

August 4, 2005

Mr. Richard A. Hertling
Deputy Assistant Attorney General
Office of Legal Policy
4234 Robert F. Kennedy Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

Subject: OLP Docket No. 100

Dear Mr. Hertling,

ChoicePoint submits these Comments in the above referenced docket in connection with the Department of Justice's requirement under Section 6403 of the Intelligence Reform and Terrorism Prevention Act of 2004 to, "make recommendations to Congress for improving, standardizing, and consolidating the existing statutory authorizations, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes".

ChoicePoint is a publicly traded company (NYSE – CPS) providing information and technology solutions for businesses, government agencies and nonprofit organizations. Among the services which ChoicePoint provides to public and private sector clients are public filing information, including criminal history record information for employment background checks, licensing and other authorized purposes. ChoicePoint's Workplace Solutions division supports the employment screening needs of more than 45% of the Fortune 500 and a majority of the nation's leading volunteer organizations, particularly those with a focus on serving children and young adults. A key component for many of these programs is a search of our National Criminal File, a proprietary criminal records database.

The use of our commercial criminal records database has provided an efficient, cost effective method for volunteer organizations and private sector employers to quickly identify felons, sexual predators and others who present an unacceptable risk to be placed in a position of trust.

Since its launch just over two years ago, ChoicePoint's Volunteer Select screening program has enabled churches, youth sports associations and other volunteer groups to screen more than one million volunteers. More importantly, through the use of our commercial criminal records database, Volunteer Select has identified more than 11,000 felons and sexual predators.

The question of how best to provide criminal history checks for non-criminal justice purposes, including employee background purposes, is an issue of profound and growing importance. The extent to which, and the way in which, the nation's laws facilitate effective and appropriate criminal history record background checks impact numerous and critical values, including:

- The safety of children, the elderly and other vulnerable populations
- Homeland security
- The ability of employers to manage risk effectively and to avoid unnecessary legal risk
- The ability of our nation's employers to deliver goods and services effectively and cost-effectively
- The extent to which applicants and consumers are treated with fairness and with respect for their privacy rights and interests
- The nation's ability to reintegrate offenders so that they can assume productive positions in the workplace

Laws passed by state legislatures indicate the high value put on background screening. State legislatures have required government agencies to use background checks for employment applications for positions that, "because of the special trust or responsibility or sensitive location of those positions "require that the person employed be subject to a background check. Fla. Stat. §110.1127 (1). For example, Florida county agencies are required to run background checks on "any position of county employment or appointment which the governing body of the county finds is critical to security or public safety, or for any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility that the governing body of the county finds is critical to security or public safety." Fla. Stat. §125.5801. The same requirement applies to municipal employees. Fla. Stat. §166.0442.

The story is the same in Texas. For example, to obtain a license to operate a home health service, a hospice or provide personal assistance, the application must provide "identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable the department to conduct criminal background checks on those persons;" Tex. Health & Safety Code § 142.004.

The Maryland General Assembly has required background checks before hiring anyone to work with children, (Md. Family Law Code §5-561, 5-563, 5-566) dependent adults, (Md. Health-General Code §19-1902 et seq.) and in public schools (Md. Education Code §6-113). These examples are provided simply to illustrate the extent to which state governments already recognize the importance of doing background checks in dozens of contexts.

Nonetheless, in many states today and at the federal level, the relevant statutes and regulations restrict employers from obtaining access to criminal history record information held by the FBI and by state law enforcement agencies. In addition, many states – for budgetary and other reasons – have not been able to establish an infrastructure which would allow employers, acting through state agencies, to obtain some information from and through the state agency that an applicant is suitable, at least from a criminal history record standpoint, for a particular position.

ChoicePoint's Workplace Solutions business provides employers with criminal history record information about applicants and incumbent employees. The use of background screens has taken on sharply increased importance to corporate users and other employers since September 11, 2001. According to a February 2005 report from the Society for Human Resource Management, 68 percent of companies surveyed said they run a criminal check on every applicant, thirteen percent say they sometimes perform a check for criminal background. Associated Press, February 3, 2005. That is up 30 percent from 1996, "making the practice as common as checking references or prior work histories." <http://www.msnbc.msn.com/id/4018280>.

Depending upon the status of the employer – *i.e.*, the industry in which the employer operates; its for-profit or nonprofit status; whether it is a governmental, non-criminal justice agency, etc. – as well as the needs of the employer and the sensitivity of the position for which the applicant is applying, the background screening product which

ChoicePoint and other commercial vendors provides frequently includes more than criminal history record information. This additional information may include credit records (particularly for employees in positions of trust and handling financial matters); driving records (particularly for employees who will be driving employer vehicles); employment history; educational history; licensure status; and application verification data.

The criminal history record information which ChoicePoint provides comes from court records; corrections and jail records; law enforcement agencies, including state central repositories in states that are open record states or that permit such access; and other public record sources. In every instance, ChoicePoint relies only upon reputable sources.

Moreover, all of the criminal history record information which ChoicePoint (and other commercial vendors) provide for employment background screening purposes is subject to the protections of the Fair Credit Reporting Act. Under the Fair Credit Reporting Act, applicants receive notice that a consumer report, including criminal history record information, will be sought; receive an opportunity to approve, *i.e.*, consent to this process, or disapprove, in which case a report is not provided; receive access to any subsequent report and an opportunity to correct the report; and other critical consumer and privacy rights.

We believe that experience has shown that the criminal history record employment background screening product which ChoicePoint and other commercial vendors provide is a high-value product. Indeed, tens of millions of such reports are ordered from ChoicePoint and other commercial providers every year and the market for these reports continues to grow rapidly.

These commercial vendor criminal history background screening reports are marked by numerous positive features:

- The fees that are charged by ChoicePoint and other commercial vendors for criminal history record employment background checks are customarily lower than the fees charged by the FBI or by state repositories.
- The response times provided by ChoicePoint and other commercial vendors are customarily quicker than that provided by many state agencies.

- ChoicePoint and other commercial vendors provide responses on a “name” basis in combination with other identifiers and demographic information. The industry’s record of matching the right individual with the right record is quite strong. Were it not strong, we simply do not believe that employers and other authorized users would continue to buy commercial vendor criminal history employment checks in increasing numbers.
- Further, the accuracy and completeness of criminal history record information for employment background and other authorized purposes is good and getting even better. In fact, because many commercial vendor checks are based upon court records, and because not all court records are reported to state repositories, and certainly not reported to the FBI, the commercial vendor check, not infrequently, contains criminal history record information not found in a check of state or FBI records.
- As noted, commercial vendors are required to comply with the Fair Credit Reporting Act when they provide criminal history record information for employment screening purposes. As stated earlier, the Fair Credit Reporting Act addresses accuracy, timeliness, confidentiality and provides consumers with an array of important access, correction and other rights.
- Commercial vendors provide employers with the entire record which the commercial vendors have retrieved, rather than an adjudicatory message. This means that employers get to see the actual record for themselves and make their own suitability determinations. Further, under the Fair Credit Reporting Act, employers are prohibited from using the information for any other purpose or from sharing the criminal history record information with third parties.
- Commercial vendors are subject to rigorous enforcement by the Federal Trade Commission, as well as by state attorneys general and, thus, are regulated in a way that the FBI and state repositories are not.
- Further, unlike state and federal agencies, commercial vendors are subject to consumer redress through lawsuits brought by consumers or other means.

The Department of Justice study and Report to the Congress presages an important and timely public debate. That debate is likely to focus on:

- The key role and contribution made by public records.
- Assuring that all employers have appropriate access to criminal history record information for background check purposes.
- Helping to assure that criminal history background checks are accurate, complete and up- to-date.

- Helping to assure that the fees charged to employers and, particularly, not-for-profit organizations do not chill the willingness or the ability of these organizations to obtain criminal history record information about their employees and volunteers.
- Helping to assure that employers and not-for-profit organizations receive a timely response to their criminal history record background check inquiries. This is particularly important for organizations sponsoring summer camps or other activities for children or the elderly and relying upon volunteers and interns whose term of duty is necessarily limited.
- Finding ways to deliver the full criminal history record report to employers and other end users while appropriately protecting applicants' privacy and confidentiality rights and interests.
- Finding ways to permit and encourage rehabilitated offenders to assume a productive role in the workplace.

All of this will require a national debate. Ultimately, all of this will require a stronger partnership among the FBI; state law enforcement agencies; other federal and state criminal justice agencies; and commercial vendors including, most particularly, consumer reporting agencies. ChoicePoint looks forward to participating in that process.

Respectfully submitted,

David W. Davis
Corporate Secretary
and Vice President, Government Affairs

cc: Ms. Alice Neff Lucan, Esq.

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