



Katie's Korner Q2 2020

April 1st, 2020

A promotional graphic with a dark blue background featuring a faint financial chart. On the left, a white-bordered box contains the text "LET'S MAKE 2020 THE YEAR FOR BETTER HIRING." in bold white capital letters. To the right, the text "Get in touch for company insights and industry updates." is displayed. Below this text is a blue bar with social media icons for Facebook, Twitter, and Instagram, followed by the handle "/peopletrail".

**LET'S
MAKE
2020 THE
YEAR FOR
BETTER
HIRING.**

Get in touch for company insights and industry updates.

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About Peopletrail

We are the leading provider of advanced background checks and pre-employment screening. We work hard every day to help you make an informed hiring decision. Our PBSA accreditation, Actionable Insight®, and human touch set us apart when it comes to comprehensive and accurate pre-employment screening solutions.

Disposed by Prosecutor Disposition

Disposed by the prosecutor would normally indicate that the charge was dismissed by the prosecutor. There are a variety of reasons why the prosecutor may not choose to continue with charges, but we will cover one of the many reasons a prosecutor may not continue with charges. It's important to know that this type of disposition is a non-conviction.

U.S. Department of Justice's Bureau of Justice cited in the research paper, "Spouse Murder Defendants in Large Urban Counties" discussed why sometimes the prosecutors decided not to go through with charges against a spouse.

"Most of the wives not prosecuted were screened out because prosecutors concluded from the evidence that these wives had killed their husband in self-defense. By contrast, self-defense was rarely the reason prosecutors gave for not prosecuting husbands. For husbands, reasons were more diverse: he committed suicide after killing his wife; he took her life in a mercy killing or in a gun accident."

Of the 540 defendants in the study, 70- or 13% were not prosecuted. It's important to know for context that prosecutors did not screen out defendants based on gender. One may assume that there would be a significant more wives screened out than husbands, but 16% of wives and 11% of husbands were not prosecuted. Which makes that number much closer than one would assume.

Content Warning: The following are **two real cases** in which the spouses' murder charges were dismissed by the prosecutor. Reader discretion is advised.

Case #95 - New Orleans, Louisiana

The 28-year old husband has a long history of assaulting his 25-year-old wife.

At the time of the murder, a witness sees the husband in the kitchen chasing the wife with a machete in his hand. The fight ends when the wife stabs the husband once.

She is arrested the same day and claims self-defense in the murder of her husband.

The wife was not prosecuted.

Case #79 - Dallas, Texas

The wife is 89 and has been married 65 years to her husband.

A recent stroke leaves the wife in terrible pain. She pleads with the doctor to kill her. The doctor refuses.

The 87-year-old husband goes to the hospital and shoots his wife. The husband is immediately arrested.

The husband was not prosecuted.

Read more at: Langan, P. A., Dawson, J. M., & United States. (1995). Spouse murder defendants in large urban counties. Washington, D.C: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics.

According to a 2018 survey, 70% of employers use social media to screen candidates during the hiring process, and about 43% of employers use social media to check on current employees.



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Alford Plea Disposition

Michael Iver Peterson appeared on the outside to have a picture-perfect life. He had a beautiful family, a large mansion, and a successful career as an author.

However, on December 9, 2001, Michael Peterson called an emergency line to report that he had just found Kathleen, his wife, unconscious in their Forest Hills mansion and suspected she had fallen "15, 20, I don't know" stairs. He later claimed that he had been outside by the pool and had come in at 2:40 am to find Kathleen at the foot of the stairs. He said she must have fallen down the stairs after consuming alcohol and valium. But the police, and armchair detectives around the world, had other ideas—namely, that Michael was to blame.

There have been many theories for that night that spawned to explain what happened (including the idea that she was attacked by an owl).

However, on October 10, 2003, after one of the longest trials in North Carolina history, a Durham County jury found Michael Peterson guilty of the murder of Kathleen Peterson and he was sentenced to life in prison without the possibility of parole.

After eight years, Peterson was granted a new trial after the judge ruled a critical prosecution witness, SBI blood analyst, Duane Deaver had given "materially misleading" and "deliberately false" testimony about bloodstain evidence, and had exaggerated his training, experience, and expertise. The new trial was scheduled to begin on May 8, 2017.

However, instead of going to trial on February 24, 2017, Peterson submitted an Alford plea to the reduced charge of manslaughter. The Alford's Plea is still a conviction, but a defendant in a criminal case does not admit to the criminal act and asserts innocence. This innocence was critical to Michael Peterson, because he was adamant that he had nothing to do with the murder of his wife, Kathleen. The judge sentenced him to a maximum of 86 months in prison, with credit for time previously served. Because Peterson had already served more time than the sentence (98.5 months), he did not face additional prison time. Therefore, he was freed.

If Mr. Peterson had an employment background completed since his release, the charge would likely show on his background as manslaughter with the disposition of Alford's Plea. The disposition of Alford's Plea would be treated as a conviction, and under the Fair Credit Reporting Act, a conviction like this is reportable indefinitely on his background if the State doesn't have additional qualifiers.

ACCORDING TO A SURVEY BY CAREERBUILDER

The average cost of one bad hire is nearly **\$15,000** & average cost of losing a good hire is nearly **\$30,000**



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Stages of a Criminal Cases

The stages of the criminal process are much more complex than television would have you believe. The following is a brief overview of the stages of a criminal case. This model is based on Utah procedures, and may not apply to other states.

Arrest

Criminal prosecution typically begins with an arrest by a police officer. A police officer may arrest a person if (1) the officer observes the person committing a crime; (2) the officer has probable cause to believe that a crime has been committed by that person; or (3) the officer makes the arrest under the authority of a valid arrest warrant. After the arrest, the police booked the suspect. When the police complete the booking process, they place the suspect in custody. If the suspect committed a minor offense, the policy may issue a citation to the suspect with instructions to appear in court at a later date.

Right to Counsel

The United States and State Constitutions guarantee every criminal defendant the right to counsel in criminal proceedings. For those who cannot afford an attorney, the prosecuting government will pay for an attorney if the defendant faces a substantial probability of receiving jail time, even a suspended sentence of jail time.

When a defendant first appears in court, the court will explain the right to counsel and a criminal defendant who believes that he or she is entitled to counsel at government expense should request counsel at that time.

The court will ask the defendant to complete an affidavit of indigency. The person will list income, assets, and liabilities. If the person's income is less than 150% of the poverty guidelines established by the United States government, the person will qualify for counsel. For those who make over 150% of the poverty guidelines, the court will still appoint counsel if the person is otherwise able to show that the person cannot afford to hire an attorney at his or her own expense.

First Appearance

At the first appearance, the defendant will be formally notified of the charges and may be advised of his/her rights by a magistrate. The defendant will be advised of the right to counsel. A date is set for a preliminary hearing (felony cases only), which the defendant may waive. In felony cases, no plea is entered at this stage.

For misdemeanor cases, the defendant is arraigned at their first appearance. See the Arraignment section for more information.

Preliminary Hearing

A preliminary hearing only applies in felony and class A misdemeanor cases. The purpose of a preliminary hearing is to determine

- whether probable cause exists to show the crime was committed, and
- whether probable cause exists to show the defendant was the person who committed the crime.

At the hearing, the judge listens to witnesses' testimony and receives evidence. If the judge finds probable cause that the defendant committed the crime, the defendant is bound over for trial. If the judge concludes there is insufficient evidence, the case is dismissed. Charges may be amended at the preliminary hearing.

Arraignment

In misdemeanor cases, this is the stage at which the court advises the defendant of the defendant's rights, including the right to counsel. The defendant will be offered an opportunity to consult with counsel before proceeding further. The court will reschedule the hearing to give the defendant that opportunity.

When the defendant is ready to proceed, either at the initial arraignment, or the rescheduled arraignment in both misdemeanors and felony cases, the judge reads the charges to the defendant, who must enter a plea.

If the plea is "guilty," the court will ensure that the defendant understands the rights the defendant will be waiving. If the court is satisfied the defendant understands the consequences, the court will accept the guilty plea. The court will schedule a date for sentencing.

If the plea is "not guilty," a pretrial conference and trial dates are usually scheduled. A "not guilty" plea preserves all of the defendant's options. There are also two other types of pleas

- **No Contest:** This has the same procedural effect as a guilty plea, but rather than admitting guilt, the defendant admits that the prosecutor would likely prevail at trial. A judge has discretion to reject this type of plea.
- **Alford plea:** This plea may be used when the defendant wants the advantage of a plea bargain, but cannot or will not admit guilt. Instead, the defendant pleads to avoid the potential consequences of going to trial, and pleads without admitting guilt. A judge has discretion to reject this type of plea.

Pretrial Motions

Before a trial begins, the prosecution and defense may file any number of motions with the court. A motion is a formal request to a judge to issue an order. These may include motions to suppress the introduction of evidence of a defendant's prior convictions, motions to suppress evidence, or requests for discovery. If a defendant would like to file a motion, it must be done at

least 7 days before the trial and must be in writing. All motions should be heard and decided by the judge before a trial can proceed.

Pretrial Conference

At its discretion, the trial court may hold a pretrial conference in which the prosecutor and defense attorney attempt to negotiate a settlement of the case. A judge may refuse to approve a proposed settlement. Cases not settled are set for trial.

Plea Bargaining

In this process, the prosecutor and defense attorney negotiate a mutually satisfactory disposition of the case. The judge does not participate in the plea bargaining process, but must approve the proposed plea agreement. The defendant and the prosecutor must both approve the plea bargain. If all parties accept the plea bargain, and the defendant enters a plea of guilt, the next step is the defendant's sentencing.

Trial Procedure

Depending on the type of action, a case may be tried before a judge (bench trial) or before a jury with a judge presiding. Whether the case is civil or criminal, or tried by a judge or jury, the procedure is essentially the same.

Jury Selection

At the trial's beginning, the clerk calls a panel of prospective jurors. The judge or, in some cases, the lawyers, ask the potential jurors questions about their background and general beliefs to determine any biases or prejudices. This process is called "voir dire."

If any attorney or judge feels that a juror is not qualified for the case, the juror is excused for cause. There is no limit to a party's challenges for cause. Both sides are entitled to a certain number of peremptory challenges, which means they may excuse some prospective jurors without stating any reasons (unless the motives appear to be motivated by race or gender.)

Opening Statement

Lawyers for each side make statements to inform the court and jurors of the nature of the case, the evidence they will present, and the facts they expect to prove. The defense may choose to wait to make an opening statement until after the prosecution has rested its case, or may choose not to make one.

Prosecution Evidence/Witnesses

Each side makes its case based on testimony from witnesses and physical evidence. The prosecutor/plaintiff calls their witnesses for direct examination to state what they know about the alleged crime or injury. The defense may ask questions of the same witnesses (cross-examination). Then the prosecutors/plaintiff may re-examine their witnesses (re-direct). Physical evidence, such as documents, pictures and other exhibits, is also introduced.

Defense Evidence/Witnesses

After the prosecution has rested its case, the defense may call witnesses to give testimony to disprove the prosecutor's/plaintiff's case and to establish the defendant's case. The prosecutor/plaintiff may cross-examine the witnesses. The defense may then re-examine its witnesses.

Rebuttal

When the defense has presented all its witnesses, the prosecutor/plaintiff may again call witnesses to rebut any new information introduced by defense witnesses. The judge may allow surrebuttal (a rebuttal to the rebuttal) by the defense.

Jury Instructions

Before closing arguments, the judge will instruct jurors carefully as to what law they are to follow. In civil cases, the jury must determine that a preponderance of the evidence favors one party. In criminal cases, the defendant must be found guilty beyond a reasonable doubt to be convicted.

Closing Argument

After jury instructions are given, both attorneys summarize the evidence and testimony in an effort to persuade the judge or jury to decide the case in favor of their client. The prosecution makes its closing argument first, then the defense, and then the prosecution responds to the defense's closing argument. Either side may waive closing arguments.

Jury Deliberations

After closing arguments, the court orders the jury to retire to the jury room for deliberations.

Verdict

In criminal cases, a verdict must be unanimous and must be given in open court with the defendant present, unless he chooses not to be.

- For criminal cases there are a limited number of possible verdicts: guilty (of some or all of the charged crimes, or guilty of a lesser crime); not guilty (of some or all of the charged crimes); not guilty by reason of insanity or affirmative defense; guilty and mentally ill.
- For civil cases, two types of verdicts are rendered - general and special. The verdict does not have to be unanimous; at least three-fourths of the jurors must agree to the verdict. In general verdicts, the jury has decided the case either in favor of the defendant or the plaintiff. In special verdicts, a general decision is not announced. Rather, the jury has answered certain factual questions, leaving the "total" decision up to the court.

Sentencing/Judgment

- In a criminal case, after a verdict of guilty or a plea of guilty, the defendant has the right to be sentenced in no fewer than two nor any more than 45 days following conviction. If the defendant chooses, he or she may waive that time and may be sentenced on the day of conviction or the day of the plea. The defendant may also choose to be sentenced after 45 days if they need more time to prepare for sentencing.
- In a civil case, after the verdict or after the court has decided the facts in a bench trial, a judgment will be rendered. The court will award money damages or injunctive relief.



ACCORDING TO FBI SOURCES

**SINCE LAUNCHING IN
1998, MORE THAN
300 MILLION CHECKS
HAVE BEEN DONE,
LEADING TO MORE
THAN 1.5 MILLION
DENIALS.**

<https://www.fbi.gov/services/cjis/nics>

Crime Classification Systems

Criminal statutes in both federal and state have multiple classifications of criminal offenses. These classifications often include felonies, Felony-Misdemeanors, misdemeanors, and infractions.

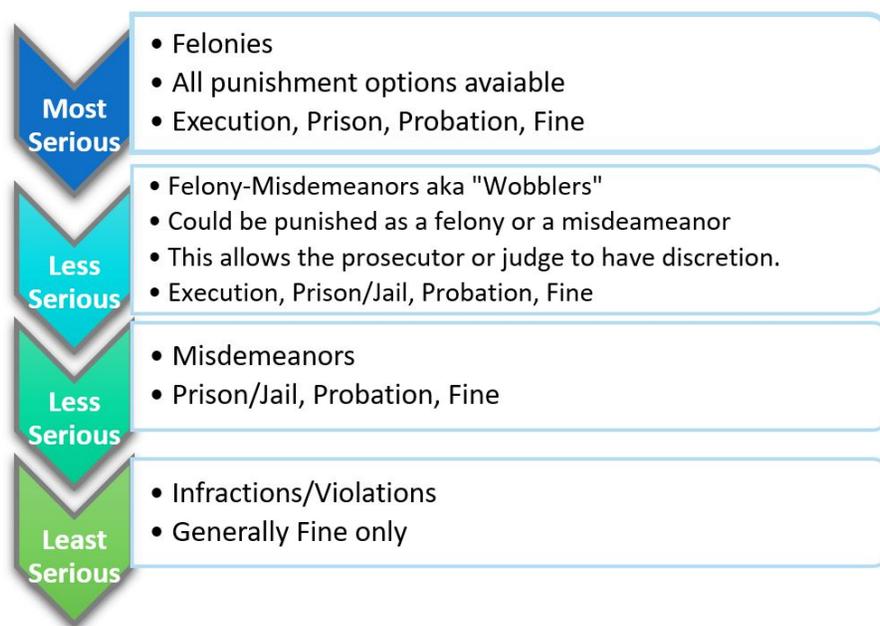
Legislators determine the classification of a particular offense by a range of determinators. These factors can include the offense's severity, the circumstances in which it took place, and the damage caused. The classification of crimes according to the harshness of punishment is done by grading of the crimes. Crimes are generally graded into one of the four classifications of felonies, misdemeanors, felony-misdemeanors, and infractions.

Felonies

Felonies are the most serious class of criminal offense. They are generally defined as crimes punishable by imprisonment of more than one year, and the prison sentences are usually served in a federal or state penitentiary rather than a county jail. Federal criminal law and many states allow imposition of the death penalty in some murder cases.

In addition, some examples of felonies include murder, rape, burglary, kidnapping and arson.

People who have been convicted of a felony are called felons.



Felony Example:

Timmy pulls over Susan with his police lights for speeding and identifies himself as a local police officer. Susan notices that Timmy's uniform and badge are not like the one her veteran police officer has for the same precinct.

Susan complies with Timmy's request for identification and insurance. However, while Timmy's in his car writing Susan a ticket, Susan calls 911 and informs them of the situation. Emergency Dispatch sends a police officer to Susan.

Timmy comes back Susan's car. He asks her to get out of the vehicle and put her hands behind her back.

Timmy handcuffs her, gives her Miranda rights, and lets her know she's under arrest for warrants out for her arrest. While Timmy is placing Susan in the back of his car, the police officer sent by emergency dispatch arrives at the scene. The officer on the scene realizes very quickly that Timmy is impersonating a police officer, because he is trying to kidnap Susan.

The police arrest Timmy for impersonating a police officer and kidnapping, and release Susan.

Timmy was convicted by a jury of his peers for impersonating a police officer and kidnapping.

State law provides that these offenses are punishable by up to 8 years in prison up to life in prison. The Honorable Judge Miriam Ben-Porat sentenced Timmy to 40 years in prison, \$10,000 fine, and if he's released from prison, he's on parole for life.

Felony-Misdemeanors aka "Wobblers"

Felony-misdemeanors also known as "wobblers," are crimes that the government can prosecute and punish as either a felony or a misdemeanor, depending on the particular circumstances accompanying the offense. Usually, the prosecutor decides how they will charge the defendant, and the judge decides how to sentence the individual charged with the crime (though judges can also reduce the charge prior to sentencing).

Felony-Misdemeanors aka "Wobblers" Example:

Florida man, Bubba Thornton is arrested for using a beer bottle to strike the alleged victim on the head (*Cloninger v. State*, 846 So. 2d 1192 (Fla. 4th DCA 2003)). The statute allows for the crime to be charged as a felony or misdemeanor. The prosecutor, Carmella del Luna, decided to charge Bubba as a misdemeanor since the victim was not seriously injured.

Bubba was convicted by a jury of his peers of assault with a deadly weapon. State law provides that the offense is punishable by up to one year in jail or up to five years in prison.

The Honorable Judge Garcia sentences Bubba to four months in jail, three years of probation, and 200 hours of community service. The sentence maintains the conviction as a misdemeanor.

Misdemeanors

Misdemeanors are less serious than felonies, either because the intent requirement is of a lower level or because the result is less extreme.

Misdemeanors are usually punishable by jail time of one year or less per misdemeanor, a fine, or alternative sentencing like probation, rehabilitation, or community service.

Note that incarceration for a misdemeanor is in jail rather than prison. The difference between jail and prison is that cities and counties operate jails, and the state or federal government operates prisons, depending on the crime. The restrictive nature of the confinement also differs between jail and prison. Jails are for defendants who have committed less serious offenses, so they are generally less restrictive than prisons. ‘

Misdemeanor Example:

Stan is a 19-year old man living in Utah living in his mother’s, Eliza, shed. Eliza is tired of her son living in the Shed for free, not having a job, not going to school, and playing video games all the time. Eliza decides to lawfully evict her son, Stan, from the shed, and create her dream she-shed.

Stan is mad about his eviction. He feels like his mother is being self-centered, and not being a good mom. Stan texts his mom saying he’s has a bomb in the shed and he is going to blow up the shed if she doesn’t let him move back into the shed.

Eliza calls emergency services and this forces an emergency response agency to deploy police, firefighters, and the bomb squad. (Utah Code § 76-5-107.3(1)(b)(iii)) The police, firefighters, and the bomb squad quickly realize that there is not a bomb within the shed, and the police arrest Stan for Threat of Terrorism as a Misdemeanor.

Stan was convicted by a jury of his peers of Threat of Terrorism as a Misdemeanor.

The Honorable Judge Rosalie Silberman Abella sentences Stan to jail for 6 months and a fine of \$1,000 to reimburse the police, firefighters, and bomb squad for the lost time and money responding to the threat.

Infractions

Infractions, which can also be called violations, are the least serious crimes and include minor offenses such as jaywalking and motor vehicle offenses that result in a simple traffic ticket. Infractions are generally punishable by a fine or alternative sentencing such as traffic school.

The names of infractions may vary in different states.

Infractions Example:

Mario Andretti receives a speeding ticket. After Mr. Andretti and the officer who issued the ticket testify in court, the judge concludes that Mr. Andretti was speeding. Mr. Andretti's punishment is limited to a fine and the addition of a point to his driving record.

Waterloo, Iowa Passed Ban the Box, But Faces Adversaries

A new Ban the Box Ordinance (the "Ordinance") is to take effect on July 1, 2020 in Waterloo, Iowa. All private employers with at least 15 employees, including the City of Waterloo, are subject to the Ordinance. Covered employers may not inquire in any manner about an applicant's criminal records prior to issuing a conditional offer of employment, unless criminal history is voluntarily disclosed by the applicant before an offer. Employers also are prohibited from making any employment decision based on:

- arrests or pending criminal charges; and
- convictions that have been erased, expunged, pardoned or nullified.

In addition, an employer may only rescind a conditional offer of employment based on a criminal record if it has a legitimate business reason, which means, according to the Ordinance:

- “Situations where the nature of the criminal conduct has a direct and substantial bearing on the fitness or ability to perform the duties or responsibilities of the position, taking into consideration the following factors: the nature of the position, the place and manner in which the duties will be performed, the nature and seriousness of the offense or conduct, whether the position presents an opportunity for the commission of a similar offense or conduct, the length of time between the conviction or arrest and the employment application (not including time on probation or parole or the time during which fines or other financial penalties or remedies may be outstanding), the number and types of convictions or pending charges, and any verifiable information provided by the applicant that is related to the applicant’s rehabilitation or good conduct (5-3-15 § 9a).”
- “Situations where the granting of employment would involve unreasonable risk of substantial harm to property or to safety of individuals or the public, or to business reputation or business assets, taking into consideration the factors listed above (5-3-15 § 9b).”
- “Positions working with children, developmentally disabled persons and vulnerable adults where the applicant has a conviction record of a crime against children or disabled or vulnerable adults, including but not limited to crimes of rape, sexual abuse, incest, prostitution, pimping, pandering, assault, domestic violence, kidnapping, financial exploitation, neglect, abandonment, and child endangerment (5-3-15 § 9c).”
- “Situations where an employer must comply with any federal or state law or regulation pertaining to background checks and the criminal conduct is relevant to the applicant’s fitness for the job (5-3-15 § 9d).”

This Ordinance is already facing pending litigation. A lawsuit filed against the City of Waterloo by the Iowa Association of Business and Industry alleges Waterloo is violating state law with the controversial "ban the box" ordinance.

The lawsuit cited a section of Iowa code that was championed by the Iowa ABI and was passed in 2017. It reads a city cannot pass any ordinance exceeding or conflicting with federal or state laws relating to hiring practices.

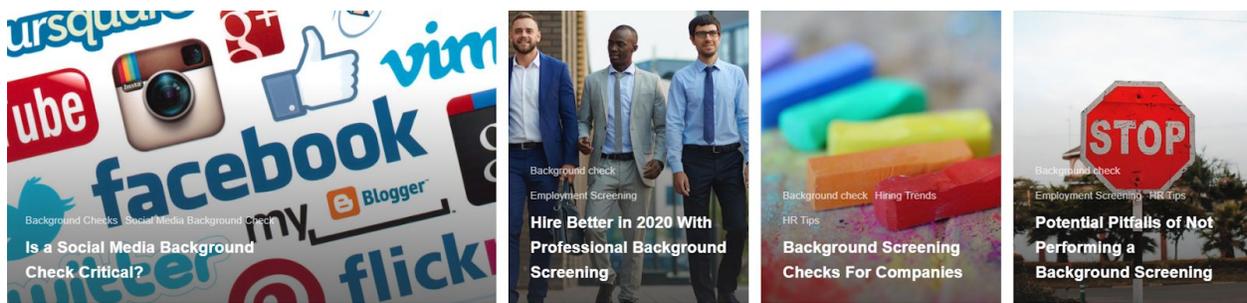
The Iowa Association of Business and Industry filed this lawsuit to stop Waterloo’s clearly unlawful ordinance that regulates when and how employers can consider an applicant’s criminal history. The ordinance is one of the broadest

criminal-history ordinances in the country, going well beyond any regulation of hiring practices under state or federal law. It doesn't just affect when an employer can inquire about an applicant's criminal history; it also forbids employers from considering criminal history at all in some circumstances. ABI supports efforts to bring individuals formerly incarcerated back into the workforce, but how and when an employer considers criminal history should be left to the employers who know and understand their needs. Iowa employers are the best in the country and they hire the best people based on their abilities, not their criminal background. Because the Waterloo ordinance so clearly violates Iowa law, ABI looks forward to a quick resolution of this lawsuit.

-Statement from the Iowa Association of Business and Industry

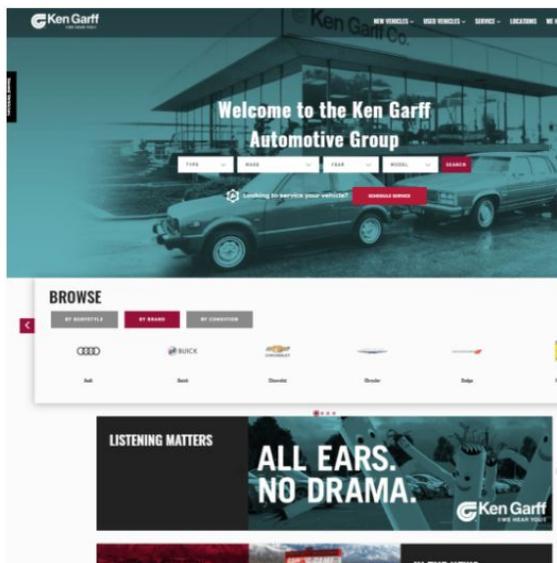
Peopletrail will remain in the trenches to follow this ongoing litigation. However, best practice does dictate that covered employers located in Waterloo, Iowa, and particularly multi-state employers, should ensure that their employment practices will comply with the Ordinance by July 1, 2020.

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[Case Study of the Quarter](#)



Ken Garff Automotive Group

Advanced Technology Integration with Dedicated Account Management Support

Ken Garff Automotive Group needed a background screening partner that could provide advanced technology integration with more than just a database report. They had previously partnered with larger, well-known screening agencies, but requests for additional technology, compliance-oriented data scrubbing, and account management support went unfulfilled. With 53 locations spanning across six states, Ken Garff Automotive Group was challenged by the lack of customer service to their account and the lack of personalized review of the information received from straight database searches. Utilizing Peopletrail's Dedicated Account Management team and Actionable Insight® Screening technology, Peopletrail increased the accuracy of reporting for Ken Garff Automotive Group to improve the quality of hires and enhance the safety and security of the organization.

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