

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 1262 (Bradford) – As Introduced February 17, 2022

Policy Committee: Public Safety

Vote: 5 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill requires a superior court clerk to permit filtering searches of publicly-accessible electronic court indexes by a defendant's driver's license number, or date of birth, or both.

FISCAL EFFECT:

Judicial Council of California (JCC) reports costs will be minor and absorbable for superior courts to program their case management systems to comply with the requirements of the bill.

COMMENTS:

1) **Purpose.** According to the author:

The *All of Us or None vs Hamrick* decision did not prohibit the use of background checks entirely, nor did it prohibit being able to search the court indexes. Companies, nonprofits, apartment owners, and others will continue to perform background check on applicants, regardless of the outcome of this bill. Whether it be for liability or insurance purposes, or an organization wanting to maintain the safest environment, the *Hamrick* decision does not change these practices. But by prohibiting the use of these identifiers when searching, we are allowing a delay in that person's background check being completed and their application accepted, even if the applicant provided those identifiers willingly for the purpose of a background check.

2) **Criminal History.** Access to person's summary criminal history information is generally prohibited and dissemination of criminal history information is only allowed if specifically authorized in statute. Existing law has held access to criminal history information should be protected as a matter of individual privacy.

The state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records. 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. The language of Penal Code section 13300 *et seq.*, demonstrates that the Legislature intended nondisclosure of criminal offender record information to be the general rule.” (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 165-66.)

- 3) **Case law.** In *All of Us or None – Riverside Chapter vs. Hamrick* (2021) 64 Cal.App.5th 751, (Hamrick) plaintiffs alleged that the Riverside County Superior Court improperly maintained the court’s records in criminal cases in various ways, one of which was 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. The court agreed with plaintiffs that based on the clear language in Rule 2.507, the Riverside County Superior Court 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. Courts are required now to only allow for searches based on name.

Supporters of this bill contend this decision has substantially slowed the completion of background checks, negatively affecting people’s employment opportunities. According to the bill’s sponsor, Checkr, a background check company:

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 from 8% 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.

- 4) **Ban the Box.** Labor Code section 432.7 prohibits employers with five or more employees from asking a job candidate about conviction history before making a job offer. Applicants must be given a conditional job offer before considering the applicant’s criminal history. An employer may conduct a background check once a conditional offer of employment is made or if the applicant waives their right and consents to a background check. Furthermore, if a person consents to a background check as part of their employment, the employer may, in certain circumstances, ask for a live scan finger print or detailed biographical information in order to obtain accurate and detailed information about a person’s criminal history information.
- 5) **Possible Concerns.** Broadening access to searchable court records may be substantially less expensive, it does not ensure the information received is accurate. According to the opponents of this bill, it costs upwards of \$200 per background check without access to court information. However, since a search of court indexes is usually very low cost, the cost to conduct a background check may be substantially less which may result in more background checks. According to Legal Services of Prisoners with Children:

Courts do not collect date of birth information in civil cases; however, they do in criminal cases. (Penal Code, § 11325.) Compiling criminal records with date of birth information helps criminal justice agencies create and share accurate and reasonably complete criminal offender record information with one another for the performance of their official duties. Without access to court records already compiled with date of birth information, one would have to conduct “a diligent search of courthouse files” to independently produce the same information. (United States DOJ v. Reporters Comm. for Freedom of Press (1989) 489 U.S. 749, 764.) Such “a diligent search” (without access to compiled records) is expected to be more time-consuming and costly. While employers with a “compelling need” can expect to pay between \$50 and \$200 for an official copy of the DOJ rap sheet, others can purchase a report from commercial background check companies for anywhere between \$10 and \$100.

It is unclear whether this bill will increase the ubiquity of commercial background checks and ultimately the harms suffered by formerly incarcerated people in their attempts to obtain housing and employment. As a general matter, the Legislature over the past several years has moved in the direction of removing barriers to employment and housing for formerly incarcerated people. For instance, AB 2383 (Jones-Sawyer), pending in Senate Appropriations, places limits on how criminal record information may be used when evaluating prospective tenants for rental housing accommodations.

6) **Argument in Support.** According to the California Chamber of Commerce:

Many businesses and nonprofits are required to perform background checks before they can put people to work. Even if not required, some organizations or apartment owners will conduct checks to ensure that they are maintaining a safe environment. The Hamrick decision has made those record checks impossible to complete, resulting in significant delays or denials of job or housing applications. When a person wants a job or apartment, they often need that opportunity right away. It is vital that we restore the ability to timely review applicant’s records. Without S.B. 1262, those applicants are at risk of being denied access to work and housing. Your bill allows us to process background checks more efficiently and accurately.

7) **Argument in Opposition.** According to Californians United for a Responsible Budget:

When the vast majority of jobs require a criminal background check, unemployment and suppression of wages follow as a natural consequence. A recent study finds that 64% of all unemployed men by the age of 35 have an arrest record, while 46% have a conviction record. For those who are employed, a conviction record reduces the average annual income of black men by 32 percent (and white men by 25 percent). The finding is consistent with our experience that individuals with a criminal record have a

hard time finding low-wage jobs but an even harder time being promoted to a higher-paying position. While negative impacts of the widespread background check are well-documented, its benefits are not. While workplace violence and theft are a real problem, there is no peer-reviewed research that shows the efficacy of the so-called solution—except for the background check industry’s marketing materials that stoke the worst of our collective bias.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081