenue initiatives for Justice Intelligence (Government and Commercial Investigations), Program Integrity and Risk Intelligence solutions. This includes working with the Equifax teams to identify and execute new revenue opportunities with existing and new partners. Over the last 25 years, he has served in business development, sales, and marketing roles in finance, data security, and technology. Brian holds a BS in Finance from Pennsylvania State University and an MBA from the Stern School of Business at New York University.

About TotalVerify

The TotalVerify™ data hub from Equifax provides the nation's most comprehensive source of criminal justice data for risk prevention-insights and analytic solutions that support informed decisions for early response to people-driven fraud and risk. By delivering real-time notifications and actionable insights, we enable government agencies and commercial enterprises to save lives, fight crime, prevent fraud, and manage risk.