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Impact and Perceptions of AB 1076, Automatic Relief of Criminal Records for Eligible Californians, by Public and Private Employers in the Bay Area

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ABSTRACT

On February 21, 2019, Assembly Member Phil Ting introduced AB 1076, Criminal Records: Automatic Relief, for consideration to become law. The bill passed with majority votes through the Assembly Public Safety Committee, Assembly Appropriations Committee, and the Assembly Floor. It was signed into law by Governor Gavin Newson on October 8, 2019. The law goes into effect January 1, 2021.

This paper discusses an overview of the law, identifies which Californians will be impacted, and offers a description of how arrest records and similar law is managed throughout the United States. This paper explores how public and private employers in the Bay Area will perceive and be affected by this law. Six (6) key informant interviews were conducted to understand the development of the law and its long-term implications and their opinions are discussed. Public and private employers were surveyed, forty-two responses were received and their results were analyzed. The new law will play a major role on how background checks and potential employees are conducted; this paper attempts to identify the extent of those impacts on the employers who will have the burden of following this new mandate. Lastly, this paper offers recommendations based on findings and lists areas for further research.

CHAPTER 1: INTRODUCTION

"The real question is: is it good public policy to expunge criminal records for the purposes of employment? Do you want a thief being a real estate broker or an insurance salesperson?"

-- Judge Ruth Astle Samas, Golden Gate University Professor
and practicing Administrative Law Judge,
on the question of whether AB 1076 will be a benefit to employers

BACKGROUND

On February 21, 2019 California Assembly Member Phil Ting introduced AB 1076, Criminal Records: Automatic Relief, for consideration to become law. Within a few months the bill gathered support by having over a dozen organizations register in favor of it and only one registered group standing in opposition to its passage. The bill went on to pass with majority votes through the Assembly Public Safety Committee, Assembly Appropriations Committee, and the Assembly Floor. It also survived being in Suspense File and headed towards successfully becoming a new law the same year it was proposed. The bill, in the end, passed and was signed into law by Governor Gavin Newsom on October 8, 2019 and will be in effect as of January 1, 2021. The new law is found under Chapter 578. The law modifies the Business and Professions Code, Labor Code, Penal Code, and Vehicle Code as it relates to criminal records. Previously, a similar bill was introduced but was rejected due to costly implementation administrative costs. The law will allow for an administrative process that will automatically erase certain criminal records and arrest records that do not lead to convictions.

An arrest record can change someone's life. Arrest records and convictions are viewable by the public – at any time and with little restrictions – and freeze anyone's ability to access housing, education, and employment. A fair opportunity to get a second chance allows social and economic mobility; this benefit is not just for the offender but includes every person whose life is affected by that person's mistake. Assembly member Phil Ting convinced legislators and the governor of that offer who ultimately supported his bill. His proposal, which he described during press conferences, helps end "paper prisons" (Horseman, 2019). By creating an automatic path to erase minor offenses and arrest records this new law brings promise of a better tomorrow for the individuals, for their families, and the communities where they live.

PURPOSE OF THE STUDY

This paper discusses the details of this new law, the impact and perception the law has on Bay Area business owners, in both private and public organizations, as well as how many individuals may be impacted by having their records automatically disappear without having to go through a court process to make that happen.

SIGNIFICANCE OF THE STUDY

The new law is mandated public policy focusing on a social issue that will impact both public and private employers who conduct background checks as part of their hiring process. There are predictions about the positive effects of the law. Individuals who have arrest records included as part of their criminal history when being considered for employment may not be as easily able to qualify for work since employers who conduct background checks as part of their hiring process may not hire them. Lack of employment opportunity can potentially lead to additional criminal offenses lessening the chance of being employable. Additionally, men of color are disproportionately impacted since they are unfortunately likely to have arrest records when compared to other groups. If by having these records automatically expunged the likelihood of employment is higher and the chance of economic mobility is also higher for these affected individuals. As a result of the new law this would be meaningful study to public administration because the time and money spent on erasing records will prove whether it is worthwhile to dedicate resources to process these records long team.

THEORY OF CHANGE AND ASSUMPTIONS

The theory of change of this paper is: If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers

about their applicant's background, then there will be increased liability cases for negligent hiring practices, and then there will be compliance adjustments necessary to be aligned with associated criminal and employment law. As such, the following three assumptions are made:

Assumption 1 (A1): If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers about their applicant's background.

Assumption 2 (A2): If criminal history disclosure is no longer required under AB 1076, then there will be increased liability cases for negligent hiring practices.

Assumption 3 (A3): If criminal history disclosure is no longer required under AB 1076, then there will be compliance adjustments necessary to be aligned with associated criminal and employment law.

ASSUMPTIONS AND LIMITATIONS

With the new law set to take effect January 1, 2021, one of the limitations of the research is that there will be no data about how many individuals will be affected by the law because it will apply toward future records. One of the assumptions made is that the law is well known by employers in the Bay Area, which is the scope of the research, and that their responses to survey questions are sincere and thoughtful. The research conducted follows the assumption that the law is going to be in effect in its entirety and without legal obstructions by employers once January 1, 2021 arrives.

DEFINITION OF TERMS

This research is based on new language in the law taken from legislation. Assembly Bill 1076, intents to provide "automatic relief" or "expungement" to "qualifying individuals" who have certain arrest records or convictions. Automatic relief or expungement is defined as automatically erasing these records from public consumption without any prompting by affected individuals. Additionally, the term qualifying individual means those who reside in California and will be affected as described in the language of the bill that became law, certain arrest records which occur on or after January 1, 2021 will qualify for automatic expungement. These records include:

1) Any offense, specifically a misdemeanor, where the charge was dismissed.

2) Any offense, again, a misdemeanor, where no proceedings have taken place, or it has been one year since the arrest.

3) Any arrest where the person may be punished by going to prison but there is no proceedings and at least three (3) years have passed since the arrest and no conviction of any kind relating to that arrest or the person was acquitted from any charges from that arrest.

4) Any case where the person successfully completes a diversion program, whether prefiling, drug, or pretrial.

Any of these arrest records will be listed as "arrest relief granted" for law enforcement or similar groups but will not be disclosed to most other agencies or the public. This means that they will qualify to have their records automatically erased from public view.

EXPECTED IMPACT OF THE RESEARCH

The potential impact is unparalleled. According to the US Department of Commerce, in 2017, a news article published by the Sacramento Bee, "California is now the world's fifth-largest economy" (Egel, 2018). This means that those individuals who may now qualify for work where

previously would have been denied will now be able to positively impact the economy if successful allowing for California to have a greater opportunity in the economy. To Californians, this would mean upward social and economic mobility for those who previously would not have been able to qualify for certain jobs in different segments of work. The data discovered and analyzed found as a result of this research project will offer insight to those predicted impacts.

CHAPTER 2: LITERATURE REVIEW

"A better and diverse applicant pool. This is especially true for positions with a high turnover. Also the wait times for background checks will be shorter. The cost and time of obtaining criminal records would be eliminated."

--Professor Ernesto Lara, University of the Pacific,
on the question of whether AB 1076 will be a benefit to employers

"This can increase the candidate pool by having applicants be more willing to apply for roles when they know criminal background checks are conducted as part of the offer process, since their records may be excluded now."

--Professor Erin Daruszka, Golden Gate University,
on the question of whether AB 1076 will be a benefit to employers

INTRODUCTION

The new law set to take effect on January 1, 2021, undoubtedly impacts California employers across all work industries. Although the onus will fall on the administrative duties of representatives of the Department of Justice to ensure that the proper records are sealed from public view and scrutiny this new requirement is a mandate all employers – with very few exceptions – must follow carefully.

A sub-set of questions were posed at the development of this research to explore the topic. Those sub questions include: How are current criminal records managed throughout the country

after an employee has been arrested? What are the Limits of New Law? How are criminal records in employment decisions currently weighed?

Intentional exclusions of literature review include: the impact of California as a whole or any particular geographical regions outside of Bay Area; the impact of particular subgroup of the population and no particular consideration to age, race, sex, or ethnicity; the criminal records and unemployment data reviewed during the writing of this research paper was limited to the last ten years; lastly, no private company that gathers and retrieves background searches on behalf of companies was interviewed or analyzed to uncover how this law will impact their work product.

LITERATURE REVIEW

HOW ARE CURRENT CRIMINAL RECORDS MANAGED THROUGHOUT THE COUNTRY AFTER AN EMPLOYEE HAS BEEN ARRESTED?

The report, "Model Law on Non-Conviction Records" published by the Collateral Consequences Resource Center was published just months ago and is directly connected to this topic. The report discusses how public policy can help create ideal law to prevent unnecessary access to criminal records that do not end in criminal convictions in order to help individuals who may have had a brush with the law but have no criminal convictions. The report argues that this is the correct approach to limiting the availability of these kinds of records since technology and easy accessibility to public records allows for intrusive access to anyone's personal information that may be detrimental when trying to attain work, housing, education, or social services. The report was produced by supporters and stakeholders including academic and policy experts as well as community advocates after multiple sessions at the University of Michigan where they

collaborated to come up with the ideal law that protects individuals from unnecessary harm as a result of access of these records that do not end in criminal convictions.

The report provides background and explanation of how current criminal records are managed throughout the country after an individual has been arrested. The report argues that arrest records with no convictions are problematic in that they do not produce an accurate representation of the individual. The report provides current legislation in thirteen states including in California that offers automatic relief if an individual's record meets certain criteria.

In 2017, HR News published by the Society for Human Resource Management the article "New Criminal History Screening Restrictions Now in Effect in California: Regulations 'borrow heavily' from 2012 EEOC guidance." Roy Maurer's article describes the new guidelines, in effect as of July 1 of that year in the State of California, by the California Fair Employment and Housing Council (FEHC) which makes clear that employers may not use any history found in criminal background screenings if by doing so means it will have a negative effect on protected classes (sex, race, color, national origin, and religion). The only caveat is when that history against a potential employee is job-related and connected to the position at under consideration. The article emphasizes more restrictive laws in which impact Los Angeles and San Francisco.

Maurer includes the perspective of a criminal background agency as well as an employment lawyer to explain how to minimize liability. Maurer discusses the Employment Equal Employment Opportunity Commission (EEOC), the state's Fair Employment and Housing Act (FEHA), and the Fair Credit Reporting Act (FCRA) and how the guidelines required from those agencies and laws also should be considered whenever considering a candidate. Lastly, the article touches on Ban-the-Box laws in place in Los Angeles and San Francisco that also play a role whenever employers conduct background checks. Maurer (2017) notes, "The regulations outline various ways in which

employers can face liability when using a candidate's criminal history in hiring and other employment decisions." These laws do not prohibit the use of criminal background checks as part of the hiring process but caution that relying on them too heavily may present a problem for candidates if the practices are discriminatory.

Just one year later, in 2018, HR News published by the Society for Human Resource Management the article, "Confused About Background Checks in California? Read This" Jennifer Mora's article describes how multiple laws in the State of California create a specific structure for employers to conduct background screening. If employers do not follow the structure then employers may be at risk for liability. Mora (2018) argues, "The employer must make a clear and conspicuous written disclosure to the individual, in a document that consists "solely" of the disclosure, that a background check may be done." San Francisco and Los Angeles local laws limit the use of criminal history screenings. The article discusses these laws for readers as a way to show that there are many considerations before running a search and deciding what to do with criminal history records: San Francisco's Fair Chance Ordinance, The Los Angeles Fair Chance Initiative for Hiring Ordinance, and California's state and local ban-the-box laws. The article concludes that in order to limit liability and protect employers during the hiring process, it recommends reviewing all hiring practices including properly training human resource employees, assessing job applications and related forms, as well as job advertisements to ensure compliance with these laws.

HOW DOES NEGLIGENT HIRING LIABILITY IMPACT HOW EMPLOYERS PERCEIVE THE NEED TO HAVE A BACKGROUND CHECK SYSTEM FOR CANDIDATES?

In the article, "Employer Liability for Negligent Hiring of Ex-Offenders" authored by Stacy A. Hickox, published by the St. Louis University Law Journal, addresses the concerns of

previous criminal histories of employers as they attempt to navigate the hiring process. Employers are sincerely concerned, Hickox argues, about the risk an employer must take when hiring a candidate who has a criminal history all while balancing not to directly target a racial or ethnic group. Hickox (2011) writes, "…employers cannot adopt outright bans on hiring ex-offenders without the strong possibility of liability for adversely impacting applicants of color or applicants with disabilities" (p.1002). These outright bans would potentially mean targeting people of color who are disproportionately represented in the criminal justice system compared to the general population. However, an employer must consider how any hire can impact the business should a lawsuit be filed for not protecting other employees, customers, or business partners through "negligent hiring" practices. The article focuses on the case law available about how an employer can ensure that its business has made "a sufficient determination regarding the risk posed by someone it hires or retains who later caused harm to others" (Hickox, 2011, 20011).

In the article Hickox (2011) cites Professor Foreman's articulate strategy for how an employer may balance hiring well and minimizing risk of candidates who may have had brushes with the law. He suggests incentives for employers as a start but also "advised on focusing on 'the nature of the crime, the time since it occurred, the effort of the ex-convict to rehabilitate, and the nature of the job' to make a determination in the job hiring process" (p. 1004). The article emphasizes the need for better specific guidelines, law, and rules that would govern this topic as the assumption is that employers want to do the right thing and hire well but without much risk.

In his discussion of "Criminal Employment Law" published in Cardozo Review, Benjamin Levin, writes about the complexities of trying to unite and balance criminal justice reform advocates with employment rights advocates. Levin (2018) concludes, "Employment law scholars should be concerned about the role of criminal records in restricting entry into the formal labor

market. And criminal law scholars should be concerned about how employment restrictions extend criminal punishment, shifting punitive authority and decision-making power to unaccountable private employers" (p. 2265). Levin argues that private employers play a significant role in offering opportunity to economic advancement of individuals with a criminal record but underscores that this important role has not been explored broadly. Furthermore, Levin's article, "describes a phenomenon, 'criminal employment law,' which exists at the nexus of employment law and the criminal system. (Levin, 2018, p. 2268).

Levin dedicates a portion to the employer's negligent hiring and retention liability since "an employee's identity and the sufficiency of her employer's efforts to suss out past misdeeds or misconduct" is what would come into play should a lawsuit be filed (Levin, 2018, p. 2282). Therefore, employers would understandably be cautious in their hiring and be persuaded easily to prevent or minimize risk by conducting background checks. Levin (2018) concludes, "This hybrid public/private and civil/criminal institution exacerbates both the punitive turn in criminal law and the marginalization of those with criminal records" (p. 2327). In order to be more successful as an employer and a candidate who would like a chance then more public policy is needed to direct employers on how to manage this issue.

In 2001, nearly twenty years ago, the article, "Criminal Background Checks for Prospective and Current Employees: Current Practices among Municipal Agencies" published by Public Personnel Management, describes how common practice it is to conduct background checks for new employees, and in some cases existing employees, in government and private organizations. The article notes, "Depending on the source, anywhere from 80 percent to 95 percent of U.S. corporations employ some form of background checks…37 percent examine criminal records..." (Connerley, Arvey, and Bernardy, 2001, p. 175). The primary reason for conducting background

checks is to reduce the liability it can bring the agency for hiring an employee who would potentially engage in illegal behavior while at work (Connerley, Arvey, and Bernardy, 2001, p. 173). They successfully argue that criminal background checks is part of the hiring process to ensure that private and public agencies are protected from lawsuits.

Several lawsuits were cited to show that employers have been sued and many lost after an employee engaged in unlawful behavior while working. The authors are careful to note that not all lawsuits where an employee conducts illegal misdoings will hold the employer accountable for those actions but their argument is that case law proves that if the employer reasonably could have predicted an employee's bad behavior based on known history (i.e. background checks) it could have prevented the future action (Connerley, Arvey, and Bernardy, 2001, p. 174). At the time Connerley, Arvey, and Bernardy (2001) wrote the article, they noted that employers were in fact losing, "72 percent of negligent hiring cases with an average settlement of more than $1.6 million, it appears that the courts believe a majority of incidents could have been prevented, if appropriate screening had taken place." Connerley, Arvey, and Bernardy (2001) conclude, "Thus, it is important that both private and public sector organizations understand negligent hiring, employer liability, and how to avoid hiring someone who will potentially generate a negligent hiring lawsuit."

To gather primary data, authors of the article sent surveys to 114 public employers across the United States, 62 public agencies responded and that was at a response rate of over 50 percent; the results showed that when it came to conducting background checks, "Half of the respondents conduct background checks on at least some of their prospective employees" (Connerley, Arvey, and Bernardy, 2001, p. 175). The article describes how some organizations relied on internal screening while others outsourced the background inquiry, yet some survey respondents did a

combination of internal screening and outsourcing; interestingly, the article notes that the survey revealed only current employees who were applying for a promotion were required to undergo a background check (Connerley, Arvey, and Bernardy, 2001, p. 175). This article concludes that it is prudent for an organization to conduct a background check for specific jobs that may interact with customers, handle money, access drugs, restricted areas, care for people, or access private homes as a way to protect the employer. (Connerley, Arvey, and Bernardy, 2001, p. 182).

The Employment and Labor Relations Law of American Bar Association, published, "Withstanding Legal Scrutiny in Employer-Conducted Background Checks" by John F. Lomax and Jennifer R. Phillips focused on the types of pre-employment screenings by employers. The article argued that even while lawful to ask information from prospective employees, "Even companies that have detailed procedures already in place can benefit greatly from revisiting and updating their background-check policies, especially in light of new local requirements and the increased litigation and agency enforcement in this area." The article highlights the multiple types of local, state, and federal laws that make it possible to fall into a potential discrimination lawsuit if employers do not properly follow guidelines and rules.

These laws include the Employment Equal Employment Opportunity Commission (EEOC) which creates federal laws and protects individuals from discrimination based on protected status such as race, age, disability and gender, Ban-the-Box initiatives across the country which erases the ability to ask about criminal histories on job applications, and Fair Credit Reporting Act (FCRA) which allows third party screening of individuals but has specific legal requirements. The article concludes by noting that even when trying to protect candidates from discrimination by future employers, "…the fact remains that nearly all companies nationwide use background checks for some or all job openings" (Lomax and Phillips, 2014, p. 15). This article lists all potentially

relevant laws that apply to employers as they consider candidates for open positions in the workplace.

HOW ARE CRIMINAL RECORDS IN EMPLOYMENT DECISIONS CURRENTLY WEIGHED?

The IZA Journal of Labor Policy published the article, "Population with Criminal Records and Racial Disparity in Labor Markets" by Jasmine Boatner last year. This study relates to my topic since one of the variables that can affect unemployment could be race and whether one race has a greater disparity when compared to another if criminal records play a role in whether someone is employed.

The research used the National Longitudinal Survey of Youth (NLSY) 1997 (NLSY97) survey to compare race and criminal records to better understand if black individuals are more likely to be affected when searching for employment when compared to Hispanic or white counterparts. Boatner (2019) used a dependent variable of only considering individuals with a criminal record, and then "ran regressions to estimate racial disparities in unemployment" (p. 3). The research's independent variables included studying "black, Hispanic, age at start of work history, age^2, Armed Forces Qualifications Test (AFQT), AFQT^2, own education, mother's education, father's education, self-esteem scale, Rotter scale, suspensions, expulsions, charged with illegal activity, and convicted of illegal activity" (Boatner, 2019, p. 3). Ultimately, the article suggests that it is more complex than these variables. The author concludes, "…the high proportion of black men with a criminal record does not seem to be the driving force responsible for the black-white employment gap" (Boatner, 2019, p. 10).

The article "The Use of Criminal Record in Employment Decisions: The Rights of Ex-Offenders, Employers and the Public" from the Journal of Business Ethics by Helen Lam and Mark

Harcourt. The article does review how the records of ex-offenders are managed in multiple countries including the U.S., Canada, Australia, Britain, and New Zealand. However, the focus in on federal and state jurisdictions in Australia (Lam & Harcourt, 2003, p. 238). This article focused on question-based method and studied data to reach a conclusion. The data used was to understand arrest records among youth in different countries. The central questions asked are, "Should minor offenses be allowed to permanently and adversely affect the ex-offenders' future employment opportunities? Moreover, are the laws always just and fair so that employers could and should rely on them to 'discriminate' in their hiring?" (Lam & Harcourt, 2003, p. 238).

Lam and Harcourt (2003) dive into employer rights and ex-offenders' employment rights and discuss the competing and sometimes conflicting rights brought on by customers (p. 239). Additionally, Lam and Harcourt discuss the right of individuals by having the reader consider that those who offend and are released face the potential of "double jeopardy" by having additional barriers in reintegrating to society when there is discrimination by potential employers and the impact it has on the community (p. 239-242). The article ends with recommendations to future legislation and public policy to allow for the opportunity to more ex-offenders an opportunity to become employed based on the data found.

In the article, "Think Twice, It's All Right: The use of conviction histories in hiring decisions under California Law" written by Arthur Four, and published by Loyola of Los Angeles Law Review succinctly discusses how criminal histories directly impact individuals who seek employment. The article is critical of California's efforts to reduce the impact of considering criminal records as one way to increase chances of employment. Four (2016) writes, "California has recently, albeit slowly, started down this important path of helping to increase the employment of ex-offenders. Though the legislature's recent efforts evince a shift as to how it prioritizes the

goal of ex-offender reentry, those efforts are likely to be ineffective" (p. 454). The article discusses the role that background checks play in hiring decisions and notes case law where the Ninth Circuit held that in some instances by requiring background checks the applicants were being discriminated against because African Americans would be more likely to have criminal records compared to their white counterparts when the requirement would not deemed a sufficient business need for a particular job (a sheet-metal worker, in this lawsuit) (Four, 2016, p.457).

Four (2016) convincingly discusses how "Ban-the-box" laws—that "remove inquiries about criminal histories from employment applications (by removing the "box" on applications that ask about convictions)" (p. 459) have allowed more employment opportunities when compared to those states that have not adopted a similar law. The article closes by recommending that California adopt New York law currently in effect where "In response to these structural barriers to reentry, groups such as the American Bar Association Committee on Effective Criminal Sanctions have suggested that more stringent procedures for relief from the consequences of criminal records must be put in place" (Four, 2016, p.468). Four is critical that California has not committed enough to changing the ability to treat ex-offenders thought a type of certificates of rehabilitation. Through rehabilitative sentences, those offenders can look forward to being considered for potential employment since that record cannot be considered since it is like a pardon (Four, 2016). New York, according to Four, is the leader of this type of criminal justice reform. Four concludes his article by emphasizing that until California adopts a better mechanism to allow for candidates with a criminal history a fair opportunity for employment after serving their sentences in their entirety the criminal system is flawed and will not allow individuals who want a second chance at life to get one.

Kimani Paul-Emile published the article, "Reconsidering Criminal Background Checks: Race, Gender, and Redemption" in the Southern California Interdisciplinary Law Journal in 2016. His research on the negative impacts on poor African Americans, specifically women, when background checks are conducted as part of the hiring process. Paul-Emile (2016) argues, "even an arrest that does not lead to a conviction can appear on criminal a record. This information is often used by employers to deny these women jobs, creating a troubling cycle of unemployment and dependence on government services that perpetuates the welfare queen mythology." Paul-Emile (2016) cites studies and data to show that the use of criminal records to predict someone's work behavior is not a reliable indicator; that almost all employers rely on some criminal record screening, and that most do not hire candidates who have a criminal record. Paul-Emile (2016) offers some stark facts: while African American women represent 30 percent of those incarcerated, only 13 percent of women are African American in the population nationally; similarly, Latina women represent 16 percent of those incarcerated while they only represent 11 percent of all women in the country (p.398). This then, places women of color at a disadvantage and less likely to be hired by an employer. Paul-Emile (2016) describes how Title VII, federal law, allows protection for women of color by barring "employers from automatically denying employment to individuals based on an arrest or conviction record" (p. 402). This disproportionately affects women of color who are more likely to have arrests, citations, or convictions compared to their white counterparts.

Paul-Emile also discusses the employer's perspective about how conducting a background check protects employers from liability; however, data also shows that after an individual has been without any brushes with the law, what is referred to as "point of redemption", there is not more risk in hiring when compared to an individual who has no criminal record. Paul-Emile (2016)

concludes, "…removing barriers is a necessary means of lowering the risk of recidivism, reducing social marginalization and societal costs, and ensuring full citizenship" (p. 409).

In 2017, Harvard Business Review published, "Hiring Discrimination Against Black Americans Hasn't Declined in 25 Years" by Lincoln Quillian, Devah Pager, Arnfinn H. Midtboen and Ole Hexel. The article discusses racial discrimination. It opens by sharing a poll by the Pew Research Center regarding race which indicates, "most white Americans remain convinced that race is no longer central to one's opportunities in life" (Quillian, et. al., 2017, p. 2). The article challenges that perception and specifically discusses racial discrimination in hiring by conducting a field experiment study which concluded that it is not on a trend of decline. First, the article states, "We find no change in the levels of discrimination against African Americans since 1989, although we do find some indication of declining discrimination against Latinos. The results document a striking persistence of racial discrimination in US labor markets" (Quillian, et. al., 2017, p. 3). This conclusion leads the authors to advocate for affirmative action practices as a way to tackle any racial bias.

In the study, the tests were conducted by performing resume audits and in-person audits. Where resumes were made-up but included ethnically identifiable names and at the same time analyzing job interviews for white and nonwhite applicants. The second conclusion the study showed the authors is that, "What our results do point to is that at the initial point of entry — hiring decisions — blacks remain substantially disadvantaged relative to equally qualified whites, and we see little indication of progress over time" (Quillian, et. al., 2017, p. 3). The article recommends that intentional intervention practices should be used to reduce racial bias whenever employers make hiring decisions.

CONCLUSION

This area of criminal reform in the United States has been extensively studied and so literature was available for review. The different subtopics explored including how current records are managed, the limits of the law, and how these records are currently weighed against a candidate looking for work were easily able accessible with published literature from various reputable sources. The debate about sealing criminal records and concealing them from public view easily sparks the interest of any reader or student of this field. Significantly, there are articles dedicated to the rights of employers that were also explored to offer a fair assessment of how this new law will impact the San Francisco business community from both an employer and employee perspective.

CHAPTER 3: METHODOLOGY

INTRODUCTION

Both private and public employers selected to participate in the research were asked to participate to allow for a better understanding of the impact and perception of the new law. Voluntary participation was requested and over 100 surveys and a dozen interviews from key informants were requested.

THEORY OF CHANGE AND ASSUMPTIONS

The theory of change of this paper is: If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers about their applicant's background, then there will be increased liability cases for negligent hiring practices, and then there will be compliance adjustments necessary to be aligned with associated criminal and employment law. As such, the following three assumptions are made:

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Assumption 3 (A3): If criminal history disclosure is no longer required under AB 1076, then there will be compliance adjustments necessary to be aligned with associated criminal and employment law.

OPERATIONAL DEFINITIONS

To obtain the most reliable and accurate data, the following operational definitions have been embraced for this research paper:

- For purposes of this study, *qualifying criminal records* will be defined consistent with the language of the law, which includes, 1) a person who was arrested but whose arrest record did not result in a conviction, 2) a person who was arrested and then completed a diversion or deferred entry of judgment program, 3) an individual who completed a sentence of pre-determined misdemeanors or felonies or 4) an individual completes probation and where other conditions such as not serving a different sentence, being on probation for a different offense or charged with any other offense.
- For purposes of this study, *automatic expungement* is defined as having an individual's criminal record unavailable for disclosure by the court to the public including employers. Additionally, under existing law, when an individual completes certain diversion programs, the arrest record is considered to have never occurred.
- For purposes of this study, *benefit* is defined as having at least one positive impact in the view of public and private employers.
- For purposes of this study, *public employers* are defined as nonprofit organizations and government agencies with small (1-49 employees), medium (50-499 employees) or large (more than 500+ employees) businesses located in the Bay Area.
- For purposes of this study, *private employers* are defined as small (1-49 employees), medium (50-499 employees) or large (more than 500+ employees) businesses owners located in the Bay Area.

- For purposes of this study, *community*, *community member(s),* and *resident(s)* are defined as an individual who resides and seeks employment in the Bay Area.

POPULATION SAMPLING STRATEGY AND PROCEDURE

To accurately capture the perceptions and knowledge of those affected by the new law, a combination of key informant interviews and surveys were conducted as the population sampling strategy. Twelve key informants were asked to participate and six agreed to respond. The following key informants participated in the research questionnaire by e-mail: Professor Carlos Sanchez, Golden Gate University and Assistant Agency Director, Alameda County's Social Services Agency Administration Department; Thomas Shawyer, Retired Assistant Chief, Office of Chief of Staff, San Francisco, and criminal justice expert, has asked that I ensure that his answers are noted as representing his personal views; Professor Roger L. Kemp, PhD, Golden Gate University; Judge Ruth Astle Samas, Golden Gate University and Administrative Law Judge; Professor Ernesto Lara, University of the Pacific, Human Resources Management; and Professor Erin Daruszka, Golden Gate University, Human Resources Management.

These six key informants returned questionnaires over a two-week period. It was easiest for each participant to respond by e-mailing their responses. Several participants requested a few days to look through the questionnaires and language of the law; many explicitly expressed that they wanted to offer thoughtful responses and needed time to do answer. This method to share questionnaires in advance and ask for responses in writing, as soon as practicable, allowed time and honored space for these experts to be thorough about how they reacted to the topic. Complete questionnaires are listed in Appendix 1: Key Informants and Questionnaires.

In addition to interviews, over 100 surveys were sent by e-mail invitation to a combination of public and private employers throughout the Bay Area. SurveyMonkey was used to create the

online survey. Six questions with multiple choice answer were used and one open-ended question was available for the respondent to share related thoughts on the topic that were not addressed. The original distribution lists were created using in part the San Francisco Chamber of Commerce's business directory; their website includes different business segments like government, employment and staffing, education, community groups, health care, hospitality, religious groups, retail, manufacturing and agriculture. Other e-mail addresses were identified through online searches and recommendations of peers and those were successful though the numbers were smaller. A total of 42 survey responses were received in a two-week period.

Originally, the scope of the research was intended to be limited to San Francisco County. However, when almost no responses were offered by survey respondents it became apparent that a larger employer pool needed to be included for a successful study. As a result, different employers in the Bay Area were asked to participate in the survey, and that raised the number of responses immediately. The Bay Area, as the target study offers great insight on how this new law will affect the State of California.

INTERNAL AND EXTERNAL VALIDITY OF METHODOLOGY

After the surveys were returned, the data provided was reviewed to identify similarities and compared how different organizations viewed the new law. This data was analyzed to show connections and variations among the responses. Similarly, the questionnaires answered by key informants were analyzed to identify themes and related or varied responses.

LIMITATIONS

At the time this research was conducted, the Coronavirus (COVID-19) pandemic was nearing its peak in the United States. Specifically, for those of us living in the Bay Area, Shelter-

In-Place, a County order requiring individuals to stay home and only go out for essential needs like a grocery store trip, was in effect, without a known end date. This ended the ability to conduct in-person interviews and have more traditional access to key informants since nearly all businesses shifted immediately to a work-from-home model – if they didn't shut down entirely. The second limitation within the methodology used to conduct this research is the uneven amount of survey responses received from public and private employers; though an ambitious and equal number of surveys were sent out to public and private employers it would be nearly impossible to get the same number of surveys returned from both groups – and especially within the timeline allowed to complete this research project (less than eight weeks). Lastly, the third limitation of this methodology is that the scope is intentionally narrow to limit the understanding of the perception and impact of employers and not future job candidates; therefore, no individuals who may be impacted by the law were surveyed or interviewed nor were any criminal background check agencies analyzed to determine what makes one most effective or credible.

SUMMARY

In summary, the data obtained to conduct this research project is of quality and reliable since it includes interviews of key informants from varied but relevant backgrounds and surveys of employers who will be directly impacted by the law. There are limitations to the research performed, however, given the time and availability of respondents during a pandemic.

CHAPTER 4: RESULTS AND FINDINGS, EXPECTATIONS

"I hope that the implementation of AB 1076, with its numerous changes to many California statutory codes, will give hope and opportunities to those who heretofore may have be unable to put their past criminal justice system involvement behind them. AB 1076 should provide greater opportunities for many folks who in the past would have been excluded from employment,

housing, etc. It will accomplish this inexpensively and hopefully will result in a re-enfranchisement of many, many Californians."

-- Thomas Shawyer, retired criminal justice expert,
on thoughts about how AB 1076 may impact employers

OBJECTIVES OF THE RESULTS AND FINDINGS

The goal of this study is to understand the perceptions of public and private employers regarding new law that will change what criminal background information is revealed about job candidates in California. By measuring this specific group's insights, recommendations about how to better evaluate the impacts about the pending law may be obtained. Quantitative and qualitative methods were used for this research. Specifically, semi-structured interviews were conducted for six (6) subject-matter experts and surveys were taken by 42 participants who are either public and private employers and located in the Bay Area.

This research originated with the following three assumption theories made: Assumption 1 (A1), If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers about their applicant's background; Assumption 2 (A2), If criminal history disclosure is no longer required under AB 1076, then there will be increased liability cases for negligent hiring practices; and Assumption 3 (A3), If criminal history disclosure is no longer required under AB 1076, then there will be compliance adjustments necessary to be aligned with associated criminal and employment law.

KEY INFORMANT RESPONSES AND SIGNIFICANT FINDINGS

Once the completed key informant questionnaires were received, responses revealed similar opinions to the questions posed. Some answers held optimistic views about the new law while others revealed concerns about not knowing much about this new law and how that may

impact employers who are also unaware of the law. Some responses included both the benefits and potential challenges. When analyzing these responses, most insightful is that key informants supported at least one of the three scholarly themes discovered in the literature review. Remarkably, all three assumptions were supported by the six key informants' written responses. Complete questionnaire responses are listed in Appendix 1: Key Informants and Questionnaires.

Professor Carlos Sanchez, Golden Gate University and Assistant Agency Director, Alameda County's Social Services Agency Administration Department

As his immediate response about the topic, Professor Sanchez confirmed that what is known as, negligent hiring, a potential liability for employers when hiring someone with a known criminal record who engages in work misconduct, may be a concern for employers when predicting perceptions about this law. This is also one of the themes discovered during literature review. Professor Sanchez insightfully stated, "The concern is going to be taking a risk on someone who had a record that may influence their behavior at work. For instance, having someone in a position of trust that may have access to either personal ID info, merchandize, money, accounts, etc., and the applicant may have had a history of ID theft or other types of theft or fraud." Some criminal records, though expunged, will still be available for view in some public agencies. These records have previously allowed employers to make the best decision while minimizing legal liability – it may now be possible that those records that should be overlooked may still count against a potential job candidate.

Another literature review theme was of how criminal records are weighed in employment decisions. Professor Sanchez's position, "The compliance issue will definitely fall on their Human Resources department for both private and public agencies…In addition, HR dept will need to

educate their agencies on the new requirements so everyone understands the issues at hand" demonstrates that the need for educating employers of this new law is paramount to its success.

In his responses, Professor Sanchez validates the third assumption in this theory of change. Specifically, the last assumption, Assumption 3 (A3), If criminal history disclosure is no longer required under AB 1076, then there will be compliance adjustments necessary to be aligned with associated criminal and employment law, would require that compliance practices change by public and private employers as a result of this new law.

Mr. Thomas Shawyer, Retired, Assistant Chief, Office of Chief of Staff, San Francisco, and Criminal Justice Expert

Mr. Shawyer's responses confirmed all three literature review themes relevant to this study as discussed in Chapter 2. Those three themes, 1) how current criminal records are managed after an employee is arrested, 2) how negligent hiring is a concern for employers, and 3) how criminal records impact employment decisions, were raised.

In his response, Mr. Shawyer described negligent hiring immediately as a concern for employers; he noted that this possible liability would cause worries for many. Negligent hiring is the second theme discussed in the literature review of Chapter 2. Those who study this area describe a delicate balance by employers who want to hire the person they see best fits a position and also needing to hire within the confines of the law so as to minimize any lawsuits by customers who engage in business with them. Mr. Shawyer specifically acknowledged this issue by its referring to its legal term, "Employers may very well have concerns about liability for what is termed 'negligent hiring.' I can see that as a real concern." Those who study the area of how to prevent and mitigate negligent hiring will potentially view this new law as a challenge.

Mr. Shawyer, in one of his responses discussed how the managing of criminal records may be different and cause for some concern. This was the first theme discussed in the literature review, in how current arrest records are managed by each state. He stated, "Some employers may also have concerns about remaining in compliance with other state laws that restrict certain convicted offenders from being hired into specific positions (e.g. jobs involving access to children or dependent adults)." The juggling of different criminal background laws from state to state may potentially be in conflict with each other without careful review for consistency. In this opinion, Mr. Shawyer also validates the third assumption in this theory. Assumption 3 (A3), If criminal history disclosure is no longer required under AB 1076, then there will be compliance adjustments necessary to be aligned with associated criminal and employment law, describes required changes of employers regarding current hiring practices such as criminal background checks.

Last, highlighting one of his responses, Mr. Shawyer touched on how important it will be for employers, both private and public, to actively comply and become educated about this new law. His answer supported the third literature review topic discussing how criminal records in employment decisions are currently weighed. Mr. Shawyer stated, "Ideally, employers should review the changes brought about by AB 1076 to ensure that their hiring practices are in harmony with the new restrictions. Because the changes involve many California codes (e.g. Penal, Labor, Business & Professions) a legal opinion may be the best avenue. Public and private employers should ensure that their HR departments incorporate the AB 1076 changes into their current practices." Mr. Shawyer's reflections about how the law may be beneficial to both employers and job candidates is possible but only if employers actively engage in understanding the most updated employment laws.

Professor Roger L. Kemp, PhD, Golden Gate University

Dr. Kemp's immediately touched on how employers prefer to know about a job candidate's criminal history since it may connect the job opening involved. This opinion connects with the literature review theme regarding negligent hiring. Professor Kemp stated, "Employers, when checking a possible employee's background, would like to know any illegal activities that have taken place during his life before he applied for the job." This is a common practical point of view, as supported in the literature review, that employers want to minimize the liability for a business by hiring well. Dr. Kemp's opinions validate Assumption 1 (A1), If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers about their applicant's background, when he discusses how employers have a deep interest in wanting to know the criminal records of job applicants for open positions.

Dr. Kemp also weighed on how criminal records should be managed by employers as it relates to employee hiring and compliance. He stated, "I would think that compliance with this new law would include instructions from the State of CA on how public and private organizations can comply with this new law." Dr. Kemp's opinion supports the literature review in that complying with all laws matters significantly to employers; however, if laws are too tricky to understand then how can employers be expected to comply? Employers have to navigate with the burden of having to comply with not only employment law but also criminal law. It will be important, in Dr. Kemp's view to ensure that there is a thorough understanding by employers about this new law so that it is well followed.

Judge Ruth Astle Samas, Golden Gate University and Administrative Law Judge

Judge Samas' opinions focused on how the new created law impacts employers but the emphasis for its creation is for the job candidate. She stated, "This legislation is not designed to help employers but to help those convicted of a crime get employment." This thought supports the literature review. Each criminal record created as a result of arrest, minor or major conviction stays with the individual. It is not until there is a rule on how to handle a criminal record that may change whether this fact changes.

The literature review in Chapter 2 describes how individuals can be affected by old records that may no longer reflect the person was involved in a particular incident – and this includes not being able to qualify for employment. The theme of how current criminal records are managed by states discusses how in some states very old arrest records that did not lead to a conviction are viewable in an employee's criminal history and how that particular record may limit the individual's ability to be hired. Many employers who view records would like to know as much as possible about an individual and do not necessarily want to have some records excluded since it is in their interest to know the history.

Judge Samas validates Assumption 1 (A1), If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers about their applicant's background, as her opinions connect to what information is available about an employee and how this law is designed specifically for the job applicant.

Professor Ernesto Lara, University of the Pacific

Professor Lara highlights that, "From an HR standpoint, the law will be followed. The city of San Francisco has enacted similar ordinances that prevent discrimination in employment based on

criminal background." This supports literature review discussed in Chapter 2 about how criminal records are managed for individuals. The literature shows that criminal laws vary by state and sometimes by county, as perceptively pointed out by Professor Lara. It will be the responsibility of employers to comply but there is an expected cooperation instead of seeking to block any part of this new law. While there are some federal jobs that require ongoing criminal background checks Professor Lara's opinion that, "For the most part, no. There are very few people (in HR or Risk Management) who have access to this unrestricted information" and this is why job candidates will be more eligible for positions once the law is in effect.

Professor Lara also considered how negligent hiring may be a concern for employers. This is a literature review topic. Professor Lara pointed out, "Employers will mostly accept it because it's the law. There will be some employers who think they will need-to-know or have the right-to-know or that it will have a negative impact on their business." This is important because once employers become aware about this law they should rely on those who interpret employment law if they have questions about someone's available criminal history. He added, "Its best to consult your legal team, either internal or external. Some insurance companies provide legal consultation services. Professor Lara, consistent with literature review, anticipate that employers want to know how to mitigate any potential liabilities to their business. Professor Lara's views validate Assumption 2 (A2), If criminal history disclosure is no longer required under AB 1076, then there will be increased liability cases for negligent hiring practices. He emphasizes employers' need to closely work with their legal teams to ensure minimizing legal liabilities.

Professor Erin Daruszka, Golden Gate University, Human Resources Management

Professor Daruszka shared her thoughts about how this new law would affect employers. She stated, "I would always recommend using a reputable background checking company that requires proper candidate authorization and has proper controls in place for compliance of applicable laws... and seeking the advice of proper legal counsel." Reputable background checks are valuable to employers since they help to minimize negligent hiring. Negligent hiring was a consistent theme in Professor Daruszka's views about the new law as it applies to employers.

Professor Daruszka discussed how employers may perceive this law challenging because they will not have access to records that they currently do. She stated, "I can imagine some employers may be concerned that someone is a potential risk and what that may mean for their business. However, if the records are not there to be seen - then ostensibly they never existed. I hope this creates more equity in hiring and allowing for people to gain better opportunities for themselves." This view is important to highlight because employers should understand that this new law is in effect and is a mandate. Professor Daruszka validates Assumption 1 (A1), If criminal history disclosure is no longer required under AB 1076, then there will be increased overall concern from public and private employers about their applicant's background, by underscoring how employers may be skeptical about the law because of legal risks they may now face.

SURVEY'S SIGNIFICANT FINDINGS

After careful review of the responses provided, trends emerged for both survey respondents and key informants. Survey participants responded similarly to several questions and revealed consistent findings. By having 42 respondents answer mostly similarly it is an indicator that the larger population who is responsible for hiring in public and private industries will be of similar opinions.

The online survey included seven (7) questions. The first six (6) questions linked to one of the three assumption theories. The last question was intentionally open-ended and optional to allow the participant to provide additional information. The complete survey questions and responses are shown in Figure 1. The third column reveals how each question ties to one of the assumption theories presented in this research paper.

Figure 1: Survey Questions and Responses

Criminal Background Checks: Public and Private Employers in Bay Area Survey			
Survey Question	**Available Answers**	**Assumption Question**	**Responses Given**
Would your company benefit from having <u>full</u> knowledge of <u>all</u> criminal arrest records or convictions of a job candidate?	Yes No Unsure	Assumption 1	Yes — 69.05% — 29 No — 26.19% — 11 Unsure — 4.76% — 2 Answered — 42
Would your company benefit from <u>not</u> being able to have knowledge about <u>all</u> criminal arrest records or convictions of a job candidate?	Yes No Unsure	Assumption 1	Yes — 45.24% — 19 No — 26.19% — 11 Unsure — 28.57% — 12 Answered — 42
Has your company ever rescinded a job offer based on a background check finding?	Yes No Unsure	Assumption 2	Yes — 45.24% — 19 No — 26.19% — 11 Unsure — 28.57% — 12 Answered — 42
Does your company run ongoing background checks after an employee has been hired and continues employment?	Yes No Unsure	Assumption 2	Yes — 45.24% — 19 No — 23.81% — 10 Unsure — 30.95% — 13 Answered — 42
Are you aware of new California law, effective January 1, 2021, that will now automatically erase certain arrest records	Yes No Unsure	Assumption 3	Yes — 23.81% — 10 No — 47.62% — 20 Unsure — 28.57% — 12 Answered — 42

and criminal convictions to qualifying Californians?					
Does your company currently conduct background checks as part of the hiring process for at least some job openings?	Yes No Unsure	Assumption 3	Yes	11.90%	5
			No	85.71%	36
			Unsure	2.38%	1
			Answered		**42**

Is there anything you would like to add?	Open	Any	1	Best of luck to you on your research!
			2	Good luck!!
			3	Depending on the position, I would like to know of any felony convictions related to the type of position they are applying for. I.e.. Embezzlement if they are applying for a financial position
			4	No
			5	That expunge records is included in the decisions of if a person is qualified to work.

The results showed that on average participants completed the survey in one about minute. Participants answered all questions with the exception of the last and optional question; thirty-seven (37) respondents did not include an answer. Only one participant left a detailed comment and wrote, "Depending on the position, I would like to know of any felony convictions related to the type of position they are applying for. I.e....embezzlement if they are applying for a financial position." This participant considers some offenses worthy of knowing without restriction and appears sensitive to any offenses that may relate to work handling money. This is significant because when interviewing key informants the same sentiment was raised by at least one individual as a caution of what may worry employers with a law like this in effect. Complete survey responses are listed in Appendix 4: Complete Survey Responses.
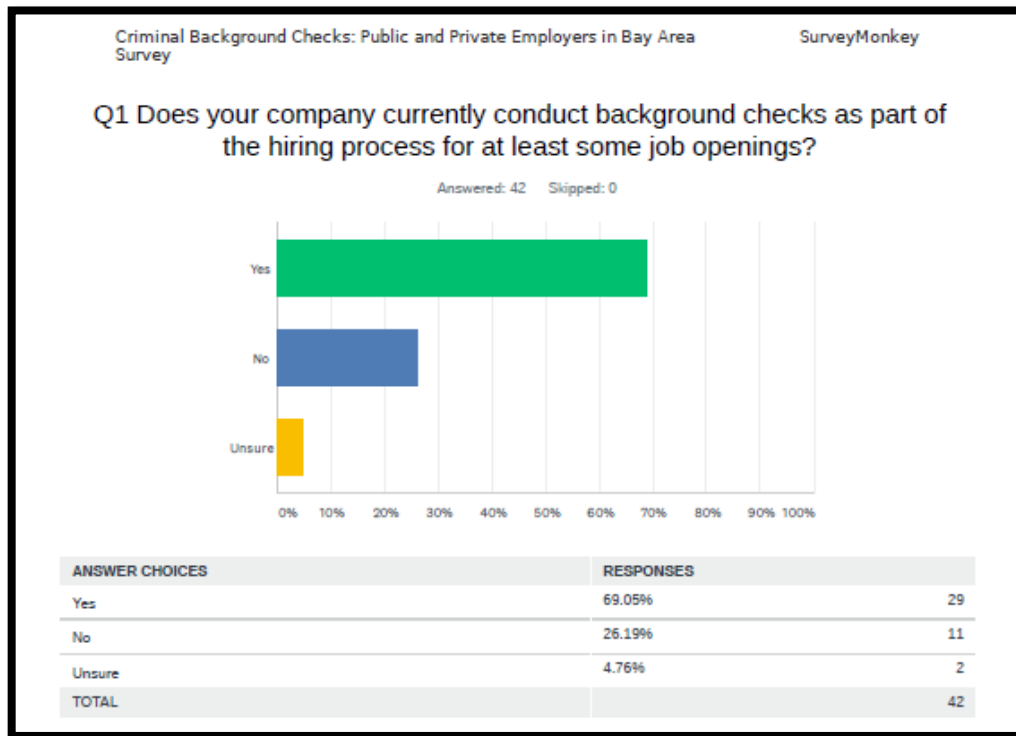
SURVEY RESULTS: SIGNIFICANT FINDINGS

After careful review of the responses provided, trends emerged for both survey respondents and key informants. Survey participants responded similarly to several questions and revealed consistent findings. By having 42 respondents answer mostly similarly it is an indicator that the larger population who is responsible for hiring in public and private industries will be of similar opinions. Overall, the survey responses supported the assumptions.

The first significant finding is that most businesses use criminal background checks during the hiring process. Question one, of the survey, asked, "Does your company currently conduct background checks as part of the hiring process for at least some job openings?" It had the following possible answers: "Yes", "No", and "Unsure". Over sixty-nine percent (69%) of respondents answered that they do currently conduct background checks at work for job candidates, twenty-six percent (26%) said they did not while the remainder said they were unsure. See Figure A.

If this survey response remains consistent with other California employers then the new law will impact the majority of businesses. This survey question connected to Assumption 3 (A3), If criminal history disclosure is no longer required under AB 1076, then there will be compliance adjustments necessary to be aligned with associated criminal and employment law. Since the majority of respondents answered that they do engage in conducting criminal background checks at least for some openings then the assumption is valid; employers will have to adjust internally to ensure that they are in compliance with this new law.

Figure A. Survey Question 1

The second significant finding is that the majority of survey respondents do not use criminal background checks after the employee is hired. Question two, of the survey, asked, "Does your company run ongoing background checks after an employee has been hired and continues employment?" It had the following possible answers: "Yes", "No", and "Unsure". Over sixty-nine percent (69%) of respondents answered that they do not currently conduct background checks after the employee is hired and continues employment, less than ten percent (10%) said they did while the remainder said they were unsure. See Figure B.

This response is significant because if what prevents someone from getting hired is a one-time background check then by having the automatic concealing of certain criminal records from employers job candidates will more likely be considered for more jobs. This question connected to the assumption theory number two, Assumption 2 (A2), If criminal history disclosure is no

longer required under AB 1076, then there will be increased liability cases for negligent hiring practices. In this case the potential concern for liability takes place when an employee is first hired. This response rate to having the majority answer no validates the assumption since there can be an increase of liability cases after employees are hired and no longer go through additional criminal background checks. Should a criminal matter arise after the job candidate begins employment there is a risk of liability without ever having more than one criminal background check.
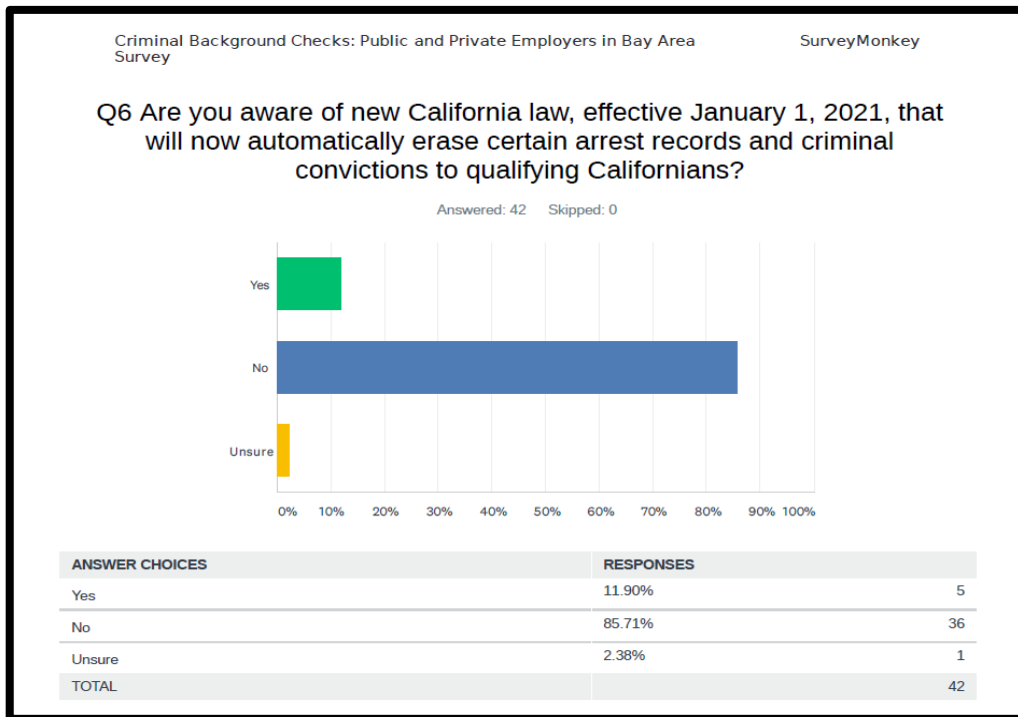
Figure B. Survey Question 2
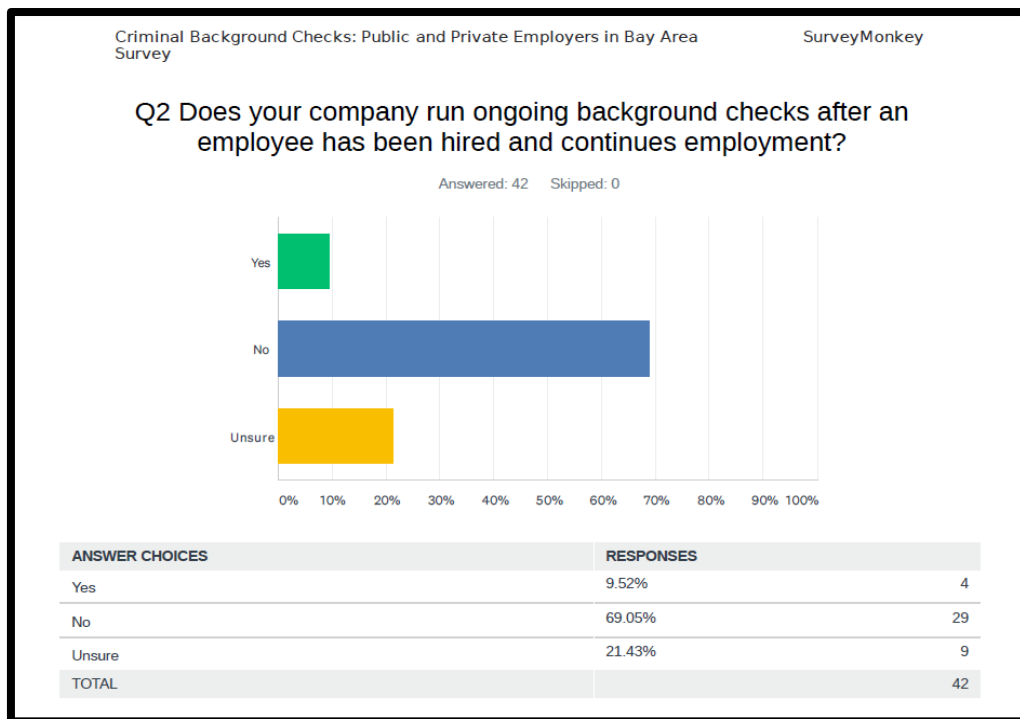
The third significant finding is that the majority of survey respondents do not know about this new law which takes effect in less than six months from the date of this research was conducted. Question six, of the survey, asked, "Are you aware of new California law, effective January 1, 2021, that will now automatically erase certain arrest records and criminal convictions to qualifying Californians?" It had the following possible answers: "Yes", "No", and "Unsure". Over eighty-five percent (85%) of respondents answered that they do not currently know about

this new law, less than twelve percent (12%) said they did know about the law while a little over

two percent (2%) were unsure. See Figure C.

This survey question connected to Assumption 3 (A3), If criminal history disclosure is no

longer required under AB 1076, then there will be compliance adjustments necessary to be aligned

with associated criminal and employment law. The response validates the survey question in that

awareness of the law are necessary to comply but there are few employers who know about the

law taking effect in less than six months from the writing of this paper.

Figure C. Survey Question 6

Criminal Background Checks: Public and Private Employers in Bay Area Survey   SurveyMonkey

Q6 Are you aware of new California law, effective January 1, 2021, that will now automatically erase certain arrest records and criminal convictions to qualifying Californians?

Answered: 42   Skipped: 0

ANSWER CHOICES	RESPONSES	
Yes	11.90%	5
No	85.71%	36
Unsure	2.38%	1
TOTAL		42

This finding is significant because it demonstrates the great need to educate current California

employers about this law which is imminent. If employers understand that this new mandated law

will apply to them the more likely they will be prepared once it is in effect.

SUMMARY OF FINDINGS

Having two groups of participants weigh in on this new law for this research allowed a better understanding of whether the theory of change and assumptions made are valid. By interviewing several key informants and surveying Bay Area public and private employers, their survey responses revealed that each of the three assumptions as well as their narrative responses support the literature review themes discovered and presented in Chapter 2. All key informants discussed negligent hiring as a grave concern for employers who are trying to hire the best qualified person for a position. Most key informants discussed how important it will be for employers to work with their legal teams and human resources departments to ensure compliance of this new law. Last, key informants touched on how state laws and county laws vary and the need to consider them because they govern what information is included in criminal histories available to employers. This information helped create the recommendations and areas of further research that are discussed in Chapter 5.

CHAPTER 5: CONCLUSIONS, RECOMMENDATIONS AND AREAS FOR FURTHER RESEARCH

"Among the various benefits for employers will be access to a larger pool of potential employees. It may also give employers more opportunities to enhance workforce diversity. It will make conducting some background investigations easier as well."

--Thomas Shawyer, retired criminal justice expert,
on the question of whether AB 1076 will be a benefit to employers

"Having this new process automatically set some algorithm to do this is a good thing. What is not clear to me is how notice will be provided to the offender whose record is cleared. This is an important piece because if the offender does not know this, they would not apply for jobs that they may be eligible for with their record cleaned."

--Professor Carlos Sanchez, Golden Gate University,
on thoughts about the new law and its effects on future job applicants in California

CONCLUSION

This responses from key informants and survey respondents demonstrates the support of all three assumptions proposed. At least three conclusions can be highlighted to support this assertion. First, survey results show that current employers have a system in place to conduct criminal history records as part of their hiring process – in some cases rescinding job offers if the results of the findings are not acceptable. Second, all key informants discussed negligent hiring as an immediate topic of concern and some immediately identified possible hypothetical scenarios of when there could be a liability for employers who will all be affected by this new law which is still largely unknown. Last, several key informants advised that the best way to comply with this new law is for employers to work closely with legal teams and human resources representatives to ensure the proper following of this new mandated law and training and education would be a good strategy.

The number of key informants who agreed to participate in this study were convincing of how valid the three assumptions are to this study. Most key informants responded similarly in that they shared the same concerns about an employer's likelihood of negligent hiring, they held optimistic views about how the law would impact job candidates and they analyzed the law from an employers' perspective. These key informants are respected experts in their respective field and include the areas of criminal justice, human resources management in private and public industries.

IMPLICATIONS

These conclusions reveal the need for immediate action to be taken by both those responsible for creating this law and for those impacted by this law. The State of California should work in partnership with business owners, both in private and public industries to ensure a good understanding of this new law. The time sensitivity stems from there being less than sic

(6) months until this new law takes effect. It is critical that this effort of offering guidance be put in place to avoid confusion or misunderstandings of the language of the law. Employers, after learning about this new law should work with their human resource and legal support teams to ensure proper compliance to avoid negative consequences like compliance issues or negligent hiring.

RECOMMENDATIONS

Recommendation 1: Increase Awareness and Understanding of AB 1076

Efforts from the California Department of Fair and Employment and Housing (FEHA) to offer employers guidance about understanding this new law and how to follow its requirements should be immediate to ensure compliance since this new law takes effect on January 1, 2021. One example could be to create materials such as posters and flyers, and add them to their existing website, for employers' immediate availability so they understand key elements of the law. There is a current section on the website now, "Criminal History in Employment" and this material can be added to that area at no cost and would be of value to private and public employers now and after the law is in effect.

Recommendation 2: Ensure Employer Compliance Requirements

Employers should ensure that their human resources representatives and legal advisers become well versed in this new law to avoid non-compliance. For independent business owners, start-up businesses and other small businesses who will be required to also follow this new law it is recommended that they work with reputable human resource networks for advice. Working with reputable background check agencies and government agencies like FEHA will ensure this process is properly followed by all employers regardless of size or industry.

Recommendation 3: Study the Impact of the Law the First Three years

An evaluation of how this law is implemented should be conducted by either Assembly Member Phil Ting's office or another appropriate State agency to understand its impact and monitor its success, each year for the first three years the law goes in effect. FEHA can also help facilitate the employers' participation in this process through its website by creating surveys for employers and request feedback on the law, its impact on their respective businesses, and ask if additional resources are needed. Those findings may help decide whether expanding the law is reasonable and appropriate.

AREAS FOR FURTHER RESEARCH

While there are several recommendations made as a result of the research and findings of this study, the are two areas of further research should be explored after this survey.

First, the individuals who are affected by this law should be studied. The employee's perspective is paramount since it will help uncover whether this law positively impacts individuals short or long term. It is possible with study that, for example, the need for a public awareness campaign can be supported and explaining to individuals the process for checking their own criminal records and explaining in what instances a criminal record is erased.

Second, in chapter two of this paper, literature review revealed that there is a great need for multi-state collaboration on how criminal records are managed since the laws vary greatly from state to state. Key informants are discussed the importance of understanding local and state laws to ensure employer compliance. Further research is needed to understand whether proposing an agreement among a few neighboring states and study whether the sharing of criminal records may help simplify employer hiring practices.

SUMMARY

For this law to take effect in just a few short months and to ensure its success an immediate education campaign effort must be promoted by the State of California and specifically FEHA. During the legislation phase, there was great support for its passage. There is no other law like this in California that reforms criminal law and allows for the automatic erasing of qualifying records. This law is promising and in order to succeed must be properly advocated by its supporters to ensure there is no confusion or misunderstanding by employers. Should individuals truly have the opportunity to break out of "paper prison" as Assembly Member Phil Ting said when describing the importance of passing this legislation, then California employers cannot afford to waste time being confused. The time to act in support of preparing employers to know why this law is so important to know before it takes effect matters because its most profound public policy implications promises social and economic mobility. We can all agree to valuing a fair and equitable California – the time to act on getting the word out is now.

Well done, a great paper.

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APPENDIX 1: KEY INFORMANTS AND QUESTIONNAIRES

Key Informants and Semi-Structured Interview Questions

Professor Carlos Sanchez, Assistant Agency Director, Alameda County's Social Services Agency Administration Department

·   What potential benefits can public and private employers gain from this new law?
·   What potential concerns will public and private employers have about this new law?
·   How have public or private employers reacted to this new law?
·   Did any public or private employers express concern about not being access to unrestricted criminal histories?
·   How can private and public employers ensure their compliance with this new law?
·   Where can private and public employers go to learn how to properly follow and understand this new law?
·   Do you have any comments or thoughts you would like to add?

Mr. Thomas Shawyer, Retired, Assistant Chief, Office of Chief of Staff, San Francisco

·   What potential benefits can public and private employers gain from this new law?
·   What potential concerns will public and private employers have about this new law?
·   How have public or private employers reacted to this new law?
·   Did any public or private employers express concern about not being access to unrestricted criminal histories?
·   How can private and public employers ensure their compliance with this new law?
·   Where can private and public employers go to learn how to properly follow and understand this new law?
·   Do you have any comments or thoughts you would like to add?

Professor Roger L. Kemp, PhD., Golden Gate University

·   What potential benefits can public and private employers gain from this new law which will automatically erase some arrest and criminal records and make them unavailable for view?
·   What potential concerns will public and private employers have about this new law?
·   In your opinion, how will public or private employers react to this new law?
·   Did any public or private employers express concern about not being access to unrestricted criminal histories?
·   How can private and public employers ensure their compliance with this new law?
·   Where can private and public employers go to learn how to properly follow and understand this new law?
·   Do you have any comments or thoughts you would like to add?

Judge Ruth Astle Samas, Golden Gate University and Administrative Law Judge

·   What potential benefits can public and private employers gain from this new law which will automatically erase some arrest and criminal records and make them unavailable for view?
·   What potential concerns will public and private employers have about this new law?
·   In your opinion, how will public or private employers react to this new law?
·   Did any public or private employers express concern about not being access to unrestricted criminal histories?

· How can private and public employers ensure their compliance with this new law?
· Where can private and public employers go to learn how to properly follow and understand this new law?
· Do you have any comments or thoughts you would like to add?

Professor Ernesto Lara, University of the Pacific

- What potential benefits can public and private employers gain from this new law which will automatically erase some arrest and criminal records and make them unavailable for view?

· What potential concerns will public and private employers have about this new law?
· In your opinion, how will public or private employers react to this new law?
· Do you believe public or private employers will express concern about not being access to unrestricted criminal histories?
· How can private and public employers ensure their compliance with this new law?
· Where can private and public employers go to learn how to properly follow and understand this new law?
· Do you have any comments or thoughts you would like to add?

Professor Erin Daruszka, Golden Gate University, Human Resources Management Department

· What potential benefits can public and private employers gain from this new law which will automatically erase some arrest and criminal records and make them unavailable for view?
· What potential concerns will public and private employers have about this new law?
· In your opinion, how will public or private employers react to this new law?

· Do you believe public or private employers will express concern about not being access to unrestricted criminal histories?

· How can private and public employers ensure their compliance with this new law?

· Where can private and public employers go to learn how to properly follow and understand this new law?

· Do you have any comments or thoughts you would like to add?

APPENDIX 2: SURVEY INTRODUCTION AND WEB LINK

Subject: Criminal Records, Public and Private Employers in Bay Area Survey

Dear Survey Participant:

I am requesting for your kind assistance in filling out the enclosed survey.

My name is Teresa VirgenTorres. I am an Executive Master of Public Administration candidate at Golden Gate University. For my final thesis, I am conducting research on the perceived impact on public, private, and nonprofit employers of AB 1076 which takes effect January 1, 2021.

Please take my two-minute survey. Your answers will be kept confidential, secure, and anonymous. You may opt-out at any time. If you have questions or difficulty completing the survey, e-mail me at tvirgentorres@my.ggu.edu. Professor Dr. Alan Roper, who I am working with on my graduate research, may be reached at aroper@ggu.edu Thank you in advance for your time and participating.

Please follow this link to the survey:
https://www.surveymonkey.com/r/V8CQ2BT