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## **COMMENTS CONCERNING S 0828 – RELATING TO HUMAN SERVICES May 3, 2011**

The ACLU has long been opposed to the increasing use of fingerprint checks across a wide variety of occupations, as they are ineffective at identifying inappropriate applicants, often inaccurate, and humiliating and intrusive for those subjected to them. This bill would significantly expand the use of these background checks in hiring, requiring hundreds of new agencies to conduct invasive background checks on individuals who have no unsupervised contact with patients and are little, if any, risk to clients.

Fingerprinting is an ineffective, inaccurate system which humiliates those subjected to it, and should not be relied upon to produce the kind of quality information which can be obtained through a careful reference check. Disturbingly, fingerprint-based background checks often have the opposite effect of their intent; by instilling the false belief that those who would cause harm were weeded out by the background check, the behavior of employees goes ignored and abuses which do occur often go unchecked. Manufacturing the belief that barring those with criminal records from employment prevents “that type of person” from having access to vulnerable populations keeps family members and other employees believing that abuse cannot possibly be happening around them, and puts children at greater risk. A thorough background check into the past behavior of an individual on the job, and not their experience with the criminal justice system, is a far more accurate predictor of their future behavior on this job.

Additionally, the system itself is deeply flawed. National background check information is currently obtained through the National Crime Information Center (NCIC), a system notorious for its inaccuracy rate. A 2001 Bureau of Justice Statistics (BJS) study of NCIC found that “name searches of the NCIC are not fully reliable and existing criminal record files may be incomplete or inaccurate, particularly with respect to case disposition information.” The study noted that “there is a substantial risk that the user will make an incorrect or misguided decision” and concluded that “inadequacies in the accuracy and completeness of criminal history records is the single most serious deficiency affecting the Nation’s criminal history record information system.” In 2006, the U.S Attorney General reported that the federal background check system is out of date up to 50 percent of the time, meaning that individuals who were arrested but never convicted of crimes are shown as having a criminal record; the Bureau of Justice Statistics reported in 2008 that one-third of felony arrests never lead to convictions. The information gained from NCIC is therefore unreliable; the system may be unduly rejecting qualified individuals who have no criminal convictions. In either case, the use of NCIC is a poor substitute for a general background check conducted by employers speaking to other employers.

Fingerprinting has long been associated with criminal activity, and requiring fingerprinting of employment candidates carries with it the stigma of being treated like a criminal. In addition, the jobs for which fingerprinting is required are historically low-paid, female-dominated jobs. As such, one portion of the community is routinely singled out and

made to feel like a criminal for the simple act of trying to get a job. These individuals may have to find themselves explaining minor offenses in their past, completely unrelated to the job they are being hired to do, to strangers.

In light of these concerns with the use of fingerprint-based background checks, the ACLU opposes this legislation and urges the committee not to recommend its passage. Thank you for your attention to our concerns, and please let me know if there is any further information the ACLU may provide for your consideration.

Submitted by: Hillary Davis, Policy Associate