

## Provider's Perspective What Constitutes a Standard Search?

By Timothy Baxter

To answer that we should define the term *standard search*.

*Standard means a definite level or degree of quality that is proper and adequate for a specific purpose.*<sup>1</sup>

In our case, the purpose of a search is to *screen* the applicant—which is to say, *examine* them *systematically to determine their suitability*.<sup>2</sup>

Thus a *standard search* can be defined as:

*A search that demonstrates a level of quality proper and adequate to examine the applicant in order to determine suitability.*

Simple enough.

So how do we determine what constitutes a standard search?

By working out what constitutes the *central court*—for our purpose defined as:

*The court or courts that must be included in a standard search.*

Okay, so how do we determine what constitutes the central court?

First and foremost—by knowing the basics of the court system involved.

Once those facts are understood the rest becomes a question of diligence.

*Diligence* corresponds to the word *quality* in our above definition of *standard search* (as in: *the level of quality* proper and adequate to screen the applicant).

*Black's Law Dictionary* defines *diligence* as:

*Vigilant activity; attentiveness; or care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety. . . .*

*There may be a high degree of diligence, a common degree of diligence, and a slight degree of diligence, with their corresponding degrees of negligence. Common or ordinary diligence is that degree of diligence which men in general exercise in respect to their own concerns; high or great diligence is of course extraordinary diligence, or that which very*

*prudent persons take of their own concerns; and low or slight diligence is that which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns.*

One more term worth defining is a *de facto*<sup>3</sup> standard:

*A de-facto standard is a standard that has become a standard because it is widely used rather than because it was officially approved by some standards organization . . . .*

*De facto standards are not necessarily the best standards. Rather, they typically come into being because they are the first or because some dominant company has been able to impose them. . . .*<sup>4</sup>

Probably the majority of county search products evolved by researchers qualify as standard. They have been established by years of hard won experience, based on local know-how, trial and error, client feedback on missed records, et cetera.

However this is not to say de facto search standards do not exist, or that previously established search standards have not been eroded or degraded into de facto standards—by time, labor and cost saving considerations, technical innovations, et cetera.

A good example of a de facto standard is the Massachusetts county-seat search.

I first learned of this default search product when my research manager visited his relative outside of Boston. Not one to shun the busman’s holiday<sup>5</sup> evidently, he visited a handful of Middlesex courts while there, conversing with both clerks and in-court researchers.

The more he learned, the more puzzled he became.

It really didn’t add up that a county-seat search would qualify as an “industry standard” for this area.

So we endeavored to establish the basic facts of the MA court system, and then determine what the central court—and therefore the standard search—ought to be.

The first fact we confirmed is that **all District Courts have jurisdiction to try and sentence all 5-year felonies**<sup>6</sup> (felonies punishable by state prison for not more than 5 years); as well as 36 other felonies punishable by state prison for more than 5 years—such as:

- Felony vehicular homicide
- Indecent assault and battery on a child under 14

- Assault and battery with a dangerous weapon
- Armed carjacking
- Forgery or uttering of forged promissory note or order for money or property

(This isn't a recent occurrence, by the way: MA District Courts have held final jurisdiction over all 5-year felonies since 1937.)

The second fact is that **the criminal court system is completely decentralized.**

The felony and misdemeanor convictions of one District Court cannot be located or accessed via another District Court, including the county-seat District Court.

Likewise the felony convictions within the District Court system cannot be located or accessed via the Superior Court.

In effect, each MA court represents its own jurisdiction, with its own isolated index.

The third fact is that **the District Court system tries and convicts more felonies than the Superior Court system.**

The fourth fact is that **a fraction of the state's felony and misdemeanor convictions are located in county-seat courts.**

For instance, of the 35,594 District Court cases filed in Middlesex in fiscal year 2010, only 3,544 were filed in the so-called *county seat* District Court of Cambridge.<sup>7</sup>

Indeed, only 12% of the county's population reside within the Cambridge district.<sup>8</sup> The remaining 1,396,226 people live within the jurisdictions of the Ayer, Concord, Framingham, Lowell, Malden, Marlborough, Natick, Newton, Somerville, Waltham and Woburn District Courts.

These facts are sufficient to thoroughly disqualify the county-seat search as "standard" for Massachusetts.

So what *would* constitute a standard search for this area?

Well, to answer that we would have to follow the aforementioned formula and determine the central court.

The current de facto standard is clearly based on the following combination as the central court:

- The Superior Court

- The County-Seat District Court

Frankly, exclusively searching the county-seat District Court would seem to demonstrate a degree of negligence. As we've already seen, for Middlesex it neglects 90% of the criminal records in the county's District Court system.

While searching every District Court would represent the highest degree of diligence, it would also seem impractical. Again, in the case of Middlesex, no less than 13 searches would need to be performed.

It would make more sense to base the District Court search on the applicant's address history—which would seem to demonstrate at least a common degree of diligence.

In short, a more standard central court, and therefore standard search, for Massachusetts would be:

- The Superior Court
- The applicable District Court(s) based on *address history*<sup>9</sup>

This combination strikes a practical medium between inclusively searching every District Court, and exclusively searching the county-seat court.

It is more diligent than gambling against unfavorable odds the applicant has even resided in the county-seat district—especially when the District Court search can as easily be based upon the applicant's address history than the county-seat court.

Anyway, this is but an example of how the aforementioned definitions can be applied to determine what constitutes a standard search for a given area.

To recap: once the basics of a given court system are known, the standard search can be determined by establishing the *central court*; which itself is worked out against the definition of a *standard search*, paying due regard for the degree of *diligence* proper and adequate to examine the applicant to determine suitability.

That's about the long and the short of it.

Researchers can apply this relatively simple formula to identify any de facto standards they may have in their area, and ideally push them up to the standard; and to counter any erosion of previously established standards.

After all this is no small part of a researcher's value as a specialist in their area. And it is as much as called for by *NAPBS Criminal Research Provider Guideline #3*.

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<sup>1</sup> *Webster's Third International Dictionary*

<sup>2</sup> *The American Heritage Dictionary of the English Language*

<sup>3</sup> De facto: existing without being legally or officially established (Latin, *In fact*).

<sup>4</sup> [http://www.linfo.org/de\\_facto\\_standard.html](http://www.linfo.org/de_facto_standard.html)

<sup>5</sup> A holiday spent doing the same sort of thing one does at work (alluding to a bus driver having a driving holiday).

<sup>6</sup> <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/offenses-in-dist-ct-criminal-jurisdiction.pdf>

<sup>7</sup> <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/crimstats2010.html>

<sup>8</sup> <http://www.census.gov/popest/cities/files/SUB-EST2009-ALL.csv>

<sup>9</sup> In Suffolk County the unique Boston Municipal Court would also be included.