

## Support the Fairness & Accuracy in Employment Background Checks Act

We urge you to support the Fairness & Accuracy in Employment Background Checks Act (H.R. 5300), introduced with bi-partisan support by Rep. Bobby Scott (D-VA), Chairman of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. The bill improves the reliability and accuracy of criminal background checks issued by the FBI for employment screening purposes, greatly assisting job applicants, employers, and government agencies that conduct background checks.

Just as the FBI tracks down incomplete arrest information when conducting background checks required for the purchase of firearms, this bill will require the FBI to track down and update old and incomplete arrest information before it is released for employment screening purposes. In order to fund this process, the bill will authorize the FBI to collect a reasonable fee for this activity. And similar to the consumer protections mandated by the Fair Credit Reporting Act (FCRA), the bill requires that workers subjected to the FBI's criminal background checks be provided with basic rights, including access to their criminal history records.

**The Problem:** As the U.S. Attorney General documented in a 2006 report to Congress, about 50 percent of the FBI's records are incomplete or inaccurate, mostly due to arrests that have not been updated by state and local authorities. The FBI conducts nearly six million criminal background checks a year for employment and occupational licensing purposes at the request of the states and federal agencies, such as the Transportation Security Administration (TSA) and the U.S. Census Bureau. Some private employers can also access the FBI's criminal records pursuant to federal laws regulating nursing homes, schools, private security officers and other selected occupations.

Despite the increased access to the FBI's rap sheets for employment screening purposes, there have been no meaningful reforms to address the poor quality of the FBI's records. As a result, inaccuracies and delays in tracking down information missing from FBI rap sheets cost workers jobs, cause employers to lose out on qualified employees, and force government agencies to expend untold hours of valuable staff time processing appeals from workers unfairly denied employment due to erroneous or outdated information on their FBI rap sheets. Everyone suffers when background checks do not provide accurate information upon which to base decisions regarding the safety and security of the workforce:

- **Incomplete FBI records hurt workers already hard hit by the economy.** As the attached workers' stories detail, workers subjected to FBI background checks are routinely denied employment or the security clearance they need for their jobs due to incomplete information on their FBI rap sheets. Correcting these errors can take weeks if not months, causing serious financial hardship to working families who must go to great lengths to track down missing information and then wait for that information to be processed.
- **Incomplete FBI records disadvantage businesses that rely on ready access to qualified workers.** In order to maintain an efficient and safe workforce, employers need to be given prompt, accurate and reliable information to evaluate prospective employees. When employers are forced to rely on outdated criminal history information that does not provide an accurate picture of that worker, they lose out on otherwise qualified workers of their choice or get bogged down in protracted delays that undermine the hiring process.
- **Incomplete FBI records undermine security and cost the government valuable time and money.** Especially since 9/11, government background checks have grown in many large industries, including most of the transportation sector as well as government jobs and large contractors doing work for the public sector. When government agencies conducting background checks rely solely on the FBI rap sheet to perform security threat assessments, it results in a grossly inefficient process where applicants are routinely denied jobs because of

arrests that never resulted in conviction and that would not disqualify the worker from employment. Government employees then spend countless hours reviewing appeals and approving applicants who never should have been denied in the first place, if the records were kept up-to-date. For example, the TSA has granted 96% of the nearly 40,000 appeals submitted by port workers that are based on inaccurate FBI background checks required to work at any of the nation's ports. However, it takes TSA several months to generate initial denial letters based on the FBI rap sheet, and then to process appeals from eligible workers, which left thousands of port workers jobless last year in the midst of the economic downturn while waiting for the appeals to clear the TSA system.

**The Solution:** The Fairness and Accuracy in Employment Background Checks Act takes simple, important steps to significantly improve the reliability of an FBI rap sheet produced for employment or occupational licensing purposes, while creating basic consumer protections that ensure workers are guarded against potential abuses associated with the FBI's criminal background checks:

- Similar to the practice of the FBI in reviewing an individual's criminal record to purchase firearms, the FBI would be required to locate missing disposition information, to the maximum extent possible within ten days, before releasing the rap sheet for employment screening purposes. The FBI has been able to track down 65% of the missing information within three days for federal gun checks under the Brady Act.
- As required by the federal law regulating private security background checks, arrests older than one year that do not include a disposition will not be reported on an FBI rap sheet for employment purposes unless the FBI can verify that the case is still being actively prosecuted.
- Codify FBI regulations that have been in place since the 1970s providing that "non-serious" juvenile and adult offenses should not be reported on FBI rap sheets, to the extent that the rap sheets are prepared for employment screening purposes.
- Individuals subject to an employment criminal background check will have the right to receive a copy of their rap sheet, thus providing the individual with an opportunity to verify and challenge the accuracy of the information.
- Provide fair and timely procedures for workers to challenge inaccurate FBI records, requiring an investigation of federal, state and local criminal records.
- For those criminal records found to be incomplete by the FBI or a worker challenge, the FBI will update its records and notify the local authorities of the corrected information, similar to the consumer protections requirements that apply to private screening firms under the FCRA.
- Direct the Attorney General to inventory the employment restrictions based on criminal records required by federal law and policy.
- Authorize the FBI to charge a reasonable fee to pay for the activities necessary to investigate and update incomplete criminal records produced for employment screening purposes.

The Fairness & Accuracy in Employment Background Checks Act, which was introduced on May 13, 2010 by Congressman Bobby Scott, is co-sponsored Representatives Loretta Sanchez (D-CA), Steve LaTourette (R-OH), Frank LoBiondo (R-NJ), Candice Miller (R-MI), and Thaddeus McCotter (R-MI). The bill also has strong support from a broad range of labor, business, civil rights and privacy rights organizations. (See attached list of supporting organizations.)

For more information, contact Jesselyn McCurdy with the House Judiciary Committee, (202) 225-5727, [Jesselyn.McCurdy@mail.house.gov](mailto:Jesselyn.McCurdy@mail.house.gov), or Judy Conti with the National Employment Law Project, (202) 533-2573, [jconti@nelp.org](mailto:jconti@nelp.org).

## Worker Stories Illustrate the Serious Hardship Caused by Faulty FBI Criminal Background Checks

- **William Truxton (Philadelphia, Pennsylvania) – Port worker who lost his home, car and the ability to support his family.**

William Truxton, 43, worked as a steamship clerk on the Philadelphia waterfront for twelve years. He applied to the Transportation Security Administration (TSA) for his Transportation Worker Identification Credential (TWIC) in December 2008, which requires an FBI criminal background check to keep working at the port. Due to TSA backlog in processing TWIC applications – specifically those where something on the applicant's FBI rap sheet triggered an initial denial – he was forced to wait over four months before receiving an initial denial letter based on charges that had been dropped. Upon receiving this notice from TSA, Mr. Truxton immediately submitted an appeal showing that all charges were dropped. He then continued to wait for TSA to process his appeal well into May, when he was finally approved.

Mr. Truxton had been out of work since December 2008, when the Philadelphia port began requiring a TWIC for entry. During the five-month period he waited for TSA to process his application, Mr. Truxton and his family, including four children and a baby granddaughter, lost everything. They were forced to sell their furniture, and his car was re-possessed. The family survived on the few dollars a day that Mr. Truxton's mother earned from babysitting that she shared with him and his family so that they could buy food at the dollar store. They eventually received an eviction notice. Mr. Truxton was incredulous that the FBI records had not been updated to show that the charges against him had all been dismissed. He said, "I went from having everything to having nothing, it's devastating. I worked hard all my life to get to where I was, where I had a house, a car, my kids, and now everything is being taken from me because of government backlogs and missing information."

- **Johnny Johnson (Baton Rouge, Louisiana) – Port worker who lost his job due to background check delays on charges that were dropped.**

Johnny Johnson, 27, worked on the docks in Baton Rouge for two years, loading and unloading barges. He applied for his TWIC card and was denied by TSA months later, based on a battery arrest for which there was no disposition on his FBI rap sheet. Mr. Johnson promptly submitted an appeal to TSA with a letter from the District Attorney's office that had declined to file charges against him, but then had to wait over two months more for TSA to grant his appeal and approve his TWIC card. During that time, Mr. Johnson lost his job because, without his security clearance, he was unable to access the petroleum plant where he worked. While waiting for TSA to review his appeal challenging his out of date FBI record, he remarked, "Soon, I will lose everything I have worked hard for if this doesn't get resolved. This is extremely unfair, especially with the way the economy is at this time. I have nowhere to turn."

- **Russ Fennimore (Philadelphia, Pennsylvania) - - 37-year-old port worker with an open arrest that threatened his job while he supported sick family members.**

Russ Fennimore, 68, had been working at the Philadelphia port for 33 years and wanted to keep working a few more years to help support his daughter, grandchild, and son-in-law who had just been diagnosed with a fatal brain disease. He applied for his TWIC card and was denied based on an arrest dating back to 1971 that still had an open disposition. Mr. Fennimore then had to take time off from work on several occasions to go to various police departments and courthouses to obtain sufficient proof that charges were never filed against him, and that he was never prosecuted or convicted for this offense. Five months later, TSA finally approved his TWIC card, to his family's great relief.