
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1262 **Hearing Date:** April 26, 2022
Author: Bradford
Version: February 17, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Courts: indexes*

HISTORY

Source: Author

Prior Legislation: None

Support: American Financial Services Association; American Staffing Association; Apartment Association of Greater Los Angeles; Asian American Hotel Owners Association; Brea Chamber of Commerce; California Apartment Association; California Bankers Association; California Building Industry Association; California Cable & Telecommunications Association; California Chamber of Commerce; California Credit Union League; California Financial Services Association; California Hospital Association; California Hotel & Lodging Association; California Restaurant Association; California Retailers Association; California Staffing and Recruiting Association; Carlsbad Chamber of Commerce; Checkr, Inc.; Coalition for Sensible Public Records Access; Consumer Data Industry Association; Corona Chamber of Commerce; Danville Area Chamber of Commerce; Family Business Association of California; Fountain Valley Chamber of Commerce; Fremont Chamber of Commerce; Fresno Chamber of Commerce; Gilroy Chamber of Commerce; Greater Conejo Valley Chamber of Commerce; Greater High Desert Chamber of Commerce; Imperial Valley Regional Chamber of Commerce; LA Canada Flintridge Chamber of Commerce; Laguna Niguel Chamber of Commerce; Long Beach Area Chamber of Commerce; Los Angeles Area Chamber of Commerce; Mission Viejo Chamber of Commerce; National Credit Reporting Association; National Federation of Independent Business (NFIB); Newport Beach Chamber of Commerce; Nonprofits Insurance Alliance of California; Official Police Garages of Los Angeles; Professional Background Screening Association; Rancho Cordova Chamber of Commerce; San Jose Chamber of Commerce; Santa Maria Valley Chamber of Commerce; Simi Valley Chamber of Commerce; Southern California Rental Housing Association; Tulare Chamber of Commerce; Valley Industry & Commerce Association; West Ventura County Business Alliance

Opposition: None known

PURPOSE

The purpose of this bill is to require the clerk of the superior court to keep publicly accessible electronic indexes of defendants in criminal cases that may be searched and filtered based on a defendant's driver's license number or date of birth, or both.

Existing law requires the clerk of the superior court to keep such indexes as will insure ready reference to any action or proceeding filed in the court. There shall be separate indexes of plaintiffs and defendants in civil actions and of defendants in criminal actions. The name of each plaintiff and defendant shall be indexed and there shall appear opposite each name indexed the number of the action or proceeding and the name or names of the adverse litigant or litigants. (Gov. Code, § 69842.)

This bill would additionally require publicly accessible electronic indexes of defendants in criminal cases to permit searches and filtering of results based on a defendant's driver's license number or date of birth, or both.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In May 2021, *All of Us or None of Us v. Hamrick* was decided by the California Court of Appeals, 4th District. The court misinterpreted a 2002 court rule, and in so doing, reversed nearly 20 years of public court record access. The decision called for the removal of two identifiers (date of birth and driver's license number) from public court records based on an interpretation of California Rules of Court, Rule 2.507 [(Electronic access to court calendars, indexes, and registers of actions)]. The Court wrote that:

“After considering the text, history, and purpose of Rule 2.507, we agree that the rule prohibits the Riverside Superior Court from allowing searches of its electronic criminal index by use of an individual's date of birth or driver's license number.”

Following *Hamrick*, many courts removed the ability to search and filter records based on date of birth and/or driver's license number. As a result, individuals who need to undergo a background check process to secure work or housing – and who have provided their identifiers for this process – are being stalled or stopped completely in the background check process. This delay disproportionately impacts individuals with common names and prevents these individuals from being able to secure work or housing on a timely basis.

SB 1262 returns public court record access to the status quo by allowing to search and filter by these identifiers.

2. Criminal History Information

Access to person's summary criminal history information is generally prohibited and only allowed to be disseminated if specifically authorized in statute. "The state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records. [Citation.] These records are compiled without the consent of the subjects and disseminated without their knowledge. Therefore, ... custodians of the records, have a duty to 'resist attempts at unauthorized disclosure and the person who is the subject of the record is entitled to expect that his right will be thus asserted.'" (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 165-66.)

The Department of Justice (DOJ) is tasked with maintaining state summary criminal history information and requires the Attorney General to furnish state summary criminal history information only to statutorily authorized entities or individuals for employment, licensing, volunteering etc. (Penal Code § 11105.) In addition to the specified entities authorized to receive state summary criminal history information, DOJ may furnish state summary criminal history information to other specified employers upon a showing of compelling need for the information and to any person or entity when they are required by statute to conduct a criminal to comply with requirements or exclusions expressly based upon specified criminal conduct. (Pen. Code, § 11105, subs. (a)(13) and (c).)

Local summary criminal history refers to the master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. (Pen. Code, § 13300, subd. (a).) Local criminal justice agencies are not allowed to furnish this information except to those specifically authorized in statute. (Pen. Code, § 13300, subd. (b).) Allowing unauthorized access to such records is prohibited and punishable as a misdemeanor. (Pen. Code, § 13302.)

A search of a person's criminal background may also be done by searching court records. The Rules of Court specify the manner by which electronic trial court records are to be made available to the public. The rules provide that a court that maintains civil case records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so. (Cal. Rules of Court, Rule 2.503(b).) As to criminal records, the rule states that a court that maintains the criminal case records in electronic form must provide electronic access to them at the courthouse, to the extent it is feasible to do so, but may not provide public remote access. (Cal. Rules of Court, Rule 2.503(c)(5).) Additionally, the rules specify the information to be included in, and excluded from, electronic court indexes, as well as court calendars and registers of action. The contents that must be included in electronically accessible court indexes are case title (unless made confidential by law), party names (unless made confidential by law), party type, date on which the case was filed, and case number. (Cal. Rules of Court, Rule 2.507(b).) The information that must be excluded in electronically accessible court indexes are social security numbers, any financial information, arrest warrant information, search warrant information, victim and witness information, ethnicity, age, gender, government-issued identification card numbers, driver's license numbers and dates of birth. (Cal. Rules of Court, Rule 2.507(c).)

3. Relevant Case Law: *All of Us or None vs. Hamrick*

In *All of Us or None – Riverside Chapter vs. Hamrick* (2021) 64 Cal.App.5th 751, plaintiffs alleged that the Riverside County Superior Court improperly maintained the court’s records in criminal cases in various ways, including: (1) failing to properly destroy certain court records of old marijuana-related offenses as required under Health and Safety Code section 11361.5, (2) allowing the public to search the court’s electronic index on the court’s website by a defendant’s date of birth and driver’s license number, in violation of California Rules of Court, rule 2.507, (3) disclosing protected criminal record information in violation of Penal Code section 13300. (*Id.* at p. 759.) The trial court ruled in favor of the defendants and the plaintiffs appealed.

On appeal, the court reversed the trial court’s orders as to the violations of Health and Safety Code section 11361.5 and Rule 2.507 and affirmed the trial court’s order on the violation of Penal Code section 13300.

Relevant to this bill, the court agreed with plaintiffs that based on the clear language in Rule 2.507, defendants improperly authorized public access to electronic indexes of criminal cases by allowing the user to filter searches by an individual’s date of birth or driver’s license number:

Rule 2.503 establishes a general rule of “[c]ourthouse ... access only” (boldface omitted) for records in criminal cases. (Rule 2.503(c).) While one exception to this rule is for “indexes” (Rule 2.503(b)), Rule 2.507 carefully circumscribes the contents of such indexes by expressly providing that certain information that might serve to personally identify a criminal defendant must be “excluded from a court’s ... index.” Such prohibited information includes “[d]river’s license number” (Rule 2.507(c)(11)) and “[d]ate of birth.” (Rule 2.507(c)(12).)

(*All of Us or None, supra*, 64 Cal.App.5th at p. 773.) The court also looked at the history and purpose of the rule to support its finding:

In the CEAC Report, the Advisory Committee recommended the adoption of former California Rules of Court, rule 2077 (former Rule 2077), current Rule 2.507. In discussing comments that it had received from various interested parties, the Advisory Committee explained that one commentator had recommended “that date of birth ... should be a data element that is included (and not excluded) from electronic court calendars, indexes, and register of actions.” The Advisory Committee explained that it disagreed with this recommendation for the following reasons:

“The [Advisory Committee] acknowledges that some courts currently collect sensitive personal information that has no bearing on a case, but that ... assists the court in record keeping or identifying parties with the same first and last names. One of these practices includes collecting a party’s [date of birth] as a data element and using it as a search query in case management systems. Nevertheless, the [Advisory Committee] recommends that the [date of birth] should be excluded from electronic court calendars, indexes, and registers of action for the following reasons:

“1. It is not a traditional entry within a register of action; and

“2. It prohibits access to a confidential field in criminal cases as well as bans the creation of a local criminal history summary as proscribed by ... section 13300.”

....

The Advisory Committee elaborated on this issue by stating: “While the date of birth is not confidential in court records, it should not be accessible on court electronic records for the following reasons[;] 1) it is not a traditional entry within any of the case record types that proposed [former] Rule 2077 addresses; 2) the Judicial Council, in adopting [former] Rules 2070–2076 was mindful of the privacy of citizens using the courts and approached electronic access to court records cautiously. Many people are not involved with the courts voluntarily and do not expect the information in the court file to be broadcast to anyone with a computer and Internet connection. Not including date of birth in any of the case record types that proposed [former] Rule 2077 addresses is consistent with this council policy, and 3) in an electronic database, the date of birth is a confidential field in criminal cases.

(*Id.* at pp. 774-776.)

This bill circumvents the *All of Us or None v. Hamrick* ruling by specifically requiring the superior court to keep publicly accessible electronic indexes of defendants in criminal cases that may be searched and filtered based on a defendant’s driver’s license number or date of birth, or both. Proponents of the bill, which include private background check companies, apartment associations, chambers of commerce, retailers, restaurant associations, financial services associations, among others, argue that the restriction against searching a court’s electronic database by an individual’s date of birth or driver’s license number greatly delays their ability to conduct background checks on individuals who have applied for jobs or housing but cannot be verified quickly due to the individual having a common name.

Representatives of All of Us or None, the plaintiffs in the above case, have expressed concerns to the committee that not only would allowing these criminal history searches based on date of birth and driver’s license violate the individual’s constitutional right to privacy, this instant access to unrestricted criminal history information on an individual may be used by an overly cautious employer or landlord to exclude persons who have old arrests or expunged convictions or convictions that have no relation to the purpose of the background check.

4. Argument in Support

According to Checkr:

In May 2021, some California courts began removing the ability to search an electronic index by DOB as a result of *All of Us or None of Us - Riverside Chapter v. Hamrick*, (2021) 64 Cal.App.5th 751 based on California Court Rule 2.507, which prohibits disclosure of certain personally identifying information in court indexes. Checkr agrees with the importance of protecting privacy, but believes that privacy interests are adequately protected when an individual provides their identifiers and consents to a background check.

The removal of DOB as a search field has resulted in substantial delays in the background check process for individuals with common names and criminal records. Due to the inability to filter out results by a unique identifier like DOB, the number of searches requiring a clerk-assisted search has nearly doubled to 14% of all searches. This means that the number of searches requiring clerk assistance has gone from tens of thousands to more than six figures. This has created a substantial backlog for these searches, resulting in these checks taking weeks to months as opposed to a few days prior to May 2021. Not only do these delays impact people with criminal records, but it also affects those with common names. Based on the data in Checkr's system, these delays disproportionately impact individuals with Spanish surnames. Looking at searches conducted in Los Angeles County (one of the first courts to remove the ability to search by DOB), Checkr has been averaging more than 20,000 background checks that have been pending for more than 30 days. The most impacted individuals all have Spanish surnames.

Given the barriers to employment that already exist for people with criminal records and those with Spanish surnames, we believe that it is essential to eliminate the additional barrier of a delayed background check.

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