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August 7, 2015

VIA EMAIL AND U.S. MAIL

Administrative Office of the Courts
c/o Stephanie Happold
Data Dissemination Administrator
1112 Quince Street SE
PO Box 41170
Olympia, WA 98504-1170
Email: stephaniehappold@courts.wa.gov

Re: Outdated Criminal History Data

Dear Ms. Happold:

I am a member of Terrell Marshall Daudt & Willie PLLC, a law firm in Seattle, Washington, and I serve as a cooperating attorney for the ACLU of Washington. I am writing to raise concerns about the handling of criminal history data obtained from the Administrative Office of the Courts (AOC) through SCOMIS, particularly data that becomes obsolete.

Imagine the following scenario: An individual makes a mistake that lands her in the criminal justice system. She is convicted and completes the terms of her punishment. She stays out of further trouble and eventually has her conviction vacated. Years later she applies for a new job. The interview goes well, and it appears she is going to be hired. When the call comes, however, she is turned down. A criminal background check revealed the prior conviction but failed to recognize that conviction has been vacated.

Scenes like this play out frequently and affect numerous Washington residents in a variety of contexts, including attempts to secure employment, housing, public benefits, and educational opportunities. Similar problems occur when companies report criminal charges for individuals who have completed the requirements of a deferred prosecution program and had those charges dismissed but the fact of dismissal is omitted.

The negative consequences associated with outdated criminal information are significant and impact not only the individuals named in the reports but also their families and the wider community. A criminal record can make it difficult for a person to access the resources necessary to reintegrate into society. For example, the basic needs of parents and children alike go unmet when parents are unable to secure housing or employment. And the community as a whole suffers when unemployment and homelessness lead to recidivism.

Prospective employers, landlords, and creditors typically obtain criminal history information from large credit reporting agencies, but such data may also be sourced from smaller companies operating primarily or exclusively on the internet. Either way, where information concerns a Washington superior court case, it most likely originated from SCOMIS. The problem seems to be that reporting agencies—large and small—are failing to ensure the information is current before reporting it. As such, they are utilizing data from SCOMIS that is sometimes years out of date.

We respectfully ask the AOC to implement measures that will substantially curb the pervasive disclosure of outdated criminal history information relating to Washington cases. A foundation for these measures already exists in both the Data Transfer Subscription and Licensing Agreement (DTSLA) that the AOC utilizes for the Public SCOMIS Criminal Index (Criminal Index) and the DTSLA that the AOC utilizes for the Public SCOMIS Index (General Index). For example, the Criminal Index DTSLA requires each licensee "to remove from its files cases sealed (or otherwise restricted) after their appearance in data files provided to the Licensee." In addition, the AOC requires licensees "to update promptly all cases when disposition information is received" and "to update . . . cases where the charge is amended" so that files "will contain only the most current charges." Licensees must provide the AOC with access to "any database created using information from the [AOC's files]" so the AOC can "monitor[] and audit[] contract compliance" and "detect . . . the warehousing of stale-dated information subsequently expunged, restricted, or amended by the AOC."

While laudable, these provisions have proven insufficient for several reasons. First, the terms do not themselves require licensees to update cases when the conviction has been vacated. Second, the AOC does not identify every case that needs to be removed from or modified in a licensee's database, including vacated cases and cases with amended charging or disposition information. This may make it difficult for licensees to ensure they are appropriately scrubbing their files. Third, the AOC only updates the Criminal Index on a quarterly basis. Because of this, even the most compliant licensees are lagging behind in terms of current data. And finally, the AOC does not monitor or audit licensees despite reserving the right to do so. As such, there is little-to-no oversight of the maintenance or use of criminal history information obtained from the AOC, particularly as it relates to data scrubbing or the re-dissemination of such data in bulk.

Accordingly, we ask the AOC to do the following:

1. Revise the terms of the SCOMIS bulk distribution contract to require licensees to update cases that have been vacated.

2. Update the Criminal Index and General Index on a weekly basis as it relates to expunged cases, sealed cases, vacated cases, cases with revised or amended charges, cases with revised or amended dispositions, and cases in which the defendant's name has been changed or modified.

3. Provide each licensee with a weekly list of all cases that must be updated in the licensee's database, and obligate the licensee to require that all users, customers, clients, and other third-party recipients update their databases as well. The Administrative Office of Pennsylvania Courts implemented a similar system in 2010, and information regarding that system is attached as Appendix A to this letter.

4. Monitor and audit licensees on a regular basis to ensure that they promptly comply with all of the AOC's requirements, especially data scrubbing requirements.

5. Enforce prohibitions against the re-dissemination and re-use of criminal history data in bulk.

Thank you for your attention to these issues and for your consideration of our proposals. If you have any questions or would like to discuss this letter, please do not hesitate to contact me.

Sincerely,
TERRELL MARSHALL DAUDT & WILLIE PLLC

Toby J. Marshall

TJM
cc: Vanessa T. Hernandez (via email)