



TESTIMONY IN SUPPORT OF SB 1039

My name is Janet Ginzberg and I am a senior staff attorney in the Employment Unit at Community Legal Services in Philadelphia. Our unit represents low-income citizens of Philadelphia in a variety of job-related issues, such as discrimination, wage claims, Family Medical Leave, welfare-to-work, disability benefits and barriers to employment. Among these barriers to employment, the most significant one is criminal records. Every year, our office sees hundreds of ex-offenders who are trying hard to obtain or keep employment but whose records—many as old as five, ten, even twenty years—are preventing them from doing so.

In our experience, ex-offenders face employment-related difficulties throughout their lives. Often, an employer who discovers an ex-offender's criminal record does not want to take a chance on employing him or her. Sometimes, the law prohibits an ex-offender from being employed in certain fields, such as in nursing homes and other care-giving jobs.

There are both state and federal laws that are supposed to limit the use of criminal records in hiring decisions. For example, under Pennsylvania law, employers are only permitted to consider misdemeanor and felony convictions that are directly related to the job. Arrests alone are not allowed to be considered. Under federal law, employers are similarly supposed to consider the nature of the offense, the time passed since the conviction, the particular job at issue, and the extent of rehabilitation of the individual and are not permitted to have blanket policies against hiring people with criminal records. In truth, these laws are generally ignored and difficult to enforce.

But while a person who was convicted of a crime at least has some responsibility for these employment problems, a victim of identity theft or error who ends up with a criminal record not his or her own does not. Over the past ten years, we have seen a marked rise in individuals facing employment barriers because of criminal records that are incomplete, inaccurate, or being unlawfully disseminated. Unregulated access to criminal history information has emerged as a fundamental threat to millions of U.S. workers screened every year for employment, as well as one of the most important civil rights issues of our time. At the same time that access to criminal history information has increased, a staggering share of Americans – one in four adults – now have a serious misdemeanor or felony record that will show up on a routine criminal background check, no matter the age of the offense. That is more than 65 million Americans who will have their sensitive criminal history information subjected to and employer scrutiny, often without adequate legal limits or protections.¹ Another 700,000 people are released from state and federal prisons every year, seeking a second chance at a job and housing to help turn their lives around despite their criminal record.

As court records have become more accessible online, more and more employers

¹ National Employment Law Project, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment* (March 2011).

conduct background checks, often engaging the services of private background checking companies known as Credit Reporting Agencies, or CRAs. These companies use technology-based tools for gathering criminal background information, storing it, formatting it and reporting it out to their customers. The CRAs' profits depend, in part, on quickly churning out vast quantities of data.

The Federal Fair Credit Reporting Act imposes a number of obligations on the CRAs in order to protect individuals whose backgrounds are being checked. However, certain problems arise with regularity, including:

- **Inadequate matching, leading to false positives**
- **Reporting of obsolete non-convictions**
- **Confusing and prejudicial formatting**
- **Repetitive entries of the same case**
- **Reporting dispositions that are not up to date**
- **Making the dispute process hard to navigate**

Our organization has attempted over time to explore ways in which to ameliorate the harmful consequences of background checks that don't conform to FCRA; we regularly assist individuals in filing disputes regarding incorrect or misleading information; we advocate on their behalf with employers who make adverse hiring decisions based on them; we file lawsuits in an attempt to redress the significant injuries that individuals suffer by way of these violations and effect practice changes; and, we have actively engaged the FTC's Division of Privacy and Identity Protection, with the goal of significantly raising the level of education and FCRA enforcement.

However, it has become increasingly apparent that the reliance on commercial background checking companies has a detrimental impact on the ability of many Pennsylvanians—even those without criminal records of their own—to find and maintain employment.

Requiring background checks used for employment purposes to be conducted only by the Pennsylvania State Police would be one step toward ameliorating this problem for the following reasons:

1. The PSP repository of criminal records—while not without its problems and errors—is maintained according to fingerprints and matching criteria. The incidence of mistaken identity and error are significantly lower than in reports issued by private background check companies, which often issue reports on people simply for having the same name.
2. Case dispositions in the PSP, theoretically, are updated in a short period of time by the originating courts. Therefore, when charges are dropped or dismissed, or the individual is found Not Guilty, the PSP, this disposition is generally reflected fairly quickly in the PSP's central repository. This process is not perfect by any means and we do see some errors or delays in people's PSP RAP sheets. However, the extent of

inaccuracies in dispositions disseminated by CRAs is enormous. Some of the larger CRAs manage their own databases of criminal record information culled at various points from online court records, or sell access to their databases to others. In our experience, they do not update these databases regularly or often, resulting in the publication of obsolete or outdated dispositions in many background checks. Furthermore, cases that had been expunged by a court and should not be accessible in any form continue to show up on the private CRA reports.

3. The PSP, unlike commercial background checkers, does not disseminate information about arrests that did not end in conviction. Pennsylvania and federal law prohibit employers from considering non-conviction data. However, they inevitably do so when given access to that information. Requiring employers to conduct Pennsylvania background checks through the official state repository would be one stopgap measure for preventing employers from making unlawful and discriminatory decisions.

4. The PSP information is generally laid out in a clear and concise manner. Employers reviewing the information generally are able to easily ascertain whether the job applicant has a criminal record and what the charges are. CRA records, on the other hand, are very complicated and difficult to read. It is often not easy to tell what the charges are for and whether they ended in a conviction. The charges for a single incident are often duplicated a number of times, making it appear as though the individual has a much more extensive and serious record than he or she actually does.

5. The procedures for correcting errors and inaccuracies in the PSP reports are more straightforward than with their commercial counterparts. If an individual believes that information on his PSP report is false or wrong, it is fairly easy to request and submit a simple form asking for a correction. While the FCRA mandates that CRAs allow for disputes to be filed for inaccurate or misleading information, the process for doing so is notoriously difficult to figure out or execute. Many CRAs bury information about the dispute process on intricate websites really aimed at their employer customers, not the subjects of the reports. As a result, many people are unable to correct misinformation that is affecting their ability to find and keep employment.

We thank the Pennsylvania Senate for its interest in and concern about the employment of people with criminal records. We hope you will join us in efforts to eradicate this significant barrier to employment.

Submitted by Janet Ginzberg, Community Legal Services, (215) 981-3745