



# Fingerprinting, Background Checks and Municipal Licenses

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Prepared by the Legislative Reference Bureau

**Final Issue Briefing**

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Briefing by the Legislative Reference Bureau reviewing the issue of fingerprinting and background checks for applicants of occupational licenses issued by the City, including information on federal, state and local laws; a brief legislative history of fingerprinting in Milwaukee; and a description of the pros and cons of fingerprinting.

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# INTRODUCTION

This issue briefing, developed at the request of the City of Milwaukee's Local Business Action Team, examines the issue of fingerprinting and background checks for applicants of occupational licenses issued by the City.

**Section I** of the report looks at federal regulation, and **Section II** examines the role of state governments in regulating fingerprinting and background checks – specifically those involving occupational licenses. In general, federal laws provide broad authority to states and municipalities to conduct background investigations, and state regulations vary greatly in both scope and accuracy.

Regardless, all states have established policies, practices, and standards for performing state and national criminal history record checks for noncriminal justice purposes, and Wisconsin is no exception. **Section III** briefly and broadly examines Wisconsin's regulations concerning fingerprinting. Under Wisconsin law, for instance, anyone convicted of a felony is permanently barred from obtaining over 100 different professional licenses.

**Section IV** provides a summary of selected U.S. municipalities with some form of fingerprinting requirements for occupational licenses, and **Section V** examines regulations in effect in Wisconsin's major cities. This section also includes an historical summary of Milwaukee's regulation.

The report concludes in **Section VI** with a brief presentation of the main arguments for and against requiring fingerprinting for occupational licenses.

# I. FEDERAL REGULATION

## Criminal Background Checks

The first federal criminal history database was created in 1924. According to a recent report<sup>1</sup> by the National Employment Law Project (NELP),<sup>2</sup> “*the initial database contained 810,000 fingerprint records. Since that time, both the database content and its usage have greatly expanded. Today, the FBI maintains criminal history records on more than 75 million individuals, and rap sheets are used for both criminal and noncriminal justice purposes, including employment background checks.*”

Specifically, the FBI’s Criminal Justice Information Services (CJIS) Division was established in 1992 “*to serve as the focal point and central repository for criminal justice information services.*”<sup>3</sup> The CJIS administers several crime information databases, including the Integrated Automated Fingerprint Identification System, the National Crime Information Center and the National Instant Criminal Background Check System.

There are over a dozen federal laws permitting or requiring criminal background checks for certain civil (employment and licensing) purposes, many established in the last several decades. For instance, according to a 2006 article in the University of St. Thomas Law Journal:<sup>4</sup>

The September 11<sup>th</sup> attacks led to legislation mandating criminal background checks for persons with access to controlled areas in maritime facilities (Port and Marine Security Act of 2002), for persons seeking access to biological agents (the Bioterrorism Preparedness Act of 2002), for persons who work as airport security personnel, airport and airline employees, and for air marshal and other transportation personnel (the Aviation and Transportation Security Act of 2001), and for certain individuals seeking entry to the U.S. and for persons applying for hazardous materials licenses (U.S. Patriot Act).

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<sup>1</sup>Neighly, Madeline, and Maurice Emsellem. 2013. *Wanted: Accurate FBI Background Checks for Employment*. The National Employment Law Project. <http://www.nelp.org/page/-/SCLP/2013/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf?nocdn=1>.

<sup>2</sup> The NELP is “*a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers... Through its Second Chance Labor Project, NELP promotes the employment rights of people with criminal records [and] seek[s] to ensure fairer and more accurate criminal background checks and to reduce unnecessary and unfair barriers to employment.*”

<sup>3</sup> ‘Criminal Justice Information Services Division’. 2015. FBI. Accessed February 25. <http://www.fbi.gov/about-us/ten-years-after-the-fbi-since-9-11/just-the-facts-1/criminal-justice-information-services-division>.

<sup>4</sup> Jacobs, James B. 2006. ‘Mass Incarceration and the Proliferation of Criminal Records’. *University of St. Thomas Law Journal*. Vol. 3: Iss. 3, Article 2. <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1090&context=ustlj>.

Dozens of private companies also compile their own databases, procured from publically-available information (such as court records) and provide this information to employers, landlords and others. According to the above article, for instance, “*National Online Data claims that it draws on statewide criminal history databases from thirty-eight states, encompassing more than 75 percent of the U.S. population, to maintain its National Background Directory.*”

Such companies must abide by the Fair Credit Reporting Act, but are able to report all non-expunged convictions within the United States, including, in some instances, arrests not leading to conviction within the previous 7 years. Individual applicants must consent to private background checks, and if they are not hired based on their background checks, they must be notified about which service providers performed the checks.

In all cases, fingerprints are required to be submitted for federal criminal background checks. Given that fingerprinting has become ubiquitous in the criminal justice system, the expansion of background checks for civil purposes may not be surprising, but it is certainly a recent phenomenon. As the NELP notes:

When FBI background checks were first authorized for employment purposes during the Cold War, the authorization was limited to federal government workers. Today, FBI background checks are authorized for occupations ranging from port workers and truck drivers to health care workers and school employees.

**Figure 1. Fingerprints taken c.1859-60 by William James Herschel.<sup>5</sup>**



<sup>5</sup> William James Herschel is often credited as one of the first Europeans to note the value of fingerprints for identification. In the 1850s, as a British officer working in India, he used fingerprints for identification on contracts.

## Regulations Relating to Social Security Numbers

According to a 2010 report by the National Conference of State Legislatures:<sup>6</sup>

Established in 1936 by the Social Security Administration, Social Security numbers (SSNs) were originally used to track earnings and eligibility for Social Security benefits. Recognizing the universal nature of SSNs, Congress enacted several laws that require the use of SSNs for purposes other than Social Security, such as food stamps, Temporary Assistance for Needy Families, and child support enforcement, as well as the Commercial Driver's License Information System and the Internal Revenue Service.

The Privacy Act of 1974 addressed some of the concerns relating to the use of personal information by private and public entities. It provides that, "*it shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.*"

The Privacy Act of 1974 also provides that "*any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.*" Although this law provides some limits on how public agencies may require their divulgence, certain exceptions have resulted in only minimal restrictions on governmental use of the SSN. For instance, according to a 2012 Congressional Research Service report:<sup>7</sup>

Today, an individual needs an SSN to pay taxes, obtain a driver's license, and open a bank account, among other things. The continued use of, and reliance on, SSNs by public and private sector entities and the potential for SSN misuse, including identity theft concerns, has led to increasing efforts by governmental entities to limit the use and disclosure of SSNs. However, no single federal law comprehensively regulates SSN collection and confidentiality.

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<sup>6</sup> National Conference of State Legislatures, and Heather Morton. 2015. 'Social Security Number 2010 Legislation.' Accessed April 21. <http://www.ncsl.org/research/financial-services-and-commerce/social-security-number-2010-legislation.aspx>.

<sup>7</sup> Swendiman, Kathleen S. 2012. The Social Security Number: Legal Developments Affecting Its Collection, Disclosure, and Confidentiality. Congressional Research Service RL30318. [http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/RL30318\\_02082012.pdf](http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/RL30318_02082012.pdf).

Regarding private sector use of SSNs, this report further notes that:

Private sector use of the SSN is widespread, including activities such as using SSNs for data exchanges to assess credit risk, tracking patient care among multiple providers, locating bankruptcy assets, and providing background checks on new employees. One may be asked to provide one's SSN for such diverse activities as taking out an insurance policy, checking into a hospital, applying for a store charge account, buying a car, setting up a utility account, or joining a club.

Section 7 of the Privacy Act 1974 and related federal statutes do not impose restrictions on private sector use of the SSN. Thus, private businesses and organizations may, in most circumstances, request an individual's SSN in exchange for goods or services, and no general Federal law regulates such transactions. Although an individual can refuse to give his or her SSN to a company or organization, the business can also refuse to provide the goods or services unless the SSN is provided.

SSNs are not required to perform federal background checks. Private or other name-based background checks, likewise, do not require SSNs, but they may be used to verify a person's identify or to more easily and accurately identify past addresses to initiate checks in specific counties. SSNs are not typically used in researching criminal records themselves.

### Emerging Technologies

The FBI's Next Generation Identification (NGI) Biometrics Database expands the federal government's criminal and civil fingerprint database to include various emerging biometric identifiers, including iris scans, palm prints and voice data. In addition to this data, all 50 states currently collect and share DNA records through the FBI's Combined DNA Index System database.

Several states have also signed memorandums of understanding with the FBI to share and access facial-recognition data through the NGI database, and various standard-setting bodies (including the National Institute for Standards and Technology) have developed standards for the exchange of biometric data.

However, although the collection and use of biometric data has greatly increased in recent years, their widespread application in local licensing or permitting appears to be limited. The LRB was unable to find any codified references to biometric data in any of the cities listed in Table 1 on page 15.

## II. STATE REGULATION

In general, state regulations regarding background check requirements for certain licenses vary, but all states have the capability to require and perform such checks. For instance, according to a 2009 U.S. Department of Justice (USDOJ) report<sup>8</sup> (using federal, state and local data on fingerprint processing provided by the CJIS):

- **All states have established policies, practices, and standards** for performing state and national criminal history record checks for noncriminal justice purposes. In FY 2009, the CJIS Division received over 9.3 million civil fingerprint submissions from the 50 states and the District of Columbia.
- **Forty-nine states and the District of Columbia have enacted statutes** authorizing national fingerprint-based criminal history background checks on one or more categories of employees, licensees or volunteers who work for organizations that provide care to children.<sup>9</sup>
- **The average processing time** for a live-scan submission is one day. The average processing time for a manual mail-in submission is five days. The average processing time for a card-scan submission is 10 days.
- **FBI charges** for fingerprint-based submissions vary between \$18 and \$24.
- **State costs** vary for name-based checks and fingerprint-based checks.

Regarding this last point and according to a July 2012 white paper,<sup>10</sup> Child Care Aware of America conducted a phone survey of states in the spring of 2012, which found an average cost of \$20.31 for fingerprint checks against state records.

Finally, regarding state laws in general, a July 2011 report by the National Conference of State Legislatures<sup>11</sup> notes that, “*state laws generally allow denial of employment if the conviction is*

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<sup>8</sup> U.S. Department of Justice. 2009. *Interim Report on the Feasibility of Performing Fingerprint-Based Criminal History Background Checks on Individuals That Participate in National Service Programs*. <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/interim-report-nsp.pdf>.

<sup>9</sup> In January 2014, Wisconsin began requiring fingerprint-based (FBI) background checks for child care providers, their employers and household members. The fee is \$31.50.

<sup>10</sup> *Child Care Aware of America. 2012. Background Checks: It Is Time to Protect Children in Child Care (White Paper)*. [http://www.naccrra.org/sites/default/files/default\\_site\\_pages/2012/background\\_checks\\_white\\_paper\\_final\\_july\\_6.pdf](http://www.naccrra.org/sites/default/files/default_site_pages/2012/background_checks_white_paper_final_july_6.pdf).

<sup>11</sup> Kincaid, Erin, and Alison Lawrence. 2011. *Ex-Offender Employment Opportunities*. National Conference of State Legislatures. <http://www.ncsl.org/documents/cj/pew/ex-offenderreport.pdf>.



*job-related or otherwise justified. In North Dakota, for example, a professional license can be denied if the conviction has a 'direct bearing upon a person's ability to serve the public' or if it is determined the individual has not been sufficiently rehabilitated."*

The 2009 USDOJ report further concludes that:

In the absence of state statutes, many states use federal laws, such as the NCPA [National Child Protection Act], as amended by the VCA [Volunteers for Children Act] and the Adam Walsh Child Protection and Safety Act of 2006, to perform state and national criminal history record checks on individuals who work with children, the elderly, or individuals with disabilities.

The FBI acknowledges that the state repository is the most complete and accurate source of criminal history record information within the state. Furthermore, since states maintain records that are not available at the national level, e.g. sex offender records that do not qualify for entry into the National Sex Offender Registry file and arrests and dispositions not reported to the FBI, they have more information to identify individuals who may be unsuitable to work in a particular job.

**Figure 3. Clerical employees of the L.A. Police Department being fingerprinted, c. 1928.**



### III. WISCONSIN, SPECIFICALLY

According to the Wisconsin Department of Justice (WDOJ) website,<sup>12</sup> the department's Crime Information Bureau (CIB) manages Wisconsin's fingerprint-based criminal history database. Specifically, the WDOJ notes that "*the centralized criminal history (CCH) database contains detailed information of arrests, arrest charges, prosecution, court findings, sentences, and state correctional system admissions and releases. The database is an accumulation of information submitted by Wisconsin law enforcement agencies, prosecutors, courts, and the Wisconsin Department of Corrections as required by applicable statutes.*"

The Wisconsin DOJ further notes that:

Fingerprint-supported records can be used to confirm whether or not a criminal record in the file belongs to a particular individual. Arrests without supporting fingerprints or related dispositions are not included in the criminal history database.

Because name-based checks are quicker, cheaper, and easier than fingerprint-based searches, most background checks required in Wisconsin are name-based. In many instances they are the only type of checks available to employers, landlords, and other individuals requesting a background check. Because name-based checks use non-unique identifying data, such as name and date of birth, they are less reliable than fingerprint-based checks. It is possible for multiple persons to share a name and date of birth. In some cases, a name-based check may pull up a criminal record that does not belong to the subject of the search.

Like many states, Wisconsin requires some professions to submit fingerprints for federal background checks. For instance, the Wisconsin Department of Public Instruction (DPI), according to its website,<sup>13</sup> is required by law to conduct background checks on every applicant for a Wisconsin educator license. "*The primary purpose of a background check is to determine if the applicant has engaged in any behavior that endangers the health, welfare, safety or education of pupils,*" the DPI notes. This background check includes the submission of fingerprints.

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<sup>12</sup> 'Wisconsin Department of Justice - Background Check & Criminal History Information'. 2015. Accessed February 25. <http://www.doj.state.wi.us/dles/cib/background-check-criminal-history-information>.

<sup>13</sup> 'Wisconsin Department of Public Instruction - Teacher Education, Professional Development & Licensing'. 2015. Accessed February 25. <http://tepd.dpi.wi.gov/backgroundcheck/background-checks-licensure>.

The LRB did not further examine specific professions which may require by Wisconsin law the submission of fingerprints for background checks, but Wisconsin law does make people convicted of a felony ineligible for more than 100 professional licenses, according to the National Inventory of the Collateral Consequences of Conviction.<sup>14</sup>

This practice does not appear to be altogether uncommon. For instance, according to an article in the Atlantic,<sup>15</sup> “*the Texas Medical Board requires fingerprints for medical licenses and the Texas Nursing Board requires them for nursing licenses. Same goes for every job type governed by the Texas Racing Commission (ranging from assistant farrier to race announcer to jockey), as well as real estate agents, lawyers, and speech language pathologists.*”

Finally, although the Wisconsin Fair Employment Act expressly bars discrimination in employment and licensing decisions on the basis of an individual’s criminal record, according to a recent white paper by the National Association of Criminal Defense Lawyers:<sup>16</sup>

It is not unlawful to discriminate against those previously convicted of a crime if the circumstances of the particular criminal offense “substantially relate to the circumstances of the particular job or licensed activity,” or if the person is not bondable. § 111.335(1)(c). It is also not employment discrimination for an educational agency to refuse to employ, or to terminate the employment of, an individual who has been convicted of a felony, whether or not the circumstances of the crime relate to the job. § 111.335(d)(2).

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<sup>14</sup> Staff, CCRC. 2014. ‘Sexting Prosecutions Derailed by Concerns about Collateral Consequences - Collateral Consequences Resource Center’, November. Collateral Consequences Resource Center. <http://ccresourcecenter.org/2014/11/20/sexting-prosecutions-derailed-by-concern-over-employment-consequences/>.

<sup>15</sup> ‘Texas Architects Will Soon Have to Be Fingerprinted’. 2015. CityLab. Accessed March 10. <http://www.citylab.com/work/2013/12/texas-architects-will-soon-have-be-fingerprinted/7825/>.

<sup>16</sup> Colgate Love, Margaret. 2014. *NACDL Restoration of Rights Resource Project: Wisconsin*. National Association of Criminal Defense Lawyers. [https://www.nacdl.org/uploadedFiles/files/resource\\_center/2012\\_restoration\\_project/state\\_narr\\_wi.pdf](https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/state_narr_wi.pdf).

## IV. MAJOR U.S. CITIES

### Boston, MA

In 2011, Boston passed an ordinance authorizing the Boston Police Department (BPD) to “*obtain fingerprints from individuals who apply for certain licenses that the department issues.*” Prior to this change, the BPD could only conduct background investigations using an individual’s name and only in the state of Massachusetts. After the passage of the ordinance, BPD could conduct background checks using fingerprint records in all 50 states.

The authority for the BPD to obtain civilian fingerprints as part of certain city-issued applications was derived from a 2010 change in Massachusetts state law. Boston’s ordinance only applies to licenses for taxicab drivers, commercial bike messengers, hawkers and peddlers, pawnbrokers, sight-seeing vehicle operators, and certain members and appointments of the police force.

### Chicago, IL

Like Boston, the City of Chicago only requires fingerprinting for certain businesses. According to the City’s website, “*some business license applications require a fingerprint-based criminal history investigation for every owner, corporate officer, member or any person with a 25% or more interest in the business, as well as every on-site manager.*”

These businesses include: adult family care centers, expediter companies, expeditors of natural persons, children’s services facilities, certain weapons dealers, shooting range facilities, public places of amusement, public chauffeurs, horse-drawn carriages, pedicabs, taxicabs, public passenger vehicles other than taxicabs and transportation network providers.

### New York, NY

According to the New York City Department of Education (NYCDE) website, “*to keep our school communities safe, we require all employees to be fingerprinted and undergo a background check before beginning work...Before you begin working, your fingerprints must be cleared by the state and federal government, as well as our Office of Personnel Investigations.*” The NYCDE charges a fee of \$130 for the background check.

The LRB did not examine additional City of New York licensing regulations in-depth, but it appears such regulations are not uncommon at the state level. For instance, according to a March 2014 report by the Rochester Institute of Technology’s Center for Public Safety

Initiatives,<sup>17</sup> *“there are over one hundred occupations from which people with criminal records are restricted by New York [state] licensing laws, including barbering, massage therapy, health care, teaching, social work, counseling, notary public, plumbing, and funeral directing.”*

#### Olympia, WA

According to its website, the City of Olympia *“regulates certain occupations that, by the nature of their work, present a heightened safety risk to the public. The City requires that these occupations obtain an Occupational Permit to ensure that those who are engaged in the regulated occupations meet certain background criteria.”*

The City notes that its occupational license is different from and in addition to any required business licenses. Businesses required to obtain an occupational permit in Olympia include door-to-door solicitors, for-hire drivers and locksmiths. The permit costs \$70, \$40 of which is required for the fingerprinting and background check. Background checks are required to be completed every 3 years and permits renewed annually.

#### Reno, NV

The City of Reno requires that, *“every person submitting an application for a privileged business license [be] subject to...an FBI fingerprint-based investigation.”* This provision applies to all of the following business licenses: Adult interactive cabaret; alcohol service and sales; pawnbrokers and secondhand dealers; auctions and auctioneers; escort and outcall services; peddlers, solicitors and temporary merchants; sidewalk vendors; towing and booting companies; vehicles for hire; and tobacco paraphernalia retailers.

#### Others

Many additional municipalities require fingerprinting for certain and specific business licensees. For instance, Boise, ID, requires child care facilities, alarm services, taxicab drivers, auctions and auctioneers, massage establishments, pawn brokers, non-consent towing companies and precious metal dealers to submit fingerprints with license applications. Other notable businesses in other U.S. cities include ice cream truck vendors (Tucson); ticket brokers (Indianapolis); and auto wreckers, salesmen and dealers (Houston). A summary of fingerprinting requirements in cities similar in size to Milwaukee is provided in tables 1 and 2 on page 14 and 15, respectively.

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<sup>17</sup> Dougherty, Jamie, and John Klofas. 2014. 'Banning the Box' to Increase Ex-Offender Employment: Related Issues and a Policy Research Proposal for Rochester, NY. Center for Public Safety Initiatives, Rochester Institute of Technology. <https://www.rit.edu/cja/criminaljustice/sites/rit.edu.cja.criminaljustice/files/docs/WorkingPapers/2014/Ban%20the%20Box.pdf>.

**Table 1. Comparison of Licenses or Permits Requiring Fingerprints in Milwaukee, Similar-sized U.S. Cities.**

City	Alarm Businesses	Amusement Machine Distributors	Auto Wreckers	B&B Establishments	Certified Providers	Direct Sellers	Escort Services	Extended Hours Establishments	Filling Stations	Food Dealers/ Peddlers	Home Improvement Salespersons	Ice Cream Peddlers	Junk Collectors & Dealers	Pawnbrokers	Precious Metal and Gems Dealers	Professional Photographers	Public Entertainment Premises	Public Passenger Vehicles	Secondhand Dealers	Tattooing & Body Piercing	Used Bike, Tire & Battery Dealers	Used Car Dealers	Used Car Dealers - Parts Only	Various Liquor Licenses	
Austin																	Y							Y	
Cleveland																	Y								
Columbus													Y				Y	Y							
Fresno		Y												Y			Y	Y	Y						
Indianapolis														Y				Y	Y						
Jacksonville		Y					Y										Y								
Kansas City																	Y	Y						Y	
Las Vegas	Y									Y				Y			Y		Y					Y	
Memphis	Y																	Y							
Milwaukee	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Orleans							Y											Y					Y	Y	
Oklahoma City		Y				Y				Y					Y		Y								
Raleigh																		Y							
Tucson	Y	Y					Y			Y							Y								
Virginia Beach						Y							Y	Y	Y				Y						

**Table 2. Additional Licenses or Permits Requiring Fingerprinting, Similar-sized U.S. Cities.**

City	Licensed Activity
<b>Austin</b>	Special event temporary chauffeur.
<b>Cleveland</b>	Armed security guards, massage establishments.
<b>Columbus</b>	Massage or bath establishments, peer-to-peer transportation network drivers, billiard rooms.
<b>Fresno</b>	Billiard rooms, auctioneers, massage businesses, card rooms, tow trucks.
<b>Indianapolis</b>	Ticket brokers, flea market dealers.
<b>Jacksonville</b>	Electronic game promotions, adult entertainment and services, dancing entertainment establishments.
<b>Kansas City</b>	Airport taxicabs, surety recovery agents, massage shops, nude modeling studios, body painting artists.
<b>Las Vegas</b>	<p>“Work cards” (which require fingerprints) are required for employees at: casinos; child care facilities; adult businesses; carnivals; traveling shows; and restaurant, bar and convenience stores where alcohol is handled.</p> <p>The following must also obtain work cards: security guards; locksmiths; pawnbrokers; mobile food vendors; peddlers and temporary merchants; property managers; entertainers; commercial dance studio workers; and martial arts instructors.</p> <p>Fingerprints are also required for "privileged businesses", including: adult nightclub establishments; alcoholic beverage establishments; burglar alarm services; erotic dance establishments; gaming; ice cream trucks; locksmiths and safe mechanics; massage establishments; medical marijuana establishments; pawnbrokers; psychic arts establishments; reflexology businesses; secondhand dealers; and teenage dancehalls or nightclubs.</p>
<b>Memphis</b>	Horse-drawn carriages, vehicles for hire, special police officers, alarm businesses not licensed by the state
<b>New Orleans</b>	Booting service businesses, teen clubs, massage establishments.
<b>Oklahoma City</b>	Youth dance halls, barterers, auctioneers, peddlers/solicitors.
<b>Raleigh</b>	None.
<b>Tuscon</b>	Fortunetellers, massage establishments/therapists, youth dance halls.
<b>Virginia Beach</b>	Solicitors.

## V. MAJOR WISCONSIN CITIES

Of the 5 largest municipalities in Wisconsin (after Milwaukee), 4 require fingerprinting for at least one type of license or permit, with Kenosha being the lone exception in that no fingerprinting requirements appear in its code. Specific fingerprinting requirements are provided below.

### Appleton

According to Appleton's code, "*all operators or employees working for any escort service and independent contractors*" are required to provide photographs and fingerprints to the Appleton Police Department. This appears to be the only license requiring the submission of fingerprints.

### Green Bay

Anyone applying for a sexually-oriented adult-entertainment establishment license or an escort service license (including all escorts), according to Green Bay's code, is required to submit to fingerprinting. No other licenses established by the City of Green Bay require fingerprinting.

### Kenosha

Kenosha's code does not specifically require fingerprinting for any license or permit application, but it does require criminal background investigations for staff of any licensed refuge centers whose clientele include minors; for certain liquor licenses; and for all cabaret, peddler, pawnbroker, secondhand article, and jewelry dealer licenses.

### Madison

The City of Madison requires fingerprints only for certain licenses and permits. These include secondhand dealers, hawkers, peddlers, truckers, massage establishments, and massage technician's and manager's licenses, and solicitor's and canvasser's permits.

### Racine

All persons applying for massage establishment, non-registrant massage therapist and private security person permits in Racine are required to submit fingerprints. Further, according to Racine's code, any "*person possessing a valid secondhand article or jewelry dealer license issued by a county or another municipality of the State of Wisconsin...may operate a business in the city of Racine as a secondhand article or jewelry dealer...without obtaining a license*" if the person submits to an investigation, to include fingerprinting.

Fingerprinting does not appear to be a requirement for secondhand article or jewelry dealer



licenses granted by the City of Racine, but the City's code does note that applicants are to be investigated by the Police Department *"in order to determine whether the applicant has been convicted within the preceding ten years of a felony or within the preceding ten years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation, including any violations of state or local permitting or licensing laws."*

### Milwaukee

Fingerprinting requirements in Milwaukee date back to at least 1942, when references appear in the text of a newly-created section of the code (s. 90-57.1 – "Qualifications of Class 'D' Licensees"). The reasoning behind the creation of this section is not provided in City records.

Fingerprinting requirements continued to be implemented for individual licenses or permits until April 11, 2012, when the Council adopted Ordinance File Number 110991, which standardized fingerprinting requirements for all license and permit applicants. Specifically, s. 85-21-1 of the code, now states that *"each applicant for a license or permit subject to review by a licensing committee of the common council shall be fingerprinted in a manner directed by the chief of police unless otherwise provided in this code."* This ordinance exempts persons already licensed by the city when that person is renewing a license.

The code was further amended on January 15, 2013, by Ordinance File Number 120948, which established fees of \$10 (city residents) and \$15 (non-city residents) for fingerprinting by the Police Department (when requested by the person being fingerprinted). Currently, the City requires fingerprints for the following categories of licenses and permits:

- Alarm Businesses
- Amusement Machine/Jukebox Distributors
- Auto Wreckers
- Bed & Breakfast Establishments
- Certified Providers (emergency medical)
- Direct Sellers
- Escort Services
- Extended Hours Establishments
- Filling Stations
- Home Improvement Salespersons
- Ice Cream Peddlers/Food Dealers
- Junk Collectors & Junk Dealers
- Pawnbrokers
- Precious Metal and Gem Dealers
- Professional Photographers
- Public Entertainment Premises
- Public Passenger Vehicles & Drivers
- Secondhand Dealers
- Secondhand Vehicle & Parts Dealers
- Tattooing & Body Piercing Businesses
- Used Bike, Tire & Battery Dealers
- Various Liquor Retailers.

## VI. PROS AND CONS

### Pros

Proponents of fingerprinting-based background checks contend that such checks are more comprehensive and more accurate than name-only background checks, and that it is in the interest of the health, safety and welfare of the public to perform these checks. The California Department of Justice, for instance, puts it this way:<sup>18</sup>

Securing a criminal background check prior to employment, licensure, or certification provides a hiring or licensing authority an important resource, which aids in the evaluation of the applicant. These applicants are often candidates for positions that place them in a position of trust for some of California's most vulnerable citizenry, elderly, and dependent adults and children. As such, it is vital for the hiring or licensing authority to be aware of specified active arrests or convictions. Entrusting applicants with the responsibility of the position prior to a criminal background check potentially jeopardizes the safety and integrity of the workplace and may leave some individuals exposed to unnecessary harm. Employment and licensing authorities may also face legal liability if applicants with specified active arrests or convictions are employed or licensed when statute prohibits such action based on the successful completion of a criminal background check.

Regarding thoroughness, specifically, fingerprint-based background checks may help hiring or licensing authorities identify applicants making false claims relating to applicable criminal activity which occurred in another state. Crimes committed under an alias or in another state may be missed if using a name-only background check.

Fingerprint-based background checks generally include criminal records going back to the beginning of an applicant's history and may include arrest records, convictions, warrants, juvenile records (if provided by the state), dismissed charges and not-guilty verdicts, sex offender registry information, physical characteristics (height, weight, tattoos, etc.), aliases, and – in some cases – misdemeanors and case dispositions.

Name-based background checks, on the other hand, are typically quicker, cheaper and easier to administer than fingerprint-based searches, but may be less reliable and limited to a specific jurisdiction (typically the state). Some private vendors have created proprietary databases from

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<sup>18</sup> 'Fingerprint Background Checks'. 2015. State of California, Department of Justice. Accessed March 11. <http://oag.ca.gov/fingerprints>.

public court records, correctional facilities and criminal history record repositories from many states, allowing employment and licensing authorities to perform name-based background checks for fees.

However, state laws vary on what data is publicly available, commercial databases may not have important disposition information, and these types of background checks can generally only provide 7 years of information, in accordance with the Fair Credit Reporting Act. For instance, state laws generally dictate if sex offenses are made public, so it may be possible for a person found guilty of a “lower-level” sex offense to show up under a fingerprint check, but not be listed on a public website due to the requirements of the state.

### Cons

Opponents of fingerprint-based background checks (and, often, background checks, in general) often contend that they are an invasion of personal liberty and lead to discrimination. For instance, according to a 2006 article in the University of St. Thomas Law Journal:<sup>19</sup>

The criminal justice system feeds on itself. The more people who are arrested, prosecuted, convicted, and especially incarcerated, the larger is the criminally stigmatized underclass screened out of legitimate opportunities, steered toward criminal careers and further incarceration. Wider dissemination of criminal history records through modern information technology and greater acceptance of de jure and de facto discrimination against individuals with criminal records reinforce the cycle.

Further, according to a July 2011 report by the National Conference of State Legislatures:<sup>20</sup>

One of the first requirements for an offender who is released from prison is to obtain a job. Employment increases an ex-offender’s opportunities to obtain housing and health care, comply with court-ordered debts such as restitution and child-support, and support himself or herself and family. Having a criminal record usually makes it more difficult for an ex-offender to find a job, especially a well-paying one.

This report also notes that “*at least 27 states limit or prohibit the use of criminal records in public or private employment and for licensing eligibility.*” In Arkansas, Minnesota, Montana and New

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<sup>19</sup> Jacobs, James B. 2006. ‘Mass Incarceration and the Proliferation of Criminal Records’. *University of St. Thomas Law Journal*. Vol. 3: Iss. 3, Article 2. <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1090&context=ustlj>.

<sup>20</sup> Kincaid, Erin, and Alison Lawrence. 2011. *Ex-Offender Employment Opportunities*. National Conference of State Legislatures. <http://www.ncsl.org/documents/cj/pew/ex-offenderreport.pdf>.

Mexico, for example, ex-offenders are deemed rehabilitated (for the purpose of occupational licensing) after a certain time.

In reaction to these and other issues with background checks, many jurisdictions have adopted “ban the box” and other fair chance hiring measures. As of February 2015, for instance, at least 13 states and 96 cities and counties have adopted such measures, according to the NELP. Those jurisdiction identified by the NELP with ordinances applying to licensing, specifically, include Indianapolis (February 2014), Newark (September 2012), Seattle (April 2009)

**Figure 4. FBI Fingerprinting Experts, Undated.**



## VII. Conclusion

The topic of background checks, in general, is not without contention, and the issue is perhaps best summarized by the Wisconsin Supreme Court, in a 1987 case<sup>21</sup>

On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. . . On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

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<sup>21</sup> *County of Milwaukee v. LIRC*, 407 N.W.2d 908, 916 (Wis. 1987)

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