Staff Screening

Third Edition

TOOL KIT

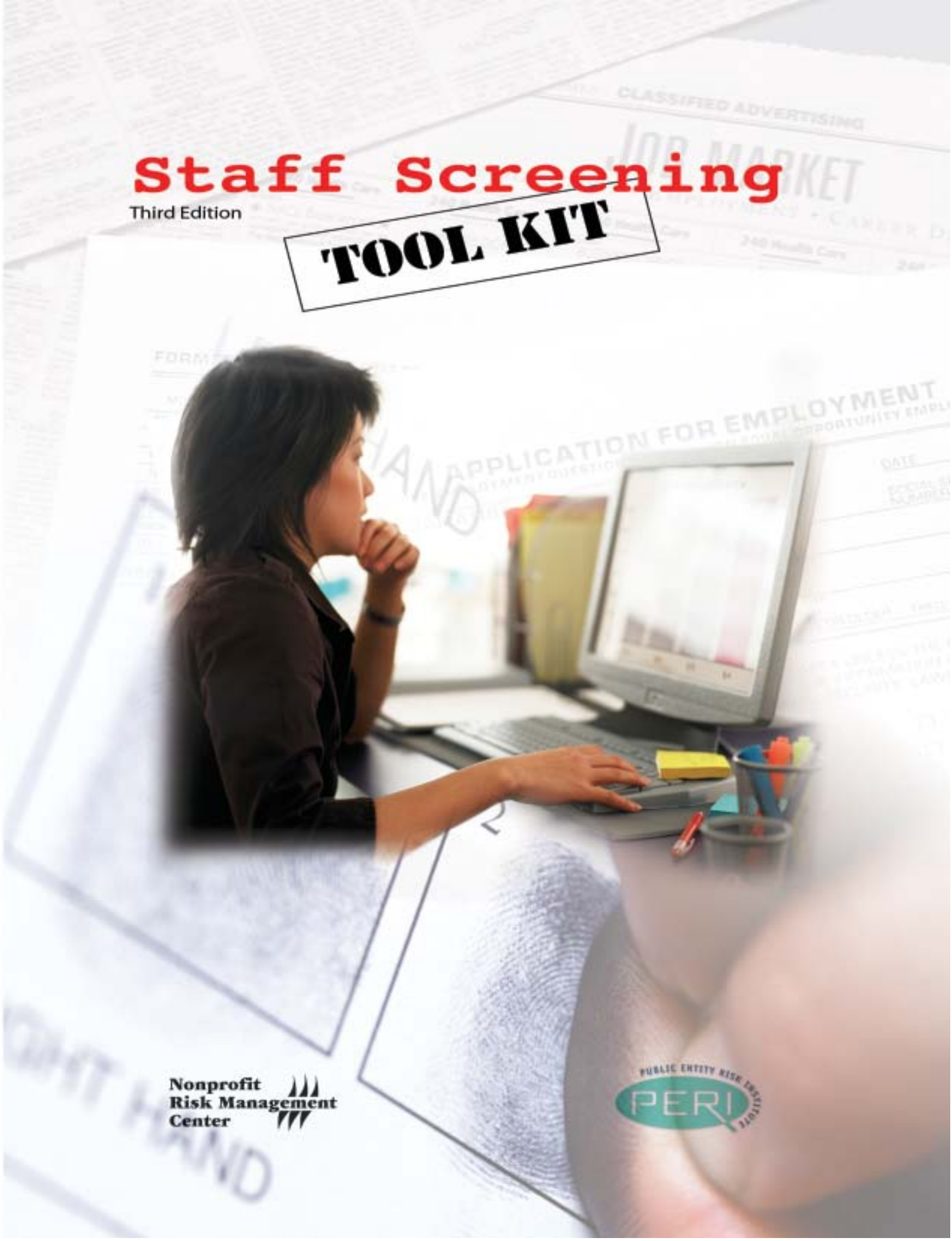

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Table of Contents

Preface v

Chapter 1 — The Screening Process 1

Chapter 2 — Legal Issues Pertaining to Screening 11

Chapter 3 — Position Descriptions and Selection Criteria 35

Chapter 4 — Recruitment and Applications 47

Chapter 5 — Interviews 59

Chapter 6 — Checking References 73

Chapter 7 — Record Checks 83

Chapter 8 — Other Screening Techniques 115

Chapter 9 — Using the Tools to Customize Your Search 125

Epilogue 133

Bibliography 135

Preface

Ten years ago the Nonprofit Risk Management Center published the first edition of the *Staff Screening Tool Kit: Keeping the Bad Apples Out of Your Organization*, which provided a practical approach to screening paid and volunteer staff. The response to this publication and its subsequent *Second Edition* was extraordinary.

Since the last edition of the *Tool Kit* was published, changes have taken place that influence the screening process for paid and volunteer positions. Some of the changes are in the laws that regulate the screening process and govern access to records; other changes are in the technology now available to assist with the staff screening process. Our goal for this third edition is to increase the amount of up-to-date information offered in the book while preserving and strengthening the characteristics that made the first two editions valuable tools for you. Some of the information from the last edition has been reorganized to make it easier for you to find. As in the other editions of the *Tool Kit*, we have included samples of screening tools that you may adapt for use within your organization.

While we reviewed all chapters to ensure that the information they contain is current, we significantly expanded Chapter Seven, Record Checks, to address more adequately the increased focus on the use of third-party vendors for performing criminal history record checks. Use of these services is much more common due to the lower costs and technological advances enabled by the Internet. At the end of Chapter Seven we have listed contact information including Web sites for each state's criminal history record repository and sex offender registry.

As important as screening is for nonprofit organizations in order to ensure that their employees and volunteers meet the standards, no screening process is totally effective. Organizations must continue to maintain their vigilance and ensure that all of their staff members—employees and volunteers—receive adequate training, supervision, and management support to fulfill the organizations' missions.

CHAPTER 1

The Screening Process

Checklist for Designing Your Organization's Staff Screening Process

- ❑ Does the process enable the nonprofit to place the best applicant into the proper position?
- ❑ Is the process fair to all applicants?
- ❑ Is the process comprehensive?
- ❑ Is the process efficient and affordable?
- ❑ Does the process specifically address risk factors?
- ❑ Is the process legal?

Key Concepts Addressed in This Chapter

The goal of any staff screening process should be to select the right person for the position. In performing this process, organizations must examine if the person selected has any identifiable characteristics that would constitute a threat to the organization's service recipients, other staff members, or the organization itself. The screening process that we will present is based upon four overarching principles: legal compliance, systematic application of procedures, matching level of screening with position-specific risk factors, and applying uniform selection criteria to all applicants for a specific position.

This chapter introduces a screening process for your organization's staff—both employees and volunteers—that achieves the criteria in the checklist above.

Designing an Effective Screening Process for Your Nonprofit

During the past decade, community-serving organizations have encountered increasing pressure to thoroughly screen individuals who staff their programs. In some cases, the screening requirements and proposals are well-intentioned attempts to address complex problems with oversimplified and sometimes inappropriate solutions. The purpose of this *Tool Kit* is to provide a framework for deciding what kinds of screening you should do and which requirements you should support.

Staff screening is a time consuming and costly endeavor. Perhaps the cost of screening is exceeded only by the cost of an organization's failure to screen. A well-designed screening process is an investment in the future of your organization and the safety and well-being of the clientele you serve.

The screening process suggested in this *Tool Kit* optimizes the return on your organization's investment by sequencing the steps to enable informed decision making at each step of the process. This enables selecting applicants who meet the requirements for the position and are most likely to be accepted. The process also limits use of more intrusive and expensive screening tools to the final steps of the process—a very important consideration as the use of some screening tools may have legal ramifications such as triggering provisions of the Fair Credit Reporting Act.

Every community-serving nonprofit has a legal duty to exercise reasonable care when confronted with a reasonably foreseeable risk or probability of injury associated with its activities. This duty may extend to taking steps to prevent staff from harming service recipients or from using their positions to inflict damage on the community, the organization, or themselves. When correctly applied, screening of applicants is a risk management strategy that can reduce the risk of harm and assist you in fulfilling that duty.

The drive for more thorough screening is strongest for community-serving organizations and public agencies that serve *vulnerable* populations—children, the elderly, and individuals with disabilities. Even organizations that do not serve vulnerable populations may need to screen staff who handle funds, drive vehicles, or serve in other positions that pose particular risks. The *Tool Kit* suggests a process of staff screening based on the requirements of the position, the nature of the contact with service recipients, and the legal limits placed on the use of screening tools.

For purposes of the *Tool Kit*, staff screening consists of the steps you take before selecting an individual to serve in your organization. Think of these steps as tools for building a strong organization that will serve your community well. Some organizations and publications use the

term "screening" much more broadly to include all types of measures for reducing staff-related risks. Contact the Nonprofit Risk Management Center at (202) 785-3891 for information on other risk management issues. The Center also has a Web site, www.nonprofitrisk.org, where you will find a listing of current publications along with information on our training programs and other services.

Screening Objectives

The broad purpose of staff screening is to help you select the best applicants to fill positions in your organization. Consequently, minimizing risk is not the only concern of the screening process. The focal point of this book, however, is the use of staff screening as a risk management strategy—that is, the use of screening *to detect applicants who have identifiable characteristics that would increase risks if they were placed in inappropriate positions.* There are several corollaries to this objective:

- To identify individuals who would create an unacceptable risk if placed in situations that offer access to vulnerable populations, such as a convicted child molester assigned to unsupervised work with children.
- To prevent the placement of individuals who lack necessary skills, such as assigning a non-swimmer as a lifeguard.
- To rule out potentially dangerous individuals, such as someone who was fired from a previous position for bringing a weapon to work.
- To exclude individuals who would be considered too risky for a particular position, such as a bookkeeper who was previously convicted of embezzlement.

Although screening cannot eliminate all of the individuals who present an unacceptable risk, proper screening can reduce the likelihood that you will inadvertently select those individuals to join your staff.

Staff screening must also take into account the mission of your nonprofit. The missions of some organizations may not allow the exclusion of individuals who have characteristics that appear to increase risks. For example, a nonprofit mentoring program that matches ex-felons with teenage boys cannot eliminate prospective volunteers simply because they have a criminal record—doing do would defeat the purpose of the program, inspiring young people to choose lifestyles that will keep them out of the criminal justice system. Screening in these organizations at least identifies risks and provides a basis for managing them through strategies other than exclusion. The guidance in this *Tool*

Kit can be used to help you successfully screen applicants, regardless of your organization's mission.

Inherent in our approach is the identification of specific risks for which screening is to be performed. The screening process should go beyond the obvious and address three specific concerns:

- ❑ Does the applicant represent an unacceptable risk to the members of the community served by the nonprofit?
- ❑ Does the applicant represent an unacceptable risk to other staff members or to other resources of the organization?
- ❑ Does the specified position pose an unacceptable risk to the applicant?

Focusing on these issues reduces the potential for misusing the screening process as a way of excluding people who do not fit some standard mold but who are not dangerous. This *Tool Kit* suggests a screening process that addresses the identification of unacceptable risks without losing sight of the goal of selecting the best person for the position while respecting the rights of applicants.

Risks to Service Recipients

Community-serving nonprofits exist to improve the quality of life in our society. Recruiting staff who pose an unacceptable risk of harm to the beneficiaries of an organization's services negates that intent. Every nonprofit should develop policies and procedures that minimize the risks staff pose for service recipients.

There are at least four kinds of risk that a staff member may pose to a nonprofit's clientele:

- ❑ Physical harm—including physical assault, sexual assault, child abuse, injuries caused by misuse of vehicles or other machines, and exercise of poor judgment leading to injury or death.
- ❑ Emotional harm—including sexual harassment; name calling; racial, gender, or religious discrimination; and denigration due to disabilities.
- ❑ Theft of, or damage to, property—including use of scams to take money from unsuspecting service recipients (often in conjunction with programs for the elderly), embezzlement and misuse of organizational funds, vehicle collisions, and other damages from recklessness or lack of respect for property.
- ❑ Violations of privacy—including misuse of confidential information, gossip, discussing clients

with other service recipients or staff, and
unauthorized distribution of mailing lists.

The concept of personal harm—either physical or emotional—that staff may inflict on a service recipient is fairly straightforward. You should not, however, discount the harm that staff could cause by other means, such as theft of financial assets or misuse of confidential information.

Risks to the Organization

Just as a staff member may pose a threat to service recipients, he or she may also pose a risk to the physical and emotional safety of other staff. Drug abuse and physical assaults pose serious threats to a nonprofit. Harassment and intimidation can cause enormous damage to other staff and the organization. There are also specific risks to organizational assets through embezzlement, insurance fraud, theft, and misappropriation of funds for which applicants may need to be screened.

The staff screening process may be the most significant risk management technique for preserving the intangible, but arguably most important, organizational asset—*goodwill*. Without goodwill and community support, a nonprofit may be unable to raise money, receive referrals, and fulfill its mission.

Risks to Applicants

Some positions require a degree of physical ability for which applicants need to be screened. For example, in order to limit the risk of harm to the applicant, volunteer leaders for a fifty-mile backpacking trip with inner-city youths need the physical stamina to be able to complete the trip. Obviously, persons selected for these positions should not be on doctors' orders to limit their exercise.

Staff assigned to crisis hotlines or counseling programs may be at risk of having their own emotional stability affected by the stress often present in such positions. A mentally unstable person or someone with unresolved victimization ordinarily should not be selected for placements of this nature. Another kind of risk may be posed by operating certain kinds of machinery—a person with poor hand-eye coordination might be a poor candidate for operating power tools and other potentially dangerous equipment.

The concerns mentioned in the previous paragraphs must be examined in the context of the Americans with Disabilities Act (ADA). This legislation requires employers to make reasonable accommodations to enable workers with disabilities to be employed. The ADA does not, however, require employers to hire people with disabilities when their disabilities would prevent them from performing tasks that are essential to the position.

Tailoring the Screening Process to Address Risk Factors

There is no standard screening process applicable to all staff positions. The screening process used should be based on the requirements of the position and the specific risks associated with that position. The chart on the next page provides a rough assessment of the sensitivity of several kinds of staff positions and the relative importance of each screening element.

The organization should develop its screening process based upon

- the nature of the position,
- the risks perceived to be associated with the position, and
- the costs associated with the screening procedure.

Your nonprofit's screening process must balance these three elements. If the costs to screen applicants adequately is too high and there are no other ways to mitigate the risks of the position, then the organization must seriously reconsider the wisdom of the endeavor.

On the facing page a chart titled *Relationship of Position Requirements to Screening Elements* appears. The rows represent specific responsibilities that may be listed in a position description; the columns are screening tools as discussed in subsequent chapters of this *Tool Kit*. The larger the symbol in the box formed by the intersection of a row and column, the more important it is to use that particular tool for screening applicants for positions that include the responsibilities specified in the left-hand column. The chart is merely a general guide. Whether a tool is advisable depends on the details of the specific position.

Basic Screening

As the chart indicates, a basic screening process should begin with position descriptions and include completed applications, interviews, and reference checks. These four elements are the cornerstones for screening applicants for every position. Some positions may not require any higher level of screening. If a volunteer has only a brief, one-time exposure to a vulnerable service recipient in a very controlled setting, then basic screening may be adequate.

In theory, the need for more extensive screening is generally related to the intensiveness of the contact with vulnerable service recipients. As reported in the United States House of Representatives Committee of the Judiciary Report on the *National Child Protection Act*, "The Committee does not believe that all occupations and volunteer positions…merit the time and expense of criminal history records checks. There are other means available to protect children from abuse, including the checking of prior employment history and character

Relationship of Position Requirements to Screening Elements

Position Requirements	Position Description	Application	Orientation Interview	In-Depth Interview	Reference Checks	Motor Vehicle Records Check	Criminal History Records Check	Psychological Tests	Medical Tests	Home Visit
Unsupervised contact with vulnerable client	X	X	X	X	X	X	X	X	x	X
Access to confidential client information	X	X	X	X	X	X	X	X	x	x
Transportation of vulnerable clients	X	X	X	X	X	X	X	x	X	x
Handling organization's or client's funds	X	X	X	X	X	x	X	x	x	x
Long term contact with vulnerable client in live-in situation	X	X	X	X	X	X	X	X	X	X
Extreme physical exertion in a remote setting with children	X	X	X	X	X	X	X	x	X	x
Visits to clients' homes	X	X	X	X	X	X	X	x	x	X
Supervised client contact in groups, public setting	X	X	X	X	X	x	X	x	x	x
Helping clients change clothes, bathe, or with other personal activities	X	X	X	X	X	X	X	x	x	x
Coaching sports in which physical contact between adult and child is routine	X	X	X	X	X	X	X	X	X	x
Delivery of meals to clients homes	X	X	X	X	X	X	X	x	X	x

KEY: The bigger the X the more important the element in the screening process for that kind of position.

Child Sexual Abuse Risk Exposure Matrix

Lower	Medium	Higher
Activities held in facilities with public acccess.	Activities held in private homes. Mitigated Some Mit. Unmitigated	Activities held in an isolated setting (e.g., wilderness, institutions). Mitigated Some Mit. Unmitigated
Parents actively involved in program with their child.	Some parental involvement in program. Mitigated Some Mit. Unmitigated	Little or no parental involvement in program with their child. Mitigated Some Mit. Unmitigated
Two or more adults supervising group activity.	One adult supervising a group of children. Mitigated Some Mit. Unmitigated	Activity with one adult and one child. Mitigated Some Mit. Unmitigated
No regular interaction between volunteer and any specific children.	Periodic interaction for short periods of time between volunteer and specific children. Mitigated Some Mit. Unmitigated	Interaction between volunteer and specific children spanning long period of times. Mitigated Some Mit. Unmitigated
No changing of clothing as part of activity.	Changing of clothes required; showering (such as for sport activities.) Mitigated Some Mit. Unmitigated	Changing of clothes, bathing, toileting, or overnight stays. Mitigated Some Mit. Unmitigated
Training for volunteers concerning child sexual abuse is required.	Training concerning child sexual abuse offered to volunteers; not required. Mitigated Some Mit. Unmitigated	Training concerning child sexual abuse not offered to volunteers. Mitigated Some Mit. Unmitigated
Education about child sexual abuse is required for youth participants.	Education about child sexual abuse is offered to children, but not required. Mitigated Some Mit. Unmitigated	Education about child sexual abuse is not offered to children. Mitigated Some Mit. Unmitigated
Organization regularly monitors and evaluates the volunteer's activity.	Organization provides informal oversight of the volunteer's activities. Mitigated Some Mit. Unmitigated	Volunteer operates on organization's behalf without oversight. Mitigated Some Mit. Unmitigated
Volunteer has no physical contact with children.	Volunteer and child engaged in activities involving some physical contact. Mitigated Some Mit. Unmitigated	Volunteer has close physical contact with children (e.g., swimming instruction, wrestling). Mitigated Some Mit. Unmitigated
Organization has very little staff turnover (including volunteers).	Organization has some staff turnover (including volunteers). Mitigated Some Mit. Unmitigated	Organization has considerable staff turnover (including volunteers). Mitigated Some Mit. Unmitigated
Services offered to children older than 12 years of age.	Services offered to children younger than 12 years of age. Mitigated Some Mit. Unmitigated	Services focused on children of any age who have disabilities. Mitigated Some Mit. Unmitigated

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references and proper training and supervision of employees and volunteers...positions involving long-term or ongoing contact with children in one-on-one situations merit criminal history record checks and that positions that involve infrequent direct contact or contact only in group settings do not merit such checks."

Intermediate and Comprehensive Screening

Some positions offer a somewhat higher level of risks for specific exposures—for example, working closely with groups of children, providing transportation, or handling cash. Screening for these positions may need to be expanded to include state-level criminal history record checks, Department of Motor Vehicles (DMV) checks, or use of national credit reporting information, as well as expanding the number and sources of references.

For positions that offer considerable opportunities for harm—for example, extensive one-on-one contact between a vulnerable person and a service provider, delivering in-home services, or helping individuals manage their finances—closer attention to the background of the applicant may be required. An enhanced screening process might consist of conducting a national FBI criminal history records check, checking child abuse registries, or administering tests that measure integrity.

The *Risk Exposure Matrix* on the prior page demonstrates one way to assess the risks for sexual abuse based upon your organization's analysis of a position against eleven risk factors related to sexual abuse and the mitigation measures used by your organization to lessen the risks. Organizations can use the matrix to identify the level of risk and design your screening process for employees and volunteers who work with children accordingly.

Finding What You Need In the ***Tool Kit***

The *Tool Kit* offers up-to-date information for nonprofit organizations concerning staff recruitment, screening and selection processes. At the front of each chapter is a checklist and a summary of the information you will find in the text of the chapter. Following the text, for most chapters, is a *Tools* section that contains sample forms and other useful information. These samples may easily be adapted for use in your nonprofit organization.

CHAPTER 2

Legal Issues Pertaining to Screening

Legal Checklist for Your Organization's Staff Screening Process

- ❑ Has the nonprofit conducted due diligence on the tools it will be using?
- ❑ Is the organization's approach to screening reasonable given its mission and resources?
- ❑ Does the process that will be used account for foreseeable risks?
- ❑ Are the selection criteria and process determined *before* screening begins?
- ❑ Have key elements of the screening process been documented?
- ❑ Has the nonprofit considered available and affordable screening tools?
- ❑ Has the organization thoughtfully considered the rights of applicants?
- ❑ Does the process comply with the applicable provisions of state and local laws?
- ❑ Does the process comply with the applicable provisions of Federal laws?
    - ❑ Fair Credit Reporting Act
    - ❑ Americans with Disabilities Act
    - ❑ Title VII of the Civil Rights Act of 1964
    - ❑ Employee Polygraph Protection Act
    - ❑ Privacy Act/Freedom of Information Act
    - ❑ Health Insurance Portability and Accountability Act of 1996
    - ❑ Age Discrimination in Employment Act of 1967

Key Concepts Addressed in This Chapter

Organizations face two legal pitfalls related to screening applicants. The first pitfall is accountability for negligence—the failure to use reasonable care in the selection of staff members. The other legal pitfall is the duty to preserve the rights of the applicants and not violate their privacy as established by various state and federal laws. Each state has laws that, to some degree, may require employers to limit areas of pre-employment inquiries into applicants' pasts. There are also several federal laws that apply to the privacy of applicant information. The provisions of both state and federal laws are generally limited to applicants for paid employment and not for volunteer positions. It is wise to consult legal counsel knowledgeable about your state's employment laws for guidance in this area.

This chapter discusses these laws and some of the court cases in which they were applied.

The Legal Perils of Screening

From a legal standpoint, screening can be a perilous activity. There are legal risks associated with a thorough screening process as well as risks in not screening. In this chapter we will outline some of the legal risks of screening and suggest policies and practices to minimize these risks.

Risks associated with *not* screening paid and volunteer staff can be significant. The basic legal standard that applies to screening is *reasonableness under the circumstances*. If a nonprofit's screening process is challenged in court, a judge or jury will evaluate the reasonableness of the process employed; the foreseeability of the risk (whether the organization knew or should have known of the risk of harm); and whether the screening process, or lack of it, caused or contributed to the harm at issue. A plaintiff is likely to argue that the absence of a well-documented screening process is gross negligence and that an ineffective process or one lacking thoroughness represents the failure by the nonprofit to exercise reasonable care.

For many nonprofits, a sense of moral duty and sincere concern for service recipients are the primary motivators behind the development of a screening process. In other cases, the overwhelming fear of potential legal liability is the principal motivator.

There are two basic categories of legal risk in screening:

- ❑ the risk of not screening thoroughly enough, and
- ❑ the risk of violating an applicant's legal rights.

Under the first scenario, the potential plaintiff is someone injured by a paid or volunteer staff member who was unfit for service. Liability is

imposed when a court determines that the nonprofit employer failed to exercise reasonable care in selecting the worker. Under the second scenario, the likely plaintiff is an applicant who was rejected by a nonprofit.

It is important to keep in mind, however, that applicants for positions at your nonprofit generally have fewer rights than current staff members. As Judge Henry J. Friendly (a 27-year veteran of the United States Court of Appeals for the Second Circuit) wrote in 1975: [T]here is a human difference between losing what one has and getting what one wants." (Friendly, *Some Kind of Hearing*, 123 U. Pa L. Rev. 1267, 1296 (1975).) This point was echoed in *Harmon v. Thornburgh*, 878 F.2d 484 (D.C. Cir. 1989), where the court wrote, "Denial of a future employment opportunity is not as intrusive as the loss of an existing job."

There are no hard-and-fast legal rules about screening. Liability for negligent screening requires a thoughtful analysis of the circumstances. There are, however, some basic principles that apply and are helpful in evaluating whether your screening practices and policies will withstand legal scrutiny.

Some Processes Mandated by Law

In rare instances, a component of a screening process—such as a criminal history records check—may be mandated by state law. For example, some states require that applicants for day care positions undergo state-based criminal history checks. States may issue specific licenses—e.g., to drivers or childcare workers or teachers—that define a necessary level of competence. If the state determines that specific qualifications (such as possession of a commercial driver's license or CDL) are required for a specific position (e.g., school bus driver), your screening process should be designed so that only applicants who meet the standard are given consideration.

Screening Practices Judged Under Negligence and Reasonableness Standards

Claims alleging inappropriate or inadequate screening are typically based on negligence theory. *Black's Law Dictionary* defines negligence as "[t]he omission to do something which a reasonable man guided by those ordinary considerations which ordinarily regulate human affairs would do, or the doing of something which a reasonable and prudent man would not do." (6th Ed. (1990) at 1032.) A simple way to restate this definition is: negligence is doing something a reasonable person would not do or failing to something a reasonable person would do under the circumstances.

Negligent hiring is a legal theory based upon the negligence of an employer in placing a person with known propensities, or propensities

that should have been discovered by reasonable investigation, in a position in which it should have been foreseeable that the person posed a threat of injury to others (*Ponticas v. K.M.S. Investments*, 331 N.W.2d at 911). Under the theory of negligent hiring, an employer can be liable for an employee's intentional tort—an action invariably outside the scope of employment—when the employer knew or should have known that the employee was violent or aggressive and might engage in harmful conduct (*Di Cosala v. Kay*, 450 A.2d 508 (1982) (New Jersey)).

Additional Definitions of Negligence

- the name of a tort cause of action and a general principle of tort liability
- conduct that creates an unreasonable risk of harm to others
- conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm (source: *Restatement of Torts*, Section 282)

Individuals and nonprofits as well as large corporations can be negligent. Fortunately, most injuries do not result in lawsuits. Despite the common view that everyone sues, most people who are injured—whether while receiving services from a nonprofit or while shopping in a supermarket—do not sue. Furthermore, simply suffering an injury on premises belonging to someone else or while participating in an event sponsored by an organization does not necessarily entitle an injured party to compensation. Each state has adopted rules that are used in the determination of whether and when an injured plaintiff can recover. Recovery is never automatic. A plaintiff in a standard negligence action must prove four essential elements of the cause of action: duty, breach of the duty, causation, and damages.

1. Duty. The defendant owed the plaintiff a duty or obligation to act in accordance with legal standards of reasonable conduct given a foreseeable risk of harm.
2. Breach. The defendant did not meet the appropriate standard of care.
3. Causation. The defendant's failure to meet the required standard of care was causally connected to the harm suffered by the plaintiff.
4. Damages. The loss or injury to the plaintiff's person or property was caused by the defendant's negligence or breach of his duty.

When a law requires the use of certain screening tools, the "reasonableness" standard is clear. Failure to use the mandated screening tool may render the organization negligent per se (as a matter of law) if the harm that occurs is of the nature the law was intended to prevent. In most instances, however, such clarity is not available. When will a nonprofit be held responsible (liable) for negligent hiring? Absent statutory provisions, your nonprofit's potential liability—and the requisite standard of care—are essentially defined by the standard of reasonableness. The outcome of a suit alleging negligent hiring (screening) may turn on a court's determination of whether you acted reasonably under the circumstances.

The concept of "reasonableness" is a moving target. Its meaning changes as circumstances, public perception, environments, victims, and available safeguards change. Actions considered reasonable in a rural community may be considered unreasonable in an urban setting. Inaction in a situation involving adults may be reasonable; the same inaction with children present could be unreasonable. This makes it very difficult to predict whether your nonprofit's screening process will withstand legal scrutiny. Your commitment to implement an appropriate screening process is the starting point for defending a legal action. As described in the remaining chapters of this book, an appropriate screening process is one that assesses and responds to the risks presented by a position, the person holding the position, the service recipients, and danger to others.

"It is sometimes said that the study of negligence is the study of the mistakes a reasonable man might make."

— Harry Kalven, Jr.

The reasonableness standard of the negligent hiring doctrine is flexible. It requires that the judge or jury consider the availability of various screening tools with the ability of the nonprofit to use those methods. For example, your nonprofit uses adult volunteers to drive young people to local nursing homes for visits with elderly patients. One day, a car driven by a volunteer driver is involved in a collision with a truck. Two of the four children in the car suffer serious injuries. During the investigation of the accident, you learn that the volunteer driver's license was suspended six months ago after a charge of reckless driving. This fact could have been discovered in a Motor Vehicle Records (MVR) check, available for $5 each at your state's DMV and taking only one day to process. Did your nonprofit take reasonable steps to protect young volunteers and the general public from harm?

Ability to Control the Situation Is Necessary to Prove Negligence

A nonprofit is not required to control all risks. When the duty exists, however, a nonprofit must act reasonably. For example, under certain circumstances, national nonprofits may escape liability for screening missteps that result in harm conducted by their local affiliates. The liability decision may rest on whether the national group had the right to control the local screening process. Without the right to control, the duty to protect is generally absent.

Foreseeability Is Also Required

Once the duty to act reasonably is found, liability for negligent screening rests on the foreseeability of harm. If an employer knew or should have known the existence of a dangerous condition that eventually causes an injury, the courts may hold the employer liable for the resulting harm. The mere possibility that a person may present a threat is probably insufficient to establish liability. Public policy favors limiting the liability of employers to some extent. To hold employers strictly liable for harm caused by employees with criminal histories

would make persons with criminal backgrounds permanently unemployable.

In the *Ponticas* case, the court wrote that liability is determined by the entire circumstances surrounding the hiring and whether the employer exercised reasonable care. It further instructed that "[t]he scope of the investigation is directly related to the severity of the risk third parties are subjected to by an incompetent employee..." Employers are not required to conduct an exhaustive screening of every applicant. The nature of the process may be tailored to the foreseeability of harm.

Under common law, nonprofits have a duty to exercise reasonable care in selecting paid and volunteer staff. Some form of investigation of an applicant's background is prudent whenever a nonprofit staff member will come into contact with the general public. Frequently an application, an interview, and reference checks are used. When the initial screening process detects issues that may render the applicant unfit for a particular position (for example, an applicant for an accounting position acknowledges a felony conviction for embezzlement), a nonprofit is well advised to subject the applicant to further scrutiny.

In addition to this two-tier process, certain aspects of the employment relationship may indicate the need for rigorous scrutiny. These aspects include the nature of the contact between the position and service recipients, the level of supervision provided, the vulnerability of service recipients, and the potential for serious harm. Reasonableness under the circumstances requires that the above factors be balanced by consideration of the burden imposed by additional, more rigorous screening processes.

Young Service Recipients: A Higher Standard of Care May Apply

Nonprofits serving young people may have their performance measured against and be held to a higher standard of care. Every youth-serving nonprofit has an affirmative duty to undertake reasonable efforts to evaluate the fitness of applicants for paid and volunteer staff positions. This duty is based on the doctrine of negligent hiring, which imposes a duty to use reasonable care when hiring employees who will be exposed to the general public. "Even in informal contact situations where the employer is familiar with the applicant, a personal interview, application and reference checks should be used." (Noy Davis and Susan Wells, "Effective Screening of Child Care and Youth Service Workers," CHILDREN'S LEGAL RIGHTS JOURNAL, Winter/Spring 1994-1995 at page 26 (study by the Office of Juvenile Justice and Delinquency Prevention and the American Bar Association Center on Children and the Law).)

The higher standard of care does not extend to the use of criminal history background checks for volunteers. At present, no state mandates the use of background checks for all volunteers who have contact with

children. As indicated previously, "reasonableness" is a moving target. Given a greater availability of computerized databases to maintain and retrieve criminal histories, the use of these screening instruments may affect the reasonableness standard by which nonprofits will be judged in the future. In the years ahead, judges and juries will decide whether a nonprofit's failure to use this tool is an acceptable practice.

The negligent hiring doctrine is based on employment law and has evolved into a broader duty to protect the general public from harm caused by paid and volunteer staff. Under the doctrine of negligent hiring, an employer may be liable for "negligently placing an unfit person in an employment situation involving an unreasonable risk of harm to others." (Cindy M. Haerle, "Minnesota Developments, Employer Liability for the Criminal Acts of Employees Under Negligent Hiring Theory: *Ponticas v. K.M.S. Investments*," 68 MINN. L. REV., 1306, 1306-08 (1984).)

The six elements of a negligent hiring cause of action are:

1. An employment relationship must have existed between the defendant and the tortfeasor (the wrongdoer).
2. The employee must have been unfit under the circumstances of employment.
3. The employer must have known or should have known through reasonable investigation that the employee was unfit.
4. The employee's tortious (wrongful) act must have been the cause in fact of the plaintiff's injuries.
5. The negligent hiring must have been a proximate cause of the plaintiff's injuries.
6. Actual damage or harm must have resulted from the tortious act. (Haerle, 1308.)

Does Liability for Negligent Hiring Apply to Volunteers?

There is authority in the common law—the body of law derived from usage, custom, and tradition—supporting the argument that the concept of negligent hiring can be applied even when the wrongdoer is an unpaid staff person. "A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless...in the employment of improper persons or instrumentalities in work involving risk of harm to others." RESTATEMENT (SECOND) OF AGENCY, Section 213 (1958) "It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such a person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of

harm to others." RESTATEMENT (SECOND) OF TORTS, Section 308 (1965). As discussed previously, key considerations are:

- ❑ Foreseeability. Did the nonprofit know or should it have known that the staff member posed an unreasonable risk of harm?
- ❑ Control. Did the nonprofit have control over the activity in which the "actor" was engaged?

Risk Management Strategies for Legal Screening

- ❑ *Always base screening processes on the potential risk posed by a position*. Begin your screening process by considering the potential dangers inherent in the position. For example, a position that will have one-on-one contact with vulnerable service recipients or the general public poses greater risk to these populations than a clerical position with light typing duties and no public contact.

- ❑ *When a position involves unsupervised contact with vulnerable service recipients, use a more rigorous screening process*. The determination of whether a screening process will be considered reasonable will take into account the level of risk to service participants.

- ❑ *Before screening for a particular position, identify the characteristics that will act as automatic disqualifiers for the position*. For example, determine that one or more moving violations during the past five years will disqualify an applicant for the position of van driver.

- ❑ *Whenever a basic screening process raises red flags about an applicant, you should investigate the issue to determine whether it disqualifies the applicant*.

- ❑ *Whenever an employee's or volunteer's actions—after they have been retained—raise red flags about their suitability for positions of trust, investigate to determine whether these actions disqualify the staff member from continued service*.

- ❑ *Do not disqualify applicants based on their beliefs*. Conduct, not ideas, is an appropriate basis for exclusion.

- ❑ *If appropriate, when a disqualifying characteristic is detected in an applicant for a volunteer position, consider the applicant for another position*.

- ❑ *Establish written screening guidelines and use written tools to substantiate your efforts, such as position descriptions, interview guides, hiring checklists, reference check worksheets, and other items as appropriate*.

- ❑ *Determine whether a license is required for each position, and confirm that every applicant has the required license before proceeding with additional steps in the screening process.*

- ❑ *Make certain that your screening process considers all of the risks and does not focus only on a particular risk.* For example, harm could result from an employee or volunteer's lack of maturity or judgment or a staff member's poor driving skills. A screening process that focuses solely on the risks of abuse to clients may overlook other critical risks that should be considered and may pose more likely threats.

- ❑ *Evaluate the sufficiency of your screening processes using the reasonableness standard.* Is the process used to screen applicants for volunteer positions reasonable under the circumstances? Is the process used to screen applicants for paid positions reasonable under the circumstances?

Case Law Examples

Several cases are discussed below to illustrate the considerations some courts have used to impose liability for negligent hiring. Each case analysis focuses only on a screening process, not on other available risk management tools. As you review each case summary, consider why the court decided the case as it did. Then compare your organization's activities with those discussed in the case. Does the case guide you to use any of the screening tools outlined in this book?

Volunteer Status Does Not Negate Responsibility For Screening

In *Broderick v. Kind's Way Church*, the Alaska Supreme Court concluded that a church failed to exercise the required high degree of care in selecting a volunteer who allegedly sexually abused a three-year-old in a church nursery. In its ruling, the Court rejected the defendant's assertion that it was not required to conduct a background check on the volunteer because of her volunteer status, writing that a volunteer "may be subject to the same interview and background checks" as any other worker, so long as the volunteer is subject to the control of the employer.

Failure to Verify a License May Subject Nonprofit to Liability

In *Deerings West Nursing Center v. Scott*, a case out of Texas, a nursing home failed to verify that any applicant possessed a license required under state law. In *Deerings*, the home hired a nurse over the telephone. The nurse subsequently certified that he had a nursing license on the home's official application. He further certified that he had never been convicted of a crime. Actually, the nurse was ineligible for a license because he had a lengthy criminal record. The home hired the nurse.

An elderly woman came to the home to visit her brother but arrived before visiting hours began. The nurse became agitated, hit her on the chin, slapped her, and pinned her on the floor. The woman sued for damages, and the jury gave her both compensatory and punitive damages. The court held that, had the home required the license, the licensing process would have uncovered the potential danger. It found that the injury to the elderly woman could have been avoided if the home had merely followed the law. In addition to awarding compensatory damages, the court found that the home's conduct had been reckless and that the jury's award of punitive damages was justified.

Does your organization hire staff "sight unseen"? Does your organization determine whether a license is required for an activity and, if so, does it get it? Does your organization have procedures in place to prevent acceptance of a forged or fake license?

A Higher Level of Risk Requires a More Thorough Investigation

A security firm was held liable for negligently hiring a guard in *Welsh Manufacturing v. Pinkerton's*. Pinkerton's hired the applicant as a security guard. A client hired Pinkerton's to protect a large amount of gold. After the applicant had been employed for approximately six months, the client had three robberies within forty-five days. The guard subsequently admitted his involvement.

The screening process involved completion of an application form, a criminal history background check, and reference checks. Pinkerton's failed to ask the references about the applicant's honesty and trustworthiness and did not contact all of the provided references. Given the value of the property subject to theft, and the importance of honesty to the job, the Rhode Island court found that Pinkerton's was obligated to conduct a more thorough investigation.

Does your nonprofit take the time to investigate each requested source of information? If a trait is highly relevant to the job description, does your organization focus on the specific trait? If you are hiring someone who will be entrusted with financial assets, do you ask if the applicant has been "bonded" and, if so, check the claims history on the applicable fidelity bond? Do you ask each reference about the applicant's honesty and trustworthiness?

"Red Flags" Are Important, Especially for Positions of Trust

An owner/operator of an apartment complex was found to be liable in *Ponticas v. K.M.S. Investments*. In *Ponticas*, the employer hired an apartment manager, not knowing that the manager had a criminal record. The employer obtained an application form and ran a credit check on the manager. The staff interviewed the manager before an offer was made. The manager was entrusted with a passkey to enter each

apartment. He later used the passkey to enter a tenant's apartment, where he raped her.

The court held that the application process uncovered "red flags" and that the owner should have investigated further. The application indicated:

- that the manager received a general (rather than honorable) discharge from the U.S. Army after an abnormally short tour of duty,
- long periods of unemployment, and
- a criminal history.

The court remarked that the decision to hire the manager was hurriedly made and, while it was not clear whether the criminal record could have been discovered, nobody even tried. Also, though the application asked for references, the owner and his staff failed to contact the names provided. Had they done so, they would have learned that the "references" were the manager's mother and sister. The court concluded that the potential risk of harm associated with hiring an unfit person to fill the manager position was substantial. The manager had a passkey with access to all of the units. As a result, a more thorough screening process was necessary.

Does your organization contact references? Are work-related references required? Do you document each contact with the date and time of the call, the name and position of the reference, the reference's relationship to the applicant, and the substance of the opinion? If the references provided by the applicant are inappropriate, do you attempt to obtain additional references based on past employment?

The Job Description Influences The Obligation to Investigate

A Minnesota employer was found not liable for rehiring an employee after his incarceration for an earlier killing in *Yunker v. Honeywell*. In *Yunker*, after serving a five-year sentence for the strangulation death of a Honeywell employee, the company rehired Randy Landin as a custodian. Landin became friends with a co-worker, Kathleen Nesser, and spent time with her away from work. He subsequently began harassing Nesser after she rejected his romantic advances. One week after resigning his position at Honeywell, Landin killed Nesser in her driveway.

The ruling of the trial court that Honeywell had no legal duty to Nesser and that Honeywell could not have reasonably foreseen Landin's killing Nesser was upheld on appeal. The appeals court also affirmed the lower court's finding that the job responsibilities of custodian did not involve inherent dangers to others, and that co-workers were not reasonably foreseeable victims at the time Landin was hired.

Do certain positions in your nonprofit pose greater risks than others? Is the screening process used by your nonprofit appropriate for all positions? If not, what aspects of certain positions make them suitable for more rigorous screening?

Redundant or Unavailable Tools Need Not Be Pursued

The background investigation of an applicant was found to be adequate in *Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell*, a case decided in Georgia. In *Terrell*, the Big Brothers paired a boy with a volunteer who molested him. The Big Brothers' investigation process included completion of an application and a family history, contact with at least three references, an "extensive interview and assessment by a clinically trained case worker," and an interview with the membership committee.

The court held this investigation to be reasonable and sufficient. It rejected the plaintiff's suggestion that the organization should have also had a credit check, psychological tests, or FBI report. The court found the credit check to be irrelevant to the job description, and the other tools to be either unavailable or redundant.

TORT

A private or civil wrong or injury, including bad faith, for which the law will provide a remedy in the form of an action for damages.

Mentoring programs facilitating one-on-one contact with children present risks associated with the vulnerability of the service recipient and the intensity of the contact. The courts may find a nonprofit liable for injuries unless a rigorous screening process is employed. The above case illustrates that screening need not be an exhaustive process. When the risks are substantial, however, the process must include and may require more than the basic application, reference checks and interview. In the *Terrell* case, the court noted the extensive interview by a trained professional. You should not provide one-on-one mentoring services unless you intend to screen applicants thoroughly. If your organization cannot afford to supplement a basic screening process with an "extensive interview" by a "clinically trained case worker," are there other tools that you can use without duplicating your efforts?

Reasonable Discretion Allowed in Using Screening Tools

An employer in Mississippi was found not to be liable even though a personality test raised concerns in *Thatcher v. Brennan*. In *Thatcher*, a salesman physically assaulted a fellow motorist after a traffic dispute.

The salesman had taken a personality inventory test prior to his employment. The evaluation characterized the applicant as a person of "high aggression," immaturity, and volatility. The evaluator remarked that the profile significantly differed from that of most other sales candidates.

The victim asserted that the test put the employer on notice of the salesman's propensity for violence, and that the employer was negligent

to hire him. The court disagreed. The court held that "aggression" is not synonymous with "violence," and that the employer did not have notice that an assault would occur.

How would the headlines read if this were a nonprofit volunteer at a camp for individuals with disabilities? Does your organization properly analyze the information obtained through use of its screening tools? For the screening tools that you use, do you have criteria and procedures to guide you in the selection or rejection process?

To summarize this section, the legal duty to screen depends on the specific circumstances and legal doctrines that vary from state to state. Failure to screen applicants for paid or volunteer positions may lead to liability for a nonprofit, even if the wrongful conduct is illegal, immoral, and in flagrant violation of the organization's rules.

The screening methodology in this *Tool Kit* will be helpful in this regard. When reading about the tools in this book, think about how these legal theories may be used against your organization. Then think about how you can use the tools to prevent such claims.

Remember that your organization's obligations do not stop after the application has been accepted. When you learn of a potential danger (e.g., a drunk driving conviction or an abuse allegation) involving someone already on your staff, it may be negligent for your organization not to take further precautions.

Applicants Have Legal Rights Too: Know Them and Screen Accordingly

As noted earlier, screening is subject to two general sets of legal rules: one pertaining to your responsibility to screen in a reasonable manner and the other related to the protection of the rights of individuals being screened. This section discusses potential limitations on the screening process to protect applicants' rights.

You owe legal duties to the applicants themselves. Each applicant, whether seeking a paid or volunteer position, is entitled to privacy and to fair treatment under the law. The United States Constitution mandates that "public" entities protect certain privacy and liberty interests. Common law and various statutes impose similar obligations on private entities.

While reading this material, it is important to keep in mind that the law is highly variable. For this reason, the *Tool Kit* covers the general considerations, but it cannot compile all the applicable requirements. One reason is that each state may have different laws. For example, in one state it might be unlawful to review arrest records, because "second chances" and confidentiality are of the utmost importance. In other

states, you may be required to review such records because full disclosure of past conduct has been given the top priority.

The law is also constantly evolving, and you must change with it. From the previous example, the states where "second chances" have been a top priority may join the trend toward open records. Screening procedures that are adequate today may be inadequate when the law changes.

Many statutory protections, such as the Age Discrimination in Employment Act (ADEA), apply only to employees. The law has been interpreted, however, to include volunteers under certain circumstances. State laws may extend to volunteers, and certain volunteer benefits may constitute sufficient compensation to create an employment relationship. Furthermore, given your nonprofit's mission to help, rather than hurt, society, you should commit to treat applicants fairly and with respect, regardless of the nature of their position. Doing so is likely to advance your mission and foster goodwill in your community.

Screen Based Upon Each Applicant's Skills and Qualifications

Federal law generally prohibits your organization from screening out applicants for paid staff positions based upon their race, color, religion, sex, national origin, age, disability, or other protected status. (See the list of federal statutes at the end of this chapter.) In some states, you may not screen out applicants based upon sexual orientation or other characteristics. While sometimes exceptions are made (e.g., for religious organizations where religious beliefs are a prerequisite), paid and volunteer staff should be considered on the basis of their skill and capacity to fulfill the requirements of the position—not on the basis of any group characteristics.

Red Flags

As used in this *Tool Kit*, "red flags" are items that would cause a reasonable person to question the suitability of the applicant for the position. Some "red flags" may be automatic disqualifiers; others signal the need for further investigation.

Not only is it forbidden to specifically screen out a legally protected group, the laws also forbid seemingly neutral criteria that have the same effect. If a selection requirement disparately affects a protected group, your organization must prove that such a criterion is sufficiently important for job performance to justify its use.

- ❑ A height requirement of 6'0" would exclude more women than men. Such a rule is improper unless necessary for adequate job performance.
- ❑ An automatic rejection of individuals with arrest records may eliminate some minority groups at a higher rate than others. Such a result from a single screening tool may be found to unlawfully discriminate unless there is a legitimate "business" justification.

In addition to having an attorney review your policies and practices, you may want to consider the following questions when assessing your risk of liability:

- ❑ Do position announcements and advertisements express your nonprofit's policy of nondiscrimination?
- ❑ Have you trained your staff in the nonprofit's hiring policies, including its prohibition against illegal discrimination?
- ❑ Do you solicit applicants from the general public, or do you limit your advertisements to areas dominated by one ethnic group or religion?
- ❑ Are the requirements and qualifications of each staff position absolutely necessary?
- ❑ Do you train your interviewers to conduct interviews properly? Do they have the tools they need, such as a list of permissible interview questions?
- ❑ Do you submit each applicant for a position to an identical selection process? If not, have you identified and documented a legitimate justification to treat applicants differently? Would you be embarrassed about this reason if you were asked about it in court?

The Right of Privacy

An individual's right to privacy—to be left alone and free from unwarranted intrusion—is protected under the United States Constitution and various state constitutions. It is not an absolute right. The right to privacy can be invaded if a compelling state interest exists or if the applicant consents to the invasion. Privacy protections work in two ways: they limit the use of certain tests, and they permit recovery by an individual whose privacy is wrongfully invaded. Screening processes have the potential of invading privacy and must, therefore, be designed with this risk in mind.

To begin, any screening tool used by your nonprofit should be thoughtfully considered. Do not use any tool that you cannot relate to your nonprofit's commitment to safety and the specific risk posed by the application. For example, conducting a credit check on every employee in a youth-serving nonprofit is probably unreasonable and may unnecessarily violate the privacy rights of nonfinancial employees. The use of certain screening tools—such as phone taps and eavesdropping—are almost always impossible to justify and may be illegal. When balancing the privacy right of an applicant against the need for these investigatory tools, the privacy right almost always wins out.

Some screening tools are closely regulated by statute to protect privacy interests. The Employee Polygraph Protection Act (EPPA) prohibits any employer "engaged in or affecting commerce" from:

1. directly or indirectly requiring, requesting, suggesting, or causing any employee or prospective employee to take or submit to any lie detector test;

2. using, accepting, referring to, or inquiring about the results of any lie detector test of any employee or prospective employee; and

3. discharging, disciplining, discriminating against in any manner, denying employment or promotion to, or threatening to take any such action against, (a) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test, or (b) any employee or prospective employee on the basis of the results of any lie detector test.

The "engaged in commerce" test is very complex. A good risk management approach is to assume that your nonprofit meets the test. Consult your attorney before considering the use of polygraph tests. The law also provides certain safeguards when polygraph tests are used and permits an individual to sue for violations.

There are a number of exceptions in the law, including ongoing investigations for theft. If an employee is suspected of theft, a nonprofit should not consider the use of a polygraph until it is clear about what is forbidden under the Act, understands the "ongoing investigation" exception, and knows the consequences of violating the Act, which include damages for emotional distress. These damages may not be covered under your nonprofit's liability policy.

Likewise, federal law protects individuals' right to keep their finances private. Only people or organizations with a legitimate reason to review them may obtain credit reports. Both criminal and civil liability may result from knowingly obtaining a credit report for an impermissible purpose. For example, the director of finance has a legitimate reason to request credit reports on applicants for the position of accounts receivable clerk. However, she should not use her position to obtain a report to satisfy her curiosity about applicants for a nonfinancial position, or simply to satisfy her curiosity about the financial background of applicants. When financial information is obtained for impermissible reasons, the nonprofit could be liable for the consequences.

Protecting Privacy

If your nonprofit intends to use a screening tool that may invade an applicant's privacy, it is advisable to:

- ❑ retain an attorney to review any federal and state laws restricting use of the tool,
- ❑ define the specific need that justifies the use of the tool and the acceptable scope of the test,
- ❑ educate your staff about the appropriate use of such tools,

- set up an approval process to ensure that the use of the tool is necessary and tailored to meet the organization's needs,
- try to anticipate any improper way that a screening tool can be used and construct barriers to prevent such abuse,
- describe the screening tool and its attendant safeguards to applicants and obtain their consent, and
- maintain a file of signed consent forms.

Some screening tools are based upon scientific principles such as urine, blood, psychological, or physical strength tests. While these tools may accurately detect a hazardous condition, use of such tools can raise serious privacy concerns. The tools may be invasive both because of how the test is administered and because of the sensitive facts that may be disclosed. For example, if urinalysis is an effective test for drug use, and such a test is necessary to ensure that a school group is not endangered by an impaired bus driver, is it necessary to have five people of the opposite sex watch the sample taking? If it is a blood test for the purpose of detecting drug use, is it necessary to also run an AIDS test at the same time?

Obtain Consent

A good risk management practice to minimize invasion of privacy claims is to always obtain the applicant's consent before using an invasive screening tool. Recognize, however, that consent may not always be upheld. For example, juveniles cannot provide legal consent, although their parents or guardians can generally act on their behalf.

Unless you apprise the applicant of the risks of the invasion, consent may be an ineffective defense. In addition, consent is no defense if the screening tool is not used as authorized, or if the invasion is greater than originally anticipated. Also, even when you have obtained consent from an applicant, you must carefully guard the information obtained and take steps to prevent the inappropriate release of the information to unauthorized recipients. Consent to use the tool for a specific purpose does not include public release of such private information without the applicant's specific consent to publish the results.

Seek Legal Counsel

Questions about your organization's screening processes and the laws in your state should be directed to your attorney. This book is not a substitute for legal advice on your particular circumstances.

Avoiding Defamation

In order to be defamatory, a statement must be communicated to others, it must be false, and it must tend to harm the victim's reputation in the community. Only statements of fact can be defamatory, not

opinions. A court will consider the entire context of an expression in determining whether a statement is an opinion or a fact.

Contrary to popular opinion, the First Amendment of the Constitution provides only minimal protection against defamation claims. "Only statements about matters of public concern not capable of being proven true or false and statements that cannot be interpreted reasonably as stating facts are protected from defamation actions under the first amendment." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

Although defamation actions are rare and difficult to win, all applicants have the right to protect their reputations from falsehoods and their private lives from public scrutiny. Even if your nonprofit has a legitimate need for sensitive information, the inaccurate recording or release of that information may result in liability.

Public statements of a private matter, even if the statements are truthful, may also lead to liability if the matter does not concern a "legitimate" public issue. However, "legitimate" public issues do not encompass everything that is of interest to the public. For example, the public may be interested in the prevalence of AIDS in the community, but this interest alone will probably not justify the dissemination of an applicant's blood test results that indicate infection with the disease.

To avoid defamation claims, adopt the following risk management strategies:

- ❑ Commit to maintaining the confidentiality of information provided by applicants and develop policies that prevent disclosure to anyone without a need to know.
- ❑ Never release the resulting information to people who have no legitimate need to acquire it. Limit the circle of people with access to confidential information.
- ❑ Prohibit consideration or discussion of an applicant's background beyond characteristics or background directly related to the position and the needs of the organization.
- ❑ Strive to factor only truthful information into the analysis and take reasonable steps to keep all information confidential.
- ❑ Instruct your staff and volunteers not to discuss personnel issues outside the office.
- ❑ Keep rejection letters brief. The safest explanation is that an applicant was chosen "whose background more closely fit the requirements of the position."

Case Law: Screening Duty

Arndt v. Magnuson, 531 N.W.2d 849 (1995) (Minnesota—despite past history of abuse, church did not have actual knowledge of pastor's propensities to commit sexual abuse before he was hired, nor was it reasonable to conclude that it should have learned of sexual abuse of child).

Beddia v. Goodin, 957 F.2d 254 (6th Cir. 1992) (music festival organization not liable because it had no duty to protect shuttle passengers while they were on another's property, and because it had no control over the shuttle service).

Big Brother/Big Sister of Metro Atlanta, Inc., v. Terrell, 359 S.E.2d 241 (1987) (Georgia—screening deemed sufficient; every available tool need not be used).

Christianson v. Educational Service, 501 N.W.2d 281 (1993) (Nebraska—employer is liable for physical harm to third persons resulting from the negligent selection of an employee).

Connes v. Molalla Transp. Sys., Inc., 831 P.2d 1316 (1992) (Colorado—recognizing that when "the duties of the job will bring the employee into frequent contact with members of the public, or will involve close contact with particular individuals…some courts have expanded the [requisite screening requirements] beyond the job application form and personal interview").

Cottam v. First Baptist Church of Boulder, 756 F. Supp. 1433 (D. Colo. 1991) (liability for an injury requires ability to control the situation and to prevent harm).

Deerings West Nursing Center v. Scott, 787 S.W.2d 494 (1990) (Texas—liability imposed for hiring nurse who failed to have necessary license; evidence supported award of punitive damages).

Diaconescu v. Hettler, 435 S.E.2d 489 (1993) (Georgia—homeowners failed to investigate homeless man whom they asked to "watch" their home; found not to be liable to gunshot victim because man never showed signs of violent or criminal behavior, homeowners did not know that man had access to firearms, and man was not hired to be "security guard").

Doe v. Boys Clubs, Inc., 907 S.W.2d 472 (1995) (Texas—failure of club to investigate, screen, or supervise volunteer did not proximately cause molestation as there was no evidence that boy was assaulted at club premises and criminal record of misdemeanor driving convictions would not have precluded volunteer's presence at club).

Garcia v. Duffy, 492 So.2d 435 (1986) (Florida—employer liable when employer knows, or should know, that employee is predisposed to wrongful conduct and permits opportunity for wrongful conduct to occur).

Golden Spread Council, Inc. v. Atkins, 926 S.W.2d 287 (1996) (Texas—council's affirmative act of recommending scoutmaster created duty to use reasonable care in light of information council received about scoutmaster's alleged prior conduct).

Guillermo v. Brennan, 691 F. Supp. 1151 (1988) (North Dakota—screening tools need to be tailored to ensure fitness for job at hand).

Infant C. v. Boy Scouts of America, Inc., 391 S.E.2d 322 (1990) (Virginia—duty to screen applicants is not uniformly imposed on every division of an organization).

Kansas State Bank & Trust Co. v. Specialized Transp. Services, Inc., 819 P.2d 587 (1991) (Kansas—employer liable if knew or reasonably should have known of danger; it need not foresee specific injury).

Moses v. Diocese of Colorado, 863 P. 2d 310 (1993), *cert. denied*, 114 S. Ct. 2153 (1994) (Colorado—church placed priest in position that required frequent contact with others and that induced reliance and trust; church liable for failing to screen out priest when psychological report indicated potential problems with depression, low self-esteem, and "sexual identification ambiguity").

Peck v. Siau, 827 P.2d 1108 (1992), *cert. denied*, 838 P.2d 1142 (Wash. 1992) (*S.H. v. Utah*, 865 P.2d 1363 (Utah 1993) (Washington—state immune from negligent hire lawsuit even though it had been aware of previous incidents of sexual abuse).

Thatcher v. Brennan, 657 F. Supp. 6 (S.D. Miss. 1986), *aff'd*, 816 F.2d 675 (5th Cir. 1987) (liability not imposed merely for accepting "volatile" person).

Welsh Mfg., Div. of Testron, Inc. v. Pinkerton's, 474 A.2d 436 (1984) (Rhode Island—central characteristics of position should be focus of screening procedure).

Yunker v. Honeywell, 496 N.W.2d 419 (1993) (Minnesota—employer was not liable under theory of negligent hiring for failing to investigate criminal background of employee who murdered co-worker, where employee's job responsibilities as maintenance worker entailed no exposure to general public and required only limited contact with co-workers).

Case Law: Rights of Applicants

Big Brothers, Inc. v. Minneapolis Commission on Civil Rights, 284 N.W.2d 823 (Minn. 1979) (Minnesota—unlawful to discriminate on sexual preference, but mere notification of family that potential mentor is homosexual is not discriminatory).

Boy Scouts of America and Monmouth Council, Et Al. vs. James Dale, No. 99-699, Supreme Court of the United States 120 S. Ct. 2446 (June 2000) (The forced inclusion of an unwanted person in a group infringes on the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints.)

Borse v. Piece Goods Shop, Inc., 963 F.2d 611, 620-21 (3d Cir. 1992) (drug testing may be invasive, both because of how test is administered and because of the host of private medical facts that are disclosed).

Brewer v. Purvis, 816 F. Supp. 1560 (M.D. Ga. 1993) (distribution of investigative report concerning grade change allegations against coach was not defamatory when given to persons with reason to review, by either duty or authority).

Briscoe v. Reader's Digest Association, 483 P.2d 34 (1971) (California—plaintiff's identification as former hijacker in connection with article on hijacking was not newsworthy).

Brown v. Albany Citizens Council on Alcoholism, Inc., 605 N.Y.S.2d 577 (1993) (New York—statements of opinion may be defamatory if intertwined with statements of fact).

Resbach v. Doubleday & Co., Inc., 518 F. Supp. 1285 (D.D.C. 1981) (passage of time may make a subject private, even though it had once been a matter of legitimate public interest).

Frederick v. Marquette National Bank, 911 F.2d 1 (7th Cir. 1990) (credit checks proper where there is legitimate need).

Geary v. United States Steel Corp., 319 A.2d 174 (1974) (Pennsylvania—there are areas of an employee's life in which employer has no legitimate interest).

Graves v. Women's Professional Rodeo Association, 907 F.2d 71 (8th Cir. 1990) (an exchange of compensation for services is central to the idea of employment).

Haavistola v. Community Fire Co. of Rising Sun, 6 F.3d 211 (4th Cir. 1993) (volunteers may be construed to be "employees" under certain circumstances).

Hall v. Delaware Council on Crime and Justice, 780 F. Supp. 241 (D.Del.), *aff'd*, 975 F.2d 1549 (3d Cir. 1992) (reimbursement of work-related

expenses and free admittance to annual luncheon are insufficient remuneration to consider volunteers as employees).

Hester v. City of Milledgeville, 777 F.2d 1492 (11th Cir. 1986) (polygraph testing of firefighters upheld where illegal drug activity was a concern and testing was specifically directed at such activity; test results also were not sole basis for disciplinary action).

Little v. Wuerl, 929 F2d 944 (3rd Cir. 1991) (Catholic school not prohibited from terminating non-Catholic teacher under Title VII).

O'Brien v. Papa Gino's of America, Inc., 780 F.2d 1067 (1st Cir. 1986) (jury found employee pressured into highly offensive polygraph test).

Paul v. Davis, 424 U.S. 693 (1976) (privacy rights not absolute; release of "public records" may be permitted).

Smith v. Berks Community Television, 657 F. Supp. 794 (E.D. Pa. 1987) (volunteers who receive no fringe benefits or reimbursement for expenses are not protected by the statutes prohibiting discrimination).

Smith v. Greyhound Lines, Inc., 614 F. Supp. 558 (W.D. Penn. 1984), *aff'd*, 800 F.2d 1139 (3d Cir. 1986) (state law protects only at-will employees from polygraph tests; union employees protected by collective bargaining agreement have other remedies; unsubstantiated rumors that do not come from official source are not defamatory).

Walker v. Grand Central Sanitation, Inc., 634 A.2d 237 (1993) (Pennsylvania—former employer's statements of opinion to prospective employer were not defamatory).

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) (business justification to discriminate requires legitimate, nonbiased reason for business practice).

Wefel v. Rockwood R-6 School District, 779 F. Supp. 468 (E.D. Mo. 1991) (letter in personnel file that characterized plaintiff as "a liar and a fake" does not violate rights when state law and district policy prevent disclosure).

Wolf v. Regardie, 553 A.2d 1213 (1989) (District of Columbia—article written from review of public records does not invade individual's privacy).

Yohay v. City of Alexandria Employees Credit Union, 827 F.2d 967 (4th Cir. 1987) (both attorney and credit union can be liable for credit report obtained under false pretenses).

Relevant Federal Statutes

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, prohibits discrimination based on race, color, religion, sex, or national origin.

Age Discrimination in Employment Act of 1967, 29 U.S.C § 621 *et. seq.*, prohibits discrimination based upon age.

Federal Public Accommodations Law, 42 U.S.C. § 2000a, mandates that places of public accommodation must be open to everyone without discrimination or segregation on grounds of race, color, religion, or national origin.

Americans with Disabilities Act, 42 U.S.C. § 2501 *et. seq.*, prohibits discrimination against individuals with disabilities and requires employers to make reasonable accommodation for workers with disabilities.

Employee Polygraph Protection Act, 29 U.S.C. § 2001 *et. seq.*, bans use of lie detectors in workplace unless there is ongoing investigation into economic loss, and there is reasonable suspicion that individual being tested was involved.

Privacy Act/Freedom of Information Act, 5 U.S.C. § 552a *et. seq.*, balances public's right to access governmental information against privacy rights of individuals involved.

Fair Credit Reporting Act, 15 U.S.C. § 1681b *et. seq.*, regulates access to individual's credit history.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes privacy protections that apply where an employer obtains drug test or pre-employment physical information directly from a medical provider, or receives information from a medical provider regarding an employee's workplace injury.

CHAPTER 3

Position Descriptions and Selection Criteria

Checklist for Your Organization's Use of Position Descriptions and Selection Criteria

Positions

- ❑ Has the nonprofit developed a written position description for each position?
- ❑ Has the nonprofit developed a position description for each volunteer assignment?
- ❑ Do the nonprofit's position descriptions describe principal duties of the position?
- ❑ Do the position descriptions clearly establish the time commitment required by the nonprofit?
- ❑ Do the position descriptions list essential and desirable qualifications?
- ❑ Do the position descriptions delineate training requirements?
- ❑ Do the position descriptions identify where the position will be located?
- ❑ Do the position descriptions identify the supervisor?

Selection Criteria

- ❑ Are selection criteria clearly related to the requirements of the position?
- ❑ Do selection criteria consider risk factors related to position duties?
- ❑ Do selection criteria consider the need for academic credentials, licenses, or certificates?
- ❑ Is a uniform set of selection criteria used in considering all applicants for the same position?

Key Concepts Addressed in This Chapter

Position descriptions are important tools that provide the foundation for screening staff applicants. Position descriptions enable the organization to determine the kinds of information it needs to collect from applicants and others during the screening process. The position description helps to determine how extensive the screening process needs to be in order to reasonably protect service recipients, other staff members and the interests of the organization.

The position description also sets the selection criteria against which applicants will be measured. Selection criteria for each position should be uniform and meet the "reasonableness" test to avoid negligence. In order to be fair, all applicants should be measured using the same criteria.

This chapter further discusses the use of position descriptions and selection criteria to accomplish the twin goals of staff screening: selecting the most qualified individual for a particular vacancy in the nonprofit and eliminating applicants who constitute a possible threat to service recipients, other staff, and to the organization.

Developing written position descriptions and selection criteria will help you place qualified people in positions where they can help your organization deliver strong services to your community and thereby accomplish its mission.

The Position Description

A written job description defines the duties and responsibilities of the position. It also defines the qualifications for the job and provides the foundation for the screening process. It may also indicate specific tasks that the person holding the position should not undertake (especially for volunteers whose assistance may need to be limited, such as a hospital volunteer who should never administer medications). Having a position description for each staff position—paid and volunteer—is a powerful risk management tool.

Duties and Limitations

The duties and limitations stated in the job description should guide your screening process. For example, if the position description calls for an individual to handle money, the organization has a legitimate interest in the person's experience with handling money, any financial difficulties the individual may have experienced, any experiences the individual may have had handling someone else's money, and any history of embezzlement or misappropriation of funds. Inquiring into these matters for another kind of position could be inappropriate and possibly unlawful.

If the position requires working directly with service recipients, the areas of interest for screening may include how well the individual relates to others; any indications of abusive behavior toward clientele or staff in other, similar circumstances; and the applicant's ability to relate to individuals from different ethnic backgrounds.

The nature of the work with service recipients also has implications for the extent of the screening process used. For example, if the only staff contact with clientele occurs while service recipients are in a group and staff members are under the direct surveillance of a supervisor, the screening may still be reasonable although less exhaustive than if the position requires staff to visit individual clients alone in their homes.

These are just a few of the points established by position descriptions that help identify relevant screening criteria for applicants. They provide the basis for lawful inquiry (see Chapter Two, Legal Issues Pertaining to Screening). In subsequent sections of the *Tool Kit*, we will examine the relationship of the job description to screening tools: applications, interviews, reference checks, record checks, and other screening techniques.

Qualifications and Training

A position description should state the qualifications and training necessary to the responsibilities of the assignment. Minimum qualifications should be justified by the work to be performed and should, to avoid legal problems, be performance-based. Asking if an applicant can lift a 40-pound box is less likely to screen out someone inappropriately than asking if an applicant has a bad back (but only if lifting something weighing 40 pounds is an essential requirement of the position).

If duties involve risk factors that can be reasonably anticipated, the position description should specify qualifications that will minimize the risk. For example, rather than specifying experience in the recreation field for someone who will serve as a lifeguard at a community pool, the position description should specify appropriate and current certifications such as American Red Cross lifeguard certification and first aid/CPR certification.

Training is an integral aspect of risk management. The position description should specify any training the organization requires prior to assuming a position. The training may be a simple orientation explaining the organization's goals and giving limited guidance on proper procedures. Or the training may be more extensive, providing staff with specific, position-related skill development. Describing required training in the position description may eliminate individuals unwilling to complete the training.

Selection Criteria

Prior to beginning the screening process for any position, every nonprofit should determine the selection criteria it will use for filling a position based upon the essential functions listed in the job description. As much as possible, they should be objective measures of ability to perform the usual tasks required by the position. In literature on human resources, these criteria are called "bona fide occupational qualifications."

Information sought from applicants should be based upon job descriptions. For example, anyone working with a vulnerable person should be screened against the possibility of harm to the service recipient. If, however, the opportunity for harm to occur is limited by other factors such as supervision, group activities, and infrequent contact with the service recipient, then asking the applicant and personal references about past experiences and criminal records may be sufficient.

If there will be extensive one-to-one contact with a vulnerable service recipient, limited supervision, and a relationship between the service recipient and the applicant that will extend over several months or years, then it would be prudent for the organization to seek information about the applicant's propensity for violence. If available, information from criminal history records and from other organizations listed by the applicant on the application can help you assess the applicant. The criteria used to assess the applicant are the same; it is the number of sources from which information is sought that changes with the intensity of the screening process.

A recent US Supreme Court case upheld the first amendment rights of private organizations to exclude individuals "if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." (*Boy Scouts of America vs. Dale,* case no. 99-699). In this case the Court found that the presence of an avowed homosexual leader would interfere with the Boy Scout's ability to express its belief that homosexual conduct is immoral.

Most court decisions have used "economic benefit" as the standard for determining if employment antidiscrimination laws apply to volunteer positions. While it may be legal to use selection criteria for volunteer positions that it would be illegal to use when selecting paid staff—such as age, race, or sex—it may be unwise for your organization to do so. Even though some courts have concluded that a volunteer may not have standing to sue for employment discrimination, a volunteer upset at the screening criteria may cause other damage to the nonprofit.

You should know how the information will be used to evaluate applicants for a position before you collect the information. For example, your organization may decide that it should conduct criminal

history record checks on applicants for a particular position. A criminal history record check is a process, not a criterion. It may reveal that an applicant has a record of arrests and convictions for various offenses. What offenses are relevant to the ability to perform the duties of the position? What offenses are relevant to the safety of the organization and the people you serve? These questions must be answered *before* you begin the screening process. There are two reasons for this. First, it will save time and expense. Second, it will enable the nonprofit to avoid using irrelevant information in making a selection decision.

Government agencies frequently establish selection criteria for some positions such as childcare workers, health care providers, and teachers' aides, and some positions may require licensing. Your nonprofit's selection criteria should meet or exceed any applicable legal standards.

Your insurance companies or bonding agents may also specify automatic disqualifiers for applicants for some positions. Before adopting any screening policies, consult your insurance advisor. He or she should be able to tell you if there are any specific factors that would disqualify an individual or exclude your organization from coverage for that individual's actions.

Consider the following questions as you determine the selection criteria for your positions:

- ❑ Is the position an entry-level position, or does it require substantial experience and expertise?
- ❑ What objective measures, based on the position description, can be used to determine if an applicant is qualified?
- ❑ What are the risks associated with this position, and where can we obtain the information required to screen applicants to determine if they have characteristics considered unacceptable in the context of those risks?
- ❑ Are academic degrees or other credentials related to essential functions of the position, or do they constitute arbitrary selection criteria?

Fairness dictates that all applicants for the same position should be evaluated using the same criteria. Deviating from this commitment puts your nonprofit at significant risk.

Rating Criteria

Employers rarely encounter perfect applicants. This fact requires that you balance the strengths and weaknesses of applicants. Let's assume that you favor an individual who appears to have all of the qualifications that you are looking for but about whom some negative

information shows up during a record check. How should that information be used by the organization in deciding to accept or reject the applicant?

As previously stated, applicants need to be screened based on their qualifications and ability to perform the specific tasks listed in the position description. Individuals who are not qualified and cannot perform may be eliminated from consideration. Most employers are adept at rating one individual's experience and comparing it with another's. However, some organizations have more difficulty evaluating the relevance of adverse information that is less than an automatic disqualifier. This is where judgment needs to be applied.

Judgment Factors

A nonprofit should consider three factors as it develops policies for responding to adverse information found through the screening process: consistency of information, context, and position requirements.

- ❑ Consistency of information. During your screening process, you should expect that information from the applicant, references, and record checks should be consistent. When an applicant for a position is candid about adverse information, and references and records all confirm the same situation, you should not automatically reward candor with placement. You should, however, use the information to evaluate the candidate. One might argue that an honest staff member would be better than one who gave false or incomplete information until confronted with the results of reference or record checks. In many organizations giving false information during the application process is grounds for immediate dismissal when discovered.
- ❑ Context. How long ago was the incident that gave rise to the adverse information? What has the individual been doing with his or her life since it occurred? What was happening in the applicant's life when the incident occurred? Is the incident part of a larger pattern of antisocial behavior, or was it an aberration? The answers to these questions could have a bearing on the acceptability of a staff person. If negative information is contained in an individual's records, when the applicant has lived in the same community for a while and is well known, checking current references and lifestyle information could still justify placement.
- ❑ Position requirements. The organization must determine the relevance of the specific information to the requirements of the position being filled. If a

volunteer for a local *Meals on Wheels* chapter is going to work in the office filing records, her driving records may be irrelevant. A man with a twenty-year-old arrest record for child molestation, on the other hand, could be considered an unwarranted risk for some positions working with children since there is no known cure for pedophilic tendencies. An applicant for treasurer may be out of luck if the organization's policy is that the treasurer must be bonded and the bonding company refuses to bond the individual's performance in that position due to a prior conviction for embezzlement.

By considering these three factors when your organization develops its policies concerning adverse information and its use in applicant screening, you will help formulate policies that will be fair, and at the same time you will protect your organization's interest in keeping out individuals with an identifiable risk factor.

Each organization should consider its needs and develop policies to be followed consistently in each case. The policies need to identify automatic disqualifiers, establish rating criteria, define judgment factors, and permit the information to be examined in the context of organizational requirements and other life experience factors of the applicants.

Position Description Tools

1. What's in a Position Description Checklist
2. Sample Job Description Worksheet
3. Volunteer Position Description—Sample and Worksheet

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations have provided forms designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

What's in a Position Description Checklist

Every nonprofit should use position descriptions as the foundation on which the organization recruits and screens applicants for paid and volunteer employment. Although they take time to develop, concise and complete job descriptions are an invaluable tool that will save time and conserve resources. Your nonprofit's job descriptions should include, at a minimum, the following elements:

- ❑ Job Title: Give the job a name that is descriptive of the job duties as well as the relative level of importance of the position in your nonprofit's administrative structure. Do not assign an inflated or lofty title to compensate for noncompetitive compensation.

- ❑ Job Identification: Give the name of the department or position of the supervisor to whom the position reports. Identify whether the position is exempt or non-exempt, part-time or full-time, regular, temporary or a substitute position. Independent contractors and consultants should not have a position description, but instead a contract which sets forth the nature of their services for the nonprofit.

- ❑ Job Purpose Statement: Provide a description of how the position fits into the mission of the organization. Ask: why does this position exist? What does the employee in this position spend most of his or her time doing?

- ❑ Essential Functions: Describe physical functions which are essential to the position's successful performance, such as "*carrying 60 pounds for up to 20 yards*" or "*active care of infants and toddlers, such as lifting children, holding arms overhead, getting up and down off the floor, and aiding children on the playground*."

- ❑ Job Responsibilities: List the major job activities, if possible listing those which are more significant first, indicating the relative weight, or a time value for each activity. Example: *Answer telephone and provide referrals (75%)* for "Receptionist" position.

- ❑ Minimum Qualifications or Requirements: List any skills or abilities that are critical to successful job performance. List educational degrees, licenses, registrations, certifications, etc. that create the minimum requirements for the position. Ensure that these requirements are job-related. For example, requiring a college degree may have an unlawful adverse impact. Consider using "equivalent experience" as an alternative to a degree.

SAMPLE

Job Description Worksheet

Consider developing a form similar to this one to provide a starting point for developing a job description.

Date	*Note the date the worksheet was completed.*
Job Title	*Indicate the title of the position.*
Status	*Indicate the status of the position per the nonprofit's personnel policies. For example, "Full-Time Exempt," or "Part-Time Non-Exempt."*
Reports to	*Indicate the title of the person who will supervise this position.*
Department	*Indicate, if applicable, the department in which the position will reside.*
Purpose	*Describe the specific purpose of the position in one or two sentences. The statement of purpose should be presented in terms of the nonprofit's mission, goals, and services to the community.*
Essential Functions	*Describe physical functions which are essential to successfully performing the job, such as "carrying 60 pounds for up to 20 yards."*
Key Responsibilities	*List the major duties and responsibilities of the position.*
Minimum Qualifications	*List education, experience, knowledge, and skills required for the position.*

SAMPLE & WORKSHEET

Volunteer Position Description

Consider using or adapting this worksheet to develop position descriptions for the volunteer positions in your nonprofit.

Sections of the Position Description	**Explanation and Example**
Purpose:	This section describes the specific purpose of the position in no more than two sentences. If possible, the purpose should be stated in relation to the nonprofit's mission and goals.

Example: The position of *After-School Tutor* has been created to support ABC Nonprofit's educational program for high school students. The tutoring program is one of the organization's initiatives designed to help high school students achieve academic success and graduate on time.

Job Title: What title has been assigned to the position?

Example: After-School Tutor

Location: Where will the volunteer work?

Example: The After-School Tutoring Program is conducted at the County Library on Main Street.

Key Responsibilities: List the position's major duties.

Example: The After-School Tutor:

1. works with an assigned high school student to provide assistance in one or more academic subjects;
2. assists a student in developing a better understanding of in-class and homework assignments;
3. coaches the student in identifying resources to complete assignments;
4. reviews completed assignments and suggests ways to improve or supplement assignments; and
5. provides positive feedback on the student's progress and encourages the student's continued focus on academic excellence.

Reports to: Indicate the title of the person to whom the volunteer reports.

Example: Director of Volunteers

Length of Appointment: Note the time period in which the volunteer will serve, and include restrictions, if applicable.

Example: The After-School Tutor will serve for the Fall 2005 and Spring 2006 semesters. The tutor is eligible to continue in the 2006/2007 school year with approval from the Director of Volunteers.

Time Commitment: Indicate the approximate number of days or hours required per week.

Example: The After-School Tutor position requires a time commitment of 2 hours per week for each week that school is in session. The program is held from 3-5 pm each Wednesday. In addition, each volunteer must attend a four-hour orientation during the week before the semester begins.

Qualifications: List education, experience, knowledge, and skills required.

Example: Eligible candidates for After-School Tutor position include adults over 21 years of age who have earned a Bachelor's Degree.

Support Provided: List resources that will be available to the volunteer.

Example: Training for this position will be provided at the four-hour orientation session. In addition, the Director of Volunteers is available on an ongoing basis to answer questions and provide other assistance as needed.

Additional Categories

Other categories that an organization would include, if applicable, in a volunteer job description are: appointed by, development opportunities, relationships, age requirement, and benefits provided (i.e. lunch, t-shirt or opportunity to assist a young person achieve academic success).

SAMPLE

Volunteer Resources Worksheet

Project/Event: _____

Date/Time: Beginning _____ Ending _____

Purpose *(Relate to organizational mission, and how community will benefit from assignment):*

Tasks to be Completed:

Skills/Qualifications:

Requirements:

Number of volunteers needed: _____ Approximate time required: _____

Special considerations: _____
(weather conditions, physical condition, etc.)

Benefits: _____
(T-shirts, lunch, recognition, etc.)

Supervised by: _____ Assigned to:_____

Contact Name:_____ Telephone:_____

CHAPTER 4

Recruitment and Applications

Checklist for Your Organization's Recruitment and Application Process

Recruitment

- ❑ Do position notices summarize position responsibilities and requirements?
- ❑ Do position notices indicate if a background check will be required?
- ❑ Do position notices reflect the organization's nondiscrimination policies?
- ❑ Are position notices widely disseminated to develop a diverse applicant pool?

Applications

- ❑ Does the organization consistently use a standard application form?
- ❑ Does the organization use separate applications for paid and volunteer positions?
- ❑ Does the organization solicit resumes to supplement information provided on the application?
- ❑ Does all requested information constitute a lawful inquiry?
- ❑ Do application items relate to the position requirements detailed on the position description?
- ❑ Does the nonprofit's application provide an adequate basis for initial decision-making?

Key Issues in This Chapter

Advertising open positions—whether employee or volunteer—is the first step toward meeting the organization's staffing needs. Recruitment notices need to include sufficient information to enable unqualified individuals and those for whom completing a thorough screening process is threatening—to self-select out.

Written applications require applicants to respond to the organization's requests for specific information and not merely the information the applicant wants to include in his or her resume. This chapter discusses the construction of application forms and the kinds of information organizations should require in order to make informed decisions.

Applications as a Risk Management Tool

Application forms or resumes are usually the initial source of information about candidates for staff positions and provide useful information for the first step in the screening process. The following sections discuss the application solicitation process, suggest contents for the application form, and give guidance for reviewing applications and resumes.

Opportunities for Self-Screening

The information you include in your employment ads will influence an applicant's decision about applying to work for you. Your solicitations should inform applicants about the available positions and required qualifications.

If appropriate, you should also indicate that applicants may be required to complete a background check, or other procedures, prior to placement. Letting applicants know about these requirements before they submit a resume or complete an application allows them to decide if the position is the kind of work they want to do. It also lets them know that their background will be examined for any adverse information relevant to the position.

Listing screening requirements in advertisements for applicants for positions in your organization can discourage applications from individuals who do not want to subject themselves to the screening process or who may have negative information they wish to keep concealed. Such self-screening saves an organization the time and expense involved with reviewing and screening unqualified applicants.

Some program administrators are concerned that instituting rigorous screening requirements will scare off otherwise excellent prospective applicants. This may be true, but the negative effects can be minimized. To counteract the deterrent effect of screening requirements, applicants need to have the benefits of screening explained to them. You should be

prepared to explain the reason for each screening procedure and how the information will be used. Applicants need to know that procedures are set by organizational policies and apply to everyone. If the screening requirements are derived from the requirements of the position, the loss of some applicants may be an acceptable cost.

Initial Screening

A general application form that includes at least the following six elements provides a solid foundation for screening:

- ❑ Identification. The application includes items such as the applicant's name, Social Security number (if appropriate), and addresses for the past five years with dates of occupancy.
- ❑ Qualifications. The application includes information documenting the applicant's qualifications for the position. The kinds of information needed for this may include academic achievement, training courses with dates of completion, and certificates and licenses (with their expiration dates).
- ❑ Experience. The application asks the applicant to list relevant experience, both paid and volunteer; dates of service; descriptions of duties; organizations where service was provided; and names of immediate supervisors with addresses and telephone numbers to facilitate verification of the information.
- ❑ Background and References. If permitted, the application asks for a listing of any *convictions* for criminal offenses or serious motor vehicle violations. You may want to identify the specific violations about which you are most concerned. For example, you may ask, "Have you ever been convicted of sexual assault, rape, child sexual abuse, or any other form of sexual misconduct?" Some offenses may have greater predictive value if they are recent offenses. The question on your application might ask, "Within the past five years, have you been convicted of theft, robbery, embezzlement, or forgery?"

  For volunteer positions, questions about arrests may be permitted. Also, the application should ask for references from other organizations in which the applicant served as a volunteer or at least three personal references from individuals who are not related to the applicant, but who have known the applicant for a period of time. In addition to their names, addresses and telephone numbers, the nature of the relationship and the length of time they have known the applicant should be included. For paid positions, the application should request three work-related references.

- ❑ Waiver/Consent. The application should include a statement indicating that the applicant certifies that the information provided is true and accurate. Further, the applicant should be asked to authorize the organization to verify the information included on the application and specifically waive any rights to confidentiality. The application should also contain a statement that the post-hire discovery of any misstatement on the application will be grounds for immediate dismissal. In the interest of full disclosure, the statement should specifically list the procedures that the applicant authorizes the organization to perform, such as criminal history record checks, reference checks, and employment verification.
- ❑ Signature and Date.

Most of the information listed above may be found in typical resumes, and many organizations use resumes as an initial screening tool. The problem with resumes is that they only give the information that the applicant wants to reveal to your organization. Applications allow the organization to determine the information it needs to evaluate applicants. It may be prudent to request applicants to attest to the truthfulness of the information on the resume and to sign a consent form giving the organization permission to contact references and perform other screening procedures.

Some organizations may want additional information concerning the motivation of the applicant. For example, you may want to know why an applicant wants this particular position. The organization may also want to determine applicants' communication skills or delve into applicants' self-assessments. One method of obtaining this kind of information is to append a supplemental questionnaire to a standard application form. All applicants should complete the questionnaire—both those using a standard application form and those submitting their resume for consideration.

Reviewing Applications

The objective of screening applications for both paid and volunteer staff positions is to fill available positions with qualified individuals. In a way, the screening process is similar to fitting differently shaped pegs into holes with corresponding shapes. For most paid positions, you begin with a hole of a certain shape and try to find the peg that most closely fits into the hole. With volunteer positions, you may more often begin with an assortment of pegs and try to find holes into which the pegs will fit. In each case, the position description shapes the hole that determines the fit.

To carry this analogy further, the application is the first information you have about the shape of the peg. It can indicate in general terms whether there might be a fit between the peg and the hole, but additional information will be needed to decide the closeness of the fit. The position description is the key to the fit. There must be a *thread of continuity* between the position description and screening of applications. Assessment of each application should include careful consideration of the applicant's suitability for an available position.

There are several "red flags" that are relevant to applicants for almost any position. Their presence could be indicative of serious problems. If they are present, you will need to decide if the applicant is otherwise qualified and should be interviewed. During the interview, you should ask for an explanation of factors that cause concern.

- ***Have there been frequent, unexplained moves?*** Individuals who move from community to community without apparent explanation may be leaving a trail of debt, criminal activity, or child abuse.
- ***Are there gaps in employment?*** Changes in employment with unexplained gaps may indicate poor work habits, terminations for cause, or employment not listed on the application for fear the employer would give a poor reference. Another explanation may be a period of incarceration or institutionalization.
- ***Are any criminal convictions or serious motor vehicle violations listed?*** Any convictions should be examined in the light of the requirements of the position for which the applicant is being considered. Certainly, if the position involves handling money, crimes such as forgery, robbery, and embezzlement are pertinent. If the position would not require use of an automobile, speeding tickets may not be germane. A series of tickets, however, may imply a lack of judgment or maturity needed for some positions.
- ***What are the applicant's avocations (for example, hobbies or community interests)?*** Involvement in age-appropriate hobbies and community activities suggest emotional maturity. Over investment in children's activities—such as youth groups, sports, and Sunday school teaching—to the exclusion of social activities with other adults *may* indicate an unhealthy compulsion to be around children.

Some nonprofits use a formal rating sheet to evaluate applications. They use a checklist listing position requirements and assign a numerical rating to each requirement. For example, one point is assigned if an applicant marginally meets the criteria, three points if the applicant fairly meets the criteria, and five points if the applicant meets

the criteria in an outstanding fashion. The score is then totaled, and only the top candidates are invited for interviews.

For applicants who clearly do not have qualifications you can use, you should thank them for their interest. You do not have to be specific when you notify applicants that your organization is unable to place them. You can tell them they were not the best match for the position. Citing a poor match between applicant and position can soften the rejection by shifting the focus away from the applicant's characteristics. Exercise care when turning down applicants (see CHAPTER TWO, LEGAL ISSUES PERTAINING TO SCREENING.) It is unwise and unproductive to make any kind of accusatory statements, such as "We think that you would be dangerous to our program."

Those who you feel may benefit the organization should be cleared for the next step, which is often a personal interview.

Recruitment and Applications Tools

1. Application for Employment
2. Volunteer Application
3. Disclaimer Language for a Volunteer Application
4. Driver Application

Note: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

SAMPLE

Application for Employment

Name _____ SSN_____

Address _____

Telephone Number _____

Position you are applying for _____

Are there any reasons you may have difficulty performing the essential functions of the job for which you have applied? __ Yes __ No

If yes, please explain. _____

_____

Education

School/Institution	Years Attended	Degree obtained, if any
_____	_____	_____
_____	_____	_____
_____	_____	_____

Employment

Dates of Employment	Employer/Adrs / Phone	Position	Supervisor
_____	_____	_____	_____
_____	_____		
	_____		
	_____		

Reason for leaving _____

Dates of Employment	Employer/Adrs / Phone	Position	Supervisor
_____	_____	_____	_____
_____	_____		
	_____		
	_____		

Reason for leaving _____

Dates of Employment	Employer/Adrs / Phone	Position	Supervisor
_____	_____	_____	_____
_____	_____		
	_____		
	_____		

Reason for leaving _____

References

Please provide the names and telephone numbers of three persons (not family members) who can answer questions about your experience, skills, education and training.

Name	Telephone Number	Relationship to You
_____	_____	_____
_____	_____	_____
_____	_____	_____

Read the following section carefully before signing this Application:

I understand that this application for employment is not a contract and that employment with [Name of Nonprofit] is "at will" which means that either the employer or employee may terminate the employment relationship at any time, for any reason, with or without prior notice. I further understand that all employment is continued on that basis and that no supervisor or employee of the organization has the authority to alter the nature of the "at will" employment, and the Executive Director may only do so in a written statement.

I hereby consent to permit [Name of Nonprofit] to contact anyone it deems appropriate to investigate or verify any information provided by me to discuss my suitability for employment, background, past performance, education or related matters. I expressly give my consent to any discussions regarding the foregoing and I voluntarily and knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar causes of action, against anyone providing, or seeking such information.

I certify that I have and will provide information throughout the hiring process, including on this application for employment and in interviews with [Name of Nonprofit] that is true, correct, and complete to the best of my knowledge. I certify that I have and will answer all questions to the best of my ability and that I have not and will not withhold any information that would unfavorably affect my application for employment. I understand that misrepresentations or omissions may be cause for my immediate rejection as an applicant for a position with [Name of Nonprofit] or my termination from employment if I am hired.

Signature of Applicant _____ Date _____

SAMPLE

Volunteer Application

Application Date _____Volunteer Position Sought _____

Name _____

Home Address _____

Work Phone _____Home Phone _____

Highest Level of Education _____

Employment

Current Employer, if applicable _____

Your Position/Title _____

Dates of Employment (starting, ending) _____

Employer Address _____

Would you like us to keep your employer abreast of your volunteer service and achievement? ❑ Yes ❑ No

Special training, skills, hobbies _____

Groups, clubs, organizational memberships _____

Please describe your prior volunteer experience (include organization names and dates of service) _____

_____

_____

What experiences have you had that may prepare you to work as a volunteer in the field of [description of field, e.g. domestic violence, child abuse prevention, youth recreation, etc.]? _____

_____

_____

Why do you want to volunteer?

_____

_____

Do you have: a driver's license? ❑ Yes ❑ No Car insurance? ❑ Yes ❑ No

Car available for transporting others? ❑ Yes ❑ No

REFERENCES: Please list three people who know you well and can attest to your character, skill, and dependability. Include your current or last employer.

Name/Organization	Relationship to You	Phone
1.		
2.		
3.		

Please read the following carefully before signing this application:

I certify that I have and will provide information throughout the selection process, including on this application for a volunteer position and in interviews with [Name of Nonprofit] that is true, correct, and complete to the best of my knowledge. I certify that I have and will answer all questions to the best of my ability and that I have not and will not withhold any information that would unfavorably affect my application for a volunteer position. I understand that information contained on my application will be verified by [Name of Nonprofit]. I understand that misrepresentations or omissions may be cause for my immediate rejection as an applicant for a volunteer position with [Name of Nonprofit] or my termination as a volunteer.

Signature _____ Date _____

SAMPLE

Disclaimer Language for a Volunteer Application

Read Carefully before Signing This Application

I hereby consent to permit [Name of Nonprofit] to contact anyone it deems appropriate to investigate or verify any information provided by me to discuss my suitability for a volunteer position, including my background, volunteer experience, education or related matters. I expressly give my consent to any discussions regarding the foregoing and I voluntarily and knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar cause of action, against anyone providing such information.

I hereby authorize any organization affiliated with [Name of Nonprofit] to investigate my background as necessary for the consideration of my application for the position of _____.

I further authorize all persons, schools, companies, organizations, credit bureaus, and law enforcement agencies to supply all information concerning my background and to furnish reports thereon and I hereby release them and any organization affiliated with [Name of Nonprofit] from any and all liability and responsibility arising from their doing so.

I certify that the answers given by me to all questions on this application and any attachments are, to the best of my knowledge and belief, true and correct and that I have not knowingly withheld any pertinent facts or circumstances. I understand that any omission or misrepresentation of fact in this application may result in refusal of or separation from volunteer service upon discovery thereof.

Applicant's Signature _____ Date _____

SAMPLE

Driver Application

Name: _____ SSN: _____

Previous Names: _____ Date: _____

Home Address: _____

City: _____State: ____ Zip: _____

Length of time at current address: _____

Name of current employer: _____

Dates of employment: _____

Describe your current duties: _____

License Class: _____ Years of driving experience: _____

License #: _____ Expiration: _____

Any license suspended? ❑ Yes ❑ No Any license revoked? ❑ Yes ❑ No

What type of vehicle do you normally drive? _____

Age of vehicle: _____ How many miles last year? _____

Do you carry auto insurance on your vehicle? ❑ Yes ❑ No

Policy Number: _____ Limits: _____

Insurer's Name: _____ Expiration Date: _____

Is your personal vehicle available for (the organization's) services? ❑ Yes ❑ No

Reason for leaving previous job: _____

Have you ever been employed as a chauffeur or commercial driver? ❑ Yes ❑ No

If you have been employed as a chauffeur or commercial driver, on a separate piece of paper, please provide the appropriate dates, the name of your supervisor, and the reason for leaving such employment.

_____

Check the vehicles that you have driven in the past:

❑ Passenger car ❑ Station wagon ❑ Bus ❑ Sports utility vehicle

❑ Van ❑ Tractor trailer ❑ Heavy truck ❑ Other

Do you drive: ❑ Automatic transmission ❑ Standard transmission ❑ Both

Have you ever attended a traffic safety course? ❑ Yes ❑ No

If so, when and who sponsored the program? _____

Have you ever attended a first aid, CPR, or medical emergency training course?
❑ Yes ❑ No

If so, when and who sponsored the program? _____

Have you been involved in a traffic accident in the past 10 years? ❑ Yes ❑ No

If so, on a separate piece of paper, provide an approximate date and describe the accident(s), noting whether you were driving and charged with the accident and whether anyone was injured.

Are there any vehicle or traffic law convictions and/or violations recorded on your driver's license? ❑ Yes ❑ No

If Yes, on a separate piece of paper, provide an approximate date and describe each conviction and/or violation.

Have you ever been convicted of a criminal offense? ❑ Yes ❑ No

If Yes, on a separate piece of paper, please give the date of and description of each conviction.

Are you aware of any condition that may affect your vision, hearing, perception, reflexes, flexibility or judgment? ❑ Yes ❑ No

If Yes, please describe on a separate piece of paper.

On a separate piece of paper, please list three professional references who are familiar with your driving ability and skill. References remain confidential.

I warrant that I completed this application and that the above information is true and accurate to the best of my knowledge. I authorize any investigation of all statements herein and release (the organization) and its agents from liability in connection with any such investigation. I understand that untrue, misleading, or omitted information herein may result in dismissal, regardless of the time of discovery by (the organization).

I agree to read [Name of Nonprofit]'s Driver Policies Handbook and abide by the policies therein, including attendance at defensive driving and first aid/CPR training classes sponsored by [Name of Nonprofit]. I also agree to inform [Name of Nonprofit] whether or not they occur while serving [Name of Nonprofit] of any moving violations or at-fault accidents that occur during my tenure with [Name of Nonprofit] whether or not they occur while serving (the organization).

Signature: _____ Date: _____

Note: If you are hired, your application and all statements herein will become part of your personnel file.

CHAPTER 5

Interviews

Checklist for Your Organization's Applicant Interviews

- ❑ Have the nonprofit's interviewers receiving training?
- ❑ Does the nonprofit use multiple interviewers?
- ❑ Are position descriptions carefully reviewed prior to the start of any interview?
- ❑ Is the applicant's application subject to careful review prior to the start of any interview?
- ❑ Does the interview consist of scripted, open-ended questions?
- ❑ Do interviewers encourage questions from applicants?
- ❑ Does each interview end with the interviewer setting the stage for follow-up?

Key Points Covered in This Chapter

Interviews offer an opportunity for the organization and the applicant to size each other up. They are undoubtedly time-consuming but are necessary in most cases to seek additional information and clarify the information provided on the application form. In order for interviews to be valuable to your organization the interviewers need to know what the objectives of the interview are and have the skills necessary to accomplish them. This chapter presents information about important interview goals, interviewing techniques and risk management-related questions and issues germane to conducting interviews.

Interview Goals and Purposes

Interviews provide the opportunity for staff members to meet face-to-face with applicants. The interview provides both the employer and the applicant with an opportunity to obtain valuable information.

For example, the nonprofit has the opportunity to:

- ❑ expand the information from the application,
- ❑ probe the validity of the information,
- ❑ obtain nonverbal information, and
- ❑ look for other positive and negative characteristics that could influence the placement of the applicant in a staff position.

The applicant has the opportunity to:

- ❑ learn more about the organization,
- ❑ develop a more complete understanding of the requirements for the positions available,
- ❑ get a taste of the organizational culture, and
- ❑ decide if he or she wants to complete the placement process.

Experienced personnel managers caution against putting too much emphasis on the interview. It should not be the sole basis for selecting an applicant. Keep in mind that an interview represents one brief exposure to an applicant who may not have developed good interview skills or may just be having a bad day. Properly conducted interviews, however, can add to the body of information used by the organization to make the selection decision.

Because the interview can uncover grounds for rejecting an applicant and may cause unsuitable applicants to withdraw, it is well worth the effort to prepare for interviews and conduct them properly. Keep in mind that the purpose of the interview is to help find the best applicant for the position. Interviews are not witch hunts trying to identify child molesters or embezzlers but may help to identify traits that raise questions about an applicant's suitability for a position.

Preparing for an Interview

Start by reviewing the requirements of the position for which you are interviewing applicants and become familiar with the information provided on the application or resume. By analyzing both sources of information, you'll be able to formulate appropriate questions for each applicant. Write down the questions you intend to ask so that you don't forget to ask them. This will also help ensure consistency among all interviews for the same position.

When preparing to conduct an interview, identify position responsibilities associated with specific risk factors. Be prepared to address these factors during the interview. For example, if the position

involves working with children, you should prepare questions that screen for possible abusive tendencies. Ask about past experiences with children and discipline techniques the applicant deems appropriate.

Become familiar with areas of inquiry that are legally prohibited by the ADA. A list of these questions is included as a tool at the end of this chapter.

Reserve enough time for the interviews to allow a comprehensive exchange of information between you and the applicant. Remember that the applicant also needs to have an opportunity to ask questions about the organization and specific position responsibilities.

Who Should Interview?

In some instances, more than one person in an organization will interview applicants. The first interviewer may be responsible for matching the applicant with available positions. The second interviewer may be the supervisor responsible for overseeing the specific position under consideration or someone who holds a position similar to the vacancy. After each has interviewed the candidates, they should share their information and make a decision on the suitability of each applicant.

While some organizations employ trained human resource professionals to screen applicants for positions in their programs, other organizations rely upon volunteers to select volunteers. Many Sunday school teachers, Scout leaders, youth sport coaches, and other volunteers are selected by individuals who have little or no training in conducting interviews. For these individuals, the questions in the following section should be extremely helpful.

It is a noble trait to try to think the best of everyone and deny the existence of negative information. If you feel this way, you need to recognize this as one of your biases and try to overcome it when evaluating applicants. When it comes to screening staff applicants, a little skepticism may be healthy.

Examples of Interview Questions

Interview questions should be open-ended, thereby requiring more response than a simple “yes” or “no.” The following sets of suggested questions can be asked to screen for specific risk factors.

Child Abuse

The following are some “key questions” to be asked of applicants who seek to work with children.

- ❑ *Why are you interested in this position?* Be alert for someone who over identifies with children, is unduly excited about the possibility of working with children, or emphasizes that working with children is much easier than working with adults.

- ❑ *How would you describe yourself?* Be alert for someone who indicates shyness or is withdrawn or passive.

- ❑ *Please tell me about a situation in which you were responsible for disciplining a child, other than your own.* Listen for use of excessive force, denigration of the child, unrealistic expectations about children's needs, or use of discipline techniques that would violate your organization's policies.

- ❑ *What is there about children that makes you enjoy working with them?* Listen for over identification with children, statements that young children are "so easy to work with," or negative statements about teenagers or adults compared with younger children.

- ❑ *What is there about this position that appeals to you most?* Listen for appropriate skills, qualifications, etc. Also be alert for high interest in one-on-one activities with children, preference for a particular age and gender of child, and idealized statements about "saving children."

- ❑ *In what kind of supervisory style do you prefer to function?* Be alert for an applicant's preference to be left alone to do his or her "own thing." Also use this opportunity to explain the monitoring and supervision techniques used to promote the safety of the children in the program. The applicant should understand that there is zero tolerance for any form of child maltreatment within your program.

- ❑ *What was your childhood like?* This question is intended to help discover if the applicant was subjected to abuse as a child. If so, there may be an elevated chance that he or she could be abusive. Individuals who were abused as children and who have resolved their victimization can make excellent volunteers and provide positive role models for children. However, applicants who appear not to have resolved their own childhood victimization should be screened out of unsupervised contact with children.

Some kinds of work with children require a much more in-depth interview, for example, one-to-one mentoring in which the volunteer mentor is expected to form a close relationship with a child for a period of time that may extend several years. The interview for this kind of

position, must be extensive and, due to the nature of the risks, more personal. Big Brothers Big Sisters of America uses a list of "red flags" or factors that should raise concern (see next page) if they surface during the screening process. These factors are often found in individuals who have sexually molested children, but may be of limited value for predicting or identifying *possible* child molesters.

Other than an individual with a documented history as a child victimizer, you should not rule a person out of consideration based on any *one* of these factors. Many of these characteristics are just as common to individuals who are great with children as they are for individuals who constitute a threat to them. A pattern of these factors, however, could be cause for concern. In order to adequately interview applicants and interpret the resulting information, interviewers need to be trained for this function.

Personal Prejudices

Community-serving nonprofits are people-serving organizations. Staff for these organizations must be able to interact positively with service recipients from diverse ethnic, cultural, and religious groups. Extreme views concerning these groups or personal belief systems that encourage proselytizing may interfere with your organization's mission. The following questions are designed to probe applicants' prejudices. Sensitivity must be exercised, nevertheless, to avoid exclusion on an impermissible basis.

- ❑ *Can you tell me about any experiences you may have had working with members of minority groups?* Members of minority groups can be asked about their experiences with other minority groups. This question is intended to open the topic to discussion. You may want to focus on a particular minority group if the organization serves a concentration of that particular group.

- ❑ *Have you ever had a negative experience with a member of a particular ethnic group?* This is a follow-up question to the first and provides an opportunity for probing into what the nature of such an experience might have been and if it created any generalized feelings about any group.

- ❑ *Are there any words that you use regularly that could be offensive to a member of a minority group or person of the opposite sex?* This question addresses the sensitivity of the applicant to unconscious biases as reflected in speech patterns. Some applicants may admit to using such language but try to justify its use by saying that it really does not mean anything. If an applicant routinely uses denigrating terms to refer to minority

groups or to the opposite sex, the words used probably do reflect an underlying attitude.

Criminal History

The following questions may be helpful to examine applicants' possible criminal history as related to position requirements.

- ❑ *Have you ever been convicted of a criminal offense, including criminal driving violations?* The answer to this question may be subject to verification by checking law enforcement records. Addressing the subject during the interview provides an opportunity for applicants to explain their side of the story and describe any mitigating circumstances. For example, a misdemeanor offense during college may not have any bearing on a senior citizen's character. A pattern of criminal behavior has stronger predictive value.

- ❑ *Are you required by either federal or state law to register as a sex offender?* Most states now have sex offender registries that are more accessible to community-serving organizations. Asking this question may put the applicant on notice that this aspect of his or her life may be subject to further scrutiny. Look for any unease exhibited by the applicant when this question gets asked.

- ❑ *Have you ever held a position in which you were required to be bonded and the bond was refused or revoked?* This could indicate financial problems for which a bonding company found reason to believe that the individual should not have responsibility for handling someone else's funds.

Driving History

An applicant's driving practices are relevant for any position requiring operation of a vehicle. This may include transporting people to and from program activities or transporting goods or materials, such as delivering meals to shut-ins. Some nonprofits consider serious driving violations to be indicators of poor character or judgment. The following questions are typical of the ones that you should ask concerning motor vehicle operation.

- ❑ *Have you ever been convicted of driving under the influence of alcohol or other drugs?* This question may reveal a substance abuse problem that extends beyond driving.

- ❑ *Have you received any traffic tickets or had any automobile accidents in the past two years?* This question is intended to help explore the applicant's

driving skills. It may also reveal immaturity and lack of judgment.

- *Describe the kind of driver you are.* This is a follow-up question to the previous one. Look for specific traits such as always fastening safety belts (the law in most states), never driving after consuming alcohol, obeying the speed limit, and never having wrecked a vehicle. This may be a good time for the interviewer to explain the organization's policy, if one exists, about checking the DMV records of individuals prior to job placement.

- *Have you ever operated the kind of vehicle that we own?* Driving the organization's particular piece of equipment (school bus, van, or truck) may be different from driving the three-passenger compact that the applicant uses each day. At the very least, the organization would want to supervise the applicant closely until he or she was completely familiar with the organization's vehicle.

- *Do you currently own an automobile? If so, are you licensed and adequately insured? Who is your insurance company?* Many jurisdictions require car owners to have automobile insurance. Not having insurance or being part of an assigned risk pool could be a clue to unsafe driving practices. Not only are these questions good for screening, but they also help the organization protect itself.

Home Visits

Meeting volunteer applicants in their homes is a special type of interview and should be carefully considered when the position requires a long-term, close relationship such as in a mentoring program. An interview in the home may be especially useful for screening applicants for long-term and emergency foster care programs.

Another kind of volunteer position for which a home visit might be appropriate is one that requires a considerable commitment of time away from the family. For this latter situation, interviewing other family members for their reactions could reveal sources of stress that the individual would feel in the position.

By interviewing applicants and others living in the home, organizations can assess lifestyle, evaluate living conditions, and determine the kind of environment to which a service recipient would be exposed if permitted to visit the home.

Organizations should develop a checklist and guide for home visitations prior to the visit and apply the guide consistently to all applicants. Individuals making these visitations should be trained to conduct this kind of interview and be sensitive to applicants' privacy.

If a position presupposes any visitation by a person with a disability to the applicant's home, the interviewer should evaluate the accessibility of the home. The more outside assistance that is required for a physically disabled individual, the greater the risks for injury or abuse.

Immigration Reform and Control Act Compliance

Pre-employment interviews offer the opportunity to comply with Immigration Reform and Control Act requirements. The Immigration Reform and Control Act gives employers the responsibility to verify that applicants are not illegal aliens. Employers must document the immigration status of every employee hired after November 6, 1989. You must have on hand a completed Form I-9 for each employee. Completed I-9 forms should be kept in a limited-access file separate from regular personnel files.

Before you complete the employer's portion of the I-9 form, you are required to check certain documents. One of the following is sufficient: a U.S. passport, a certificate of U.S. citizenship or naturalization, an unexpired foreign passport with an attached employment authorization form, or an alien registration card with a photo. If the applicant cannot produce any of these, you can complete the form only after seeing a document that establishes the applicant's identity: a driver's license or other item that contains either a photo or descriptive information such as height, weight, hair color, etc.; and a document that establishes the individual's right to work, such as an original Social Security card or Immigration and Naturalization Service employment authorization.

The Form I-9 must be completed within three days of the applicant's commencing employment. These requirements apply only to paid employees; they do not apply to unpaid staff (volunteers).

Interview Tools

1. Red Flags for Children and Youth Workers
2. Enforcement Guidance: Pre-Employment Disability-Related Inquiries, Equal Employment Opportunity Commission (EEOC)

2 Volunteer Interview Format

3. Mentor Interviews
4. Redirect Questions, Minnesota Department of Human Services

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

Red Flags for Children and Youth Workers

A. Single and has had no significant "age-appropriate" romantic relationships.

B. Married, but has shallow or dependent relationship (a marriage of convenience).

C. Activities and interests primarily involve children; absence of any meaningful peer relationships.

D. Individual was sexually abused as a child.

E. Immaturity; inappropriate dependence on spouse, parents, or institutions; unable to accept responsibility or make decisions.

F. Fearful of adult world; surrounds self with children.

G. Sees children as "pure, innocent, clean."

H. Anxiety or discomfort with adult sexual role.

I. Shows revulsion to subject of homosexuality.

J. Over-anxious to obtain a match, eager to bend ground-rules for overnights.

K. Describes preferences in [child] with specific physical preferences.

L. Unstable employment and/or residence history, premature separation from service.

M. Low self-esteem.

N. Abuse of alcohol or drugs.

O. Criminal record—crimes against children or other crimes including misdemeanors which evidence immature behavior.

P. Prefers a vulnerable child, frail, emotionally dependent.

Q. Poor social adjustment in childhood and adolescence.

R. Poor adjustment to homelife in childhood and adolescence.

S. Volunteer finds own child and asks [organization] to legitimize relationship.

T. Child-oriented toys or things such as video equipment, photographic equipment, Jacuzzi, swimming pool.

Source: Big Brothers Big Sisters of America: Case Management Training

Enforcement Guidance:

Pre-Employment Disability-Related Inquiries
Equal Employment Opportunity Commission (EEOC)

Examples of Prohibited Disability-Related Questions (Pre-Offer)

- ❑ Do you have AIDS?
- ❑ Do you have asthma?
- ❑ Do you have a disability that would interfere with your ability to perform the job?
- ❑ How many days were you sick last year?
- ❑ Have you ever filed for workers' compensation?
- ❑ Have you ever been injured on the job?
- ❑ How much alcohol do you drink each week?
- ❑ Have you ever been treated for alcohol problems?
- ❑ Have you ever been treated for mental health problems?
- ❑ What prescription drugs are you currently taking?

Questions That Are Not Disability-Related and Thus Allowable

- ❑ Please demonstrate how you could perform the functions of the job.
- ❑ Can you meet the attendance requirements of this job?
- ❑ Do you illegally use drugs? Have you used illegal drugs in the past two years?
- ❑ Do you have the required licenses to perform this job?
- ❑ Do you have a cold? Have you ever tried Tylenol for a fever?
- ❑ How much do you weigh? How tall are you?
- ❑ Do you eat three meals a day?
- ❑ Do you exercise regularly?

SAMPLE

Volunteer Interview Format

Name _____

Interviewer(s) _____ Date _____

1. Why are you interested in this position?
2. How would you describe yourself?
3. What is there about children that makes you enjoy working with them?
4. Tell me about an experience where you had to discipline someone else's child.
5. What is there about this position that appeals to you most?
6. In what kind of supervisory style do you prefer to work?
7. What was your childhood like?
8. Tell me about any experiences you have had working with people unlike you.
9. What was the worst interchange you've had with a member of an ethnic group?
10. Are there any words that you use regularly that could be offensive to a particular group or person or the opposite sex?
11. Have you ever been convicted of a criminal offense? Please explain.
12. What do you hope to get from a volunteer experience?
13. What questions/concerns do you have about being a volunteer?
14. Is there any other information you would like to share about yourself?

GENERAL IMPRESSIONS

_____

_____

_____

Concerns

_____

_____

_____

❑ Reference Letters Mailed ❑ Scheduled for Training

SAMPLE

Mentor Interviews

Some suggested interview questions for exploring volunteers' experiences with children and their motivation for mentoring are:

- ❑ How did you learn about our program?
- ❑ Why do you want to volunteer now, and why for us?
- ❑ What previous volunteer experience have you had?
- ❑ Are you currently involved with young people? How?
- ❑ How many brothers and sisters do you have? How many are older than you? How many are younger?
- ❑ What would your best friends say your strengths are? What would they say are your weaknesses?
- ❑ How do you handle conflict in your life?
- ❑ Have you ever had a mentor? What did you gain from the relationship? What didn't you like?
- ❑ What would you hope to accomplish in your mentoring relationship?
- ❑ What is the most important advice you could share with a mentee?
- ❑ What would you expect of your mentee?
- ❑ What types of things do you think your people today need the most help with?
- ❑ How will you know if your mentoring relationship is successful?
- ❑ What times can you meet with your mentee?
  During lunch:
  After school?
  After 5:00 p.m.?
  Weekends?
  During regular business hours?
- ❑ Would you prefer to be matched with a child from a specific:
  Grade Level? Ethnicity? Gender? Why?
- ❑ Would you like to work with a child who has physical or mental disabilities?
- ❑ What languages do you speak?
- ❑ What would you like to ask me about the program?

Note to interviewer: Review your impressions after each interview. Consider:

- ❑ the applicant's readiness for mentoring,
- ❑ the applicant's strengths and weaknesses,
- ❑ the applicant's understanding of children's needs, and
- ❑ potential matches with available mentees.

Keep in mind that the interview is an excellent time to inform candidates about how and when you will notify them about their selection status and to clarify the time commitment required by your organization.

SAMPLE

Redirect Questions

Used to clarify when an applicant indicates a history of child abuse or alcoholism.

1. When did it occur? How old were you? (look at duration/severity/recent nature/pattern of behavior)
2. What happened?
3. What was the resolution?
4. Where are you at with it today?
5. How might you use what you learned as a volunteer in this program?

Used with permission from the Minnesota Department of Human Services.

CHAPTER 6

Checking References

Checklist for Your Organization's Reference Checks

- ❑ Is your reference checker trained to stay within the law?
- ❑ Are references required?
- ❑ Does the nonprofit check references by telephone or mail?
- ❑ Does the reference checker use scripted open-ended questions?
- ❑ Are all references questions clearly related to position requirements?
- ❑ Are references always someone who personally knows the applicant?
- ❑ Are general letters of reference verified with signers?

Key Points Covered in This Chapter

Reference checking is one of the most misunderstood parts of the screening process. It is one of the best ways to obtain information about an applicant from a third-party. Without reference checking, the organization would only have information from the applicant about his or her performance, skills and competence. Reference checking should give the organization a picture of the applicant's attributes from past employers or organizations in which the applicant served as a volunteer.

This chapter offers tips on checking references of staff members who will work with vulnerable populations or in other positions of trust within your nonprofit organization.

Clearing the Reference-Checking Hurdles

When you have selected the finalists for a paid or volunteer staff position, you are ready to begin checking references. The first major hurdle in this task is getting references to respond candidly to your questions. That can be especially difficult if the reference is a former employer.

Many employers, fearing defamation lawsuits, limit the information they release about former staff members. This is particularly true if you go through a personnel officer. The degree of cooperation you receive may depend on how you approach the references. If possible, talk directly with the person who actually supervised the applicant, whether in a paid or volunteer position.

For paid positions, it is appropriate to contact former supervisors of the applicant. In some instances an applicant may specifically request that you not contact a current or former supervisor. How you respond to this request might depend on the availability of other professional references. By talking to the person's former supervisor, you will obtain information from someone who knew the individual personally—in contrast with someone referring to a piece of paper in a file. The supervisor is likely to have a better sense of whether the applicant poses a risk.

When checking references, as with interviewing and screening applications, start with the position description. One goal of checking references is to get an indication of whether the applicant is compatible with the requirements of the job. Equally important is the goal of determining whether the reference knows anything about the applicant that raises a "red flag." You should also be attentive to any discrepancies between information provided on the application and that provided by references, since that may indicate the applicant is not always truthful.

Some applicants may include general letters of reference with their applications or resumes. Given the ease with which a word processing program may create official looking documents, any such letters should be verified with the person who purportedly signed them. Specific things to look for include verifying telephone numbers with local directories or Internet web sites to ensure that the telephone listed on the "letterhead" is not a friend with a cell phone. Beware of letters from defunct organizations or past employers, ask for additional references that you are able to contact. If the organization is no longer in operation ask for names of individuals who would know the applicant and could provide a reference.

Reference Checking Do's

Start by identifying yourself and the organization you represent. Next, inform the contact that the applicant has given permission for the

organization to contact the reference and request information regarding position-related abilities and qualifications (assuming, of course, that you have asked the applicant for permission or included a waiver on the application form). Use a script prepared in advance to guide your questions. Try to verify information on the application and probe more deeply into specific qualifications for the position being filled.

If possible, make the initial contact via telephone call. This enables you to receive information more swiftly. Also, you have an opportunity to ask questions and clarify the information you are receiving, and you can assess the nonverbal information conveyed by tone of voice, hesitancy, emphasis, and demeanor.

Toni Weisgrau, a human resources consultant, suggests that when you contact a former employer for references, there are some basic rules that will help you get the information you are seeking:

- ❑ **Make your managerial or supervisory position clear** to the former employer, and give a brief description of the position you are filling.
- ❑ **Ask only position-related questions.** When you are questioning a reference about an applicant's personal characteristics, the questions should be relevant to the position responsibilities or conditions.
- ❑ **Do not discuss information that would be unlawful to use in the placement process**, such as race or sex, which are almost always impermissible areas of inquiry concerning prospective employees and generally ill-advised for screening volunteers as well.

After you make an initial contact by telephone, if the individual giving the reference asks you to send a request in writing with a copy of the release signed by the applicant, respond quickly. Try to negotiate a deadline for returning the forms to you. By establishing this contact, you have set the stage for contacting the reference again if you do not receive the information by the agreed-upon deadline. You have also established a point of contact that you can use to clarify information once the reference form has been returned.

When you contact an applicant's personal references, remember that the applicant selected them for the positive impression he or she thought they would give. Nonetheless, take the task seriously. Personal references sometimes reveal critical information about applicants.

You should verify the nature of the relationship between the applicant and personal reference and the length of time they have known each other. You may be able to increase the objectivity of the information you receive from the reference if you stress the kinds of responsibilities that the applicant will have if selected for the position.

Reference Checking Don'ts

The most common reference-checking mistake is to miss an opportunity to get critical information from the respondent. Try to avoid:

- ❑ **Asking leading questions.** When you are checking references, let the reference provide the information. Instead of "Tom Jones told us that you and he have been friends for ten years," you might want to ask, "How long have you and Tom Jones been friends?"
- ❑ **Asking questions that can be answered by a simple "yes" or "no."** You need to phrase the questions so that references are required to think about their responses and to answer in their own words.
- ❑ **Asking questions that are related to an applicant's health or disability.** Under the provisions of the ADA, in addition to the prohibition against asking an applicant about his or her health and disabilities, employers are also prohibited from making such inquiries to third parties concerning the applicant's health and disabilities. You can, however, make nondisability-related inquiries concerning an applicant's "lifestyle" as long as those questions are not likely to elicit information about the existence, nature, or severity of a disability. (McKelway 1994)
- ❑ **Asking questions that are too general.** Some information you need is very specific relative to the nature of the position and the risks you have identified.

Specific Questions to Ask

After verifying the factual information from the application (dates of employment, salary, position title, duties, etc.), there are some direct questions you should ask if the position involves working with children, handling large sums of money, or operating motor vehicles.

Working With Children

- ❑ *How would you describe Mary's personal characteristics?* Probe for immaturity, shyness, introversion, nonassertiveness, indecision, or passive acquiescence.
- ❑ *How would you say Mary relates to children?* Probe whether or not the applicant relinquishes adult roles and responsibilities, tends to become more like the child, or places a premium on one-to-one activities rather than group activities.
- ❑ *Have you ever seen her discipline a child? If so, please describe what you saw her do.* The manner in which individuals try to control children's behavior can reveal their true character. Disciplinary techniques used should not be violent or emotionally degrading.

They should deal with the issues involved, be constructive, and be appropriate for the age of the child being disciplined.

- *I'd be interested in knowing if you think there may be any problems or conditions that would interfere with Mary's ability to care for children or in any way endanger the children under her care. These problems include substance abuse, criminal activity, or history of child mistreatment.* While the reason for this question is obvious, the kinds of information you may receive are not. Listen not only to the words, but also to how the words are said. Is there hesitancy or uncertainty?

Handling Money

- *John has applied for a position that requires handling large sums of money. Are you aware of any problems he may have that would cause you concern about entrusting him with this responsibility?* Listen for general concern about honesty and dependability. Ask for specific examples of problems so that you eliminate rumors and gossip.
- *Are you aware of any financial difficulties, drug abuse problems, or history of criminal conduct?* This is a follow-up question to the first one, with specific focus on known risk factors.

Motor Vehicle Operation

- *Have you ever ridden in a vehicle while Bob was driving? If you have, how would you characterize his driving?* Warning flags you should listen for include aggressive driving, pushing the speed limit, and recklessness.
- *Are you aware of any instance in which he operated a motor vehicle while under the influence of alcohol or other drugs?* Listen for equivocation ("Well, he really wasn't under the influence, I mean he had only had a couple of beers"); evasiveness ("No, I don't really know for a fact that he has ever driven after drinking"); or justifications ("Well, hasn't everyone at one time or another?").

Reading Between the Lines

After you have finished checking an applicant's references, how do you interpret the information you have received? Since you do not personally know the individuals giving you the information, how can you be sure that their responses are valid? The simple answer is that you cannot know. You must take the information received from references and add it to the body of information available on the applicant:

information gleaned from the application, the interview, and the reference checks.

The information should be consistent, with no obvious contradictions. If the applicant told you one thing during the interview and the reference told you something completely different, warning flags should be waving. If the application listed a long-term volunteer position with a nonprofit that claims never to have heard of him, red lights and sirens should be going off!

You should check any questionable information you receive. There may be reasons for discrepancies that are very logical and yet beyond the control of an applicant. It is not, however, your role to dismiss the information out of hand. Confront the applicant with the disputable information and give him or her a chance to explain any discrepancies. When confronting the applicant, you also need to respect the confidentiality of the source who gave you the information.

Reference Check Tools

1. Sample Consent To Check References and Official Agency Records
2. Sample Reference Form
3. Reference Check Form
4. Questions to Ask a Reference

NOTE: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

SAMPLE

Consent To Check References and Official Agency Records

I hereby consent to permit [Nonprofit] to contact anyone it deems appropriate to investigate or verify any information provided by me to discuss my suitability for employment or volunteer service, including my background, past performance, education or related matters.

I also consent to permit [Nonprofit] to obtain information pertaining to any charges and/or convictions I may have had for federal and state criminal law violations. I understand that this information will be gathered from any law enforcement agency of this state or any state or federal government, to the extent permitted by state and federal law.

I expressly give my consent to any discussions regarding the foregoing and I voluntarily and knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar causes of action, against anyone providing, or seeking such information.

_____ _____

Signature of Applicant Date

SAMPLE
Reference Form

Part A

(*to be completed by the subject of this reference*)

Employment reference for: _____

I have stated to [Nonprofit] that I was employed by you as a [position title]. I request that the following information be furnished by you for reference purposes to this employer, and I consent to your providing this information regarding my past employment, work performance, attendance record, abilities, and reason for my separation from employment. Further, I knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar causes of action, against either [Nonprofit] or you or [name of previous employer] in connection with providing information about my employment with [name of previous employer].

_____ _____

Signature Date

Part B

(*to be completed by the employer providing a reference for the individual named above*)

The person named above was employed as: _____

From: _____ To: _____

According to our records, the above person left the organization for the following reason(s): _____

_____

(check one) I ❑ would ❑ would not reemploy this individual.

Please check below the rating that most accurately describes this individual:

	Exceptional	Satisfactory	Unsatisfactory
Work Quality	❑	❑	❑
Work Quantity	❑	❑	❑
Cooperation	❑	❑	❑
Supervision (if applicable)	❑	❑	❑
Attendance	❑	❑	❑

Other remarks about the employee's job performance:

_____

_____

_____

Were you the employee's supervisor? ❑ Yes ❑ No

Name _____

Title _____

Company _____

Signature _____ Date _____

S A M P L E

Reference Check Form

Date _____

Applicant Name _____

Reference Name _____

Address _____

Telephone _____ e-mail address:_____

Introduction

We are considering _____ for the position of _____. HIs/her main responsibilities would include _____. In addition there will be a lot of interaction with [children/elderly persons/persons with mental or physical disabilities; money; noise; change; other].

1. How long have you known the applicant?
2. What is your relationship to the applicant? [Friend, relative, supervisor, co-worker, colleague, other]
3. How would you describe the applicant's working style?
4. Describe how the applicant interacts with people in general. [Supervisors, co-workers, clients/customers]
5. What are his/her greatest strengths? What are his/her greatest weaknesses?
6. What tasks does he/she prefer to do?
7. Does the applicant follow through on commitments he/she has made?
8. Would you be comfortable having the applicant serve as a mentor to your own child? [Handle money for one of your volunteer organizations? Drive your elderly parents to appointments?]
9. Do you know of any traits or problems that would be detrimental in the applicant's ability to work with a child? [Handle money? Work with the elderly? Work with the mentally or physically handicapped?]
10. Why do you feel this would be the right position/opportunity for the applicant at this time?
11. What else that we haven't covered would you like to tell me that would give me a more accurate picture of this person's ability to do this particular job?

Reference Check Completed By _____
(Please Print)

SAMPLE

Questions to Ask a Reference

For Professional References

- ❑ When and where have you observed the candidate working with the frail elderly?
- ❑ What skills does this candidate demonstrate in working with the frail elderly?
- ❑ What is this person's philosophy of discipline? Please give examples of how he/she uses a variety of discipline techniques based on the person and the situation.
- ❑ Does this candidate demonstrate that he/she has realistic expectations with regard to the behavior of older persons, particularly the frail elderly? Please provide some examples.
- ❑ Does this candidate allow older clients to make choices for themselves within their capabilities and encourage independence (as opposed to doing everything for them or figuring they can't hear or make choices)?
- ❑ Does this individual ask for support from the supervisor or colleagues when needed?
- ❑ Does this candidate enjoy caring for older persons and persons facing physical and mental challenges?
- ❑ How long did the candidate work with you? Why did he/she leave? Who was his/her immediate supervisor?
- ❑ How well does the candidate communicate ideas and opinions to others?
- ❑ How does the candidate handle frustration and criticism on the job?
- ❑ Does the candidate show interest in training or other means to improve his/her skills and knowledge?
- ❑ How does the candidate communicate with family members of his/her clients?
- ❑ Have there been any complaints regarding the candidate's care of his/her clients?
- ❑ To your knowledge, has the candidate had any criminal convictions? If so, what are they?
- ❑ Would you rehire this individual to work with frail elderly?

For Personal References

- ❑ How long have you known the candidate?
- ❑ In what capacity do you know the candidate?
- ❑ Where and when have you observed the candidate working with frail elderly?
- ❑ What skills do you feel he/she demonstrates in working with frail elderly?
- ❑ How does the candidate respond in stressful situations?
- ❑ To your knowledge, has the candidate had any criminal convictions? If so, what are they?

CHAPTER 7

Record Checks

Checklist for Conducting Record Checks for Your Organization

- ❑ Does the nonprofit's process seek specific position-related information?
- ❑ Has the nonprofit defined selection criteria before undertaking background checks?
- ❑ Have steps been taken to make certain that the nonprofit's process complies with applicable state and federal laws?
- ❑ Is written permission to conduct a record check obtained from each applicant?
- ❑ Are background checks clearly relevant to the positions for which background checks are obtained?
- ❑ Is a notice of rights given to each applicant?

Key Points Covered in This Chapter

The advances of technology have enabled vast amounts of information to be amassed about individuals, much of which is accessible for use in screening applicants for employment and volunteer service. Unfortunately, the availability of the information also lends to its abuse. Nonprofit organizations should factor in the nature of the positions, the relevance of information, and the costs associated with accessing the information in making a decision to use databases and record centers for screening applicants for staff positions.

This chapter discusses the kinds of information available, the sources of the information, and applicable laws regarding use of the information.

Understanding Record Checks

By this point in the screening process, the information from the applications, interviews and reference checks should have pretty much helped you decide the finalists for the positions for which you are screening. There is no sense for your organization to expend the time and resources to conduct record checks on people who do not otherwise meet the selection criteria. Also, by conducting some kinds of record checks on applicants, you will become subject to procedural requirements established by some state and federal laws that may complicate the selection process.

Use record checks as a final determination of eligibility. Only perform record checks on applicants who meet all other eligibility criteria and whose application would be accepted.

The marvels of modern technology make it much easier to obtain information about individuals. Criminal history, sex offender, driving, credit bureau and child abuse records are accessible to organizations that meet the specified guidelines for accessing the records. Some databases are available to members of the public just by logging on to their Web site on the Internet. This is true of the sex offender registries in many states.

The creation of these databases and the perceived relevance of the information contained therein has placed increased pressure on nonprofit organizations to incorporate various record checks in the staff screening process for both employees and volunteers. This pressure is especially felt by organizations serving vulnerable populations—children, people with disabilities and the elderly.

While record checks are useful screening tools, the information gained from them needs to be handled in a responsible manner complying with the legal constraints that govern how the information may be used and the degree to which the organization must protect the privacy of the individuals being screened. Both federal and state laws must be considered when establishing organizational policies guiding the process and evaluation of record checks on applicants.

In addition to legal concerns, applicants—especially applicants for volunteer positions—may have their own concerns about furnishing some of the information required for performing record checks. The same information required for many record checks is the same information used in “identity theft.” Your organization should be prepared to reassure applicants that adequate measures are used to maintain the confidentiality of information obtained through record checks.

Records checks have limitations and should not be used in place of a comprehensive screening and risk management program within your organization. *Do not be lulled into a false sense of security*. A “clean” record check only means that the records examined did not reveal any record of past behavior. The records may be incomplete and therefore

not include past acts and should not be interpreted to mean that future behavior will be exemplary.

A clean record also is not necessarily an indication that the applicant should be offered a position. The other steps in the screening process should be completed and only those applicants who are deemed to be otherwise qualified should be subject to record checks.

The following sections should help you decide how to use record checks as a part of your organization's screening process. They will help you to decide which records to check, identify some options for conducting record checks and guide you in establishing the record checking process and evaluation criteria for your organization.

Conducting Criminal History Record Checks

- ❑ Adopt a policy requiring criminal history record checks that conforms with your organization's needs and policies.
- ❑ Identify the positions that require applicants to be screened using criminal history record checks.
- ❑ Check with state agencies to determine if there are any requirements for criminal history record checks for your organization's programs.
- ❑ Develop a list of disqualifying offenses and mitigating circumstances to be taken into account.
- ❑ Contact the state criminal history record repository for information concerning how to obtain criminal history record checks in your state, or retain a private firm to conduct criminal history record screening.
- ❑ Budget the necessary funding to pay for criminal history record checks.
- ❑ Review and revise application forms to reflect the requirements for performing criminal history record check.
- ❑ Formulate an appeals process for applicants who feel that the information received by the grantee is incorrect.
- ❑ Implement your screening process using criminal history record checks.
- ❑ Document the record check in the individual's personnel file.

Decide Which Records to Check

Determining which records to check is dependent upon the kind of information you need to obtain. This information should be related to the responsibilities of the position for which you are performing the screening. For example, if the applicant will be responsible for driving the organization's van, checking the applicant's driving records with the department of motor vehicles would give information relevant to the responsibilities of the position. Employees and volunteers who handle your organization's funds may be subject to credit checks in addition to

criminal history record check that might reveal financial problems or crimes related to financial transactions such as embezzlement.

The safety of your service recipients is a primary concern and the screening process your organization uses should reflect this concern. If all employees and volunteers with your organization are in positions that place them in contact with children, you may find it reasonable to check the criminal history records of all applicants to determine past convictions for child sexual abuse, violent crimes and significant drug offenses that could call into question the applicant's suitability to work with or around children.

Screening Criteria

Before initiating a records check program, your organization needs to determine the screening criteria that they will use to assess the applicant's fitness for a position with the organization. The criteria used should consider the mission of the organization, the nature of its clientele, and specific crimes or other factors that are relevant to the responsibilities of the positions being filled. By explicitly identifying the crimes considered to be disqualifiers, your organization may be able to avoid costly lawsuits from applicants who perceive their treatment to be unfair.

For guidance in setting criteria, several states have provided examples in their laws that may be useful. For example, Arizona state law (ARSA §41-1758.03) requires that applicants for child care workers "shall certify on a form that they are not awaiting trial and have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the following offenses in this state or similar offenses in another state or jurisdiction:

(a) Sexual abuse of a minor

(b) Incest

(c) First or second degree murder

(d) Kidnapping

(e) Arson

(f) Sexual assault

(g) Sexual exploitation of a minor

(h) Felony offenses involving contributing to the delinquency of a minor

(i) Commercial sexual exploitation of a minor

(j) Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous or narcotic drugs

(k) Felony offenses involving the possession or use of marijuana or dangerous drugs

(l) Misdemeanor offenses involving the possession or use of marijuana or dangerous drugs

(m) Burglary in the first degree

(n) Burglary in the second or third degree

(o) Aggravated or armed robbery

(p) Robbery

(q) A dangerous crime against children as defined in Section 13-604.01

(r) Child abuse

(s) Sexual conduct with a minor

(t) Molestation of a child

(u) Voluntary manslaughter

(v) Assault or aggravated assault

(w) Exploitation of minors involving drug offenses."

The Arizona statute requires an applicant to reveal past offenses, but is not as specific in disqualifying applicants as New Mexico's (NMSA§ 29-17-5) which states that "The following felony convictions disqualify an applicant for caregiver from employment as a caregiver:

(1) homicide

(2) trafficking controlled substances

(3) kidnapping, false imprisonment, aggravated assault, or aggravated battery

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses

(5) crimes involving adult sexual abuse, neglect, or financial exploitation

(6) crimes involving child abuse or neglect; or

(7) robbery, larceny, extortion, forgery, embezzlement, credit card fraud, or receiving stolen property."

These statutory citations are examples of how some state legislatures consider screening workers in licensed childcare facilities. Other states have similar statutes and organizations should consider the laws of the state in which they are located to see if similar provisions have been enacted into law.

You will note in the statutory examples from Arizona and New Mexico, the emphasis is placed on conviction and pending cases that have yet to be adjudicated. These provisions are consistent with various federal laws governing the use of criminal history records. Both the National Child Protection Act and the Fair Credit Reporting Act call for the consideration of only cases resulting in convictions. Some states' labor laws also prohibit employers from asking applicants about arrests that have not resulted in convictions. Court decisions have found that consideration of arrests constitutes discrimination and violates the requirements of Title VII of the federal Civil Rights Law of 1964 as it pertains to paid employment.

When establishing criteria for evaluating criminal history records, your organization should consider what, if any, other factors should be taken into account. The five factors listed below are adapted from guidelines published by the Bureau of Indian Affairs in the *Federal Register*, June 21, 1996. They offer examples of other factors organizations may consider when evaluating criminal history records. Rather than focusing on one or two of these factors, your organization should consider the totality of the record to determine if it should disqualify an applicant.

- ❑ **The recency of and circumstances surrounding the conduct in question**—Crimes that occurred within the past year or two may be more reliable indicators of an individual's qualification status for service than crimes that occurred several years ago. This would be particularly true if the only crimes listed in the record happened several years ago with no recent offenses. (Keep in mind, however, that any convictions for child sexual abuse, rape, or other sexually exploitive offenses constitute an unacceptable level of risk extending throughout an individual's life.)

- ❑ **The age of an individual at the time of the offense**—Many applicants are young adults; therefore, if they have a criminal record, their crimes were probably committed when they were juveniles. Organizations may consider this factor when evaluating criminal history records. In some states juvenile records will not be available as confidentiality laws protect them.

- ❑ **Societal conditions that may have contributed to the nature of the conduct**—Organizations may consider the social context in which offenses occurred. For example, in some neighborhoods, becoming a gang member may be due to pressure exerted by the gang or to a perceived threat or harm that not joining a gang would create. While societal conditions should not serve to excuse illegal behavior, the context in which the illegal behavior occurred may be considered as a mitigating factor.

- **The probability that an individual will continue the type of behavior in question**—Criminal history records that document a continuing pattern of repeated criminal offenses provide justification to believe that the individual represents a high risk for future criminal conduct. Also, some forms of criminal sexual conduct, such as child molestation, have a high probability of repetition. Individuals with a high risk for continuing criminal behavior should not be assigned to work with vulnerable service recipients.
- **The individual's commitment to rehabilitation and to changing the behavior in question**—When an applicant has a criminal history record that includes potentially disqualifying offenses, the organization may consider the steps the applicant has taken toward rehabilitation. Words of remorse alone are not sufficient evidence of an individual's commitment. Organizations should look for tangible evidence of the applicant's desire to lead a law-abiding life, such as progress in rehabilitation programs or making restitution to victims.

Record Sources

Nonprofit and community-serving organizations have several sources of records available to them to use for checking records. State agencies maintain records of criminal activities, sex offender registries, motor vehicle violations, and child abuse allegations. Private vendors access public records to offer criminal histories, motor vehicle violations and access credit reporting information. The following sections discuss these sources for conducting record checks.

State Agencies

Each state has an agency, assigned by law, to receive, maintain, and disseminate that state's criminal history records. A list of these agencies and their Web sites is included at the end of this chapter. Each state permits criminal history record checks to be conducted by non-criminal justice agencies to the extent that the state law governing the agency's operations permits.

According to the SEARCH Group, the national consortium for criminal justice information and statistics,

> "State statutes governing dissemination of criminal history records for non-criminal justice purposes are so varied as to defy classification. A few States have no statutory provisions setting statewide policies on non-criminal justice access; in these States, the DOJ [U.S. Department of Justice] regulations control access and use. In a few other States, the statute does

nothing more than delegate to a designated official the authority to issue rules and regulations on non-criminal justice dissemination. In States that do have laws dealing with the subject, the statutory approaches vary from those of Florida, Wisconsin, and other "open record" States, where anyone can obtain access to criminal history records for any purpose, to that of Tennessee, which prohibits non-criminal justice access and use except for limited purposes specifically authorized by statute and which makes it a criminal offense to release criminal history records for unauthorized purposes. The other States fall somewhere in between, with statutory approaches that differ greatly as to what types of non-criminal justice agencies may have access to particular types of records for particular purposes."

To discover the procedures for conducting a state criminal history record check, contact the criminal history record repository for your state or visit its Web site. Many of the states offer instructions and even provide the necessary forms for records checks through their Web sites in downloadable formats.

When conducting name-based record checks verify the name and date-of-birth with a government-issued picture identification.

While a few states do not charge fees to nonprofit organizations for conducting record checks, most do with fees ranging from $2.00 to $25.00. State record checks are usually name-based and will reveal only offenses that occurred within the state's jurisdiction. Identification is made based upon the name of the offender, date of birth and sex. Record checks on individuals who have common names often give inconclusive results as there are likely to be multiple offenders matching the identifying criteria. When an erroneous identification is made, fingerprints may be necessary to verify the identification.

Sex Offender Registries

Most states have established "Sex Offender Registries" to track convicted sex offenders within the state. Under the provision of federal law, sex offenders who were convicted in a state must register upon moving to a new state or face the possibility of prosecution for failure to register. This may give organizations access to more information than is available through a state criminal history record check that is limited to offenses that happened within the state. Another advantage of sex offender registries is access to them is most often free of charge.

Although federal law mandates sex offender registries, the information available to the public and to youth-serving organizations varies greatly from state-to-state. Nonprofits using sex offender registries to conduct checks of employees and volunteers should clarify the nature of the

information available. Some states list all convictions for sex related offenses while others only release to the public information on the most serious sex-related offenses. A recent example from the state of Virginia was a sex offender who admitted to his probation officer to molesting 300 teenage boys and had been convicted of two charges of molestation. He was not listed in the state's public sex offender registry because officials deemed his earlier offenses to be non-violent.

A list of sex offender registry Web sites is found at the end of this chapter. It is almost certain that anyone listed in a sex offender registry should not be allowed around children.

FBI Record Checks

The National Child Protection Act (NCPA) (PL 103-209 as amended by PL 103-322 and PL 105-251) authorizes national fingerprint-based criminal history record background checks of volunteers and employees of qualified organizations who provide care for children and those who have unsupervised access to children. The purpose of these checks is to determine if the individuals have been convicted of crimes that have a bearing on their fitness to work with children.

The FBI is responsible for maintaining access to criminal history records on a nation-wide basis. Until recently, they performed this function by collecting fingerprints and criminal record information and amassing it in a huge database. With the advent of the FBI's Interstate Identification Index (III) system, most of the criminal history records are maintained by individual states with other states given access to them electronically. Through the application of technology the screening process has been speeded up considerably.

All FBI record checks require a complete set of readable fingerprints with every finger accounted for. By requiring fingerprints, the FBI is assured that the individual's identity is positively established and that if there is a record with matching fingerprints it is the applicant's record. The fingerprints are submitted to the state's criminal history record repository for initial processing. If the state finds a record of a conviction in its records with positive identification of the fingerprints, the state is authorized to use the FBI's system to seek additional information for no additional charge.

The state collects the money from the organization seeking the background check and then gives the FBI its fees. The FBI record check costs the state's fee plus $24 for each employee or $18 for each volunteer.

Provisions of the National Child Protection Act (PL 103-209) as amended

The National Child Protection Act (NCPA) encourages states to make and enact laws to authorize national criminal history background checks on applicants for employees and volunteers in organizations that offer services to children and youth. The law envisioned a system in which employees and volunteers would submit fingerprints to the state criminal history record repository. The repository would first check its records and then submit the fingerprints to the FBI for the national record check. The FBI would return its results back to the state repository. Staff at the repository would then be responsible for reviewing the results and making a determination about the fitness of the applicant to take care of children.

Participation in the NCPA by the states is voluntary and few states enacted the required legislation. This led to the enactment of the Volunteers for Children Act that amended the NCPA by removing the requirement that states enact legislation as a prerequisite to access national criminal history record information under the provisions of the NCPA.

Under the provisions of this legislation, organizations will not receive a "rap sheet" with lists of offenses. Instead, the organization will receive a letter from the record repository with a statement of finding that the applicant does not meet the criteria to be found fit to work with children. Conversely, the organization may receive a letter indicating that the records examined did not reveal information that calls into question the fitness of the applicant to work with children.

The NCPA places responsibilities on the state repository and the organizations seeking to perform national record checks. The state agency is responsible for establishing the criteria used to determine fitness and for making "reasonable efforts" to track down offenses lacking final dispositions.

The organization must obtain a complete set of fingerprints from the applicant and a signed statement that contains the name, address, and date of birth as it appears on a valid government-issued identification document—for example, a driver's license. The applicant also needs to certify that he or she has not been convicted of a crime; or, if the applicant has been convicted of a crime must provide a description of the particulars of the offense and its disposition.

The organization must notify the applicant that a background check may be requested under the authority of the NCPA and that if the results of the background check are disputed, the applicant has the right to request a copy of the record and challenge the record with the reporting agency (See the relevant form in the "Tools Section" at the end of this chapter).

The Boys & Girls Clubs of America, National Mentoring Partnership and National Council of Youth Sports is participating in a pilot program with the Federal Bureau of Investigation and the National Center for Missing & Exploited Children to obtain national and state criminal history record checks of applicants for volunteer and employment positions. The "Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003"—the "PROTECT Act," established this program.

Under the provisions of this Act, constituent organizations are able to submit fingerprints of volunteers to the FBI and request a national criminal background check. The National Center for Missing & Exploited Children will determine the fitness of the volunteer to provide care to children. The Center will use assessment criteria derived in consultation with the three umbrella groups participating in the program to determine the fitness of applicants.

Organizations participating in the PROTECT Act program are responsible for establishing a protocol to process the background checks. The protocol must show how the organization will maintain the confidentiality of the results. The organization will also bear the costs of the background checks and remit a payment of $18 per fingerprint card they submit. For information about the project contact one of the three umbrella groups.

Private Vendors

There are an increasing number of private vendors offering a variety of screening services. VolunteerSelect is one such service endorsed by the National Assembly of Health and Human Service Organizations. Typical of most private record checking vendors, VolunteerSelect offers its services through the Internet. Depending upon the specific services used, the cost for VolunteerSelect's services are approximately $6.50 per applicant depending upon the state and the kind of check needed. Additional information about VolunteerSelect's services and pricing may be found on their Web site, www.volunteerselect.com.

Another private vendor used by some nonprofits is Intellicorp Records, Inc. Intellicorp has worked closely with the National Council of Youth Sports to establish a program for conducting background checks of volunteers in sports programs. Additional information about Intellicorp's services may be obtained through their Web site at www.intellicorp.net.

The key identifiers used by private vendors to match records with individual names are the person's name, date of birth, and social security number. When two of the three identifiers are matched, the vendor will send the report to the inquiring organization. When the applicant has a common name, it is not unusual for several records to

be included in which the name and date of birth match, but for which no social security number is on record. This places responsibility on the organization to resolve inconclusive information and ensure that individuals who have been convicted for disqualifying offenses are not accepted for staff positions.

In some cases it may be desirable to use a combination of private vendor and FBI fingerprint record checks. When a private vendor name-based record check gives ambiguous results or when the individual questions the validity of the results, submitting the individual's fingerprints to the FBI would remove the ambiguity.

As discussed in Chapter Two, background checks performed by private vendors must comply with the provisions of the federal Fair Credit Reporting Act. They must also comply with the provisions of state employment laws.

Other Record Checks

Child Abuse Registries

Child abuse registries are files maintained by state social services and child protection agencies containing allegations of child abuse. They were developed to help investigate and track child abuse cases. Their focus is on intra-familial child abuse cases and may contain information about allegations of child abuse that have not been substantiated much less subjected to due process in a court of law.

The confidentiality of child abuse registry records is closely protected because the majority of information contained in child abuse registries represents only the professional opinion of social workers that has not been validated through the judicial process. Some states do allow the child abuse registry to be used for screening in very limited circumstances. For example, screening childcare workers in licensed childcare facilities.

Driving Records

Checking the driving records of applicants for positions in which they will be operating motor vehicles is a reasonable risk management strategy. State departments of motor vehicles or similarly named agencies maintain records that track accidents and motor vehicle violations.

Motor vehicle record (MVR) checks are required for anyone driving a vehicle holding 16 or more people (15 and the driver), by federal law. The U.S. Department of Transportation requires prospective employers to check, within 30 days of the date the driver's employment begins, the applicant's driving record and the driver's employment record for the past three years. Drivers of these vehicles are also required to have a

commercial driver's license (CDL). This requirement applies to volunteers as well as employees.

Contact your state's department of motor vehicles for information concerning MVR checks. In some states the threshold at which a CDL is required is lower than the federal standard. California is an example of this practice. In California, a CDL is required for any vehicle that holds 10 persons (including the driver). Your state department of motor vehicles Web site or your insurance provider may be able to provide more information on this important topic.

Credit Bureau Records

Credit bureaus are private organizations that collect vast amounts of financial information about individuals. The information comes from financial institutions and from other business enterprises with which individuals have financial obligations or transactions.

There are three national credit reporting agencies: Equifax, Experian, and Trans-Union. The Fair Credit Reporting Act (FCRA) governs the release of information from credit bureaus. Employers must notify an applicant in writing that a credit report may be used in making an employment decision and obtain written permission before submitting a request to a credit reporting agency for a report.

If you deny an applicant a position, or even if you reassign a current employee, terminate a current employee or fail to promote an employee based in whole or in part on any information contained within a credit report, you must explain the basis for your actions and provide the employee with a copy of the report used as a basis for the adverse action. In addition, you must provide the employee with a copy of the Federal Trade Commission's booklet, "A Summary of Your Rights Under the Fair Credit Reporting Act." After you have taken the adverse action, you must inform the applicant of the following:

- ❑ the name, address, and phone number of the credit reporting agency that supplied the report;
- ❑ a statement that the credit reporting agency that supplied the report did not make the decision to take adverse action and cannot give specific reasons for it; and,
- ❑ a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free credit report from the agency within 60 days upon request.

Like other consumer report information, credit reports can be obtained nearly instantaneously using the Internet. Fees will vary depending upon the specific services requested.

Credentials Verification

If the position your organization is seeking to fill requires specific licenses, certificates, or academic preparation, it is reasonable to verify the information concerning the credentials in question. Many human resource professionals note that many—if not most—job applicants inflate their qualifications. Therefore, if a qualification is critical to one's ability to perform the duties, it should be verified.

Since any denial of employment after receiving any kind of "consumer report" from a third-party vendor may be perceived to result from the report, organizations are wise to eliminate any questionable applicants before requesting criminal record checks or credit reports from private vendors.

It is possible to have the organization's staff perform the credentials verification or retain a vendor to perform this service. If a vendor is used, the requirements of the FCRA apply as the resulting report is considered a "consumer report." The simplest way to verify credentials is to contact the credentialing organization or institution and confirm that the individual in question received the degree, license or certification. Also check expiration and renewal information. A name check is not sufficient, the confirmation of the credential should also match the date of birth or social security number of the applicant. Copies of credentials may also be placed in the applicant's file.

Payment of Fees

Virtually all of the information sources discussed in this chapter require payment of a fee to obtain information. Some fees are minimal, such as for driving record checks—usually less than $5. Other fees can be substantially higher, such as the FBI fee for a national criminal history record check using fingerprints at $24 (or $18 for nonprofit organization volunteers). Organizations that establish screening requirements for using these databases must also set policies concerning who will pay for the record checks.

For applicants who will receive a salary and thereby have an economic stake in having the record checks performed, it may be reasonable for the organization to ask the applicants to pay the cost of the record checks. Since this is a final stage in the selection process and the number of necessary background checks is thus minimal, the organization could also just as reasonably assume the costs of the background checks for their employees. However, some states prohibit employers from passing on the costs of these checks. For example, Minnesota state law provides that, "an employer or a prospective employer may not require an employee or prospective employee to pay for expenses incurred in criminal or background checks, credit checks, or orientation." (§ 181.645 Minesota Statutes 2003).

For applicants who will not receive payment for their services, the cost issue becomes more sensitive. Applicants may resist paying for their own record checks, using the following rationale: "First they want me to work for no pay, and then they actually want to charge me for that privilege? They can get lost!" To overcome this kind of resistance, the

organization may need to find ways to pay the cost of volunteer screening as another operating expense.

Sometimes it may be possible to get a third party to pay for volunteer screening—for example, an Optimist Club may pay the cost of screening coaches for the soccer team it sponsors. In some cases, the cost of screening can be spread among the beneficiaries of the screening process. One way to do this is to increase the fee for belonging to a youth group.

Resolving Inconsistencies and Inaccuracies

One way to resolve inconsistencies in the information you receive from record checking is to place the responsibility on the applicant to have the record corrected. You can tell an applicant that you cannot accept his or her application for placement due to negative information you received. If the applicant feels that the information is in error, it is his or her responsibility to contact the agency that provided the information, have the record corrected, and obtain written verification that an error was made. When you receive the written verification from the reporting agency, you can then consider the application for placement. Until that time, you have no choice but to reject the application.

Using Information From Records for Screening

Assuming that your organization has been successful in gaining access to criminal history, child abuse, driving, and/or credit bureau records, the next decision is determining how the information should be used by your organization. Consider the following examples:

- ❑ The background check on an applicant for volunteer work with children shows that 20 years earlier he was arrested for child molestation. There are no disposition data in the record and no indication of other arrests. *Do you accept the applicant and assign him to work with children?*
- ❑ You have checked the driving records of a 75-year-old volunteer with the Meals on Wheels program and discovered that he has numerous traffic violations, including some for serious offenses that resulted in collisions. He still has insurance and his driver's license but is close to accumulating the maximum number of points. *What action do you take?*
- ❑ An applicant for treasurer of your organization was convicted of burglary when she was in college. She has been active on your board of directors for 10 years, and the criminal conviction was not discovered until the bonding company came across the information during its background check. *Can you ignore the information and allow the individual to continue to handle your organization's funds?*

The answers to the previous questions depend upon the selection criteria your organization established before you started your screening process (see "Selection Criteria" in CHAPTER THREE: POSITION DESCRIPTIONS AND SELECTION CRITERIA). The purpose of identifying selection criteria before initiating the screening process is to avoid having to make decisions on an ad hoc basis.

Record Checks Tools

1. Volunteer Application And Notice Pursuant To The PROTECT Act
2. Basic Driver Acceptability Guidelines
3. Authorization to Check Criminal Record
4. Affidavit of good moral character
5. MVR Evaluation Form
6. State Criminal History Record Repository Addresses

Note: the forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. These forms may not be appropriate, or complete, for other purposes or types of organizations. Copyright laws may also restrict copying the material.

VOLUNTEER APPLICATION AND NOTICE PURSUANT TO THE PROTECT ACT

On April 30, 2003, President Bush signed into law the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act). Participating Local Organizations of the Boys & Girls Clubs of America ("B&GCA") ("Local Organization(s)") are taking part in a pilot program ("Pilot Program") with the Federal Bureau of Investigation ("FBI") and the National Center for Missing & Exploited Children ("NCMEC") to obtain national and state criminal history background checks of the Local Organizations' volunteers and volunteer applicants through fingerprint checks of those volunteers.

Pursuant to the PROTECT Act the Local Organization may obtain fingerprints of its volunteers. The Local Organization may request the Attorney General of the United States to perform a national criminal background check using the volunteer's fingerprints. The Local Organization may also request a fingerprint-based criminal background check from the state in which the Local Organization is located. The purpose of the background checks is to determine the fitness of the volunteer to provide care to children.

Background checks will access criminal history record information held by the FBI and/or state criminal justice agencies. A determination of the volunteer's fitness will be made by NCMEC. The fitness determination will be communicated to the Local Organization. NCMEC will also conduct a separate study of up to 5,000 volunteers to compare the criminal history record information obtained from the FBI to background information obtained from two background check companies.

By signing this statement, you:

1. Authorize the Local Organization to obtain a complete set of your fingerprints and acknowledge that the state and/or Attorney General may perform a criminal background check on you.

2. Acknowledge that the Local Organization has the sole discretion to determine a volunteer's status if the volunteer's background check result is favorable, unfavorable, or indeterminate.

3. Acknowledge that prior to the completion of the background check, the Local Organization has the sole discretion to deny you unsupervised access to children.

4. Acknowledge that you have the right to correct an erroneous record held by the Attorney General. You may do so by obtaining a criminal history record from the FBI and challenging its accuracy and completeness using a form available from the Local Organization.

_____

Signature Date

_____

Name and location of the Local Organization

OCA # 5 Digit Code #

The PROTECT Act also requires you to provide a photocopy of a valid identifying document containing the following information:

_____

First Name Middle Name Maiden Name Last Name Date of Birth

_____

Street Apartment

_____

City State Zip

Under the PROTECT Act, the Local Organization must ask whether you have a criminal record and, if so, what the particulars of such a record are.

____ I have not been arrested or convicted of, nor am I under pending indictment for, any crimes.

____ I have a criminal record. Such record may include, but is not limited to, felonies, misdemeanors involving crimes against a person, offenses involving sexual activity (even if considered "victimless crimes"), crimes involving drugs, and crimes involving abuse to animals. Please list all offenses accused of, including those that resulted in:

—Convictions

—Convictions that have been resolved by post-conviction relief

—Plea bargains

—Arrests not resulting in convictions

—Outstanding warrants

—Pending indictments

For each offense accused of, complete the following:

_____

Date Location/jurisdiction

_____

Describe the offense accused of and circumstances

_____

Outcome or disposition

USE A SEPARATE SHEET FOR OTHER INSTANCES.

I swear or affirm that the fingerprints submitted in support of this application are mine, the information provided is true and complete to the best of my knowledge, and any statement I have made that is found to be false may result in my being denied the opportunity to volunteer for the Local Organization. I swear or affirm that the identifying document I have provided, a photocopy of which is attached to this application, is true and accurate and is mine. I have been provided with a copy of this form and have read and understand it.

_____

Signature Date

SAMPLE

Basic Driver Acceptability Guidelines

Name _____ Division _____

Location _____ Date _____

State of license _____

INSTRUCTIONS

1. Evaluating the motor vehicle record is a primary step but not the only step in the initial evaluation of a prospective driver employee.
2. Also consider the following: age, work history, license status
3. If a prospective driver has more than 6 points, as scored below, seriously examine his or her qualifications before considering hiring as an employee or adding to the volunteer rolls.

A. Age	Points
Under 25	2
25-55	0
Over 55	1
B. License	
Licensed for less than three (3) years regardless of age.	2
Not licensed in the state where he/she resides within the required time by the state.	1
Only has an international or foreign driver's license.	2
C. Driving Restrictions	
No	0
Yes	0

If yes, what? (corrective lenses, restricted driving times, special equipment, vehicle class restriction)

Review the restrictions in order to determine if the person can meet the conditions of employment or volunteer duties.

D. Acceptable Motor Vehicle Records [See MVR Evaluation form on pages 106-107 in this book]

GRADING

Best	0-2
Average	3-4
Questionable	5-6
Poor	6+

SAMPLE

Authorization to Check Criminal Record

I, _____ (first, middle and last name of applicant), the undersigned, authorize _____ (name of agency/organization) to obtain information pertaining to any charges and/or convictions I may have had for federal and state criminal law violations to determine if I meet the standards for the position of _____ (actual title of the job or volunteer position within the organization). This information will include but not be limited to allegations and convictions for crimes committed upon minors and will be gathered from any law enforcement agency of this state, or any state or federal government to the extent permitted by state and federal law.

Signed_____ Date _____
(applicant's normal signature) (month/day/year applicant s signed this form)

Supervisor _____
(printed name) (signature)

Personal Data (please print)

(To be completed by supervisor listed above)

Name of Applicant _____
(first, middle, last)

Social Security No. or State Photo ID card No. _____
(copied directly from applicant's card)

Driver's License No. _____State of Issuance ___ Expiration Date _____
(copied directly from applicant's license)

Date of Birth: _____
(month/day/year)

SAMPLE

Affidavit of Good Moral Character

STATE OF FLORIDA

COUNTY OF

Before me this day personally appeared _____, who, being duly sworn, deposes and says: I am an applicant for employment as a caretaker with, or I am currently employed as a caretaker with: _____

By signing this form, I am swearing that I have not been found guilty or entered a plea of guilty or nolo contendere (no contest) regardless of the adjudication, to any of the following charges under the provisions of the Florida Statutes or under any similar statute of another jurisdiction. I also attest that I do not have a delinquency record that is similar to any of these offenses.

I understand I must acknowledge the existence of any criminal records relating to the following list regardless of whether or not those records have been sealed or expunged. I understand that I am also obligated to notify my employer of any possible disqualifying offenses that may occur while employed in a position subject to background screening under Chapter 435, Florida Statutes.

Reference		Relating to
Section	415.111	adult abuse, neglect, or exploitation of aged persons or disabled persons
	741.30	domestic violence and injunction for protection
	782.04	murder
	782.07	manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child
	782.071	vehicular homicide
	782.09	killing of an unborn child by injury to the mother
	784.011	assault, if the victim of the offense was a minor
	784.021	aggravated assault
	784.03	battery, if the victim of the offense was a minor
	784.045	aggravated battery
	787.075	battery on a detention or commitment facility staff
	787.01	kidnapping
	787.02	false imprisonment
	787.04(2)	taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings
	787.04(3)	carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person
	787.04	moving a child from the state or concealing a child contrary to court order
	790.115(1)	exhibiting firearms or weapons within 1,000 feet of a school
	790.115(2)	possessing an electric weapon or device, destructive device, or other weapon on school property
	794.011	sexual battery
	794.041	prohibited acts with persons in familial or custodial authority
Chapter	796	prostitution
Section	798.02	lewd and lascivious behavior

Chapter	800	lewdness and indecent exposure
Section	806.01	arson
Chapter	812	felony theft and/or robbery and related crimes, if a felony
Section	817.563	fraudulent sale of controlled substances, only if the offense was a felony
	825.102	abuse, aggravated abuse, or neglect of diabled adults or elderly persons
	825.1025	lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult
	825.103	exploitation of disabled adults or elderly persons. If the offense was a felony
	826.04	incest
	827.03	child abuse, aggravated child abuse, or neglect of a child
	827.04	contributing to the delinquency or dependency of a child
	827.05	negligent treatment of children
	827.071	sexual performance by a child
	843.01	resisting arrest with violence
	843.025	depriving an officer means of protection or communication
	843.12	aiding in an escape
	843.13	aiding in the escape of juvenile inmates in correctional institutions
Chapter	847	obscene literature
Section	847.05(1)	encouraging or recruiting another to join a criminal gang
Chapter	893	drug abuse prevention and control only if the offense was a felony or if any other person involved in the offense was a minor.
Section	944.35(3)	inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm
	944.46	harboring, concealing, or aiding an escaped prisoner
	944.47	introduction of contraband into a correctional facility
	985.4045	sexual misconduct in juvenile justice programs
	985.4046	contraband introduced into detention facilities

Under the penalty of perjury, which is a first degree misdemeanor, punishable by a definite term of imprisonment not exceeding one year and/or a fine not exceeding $1,000 pursuant to ss.837.012, or 775.082, or 755.083, Florida Statutes, I attest that I have read the foregoing, and I am eligible to meet the standards of good character for this caretaker position.

_____ **Signature of Affiant**

OR

To the best of my knowledge and belief, my record may contain one or more of the foregoing disqualifying acts or offenses.

_____ **Signature of Affiant**

Sworn to and subscribed before me this _____ day of _____, _____.

_____

My commission expires Notary Public, State of Florida

My signature, as a Notary Public, verifies the affiant's identification has been validated.

Florida Department of Children and Families
www.clearwater-fl.com/gov/depts/parksrec/forms/pdf/Aff_Good_Moral_Char.pdf

SAMPLE

MVR Evaluation Form

Driver Name_____ Division _____

Location_____ State of License _____

Use this form to evaluate the acceptability of employees and volunteers who drive vehicles on behalf of the nonprofit organization. If the person meets the criteria of a section, stop, and initial and date the form. There's no need to go further.

MAJOR VIOLATIONS

One major violation = Unacceptable

TYPE	QUANTITY
❑ Manslaughter or negligent homicide using a motor vehicle	
❑ Driving while license is suspended or revoked	
❑ Operating a motor vehicle for the commission of a felony	
❑ Aggravated assault with a motor vehicle	
❑ Permitting an unlicensed person to drive	
❑ Reckless driving	
❑ Fleeing or evading police or roadblock	
❑ Resisting arrest	
❑ Racing (speed content)	
❑ Hit and run (bodily injury or property damage)	
❑ Failure to report an accident	
❑ Illegal passing of a school bus	
❑ Having a license suspended in the past related to moving violations	
❑ Other violations considered serious by state law _____	

1 = Unacceptable TOTAL _____

Initials _____ Date _____

MOVING VIOLATIONS

Three moving violations OR two moving violations + one accident = Unacceptable

TYPE	Number
❑ Speeding	
❑ Improper lane change	
❑ Failure to yield	
❑ Failure to obey traffic signal or sign	
❑ Careless driving	

3 = Unacceptable TOTAL _____

Initials _____ Date _____

ACCIDENTS

Two or more accidents in the past seven years OR one accident and two moving violations = Unacceptable

TYPE	Quantity
❑ No fault	
❑ At fault	

2 = Unacceptable or

1 + 2 moving violations = Unacceptable TOTAL _____

Initials_____ Date _____

INELIGIBILITY

Those drivers who exceed the recommended guidelines for accidents or violations are ineligible to drive a vehicle owned by the nonprofit or to drive a personal vehicle on the nonprofit organization's business.

State Criminal History Record Repository Addresses

ALABAMA
Department of Public Safety
2720 A.W. Gunter Park Drive
Montgomery, AL 36102
Phone: 334-395-4322 FAX: 334-395-4350
www.dhr.state.al.us/chc

ALASKA
Department of Public Safety
P.O. Box 111200
Juneau, AK 99811-1200
Phone: 907-465-4336 FAX: 907-586-2762

AMERICAN SAMOA
Office of the Commissioner
Department of Public Safety
P.O. Box 1086 (Central Police Station,
Fagatogo, American Samoa)
Pago Pago, American Samoa 96799
Phone: 9-011-684-633-2827 FAX: 9-011-684-633-5111

ARIZONA
Arizona Department of Public Safety
P.O. Box 6638 (2120 West Encanto Boulevard)
Phoenix, AZ 85005-6638
Phone: 602-223-2400 FAX: 602-223-2933
www.dps.state.az.us/reports/criminalhistory/default.asp

ARKANSAS
Arkansas Crime Information Center
One Capitol Mall, 4D-200
Little Rock, AR 72201
Phone: 501-682-2222 FAX: 501-682-7444
www.asp.state.ar.us/

CALIFORNIA
California Department of Justice
Criminal Justice Information Services Division
4949 Broadway, Room J-232
Sacramento, CA 95820
Phone: 916-227-3044 FAX: 916-227-3079
caag.state.ca.us/fingerprints/index.htm

COLORADO
Crime Information Center
Department of Public Safety
Colorado Bureau of Investigation
690 Kipling Street, Room 3000
Denver, CO 80215
Phone: 303-239-4224 FAX: 303-233-8336
www.cbirecordscheck.com/Index.asp

CONNECTICUT
Bureau of Identification
Department of Public Safety
1111 Country Club Road
Middletown, CT 06457
Phone: 860-685-8322 FAX: 860-865-8361
www.state.ct.us/dps/SPBI.htm

DELAWARE
State Bureau of Identification
Delaware State Police
P.O. Box 430, (1407 North DuPont Highway)
Dover, DE 19903
Phone: 302-739-5872 FAX: 302-739-5888
www.state.de.us/dsp/sbi.htm

DISTRICT OF COLUMBIA
Records Department
Metropolitan Police Department
300 Indiana Ave., NW, Room 5054
Washington, DC 20001
Phone: 202-727-5516 FAX: 202-727-3896
mpdc.dc.gov/serv/reports/policeclearances.shtm

FLORIDA
Criminal Justice Information Systems
Florida Department of Law Enforcement
P.O. Box 1489 (2331 Phillips Rd., 32302)
Tallahassee, FL 32302-1489
Phone: 850-410-7100 FAX: 850-410-7125
www.fdle.state.fl.us/BackgroundChecks/

GEORGIA
Georgia Crime Information Center
Georgia Bureau of Investigation
P.O. Box 370748
Decatur, GA 30037-0748
Phone: 404-244-2601 FAX: 404-244-2706
www.state.ga.us/gbi/crimhist.html

GUAM
Superior Court of Guam
Guam Judicial Center
120 West O'Brien Drive
Hagatna, GU 96910
Phone: 671-475-3270

HAWAII
Criminal Justice Data Center
Department of the Attorney General
Kekuanao'a Building, Room 101
465 South King Street
Honolulu, HI 96813
Phone: 808-587-3110 FAX: 808-587-3109
www.state.hi.us/hcjdc/crimhistory.htm

IDAHO
Bureau of Criminal Identification
Idaho State Police
P.O. Box 700 (700 S. Stratford Drive, 83642)
Meridian, ID 83680
Phone: 208-884-7132 FAX: 208-884-7193
www.isp.state.id.us/identification/crime_history/index.html

ILLINOIS
Division of Administration
Illinois State Police
P.O. Box 19461 (125 E. Monroe, Room 401)
Springfield, IL 62794-9461
Phone: 217-785-2035 FAX: 217-524-5794
www.isp.state.il.us/crime/uciahome.htm

INDIANA
Indiana State Police
Records Division
IN Government Center, Third Floor
100 North Senate Avenue
Indianapolis, IN 46204
Phone: 317-232-8265 FAX: 317-232-0652
www.in.gov/isp/lch

IOWA
Division of Criminal Investigation
Iowa Department of Public Safety
Wallace State Office Building
Des Moines, IA 50319
Phone: 515-281-5138 FAX: 515-242-6297
www.state.ia.us/government/dps/dci/crimhist.htm

KANSAS
Kansas Bureau of Investigation
1620 Southwest Tyler Street
Topeka, KS 66612-1837
Phone: 785-296-8200 FAX: 785-296-6781
www.accesskansas.org/kbi/info_rci.htm

KENTUCKY
Kentucky State Police
Records Section
1250 Louisville Road
Frankfort, KY 40601
Phone: 502-227-8724 FAX: 502-227-8734
www.kentuckystatepolice.org/faq.htm#8

LOUISIANA
Bureau of Criminal Investigation
Office of State Police
P.O. Box 66614 (265 South Foster, 70806)
Baton Rouge, LA 70896
Phone: 225-925-6095 FAX: 225-925-7005
www.lsp.org/who_support.html#criminal

MAINE
State Bureau of Identification
Maine State Police
36 Hospital Street
Augusta, ME 04333
Phone: 207-624-7009 FAX: 207-624-7088
www.informe.org/PCR/

MARYLAND
Criminal Justice Information System-Central Repository
Maryland Department of Public Safety
& Correctional Services
P.O. Box 32708
Pikesville, MD 21282-2708
Phone: 410-764-4501 FAX: 410-653-4466 Toll free: 1-800-795-0011
www.dpscs.state.md.us/cjis/storefront.shtml

MASSACHUSETTS
Massachusetts Criminal History Systems Board
200 Arlington Street, Suite 2200
Chelsea, MA 02150
Phone: 617-660-4600 FAX: 617-660-4613
www.state.ma.us/chsb/

MICHIGAN
Criminal Justice Information Center
Michigan Department of State Police
General Office Building
7150 Harris Drive
Lansing, MI 48913
Phone: 517-322-5511 FAX: 517-322-0635
www.michigan.gov/msp/0,1607,7-123-1589_1878_8311—,00.html

MINNESOTA
Bureau of Criminal Apprehension
Department of Public Safety
1246 University Avenue
St. Paul, MN 55104
Phone: 651-642-0687 FAX: 651-642-2124
www.dps.state.mn.us/bca/CJIS/documents/Page-15-01.html

MISSISSIPPI
Department of Public Safety
Criminal Information Center
3891 Highway 468 West
Pearl, MS 39208
Phone: 601-933-2600 FAX: 601-933-2676

MISSOURI
Criminal Records and Identification Division
Missouri State Highway Patrol
P.O. Box 568 (1510 East Elm)
Jefferson City, MO 65102
Phone: 573-526-6160 FAX: 573-751-9382
www.ci.st-joseph.mo.us/planning/Planning%20Forms/Criminal%20Record%20Request%20Form%202003.pdf

MONTANA
Montana Department of Justice
Justice Information Services Division
Scott Hart Building, room 564
P.O. Box 201403 (303 North Roberts)
Helena, MT 59620-1403
Phone: 406-444-3625 FAX: 406-444-0689
doj.state.mt.us/enforcement/backgroundchecks.asp

NEBRASKA
Investigative Services Division
Nebraska State Patrol
P.O. Box 94907 (1600 Nebraska Highway 2, 68502)
Lincoln, NE 68509
Phone: 402-479-4099 FAX: 402-479-4022
www.nsp.state.ne.us/findfile.asp?id2=174

NEVADA
Records & Identification Services
Nevada Highway Patrol
808 West Nye Lane
Carson City, NV 89703
Phone: 775-687-1600, ext. 268 FAX: 775-687-1843
nvrepository.state.nv.us/

NEW HAMPSHIRE
New Hampshire State Police
Support Services Bureau
10 Hazen Drive
Concord, NH 03305
Phone: 603-271-3793 FAX: 603-271-6214
www.state.nh.us/safety/nhsp/cr.html#criminal

NEW JERSEY
Records & Identification Section
New Jersey State Police
P.O. Box 7068, River Road
West Trenton, NJ 08628-0068
Phone: 609-882-2000, ext. 2311 FAX: 609-530-4856
www.njsp.org/about/serv_chrc.html#icbc

NEW MEXICO
Department of Public Safety
Technical and Emergency Support Division
P.O. Box 1628 (4491 Cerrillos Road)
Santa Fe, NM 87504-1628
Phone: 505-827-9185 FAX: 505-827-3434
www.dps.nm.org/faq/record_request.htm

NEW YORK
NY State Division of Criminal Justice Services
Office of Operations and Systems
Stuyvesant Plaza, Executive Park Tower
4 Tower Place
Albany, NY 12203
Phone: 518-457-6050 FAX: 518-457-3089
criminaljustice.state.ny.us/crimnet/mail.htm

NORTH CAROLINA
Identification Section
North Carolina Bureau of Investigation
P.O. Box 29500 (407 North Blount Street)
Raleigh, NC 27626
Phone: 919-662-4500 FAX: 919-662-4380

NORTH DAKOTA
Information Services Division
Bureau of Criminal Investigation
Office of the Attorney General
(4205 State Street, 58502)
P.O. Box 1054
Bismarck, ND 58502-1054
Phone: 701-328-5500 FAX: 701-328-5510
www.ag.state.nd.us/BCI/CHR/CHR.htm

OHIO
Identification Division
Ohio Bureau of Criminal Identification & Investigation
P.O. Box 365 (1580 State Route 56, SW)
London, OH 43140
Phone: 740-845-2204 FAX: 740-845-2024
www.webcheck.ag.state.oh.us/

OKLAHOMA
Bureau of Investigation
Information Services Division
6600 North Harvey Place, Suite 300
Oklahoma City, OK 73116-7912
Phone: 405-879-2535 FAX: 405-843-3804
www.osbi.state.ok.us/CrimHistQuest.htm

OREGON
Forensic Services
Identification Services Section
Oregon State Police
3772 Portland Road, N.E.
Salem, OR 97303
Phone: 503-378-3070 FAX: 503-378-2121
www.osp.state.or.us/

PENNSYLVANIA
Bureau of Records & Information Services
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
Phone: 717-783-5588 FAX: 717-772-3681
www.psp.state.pa.us/patch/site/default.asp

PUERTO RICO
Criminal Justice Information Systems
Puerto Rico Department of Justice
P.O. Box 192 (601 Olimpo St., Miramar, Puerto Rico)
San Juan, PR 00902
Phone: 787-729-2121 FAX: 787-729-2261

RHODE ISLAND
Department of the Attorney General
Bureau of Criminal Identification
150 South Main Street
Providence, RI 02903
Phone: 401-274-4400 FAX: 401-222-2929
www.riag.state.ri.us

SOUTH CAROLINA
South Carolina Law Enforcement Division
P.O. Box 21398, (4400 Broad River Road, 29210)
Columbia, SC 29221-1398
Phone: 803-896-7142 FAX: 803-896-7022
www.sled.state.sc.us/default.htm

SOUTH DAKOTA
Office of the Attorney General
Division of Criminal Investigation
Identification Section
500 East Capitol Avenue
Pierre, SD 57501
Phone: 605-773-4614 FAX: 605-773-4629
dci.sd.gov/administration/id/cch.htm

TENNESSEE
Tennessee Bureau of Investigation
901 R.S. Gass Boulevard
Nashville, TN 37216
Phone: 615-744-4000 FAX: 615-744-4656
www.tbi.state.tn.us/divisions/isd_riu_taps.htm

TEXAS
Crime Records Service
Texas Department of Public Safety
P.O. Box 4143 (5805 North Lamar Boulevard, 78752)
Austin, TX 78765-4143
Phone: 512-424-2077 FAX: 512-424-5911
www.txdps.state.tx.us/administration/index.htm#crs

VERMONT
Crime Information Center
Department of Public Safety
103 South Main Street
Waterbury, VT 05671-2101
Phone: 802-241-5220 FAX: 802-241-5552
www.dps.state.vt.us/cjs/recordcheck.html

VIRGIN ISLANDS
Records Management Officer
Records Bureau
VI Police Department
Criminal Justice Complex
Charlotte Amalie
St. Thomas, VI 00802
Phone: 340-774-2211, ext. 4121 FAX: 340-774-5592

VIRGINIA
Bureau of Administration & Support Services
Virginia State Police
P.O. Box 27472
Richmond, VA 23261-7472
Phone: 804-674-2217 FAX: 604-674-2234
www.vsp.state.va.us/cjis_chrc.htm

WASHINGTON
Criminal Records Division
Washington State Patrol
321 Cleveland, Suite A
Tumwater, WA 98501
Phone: 360-705-5100 FAX: 360-570-5274
www.wsp.wa.gov/crime/crimhist.htm

WEST VIRGINIA
West Virginia State Police
725 Jefferson Road
South Charleston, WV 25309
Phone: 304-746-2111 FAX: 304-746-2246
http://www.wvstatepolice.com/

WISCONSIN
Crime Information Bureau
Wisconsin Department of Justice
123 West Washington Avenue
Madison, WI 53702
Phone: 608-266-7399 FAX: 608-267-1338
www.doj.state.wi.us/dles/cib/

WYOMING
Division of Criminal Investigation
316 West 22nd Street
Cheyenne, WY 82002
Phone: 307-777-7181 FAX: 307-777-7252
attorneygeneral.state.wy.us/dci/chc.html

State Online Sex Offender Registries

Alabama
www.dps.state.al.us/public/abi/system/so/

Alaska
www.dps.state.ak.us/nSorcr/asp/

American Samoa
No online sex offender registry/information.

Arizona
www.azsexoffender.com/

Arkansas
www.acic.org/Registration/index.htm

California
http://caag.state.ca.us/megan

Colorado
http://sor.state.co.us

Connecticut
www.state.ct.us/dps/Sor.htm

Delaware
www.state.de.us/dsp/sexoff/index.htm

District of Columbia
http://mpdc.dc.gov/serv/sor/sor.shtm

Florida
www.fdle.state.fl.us/sexual_predators/

Georgia
www.ganet.org/gbi/sorsch.cgi

Guam
www.sor.guamjustice.net/

Hawaii
www.state.hi.us/hcjdc/sexoffender.htm

Idaho
www.isp.state.id.us/identification/sex_offender/

Illinois
www.isp.state.il.us/sor/frames.htm

Indiana
www.state.in.us/serv/cji_sor

Iowa
www.iowasexoffenders.com/

Kansas
https://www.accesskansas.org/apps/kbiro_search.html

Kentucky
http://kspsor.state.ky.us/

Louisiana
www.lasocpr.lsp.org/socpr/

Maine
No online sex offender registry/information.

Maryland
www.dpscs.state.md.us/sor

Massachusetts
www.state.ma.us/sorb/

Michigan
www.mipsor.state.mi.us/

Minnesota
www.dps.state.mn.us/bca/Invest/Documents/Page-07.html

Mississippi
www.sor.mdps.state.ms.us/

Missouri
No online sex offender registry/information.
Missouri Sexual Offender Registration Audit Report

Montana
http://svor2.doj.state.mt.us:8010/index.htm

Nebraska
www.nsp.state.ne.us/sor/find.cfm

Nevada
No online sex offender registry/information.

New Hampshire
www.state.nh.us/soupermail/secure/cprsor.html

New Jersey
www.njsp.org/info/reg_sexoffend.html

New Mexico
www.nmsexoffender.dps.state.nm.us

New York
http://criminaljustice.state.ny.us/nsor/index.htm

North Carolina
http://sbi.jus.state.nc.us/DOJHAHT/SOR/Default.htm

North Dakota
www.ndsexoffender.com/

Northern Mariana Islands
No online sex offender registry/information.

Ohio
www.drc.state.oh.us/cfdocs/inmate/search.htm
(OH Dept. of Rehabilitation & Correction Inmate Data)

Oklahoma
http://docapp8.doc.state.ok.us/servlet/page?_pageid=190&_dad=portal30&_schema=PORTAL30

Oregon
No online sex offender registry/information.

Pennsylvania
www.psp2.state.pa.us/SVP/index.htm

Puerto Rico
No online sex offender registry/information.

Rhode Island
No online sex offender registry/information.

South Carolina
www.sled.state.sc.us/SLED/default.asp?Category=SCSO&Service=SCSO_01

South Dakota
www.sddci.com/administration/id/sexoffender/about.htm

Tennessee
www.ticic.state.tn.us/SEX_ofndr/search_short.asp

Texas
http://records.txdps.state.tx.us/so_search.cfm

Utah
www.udc.state.ut.us/asp-bin/sexoffendersearchform.asp

Vermont
http://170.222.24.9/cjs/s_registry.htm

Virgin Islands
No online sex offender registry/information.

Virginia
http://sex-offender.vsp.state.va.us/Static/Search.htm

Washington
No online sex offender registry/information.

West Virginia
www.wvstatepolice.com/sexoff/

Wisconsin
www.wi-doc.com/offender.htm

Wyoming
http://attorneygeneral.state.wy.us/dci/so/so_registration.html

CHAPTER 8

Other Screening Techniques

Checklist for Your Organization's Use of Other Screening Techniques

- ❑ Does the nonprofit possess the required expertise available to apply the technique?
- ❑ Does the selected technique represent the best source for the information to be obtained?
- ❑ Is use of the selected technique legal in the state(s) where the nonprofit does business?
- ❑ Is the use of the technique driven by specific position-related requirements?
- ❑ Are the privacy and confidentiality rights of the applicant preserved whenever the technique is used?
- ❑ Is the use of the technique worth its cost?

Key Points Covered in This Chapter

A few organizations may need to use other screening techniques in order to be reasonably sure that successful applicants will meet the demands of the positions. These techniques include medical examinations, drug testing, performance assessments and psychological testing. In deciding to use these techniques, organizations should ensure that the information obtained affords a valid and necessary measurement of the attributes the organization is attempting to measure.

This chapter discusses some of the other screening techniques and the application and misapplications in the screening process.

Considering Less Common Screening Techniques

In addition to the applications, interviews, reference checking and use of criminal history and other records for screening applicants, a few community-serving organizations use other kinds of screening, including physical examinations, drug tests, psychological personality tests, and lie detector tests.

As with other kinds of screening, your organization needs to weigh the benefits received from the use of these techniques against their costs and the loss of privacy for your applicants. Some forms of screening are illegal in some circumstances; some, in every circumstance. Virtually all of the screening techniques described in this chapter require special expertise to administer, thereby increasing their cost.

The information acquired through some of these screening techniques is intensely personal and requires some sacrifice of the subject's personal privacy. The positions for which any of these techniques are used, therefore, should be those in which the relationship between the screening tool and the position are clearly established—for example, drug tests for drivers or psychological tests for individuals who apply to be foster parents.

The organization that employs these screening techniques must ensure that the files containing access to test information are closely controlled. Only individuals who can interpret their significance and have a legitimate need to do so should have access to test results.

Performance Assessment

When position descriptions specify responsibilities requiring physical abilities or special skills, applicants may be asked to demonstrate their ability to fulfill the position requirements. For example, if the position description absolutely requires lifting forty-pound bales of newspaper at a recycling center, you may ask applicants to demonstrate their ability to handle a forty-pound weight. The measurement is objective and based upon the requirements of the position; therefore, it is nondiscriminatory if all applicants for the position are subjected to the same performance test.

When you are interviewing applicants for positions working with vulnerable populations, you may want to include an observation period as part of your screening. During this time, the applicant would be asked to work or interact with some of the service recipients with whom he or she would be working if selected for the position. The applicant's interactions with clientele should be observed to determine whether he or she:

- ❑ has realistic expectations of the capabilities of the clientele;
- ❑ demonstrates a sense of humor;

- exhibits interest, warmth, enthusiasm, and patience;
- uses positive techniques to guide behavior;
- shows a willingness to participate in all kinds of activities and routines, including messy ones;
- comforts individuals who are distressed;
- supports the other staff; and
- appears comfortable in the setting (adapted from Koralek, 1992).

Drug Testing

During the 1980s, under the leadership of the federal government, public concern heightened about the presence of drugs in the workplace. Many employers established drug-screening programs for their applicants. When these tests were first implemented, many viewed them as an infringement of individual privacy. Over time, however, drug testing has become more common, and our tolerance for the intrusions inherent in such testing has increased. There have been some positive results noted. A U.S. Department of Health and Human Services study showed that in 1985, 16.7 percent of workers said that they had used illicit drugs in the past month; in 1993, it had decreased to 7 percent.

In most, if not all, areas, a nongovernmental organization can establish a policy mandating that applicants who have received a conditional offer of employment undergo a drug screening. Such a policy gives the applicant the choice of taking and passing the test or not being accepted. You should seek legal counsel as you develop your drug screening process to ensure that it complies with federal and state laws, including the ADA, as this law has specific requirements for conducting medical examinations. As an example of state laws, Minnesota law limits drug testing to five circumstances:

- to prescreen job applicants,
- to make drug screening part of an annual physical examination,
- to perform random drug testing on all employees,
- to do drug testing when there is reasonable suspicion of a problem, or
- to do testing in affiliation with a treatment program.

Note: Other states may take a more restrictive approach. Just as in other areas of employment law, volunteers may not be subject to all of the procedural safeguards that exist for paid employees.

When considering whether to conduct drug screening, the organization should examine the specific risks it is trying to minimize. One factor might be the exposure that the position affords to controlled substances. A volunteer in a hospital, for example, could have more exposure to controlled substances than would a volunteer librarian's aide.

Safety of other staff and service recipients is also a consideration. The employment of individuals in care-giving positions where vulnerable recipients could be endangered may justify drug testing. Under the Federal Omnibus Transportation Act of 1991, testing is mandatory for "transportation workers hauling 15 or more passengers in shuttles or buses, and those larger transports with 26,000 pounds of carrying capacity." As of January 1, 1996, this requirement became applicable to volunteer drivers as well as employees.

Alcohol Screening

Because alcoholism is included as a disability under the ADA, your organization may be prohibited from conducting screening for the presence of alcohol before you make an offer of employment. However, if an applicant arrives for an interview reeking of alcohol and acting visibly drunk, you could reasonably exclude that applicant from consideration, as you could reason that such demeanor would interfere with the individual's ability to perform the essential functions of the job and could pose a direct threat to the property and safety of others.

Physical Examinations

The ADA does not permit an employer to require medical examinations prior to the time that a good-faith offer of employment is made. According to the ADA, a medical examination is one that:

- ❑ is administered or interpreted by a health care professional or trainee;
- ❑ is designed to reveal an impairment or the status of an individual's physical or psychological health;
- ❑ is invasive (e.g., requires drawing of blood or urine);
- ❑ measures physiological or psychological responses;
- ❑ is normally done in a medical setting; and
- ❑ requires the use of medical equipment or devices.

Your organization can require a physical examination of an applicant only if all employees in similar positions are required to undergo the same examination. Any medical information you collect during the screening process should be kept in a separate, confidential file. The

privacy provisions of the Health Insurance Portability and Accounting Act apply when an employer seeks protected health information directly from a health care provider or other entity covered by HIPAA. Examples of such instances are when an employer obtains drug test or pre-employment physical information directly from a medical provider, or receives information from a medical provider regarding an employee's workplace injury.

Psychological Testing

Our society has a penchant for scientific and technological procedures. The development and promotion of various psychological tests for a wide variety of diagnostic applications are manifestations of our desire to be techno-sophisticated. Sometimes, however, our reliance on science results in attempts to use psychological testing in ways that may misuse the measurement instruments.

Psychological tests used for pre-employment screening purport to measure personality traits, integrity, and vocational interests. As we are limiting our discussion to screening for risk reduction, we will focus our attention on tests that are often used in that context.

There are many tests that purport to measure integrity. Specific attributes that these tests measure include conscientiousness, reliability, dependability, carefulness, and responsibility. A study published in the *Journal of Applied Psychology* (Ones, Viswesvaran, and Schmidt, 1993) found that "integrity tests have substantial evidence of generalizable validity."

If you decide to use pre-employment psychological testing, the instruments you use should be legal (i.e., they should conform with the Uniform Guidelines on Employee Selection Procedures as adopted by the Equal Employment Opportunity Commission and comply with the ADA, the Civil Rights Act of 1991, and the Age Discrimination in Employment Act) and meet the professional standards of the American Psychological Association's Standards for Education and Psychological Testing (Cleaves, 1998).

A few community-serving organizations are using psychological tests to screen staff. Many of these are organizations that work with children and use psychological tests to screen staff for abusive tendencies. The use of psychological testing for this kind of staff screening is not without its problems, however. The American Bar Association points out that many psychological tests are "general in nature, and those tests that are child abuse specific were originally developed to assess abusive parents, not child care and youth-service workers" (American Bar Association, 1991).

Since the commonly used psychological tests were not designed to measure abusive tendencies of child- and youth-serving staff, the values of these tests for predicting abusive tendencies may be questionable at best. One possible reason for the lack of a reliable and valid profile for child abusers may be the complex interaction of multiple factors that contribute to the abuse (Finkelhor, 1986).

An additional obstacle to the use of psychological tests is the need to use professionally trained personnel to administer the tests and interpret the results. Unless your organization has staff qualified to administer the specific tests to be used by your organization, outside psychologists must be retained—sometimes at considerable cost.

The following is a list of psychological tests often used to screen applicants. With each test is a description of how it is designed to be used, as well as some of its limitations.

Minnesota Multiphasic Personality Inventory (MMPI)

This is the most frequently administered clinical test in the United States. There are two versions, the original MMPI and a newer version, the MMPI-2. The test provides information on ten personality scales. Both the MMPI and MMPI-2 may be computer-scored and computer-interpreted, which facilitates their use by organizations. Even with the use of computers, however, it is important to stress that the staff administering the tests and using the results need to be professionally trained.

Because of the popularity of the MMPI, new scales are constantly being devised and tested. Several attempts have been made to use the MMPI to identify child abusers and pedophiles. However, the problem to date with attempts to use the MMPI to identify child abusers is that researchers have been unable to derive a specific profile for these individuals. As reported by Yanagida and Ching, “a predominate MMPI profile did not emerge for abuser groups relative to other comparison groups.” (Yanagida and Ching, 1993). In other words, the MMPI cannot specifically identify child abusers.

In the past, at least one youth-serving organization was forced by its insurance carrier to use the MMPI for screening applicants to identify possible pedophiles. This is a misuse of the instrument and has been abandoned as a screening tool.

Sixteen Personality Factor Questionnaire (16 PF)

The 16 PF is similar to the MMPI in that it is a “projective, personality test.” It was not designed to identify child molesters or other categories of individuals ordinarily the target of screening efforts, and its use for that purpose has not been validated. Some organization may use the 16

PF for human resource management uses, but it is not particularly useful as a risk management tool.

Milner's Child Abuse Potential Inventory (CAP)

The Child Abuse Potential Inventory (CAP) is a self-administered screening device that measures factors such as distress, rigidity, problems with children, problems with family, problems with others, unhappiness, and loneliness. The CAP, developed by Dr. Joel Milner, contains 160 items to which respondents either agree or disagree. Seventy-seven of the statements constitute the abuse scale. The CAP is computer-scored and -interpreted, which makes it easier to administer; however, individuals administering the CAP should have training to ensure its proper use.

The CAP is intended to measure the potential for physical abuse. It is not intended or recommended for attempting to measure the potential for other forms of abuse. The CAP has been used to screen childcare workers with some success, but the developer cautions against using the CAP as a sole measure for making a selection decision. The results of the CAP should be used in conjunction with other sources of information when used in applicant screening (Milner, 1989).

Abel Screen

The Abel Screen involves a question-and-answer test looking at slides of boys, girls, men, and women in various stages of dress and undress. While the subject is viewing the slides, a physiological measurement is made.

The Abel Screen may represent a breakthrough in the ability to screen individuals with sexual desires for children. However, whether the screen is suitable for use by the majority of employers is doubtful. Furthermore, no independent verification of its reliability or validity has been made, and few people are trained to administer the screen.

Electromechanical Devices

Some researchers have attempted to identify pedophiles and other undesirable individuals through the use of machines. These machines include plethysmographs, polygraphs, and psychological stress evaluators (PSEs). The use of any of these devices for screening applicants for staff positions is questionable for a variety of legal and practical reasons.

Plethysmographs

A plethysmograph is a device that measures the changes in volume of a part of the body due to variations in the blood supply. A penile plethysmograph is used to measure changes in the volume of the penis

during sexual arousal. The data gathered from this kind of measurement is called phallometric data. Some researchers have attempted to use plethsymography to identify male pedophiles. Due to the invasiveness of the procedure and the high degree of skill required by those administering plethysmographic assessments, its widespread use for screening applicants for sexual aggression and child molestation is impractical.

Polygraphs

Any discussion of personnel screening techniques should at least touch on the subject of polygraphs, or "lie detectors." These machines detect changes in body functions during interviews. Polygraphs measure respiration, pulse, and galvanic skin response (the ability of the skin to conduct electricity) and actually indicate the body's stress levels rather than truthfulness. Polygraph operators need to be trained and certified in interviewing subjects and interpreting the paper recording generated by the machine. The Employee Polygraph Protection Act of 1988 prohibits the use of polygraphs in employee selection (see CHAPTER TWO, LEGAL ISSUES PERTAINING TO SCREENING, for additional discussion). Their use for screening volunteers is discouraged for many of the same reasons that prompted enactment of the federal law.

Psychological Stress Evaluators

Psychological stress evaluators (PSEs) are devices that measure minute variations in voice frequencies caused by stress. The devices are easier to use than polygraphs as there is no physical contact required with the subjects, who in many cases will not know that their responses are being monitored.

The PSE can accurately detect changes in voice patterns; however, it cannot ascribe the changes to deceptiveness or falsehoods. Thus, an expert must interpret the results. Also, the quality and sensitivity of the equipment may vary, affecting the accuracy of results.

Other Screening Techniques — Tools

1. Record of Road Test, American Red Cross

Note: The forms in this book are for illustrative purposes only. They are based on forms that have been used in the field. They provide "real life" examples, rather than a recommended practice.

The authoring organizations provided forms that they had designed for specific uses. The forms may not be appropriate, or complete, for other purposes or types of organizations. Copying the material may also be restricted by copyright laws.

SAMPLE

Record of Road Test

Driver's Name _____ Date of Birth _____ Date of Test _____

Address _____

Year and Make of Vehicle _____ Plate No. _____ Vehicle No. _____

❑ License Attached ❑ License No._____ ❑ Passed ❑ Failed

REASONS FOR FAILURE IN ROAD TEST:

Grounds for Immediate Failure: _____

❑ Accident ❑ Dangerous Action ❑ Serious Violation ❑ Two 10 Point Items

Reason _____

MISCELLANEOUS GRADED REASONS (more than 20 points circled below)

A. Leaving Curb	
Fails to observe a signal on time or adequately	5
Uses mirror only	3
B. Backing	
Doesn't look back as well as use mirrors	5
Fails to signal	5
Excessive speed and improper directions	5
C. Parking	
Takes too many pull-ups	5
Hits curb	5
Parks too far from curb	3
D. Slowing and Stopping	
Stops and restarts rolling back with standard shift	5
Improper use of brakes on grades	5
Fails to use mirrors to check traffic to rear	5
Stops suddenly	5
Doesn't stop before crossing sidewalk when coming out of driveway or alley	3
Fails to stop clear of pedestrian crosswalks	5
E. Traffic Driving	
1. Turning and Intersections	
Fails to get in proper lane well in advance	5
Fails to signal well in advance	5
Doesn't check traffic conditions and turns in front of traffic	10
Swings wide or cuts short while turning	3
Fails to check for cross traffic regardless of traffic controls	5

Doesn't yield right-of-way to pedestrian	10
2. Traffic Signs and Signals	
Does not approach signal prepared to stop if necessary	5
Violates traffic signal	10
Runs yellow light	10
Starts up too fast or too slowly on green	5
Fails to notice or heed traffic signals	5
3. Passing	
Runs stop signs	10
Passes with insufficient clear space ahead	10
Passes in unsafe location: hill, curve, intersection	10
Fails to signal change of lanes	5
Fails to warn driver being passed	5
Pulls out and back—uncertain	5
Tailgates waiting chance to pass	5
Cuts in too short returning to right lane	10
F. General Driving Ability and Habits	
Repeated stalling	5
Poor engine control	5
Poor steering control	5
Nervous, apprehensive	5
Easily angered and complains too much	5

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CHAPTER 9

Using the Tools to Customize Your Search

Checklist for Using the Tools to Customize Your Organization's Screening Process

- ❑ Does the nonprofit use written Position Descriptions?
- ❑ Does the nonprofit use application forms?
- ❑ Does the nonprofit conduct interviews?
- ❑ Does the nonprofit check references?
- ❑ Does the nonprofit conduct record checks?
- ❑ Does the nonprofit use other screening techniques for some or all positions?

In the previous chapters, we have discussed various staff screening tools—position descriptions, applications, interviews, reference checks, record checks, and other screening techniques. In this chapter, we will show you how to put these tools to work for your organization.

You need to remember that this is not a comprehensive employee selection handbook—its focus is on screening for risk. Arguably, individuals who are not properly prepared to perform in a position constitute a risk for the organization, but our main concern is to exclude applicants who constitute an unacceptable risk to service recipients, other staff, organizational assets, or themselves due to behavioral or character deficiencies.

In the earlier chapters, we provided samples of various forms and screening tools used by community-serving organizations. In this section we will guide you through a process to help you construct your own forms and develop your own procedures via a series of questions. Your answers will help you develop your screening process.

Developing Position Descriptions

Position descriptions are an important part of the staff screening process, spelling out the requirements of the job and identifying possible risks associated with that position. The position description provides the justification for information to be collected in each subsequent phase of staff screening.

- ❑ What is the title of the position for which you are screening?
- ❑ What purpose is the position going to serve? Why will it exist?
- ❑ What are the specific responsibilities for the position? What limitations are placed on performing these functions?
- ❑ What qualifications or skills must the person holding the position have? How are these qualifications related to the specific functions or responsibilities? Are they reasonable or discriminatory?
- ❑ Who will supervise the staff member?
- ❑ What is the minimum amount of time required by the position? What is the maximum amount of time permitted?
- ❑ What training will be provided to the individual selected for this position? Will participation in the training be a prerequisite to assuming the position?
- ❑ Where will the services be performed?

Developing the Application

The first step in preparing the application form is to review the position description. You need to ask, "Are there any inherent risks related to specific responsibilities?" If so, how will these risks be assessed in the application?

An application should generally encompass five areas based upon the requirements stated in the position description: identification, qualifications, experience, background, and consent/waiver.

Identification

- ❑ What information do you need in order to adequately identify the individual?
- ❑ Do you need the applicant's date of birth, or will a minimum age be sufficient?
- ❑ Do you request both the applicant's current address and his or her past addresses for a period of five years?

- ❑ Do you use a picture ID to confirm the applicant's identity?

Qualifications

- ❑ What do you need to ask about specific skills the applicant may bring to the position?
- ❑ Is the applicant's educational achievement relevant to the needs of the position?
- ❑ Do you need to know about the applicant's driving skills?
- ❑ Are possessing certificates, such as those for first aid/ CPR or swimming instructor, relevant to the position?
- ❑ Are any professional licenses required?

Experience

- ❑ What relevant experience could an applicant have that should be asked about on the application form?
- ❑ What information do you need to verify the applicant's experience? Are you requesting the name, telephone number, and address of the applicant's immediate supervisor for both paid and volunteer positions?
- ❑ Does the application request information about employment for the past five years, with dates of service for each position?

Background

- ❑ Is the nature of the position sufficiently sensitive to require criminal history information? If so, how will you ask about the applicant's possible criminal history records?
- ❑ Do you need to ask the applicant to provide personal references in addition to those for past and present employment or volunteer work?
- ❑ Are there other factors related to the nature of the position that need to be asked about on the application?
- ❑ Are you requesting any information in violation of employment or antidiscrimination laws—e.g., sex, race or ethnicity, age, religion, country of national origin, or sexual orientation? If you are requesting any of this information, can you justify it based on the requirements of the position—in other words are you requesting information about a bona fide occupational qualification?

Consent/Waiver

To verify the information you collect on the application, you should have the applicant sign a consent statement authorizing the organization to initiate the necessary contacts. This statement should also explicitly waive the applicant's rights to the confidentiality of the information.

- ❑ How do you intend to check references and/or verify employment and experience?
- ❑ Does the consent/waiver statement ask for explicit authorization for each kind of background check that will be conducted, including those for references, employers, volunteer service records, criminal history records, driving records, credit bureau records, and educational and professional credentials?
- ❑ Has a lawyer reviewed the consent/waiver statement?

Developing Interview Guides

When preparing to conduct interviews, review the position description and the interviewees' applications. Prepare a script with questions for the interview. The following questions may help you construct your script (for specific suggestions for questions to ask during the interview, see CHAPTER FIVE: INTERVIEWS):

Application Information Discussion

- ❑ Are there items on the application that need clarification? If there are, do you need to ask about frequent moves, gaps in employment, or adverse criminal history information?
- ❑ What additional information do you need about the experience listed on the application?
- ❑ Do you need additional information about the qualifications listed on the application? If the applicant holds a certificate, when does it expire? What training was necessary to qualify for the certificate? What kind of test did the applicant take to qualify for the certificate?
- ❑ What do you need to know about the relationship of the references to the applicant? Do they really know the applicant well enough to be of value?

Other Interview Areas

- ❑ What specific risks are inherent in the position, and what do you need to know about the applicant relative to these risks? Does the interview guide contain questions about these areas?

- ❑ Is there any information that you need to give the applicant about your organization, such as policies or procedures, expectations, or safeguards? Do you have an organizational fact sheet or other information that you routinely give to applicants?

Home Visits

Home visits are a specific kind of interview for which preparation needs to be made. In the checklist for a home visit, you should consider the following:

- ❑ Are the objectives of the visit clearly understood?
- ❑ Are all individuals over thirteen years of age living in the home going to be interviewed?
- ❑ Are the relationships with the applicant clearly identified (e.g., girlfriend, sibling, child)?
- ❑ Are environmental factors being assessed (e.g., cleanliness, condition, accessibility)?

Developing Reference Check Guides

When performing reference checks, you may find that developing a worksheet or script is helpful to ensure that you seek uniform information on applicants from each of their references.

Identification Protocol

- ❑ Do you identify yourself in a manner that leads the reference to understand that the inquiry is legitimate, with the full knowledge of the applicant?
- ❑ Do you obtain verification of the identity of the reference?

Validation of Information From Application

- ❑ Do you verify the information provided by the applicant through use of open-ended questions?
- ❑ Do you verify the nature of the relationship between the applicant and the reference?
- ❑ Do you probe the reference for information regarding the applicant's work habits and demeanor with others?
- ❑ Do you specifically ask if the applicant would be welcome to return to his or her old position?

Determining Suitability for Working With Vulnerable Individuals

- ❑ Do you ask for any information the reference has that would indicate the applicant's strengths or weaknesses in working with your service recipients?

- ❑ Do you ask if the reference ever personally observed the applicant at work with service recipients?
- ❑ Do you request specific examples that could support the reference's appraisal of the applicant's abilities?

Conducting Record Checks

If you use record checks as part of your screening procedures, here are some questions that may guide your selection and utilization of records to be checked:

- ❑ Have you established the criteria used to evaluate the information obtained?
- ❑ Have you received permission from the applicant to examine his or her records, specifically by type of record?
- ❑ If there is a fee for checking the records, who will pay?

Driving Records

- ❑ Does the position for which you are screening applicants entail operating a motor vehicle as a regular and significant position responsibility?
- ❑ Do you have written criteria for assessing an applicant's suitability to operate a vehicle for your organization?
- ❑ Will your organization's insurance company check driving records of both paid and volunteer drivers?

Criminal History Records

- ❑ Does your state have laws authorizing access to criminal history records for applicant screening?
- ❑ Do you have the applicant's written authorization in compliance with the Fair Credit Reporting Act and/or other laws or regulations?
- ❑ Are you using fingerprints for positive identification (as required for a national record check through the FBI)?

Child Abuse Registries

- ❑ Can your state's child abuse registry be accessed by your organization for applicant screening?

Credit Bureau Records

- ❑ Does the position require collecting or disbursing funds or other aspects of financial responsibility, thereby making credit bureau records relevant?

Using Other Screening Techniques

If you use drug screening, psychological testing, or other screening techniques, the following questions may be helpful to you:

- ❑ Are the techniques you propose legal?
- ❑ Does your organization have written policies about their use and criteria for decision making based on the results?
- ❑ Has the organization made sufficient provisions to ensure the confidentiality of test results?
- ❑ Have you had your organization's legal counsel review the process prior to its implementation?

Drug Screening

- ❑ Are there specific responsibilities listed in the position description that would constitute unacceptable risks without screening for illegal drugs?
- ❑ Does the position permit access to controlled substances?
- ❑ Does the position entail operating motor vehicles or other potentially dangerous machinery?
- ❑ Does the position include caring for vulnerable individuals in unsupervised settings?

Psychological Tests

- ❑ What specific factors do you want to measure?
- ❑ Is there a valid and reliable psychological test for measuring the attributes you need to have measured?
- ❑ Does the organization have access to individuals qualified to administer the tests and interpret their results?

Epilogue

In this *Tool Kit*, we have introduced an approach to screening applicants for sensitive positions in your organization. Even the most thorough screening process will not be totally effective. For evidence of this, all we need to do is to look at the case of Aldrich Ames, a CIA official who was subjected to one of the most thorough screening processes used by the federal government. His screening process involved many of the tools discussed in this *Tool Kit*, yet years after he was selected, he was discovered to be a spy for another country.

We need to make sure that the lesson of the CIA case is not lost to us. The lesson we must learn is that screening by itself is not sufficient. Community-serving organizations may screen their applicants extremely well and yet be vulnerable to the occasional applicant who avoids detection and constitutes a potential for great harm to service recipients and to the organization.

Screening does not remove your organization's responsibility to monitor and supervise the activities of its staff. In addition, when you detect incompetence or malfeasance, you have the duty to discharge, reassign, or take other appropriate action against the individual in order to protect your service recipients, other staff members, and your organization's assets. In some cases, such as child abuse, you may also be required by law to report even suspected abuse to a law enforcement or child protective services agency.

Make no mistake—staff screening is an important component of risk management for every organization. Screening, however, is not synonymous with risk management. Risk management entails a systematic examination of your organization's total operations in order to identify, assess, and control potential threats to its ability to accomplish its mission. The Nonprofit Risk Management Center offers resources to assist your organization to develop a comprehensive approach to risk management.

Bibliography

American Bar Association Center on Children and the Law, *Criminal History Record Checks: A Report for Nonprofits*, The National Assembly, Washington, DC: 1991.

Andler, Edward C., *Complete Reference Checking Handbok: Smart, Fast, Legal Ways to Check out Job Applicants*, AMACOM, New York, NY: 1998.

Atten, Donald W., and Joel S. Milner, "Child Abuse Potential and Work Satisfaction in Day Care Employees," *Child Abuse and Neglect*, Vol. 11, 1987, pp. 117-124.

Bell, Arthur H. *The Complete Manager's Guide to Interviewing: How to Hire the Best*, Dow Jones-Irwin, Homewood, IL: 1989.

Cleaves, Eileen, "Driver Screening: Who's Driving Your Trucks?", *Commercial Carrier Journal*, Cahners Business Information; Radnor, PA: 1998.

Cohen, Ronald J., Mark E. Swerdlik, and Douglas K. Smith, *Psychological Testing and Assessment*, 2nd Edition, Mayfield Publishing Company, Mountain View, CA: 1992.

Davis, Noy S. with Kimberly Dennis, Susan J. Wells, and Marsha B. Liss, *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, DC: April 1998.

Davis, Noy S., *The Effective Screening of Child Care and Youth Service Workers: An Analysis of the Law Impacting on the Use of Certain Screening Practices* (Draft Document), American Bar Association Center on Children and the Law, Washington, DC: August 1994.

Dennis, Kimberly and Noy S. Davis, *Effective Screening of Child Care and Youth Service Workers: A Review of the Literature*, American Bar Association Center on Children and the Law, Washington, DC: May 1991.

Finkelhor, David, *Sourcebook on Child Sexual Abuse*, Sage Publications, Newbury Park, CA: 1986.

Jackson, Peggy M., Leslie T. White, and Melanie L. Herman, *Mission Accomplished: A Practical Guide to Risk Management for Nonprofits*, Nonprofit Risk Management Center, Washington, DC: 1997.

Koralek, Derry, *Caregivers of Young Children: Preventing and Responding to Child Maltreatment*, U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, National Center on Child Abuse and Neglect, Washington, DC: 1992.

Lawry, Suzann S., Elisabeth Karlstrom, Candice Osborn, and Charles F. Gillespie, "Screening Tests for Pedophilia," *Criminal Justice and Behavior*, March 1994, pp. 115-131.

Matson, Scott, and Roxanne Lieb, *Megan's Laws: A Review of State and Federal Legislation*. Washington State Institute for Public Policy, Evergreen State College, Olympia, WA: October 1997.

McKelway, Jr., John M., "Employment: Impact of New EEOC Guidelines on Pre-Employment Screening," *Massachusetts Lawyers Weekly*, Lawyers Weekly Publications, Boston, MA: 1994.

Milner, Joel S., "Applications and Limitations of the Child Abuse Potential Inventory," *Early Child Development and Care*, Vol. 42, 1989, pp. 85-97.

Milner, Joel S., *Assessing Physical Child Abuse Risk*, Author's Manuscript, 1994.

Ones, Deniz S., Chockalingam Viswesvaran, and Frank L. Schmidt, "Comprehensive Meta-Analysis of Integrity Test Validity: Findings and Implications for Personnel Selection and Theories of Job Performance," *Journal of Applied Psychology*, Vol. 78, No. 4, August 1993, pp. 679-703.

Patterson, John C., *Child Protection: Guidebook for Child-Care Providers*, National Center for Missing & Exploited Children, Arlington, VA: 1991.

Patterson, John C., *Screening Volunteers to Prevent Child Sexual Abuse: A Community Guide for Youth Organizations*, National Assembly of National Voluntary Health and Social Welfare Organizations, Washington, DC: 1997.

Patterson, John C., *Screening Volunteers to Prevent Child Sexual Abuse: A Three-Step Action Guide*, National Assembly of National Voluntary Health and Social Welfare Organizations, Washington, DC: 1997.

Postol, Lawrence P., "A Reasonable Hardship? Complying With the Americans With Disabilities Act," *Risk Management*, Vol. 43, Issue 4, Risk and Insurance Management Society, New York, NY: April 1996.

SEARCH Group, Inc., *Compendium of State Privacy and Security Legislation: 1997 Overview*, Bureau of Justice Statistics, US Department of Justice, Washington, DC: 1997.

Seidman, Anna, and Charles Tremper, *Beyond the Myths About Disabilities and Risks*, Nonprofit Risk Management Center, Washington, DC: 1995.

Weisgrau, Toni, "Reference Checks Reduce Hiring Mistakes," *Third Sector Report*, March 1994, p. 8.

Yanagida, Evelyn H., and June W. J. Ching, "MMPI Profiles of Child Abusers," *Journal of Clinical Psychology*, Vol. 49, No. 4, July 1993, pp. 569-576.