



**Testimony of Becky Straus, Legislative Director  
In Opposition to HB 3331  
Joint Committee on Ways & Means: Subcommittee on General Government  
May 21, 2013**

Co-Chairs Smith and Steiner Hayward, and Members of the Subcommittee:

HB 3331 sets up a Voluntary Central Criminal Records Check Registry (“Registry”), which provides an option for applicants for employment or licensure to apply for registration that would certify that the applicant does not have any criminal history. The ACLU is opposed to this bill and I thank you for the opportunity to highlight again concerns that we raised in the policy committee.

First, I want to note that the ACLU was a participant in the HB 4091 (2012) workgroup, lead by the Department of Administrative Services and Representative Nathanson. We were thankful to be included in that group and the discussions were productive. While we support many of the bill concepts that came from that workgroup – specifically, HB 3168 and HB 3330 – we do not believe that HB 3331 would significantly improve the background check system, but it might have collateral consequences for applicants for employment or licensure.

Duplicative or Expensive Background Checks

When this issue came up most recently in 2012, the problem that was articulated by proponents at the time was the inefficiency of criminal background checks in the employment setting. Anecdotally, they presented evidence of individuals that were working or volunteering at multiple, but related facilities, and were required to undergo a separate background check for each placement (movement between different long term care facilities is an example). It is important to remain mindful of this problem that motivated the work group and the bills before you, so as not to move forward with any proposals that are not targeted at these issues or that might represent a disproportionate response to the challenges at hand.

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We have concerns about the Voluntary Central Criminal Records Check Registry (“Registry”), which provides an option for applicants to apply for registration that would certify that the applicant does not have any criminal history.

First, a system like this seems to invite discrimination from employment based on membership status in the Registry. Amendments in the policy committee (the ACLU did not draft the amendments or see them before they were introduced) attempted to put protections in place for job applicants by prohibiting an employer from inquiring about an applicant’s status in the

registry before making a job offer. This amendment improved the bill, but we would have liked to see even stronger prohibitions, including restrictions on employers considering status in the registry and a remedy for the applicant if the employer violated those terms.

Second, a central tenant of the current criminal background check program is that the statutory disqualifying crimes have some relation to the employment or role at issue. This principle would seem to suggest that it is irrelevant whether the applicant has a completely "clean" criminal record, but rather that he or she does not have any convictions for disqualifying crimes. The Registry would undermine this principle.

Third, it is unclear whether this process would save any money or meaningfully reduce the number of background checks that are conducted on an individual. HB 3331 proposes annual checks and those checks would be name-based state record checks, so would not change any requirement to conduct fingerprint-based checks for records outside of Oregon. The renewal fee every two years would be a burden to the applicant.

The idea of a Registry, or "clean box," was discussed in the workgroup. Opinions were mixed on its utility and some members of the workgroup expressed concern over the issues raised above. Because it is unclear that moving forward with this proposal would solve the problem of duplicative checks (because FBI checks would still be needed), and because of the other concerns mentioned above, we respectfully ask that you wait on this proposal, as well, so that proponents might think it through a little bit further.

Thank you for the opportunity to provide comments. Please feel free to contact me at any time with any questions that you may have.