

CRIMINAL MONITORING

Continuous Court Records Monitoring

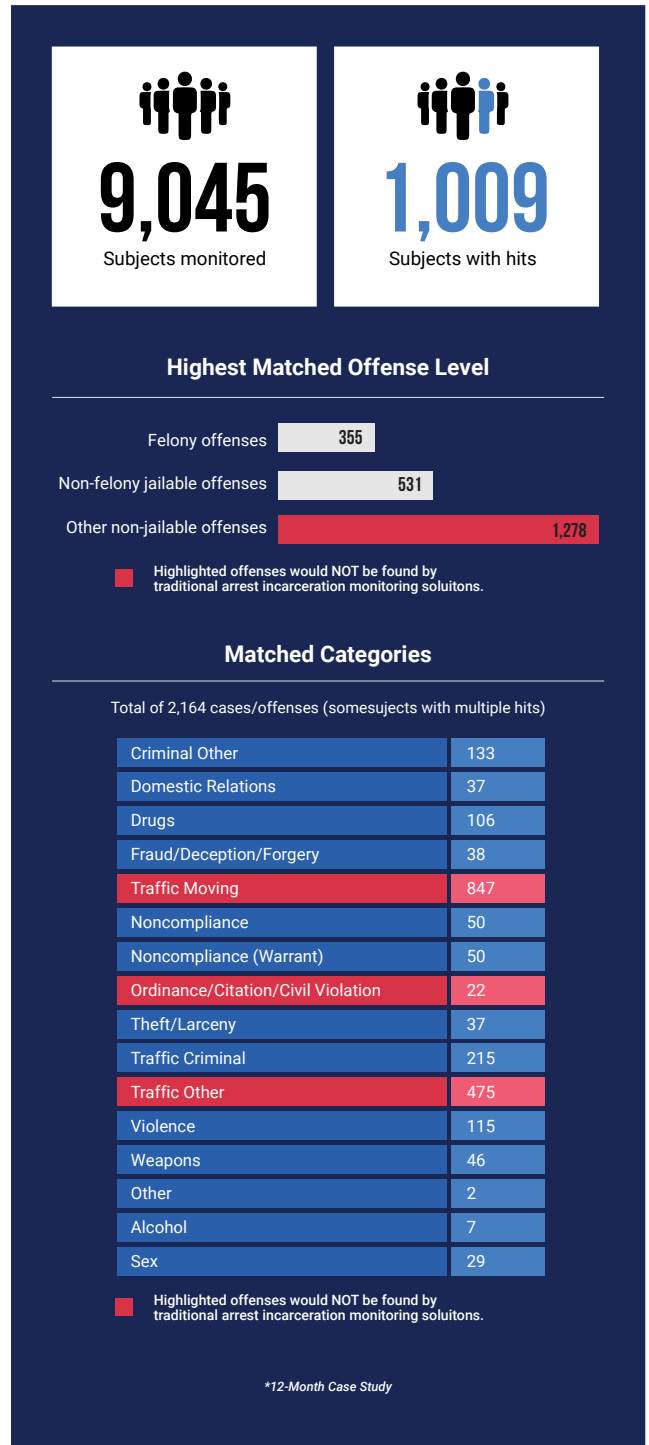
Could have known? Should have known. This is the fundamental belief that has elevated negligent retention to top-of-mind for employers and risk managers. When an employee causes a loss or injury that was “reasonably foreseeable,” the liability can fall on the employer. That’s nothing new. But what is evolving very quickly is the availability of continuous monitoring solutions that make it easier and more realistic for employers to have known about the changing backgrounds of their employees.

To illustrate this point, here is a 12-month case study on continuous court records monitoring of an employee population in the transportation industry. The findings are astounding and show just how much and how often employee backgrounds can change over time. And just how much a near real-time court records monitoring solution can uncover in terms of actionable data.

Here are some highlights:

- The total number of subjects with hits increased 60% from week 20 to week 52 (629 vs 1009).
- Total felony offenses increased 355% from week 20 to week 52 (78 vs 355).
- Theft/larceny offenses increased more than any other category from week 10 to week 52 (1133% increase).

View the 12-month summary here:



Here are three actual cases in which monitoring may have prevented harm:

CASE #1

- Home delivery man returned to complete the installation of a stove after retrieving a missing part.
- The customer and occupant of the home was a 75 year old woman.
- The delivery man raped and murdered the occupant.
- **Within a few weeks prior to the assault, the delivery man had three court appearances for assault.**
- \$2.7mm settlement with surviving family.

CASE #2

- The overnight shift supervisor at a manufacturing facility handling very sensitive, sophisticated defense products put a gun to the head of another employee and threatened to kill him in front of a dozen or so other employees.
- The supervisor had court appearances for drug possession and domestic assault within the year this occurred, and the company didn't know about them.
- **The supervisor was buying and doing meth on his breaks. Interviewees said his behavior was odd when he returned from breaks, but he was kept on because he was productive.**
- Resulted in numerous workers comp claims by traumatized witnesses, diminished morale, and productivity for at least 6 months after the event.

CASE #3

- An employee with access to company finances had been on the job five years and within that time he embezzled \$3.2mm.
- **He had two court appearances for forgery and check fraud since being hired. One in the same year he was caught and the other a few years after he was hired.**
- Not only was the employee terminated, but the CFO was also fired for not doing proper due diligence and not adequately supervising the employee.

Employers should consider how courts look at negligent retention in light of the availability of continuous monitoring:

- Given that monitoring is available and does not place an undue burden on the employer, not using it is highly likely to be considered indefensible by a court.
- Courts will consider: Foreseeability of injury, Likelihood of occurrence, Magnitude of burden to guard against crime, Consequences to defendant.
- Employers should consider the role, the risk, and the potential consequences when selecting whom to monitor and for what charges to monitor.