
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1289 **Hearing Date:** June 28, 2016
Author: Cooper
Version: June 21, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Transportation Network Companies: Participating Drivers: Penalties*

HISTORY

Source: Author

Prior Legislation: None applicable

Support: California Delivery Association; East Bay Community Law Center; Peace Officers Research Association of California; San Diego International Airport

Opposition: American Civil Liberties Union; Legal Services for Prisoners with Children

Assembly Floor Vote: Not Relevant

PURPOSE

The purpose of this bill is to require transportation network companies to do a non-fingerprint based background check on their drivers.

Existing law requires the Department of Justice (DOJ) to maintain state summary criminal history information. (Penal Code § 11105(a).)

Existing law authorizes DOJ to furnish state summary criminal history information to the following specified entities: the courts of California; peace officers, as defined; district attorneys of California; prosecuting city attorneys; city attorneys pursuing civil gang injunctions or drug abatement actions; probation officers of California; parole officers of California; a public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon; a public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision, or postrelease community supervision revocation or revocation extension proceeding, and if authorized access by statutory or decisional law; any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct; any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or

governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct; the subject of the state summary criminal history information; any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct; Health officers of a city, county, city and county, or district when in the performance of their official duties preventing the spread of communicable diseases; any managing or supervising correctional officer of a county jail or other county correctional facility; any humane society, or society for the prevention of cruelty to animals for the appointment of humane officers; local child support agencies; county child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information for the specified purposes; the court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state as specified; child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state as specified; an officer providing conservatorship investigations; a person authorized to conduct a guardianship investigation; and, a humane officer for the purposes of performing his or her duties. (Penal Code § 11105 (b).)

Existing law states that DOJ may furnish state summary criminal history information, when specifically authorized, and federal-level criminal history information upon a showing of compelling need to any of the specified agencies, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, the employer must follow restrictions listed in the Labor Code. (Penal Code § 11105(c).)

Existing law authorizes any local criminal justice agency as defined to compile local summary criminal history information and requires the local criminal justice agency to furnish this information to any of the specified entities. (Penal Code § 13300.)

Existing law provides that a “transportation network company” is an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle. (Public Utilities Code §5431)

This bill provides that a transportation network company shall conduct comprehensive criminal background checks for each participating driver that shall include local, state, and federal law enforcement records.

This bill provides that a transportation network company shall not contract with, employ, or retain a driver if he or she is required by any law to register as a sex offender or has been convicted of any of the following: any violent felony, sexual offense, nonfelony violent crime, identity theft, act of fraud, act of terror, or within the previous seven years, any crime involving property damage, theft, or driving under the influence of alcohol or drugs.

This bill provides that a transportation network company that violates, or fails to comply with, this section is subject to a penalty of not less than \$500 nor more than \$50,000 for each offense.

Existing law provides that an investigative consumer reporting agency shall only furnish an investigative report under the specified purpose including that it is intended to be used for information for employment purposes. (Civil Code § 1786.12)

This bill provides that notwithstanding the above, an investigative consumer reporting agency may furnish an investigative consumer report to a transportation network company about a person seeking to become a participating driver, regardless of whether the participating driver is to be an employee or an independent contractor of the transportation network company.

Existing law prohibits a consumer reporting agency from furnishing specified items including records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that is more than 7 years old. (Civil Code § 1786.18 (a)(7))

This bill provides that the above shall not apply to an investigative consumer report furnished to a transportation network company.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the

“durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

AB 1289 requires Transportation Network Companies (TNCs) to conduct comprehensive criminal background checks on prospective drivers. Additionally the bill prohibits TNCs from employing drivers with violent, sexual, driving under the influence (DUI) or other specified offenses and imposes a fine of up to \$50,000 for each violation.

As recently as last year, District Attorneys in Los Angeles and San Francisco uncovered 25 participating TNC drivers with convictions for murder, assault, DUI, and other criminal offenses.

AB 1289 will assist TNCs uncover the complete criminal history of prospective drivers and will help ensure the safety of passengers utilizing TNC services.

2. Non-fingerprint Based Background Check for Transportation Network Drivers

This bill requires a transportation network company (Uber, Lyft, etc.) to conduct a “comprehensive criminal background check” for each participating driver. The background check shall include local, state and federal law enforcement records. It also prohibits the hiring of people with specified offenses on their record and provides for a fine if a company fails to do the background check.

a. Not Fingerprint Based

Historically, this Committee has not passed bills providing for background checks that are not finger-print based. Name based checks are not as reliable as similar names exist and there is not check on the information. This bill does not require a fingerprint based

check, does this cause any concern that people will be rejected from the opportunity to drive for one of these companies possibly on a flawed background check?

b. Comprehensive Check

The bill requires a “comprehensive background check”, since this is not fingerprint based it is not clear what “comprehensive background check” means. Can they use any private company that claims to provide background checks?

c. Prohibited Offenses

This bill prohibits contracting with or employing a driver if he or she is required to register as a sex offender, or has been convicted of any violent felony, sex offense, nonfelony violent crime, identity theft, act of fraud, act of terror row within the previous 7 years any crime involving property damage, theft, or DUI.

Violent felony is a term of art and is a specific list of crimes. How are these companies supposed to know what a “nonfelony violent crime” is? Do they just rely on their own thoughts? Do they have to figure out what it was the person was charged with and the facts of the case? They can face a large fine if they fail to comply with the section. Is the information they get from the non-fingerprint based checks something that the transportation network company will be able to interpret enough to determine whether a criminal history falls in any of these prohibited areas?

d. Arrest Records

When the Department of Justice releases a criminal history based on a fingerprint based check it may not release arrest information unless and until they can make a determination as to the final disposition of the arrest. This to make sure that a record is not released if the charges were dropped, the wrong person was arrested, the person was acquitted or any other situation where an arrest record should not be used against a person.

Because it is not a DOJ, fingerprint based check, this bill would not stop a transportation network company from receiving an arrest record. The bill states they should not hire a person with specified convictions but how should they react to arrest records that may not have a disposition with it. Should they even be able to see anything other than convictions and if so how can we assure that they are not given that information.

Actually, this bill creates an exception to the Civil Code provision prohibiting an investigative consumer reporting agency from furnishing specified items including records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that is more than 7 years old. Again, what is a transportation network company supposed to do with anything short of a conviction? Couldn't that prejudice a company against an individual even if the arrest is years old?