

Date of Hearing: April 8, 2025

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 922 (Hoover) – As Introduced February 19, 2025

[Note: This bill is double-referred to the Assembly Committee on Public Safety and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: University of California: employees, volunteers, and contractors: background checks

SUMMARY: Specifies that the University of California (UC) must require background checks, to be completed by the Department of Justice (DOJ) as specified, during the final stages of the application process for prospective employees and volunteers who have, or would have, specified duties, including, possession of building master keys for access to residences, offices, or other facilities, and those who would have direct responsibility for the care, safety, and security of people, including children, or property, including the personal property of others or property of the UC. Specifically, **this bill:**

- 1) Specifies that the UC will require background checks, to be completed by the Department of Justice (DOJ), as specified, during the final stages of the application process for a prospective employee or volunteer whose duties include or would include any of the following:
 - a) Possession of building master keys for access to residences, offices, or other facilities;
 - b) Direct responsibility for the care, safety, or security of people, including minors, or property, including personal property or property of the UC;
 - c) Direct access to or responsibility for controlled substances;
 - d) Direct access to or responsibility for protected personal information or other restricted or sensitive institutional information, including information affecting national security;
 - e) Responsibility for operating commercial vehicles, machinery, or toxic systems that could result in accidental death, injury, or health problems;
 - f) The requirement to possess a professional license, certificate, or degree;
 - g) Direct access to or responsibility for cash, cash equivalents, checks, credit or debit cards, disbursements, or receipts;
 - h) Authority for committing the financial resources of the UC through contracts or agreements;
 - i) Direct access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process, or trade secret;

- j) Responsibilities at any UC medical center, student health center, or other medical facility; and,
 - k) Management of personnel with any of the duties described in (a) to (j) above.
- 2) Specifies that any services contract that is entered into, renewed, or amended on or after January 1, 2026, by the UC must include a provision requiring the contractor to permit the UC to require background checks, to be completed by the DOJ, as specified, for the contractor's employees and subcontractors, whose duties include or would include access to the records, documents, information, or items described in 1) above pursuant to the contract, in order for the UC to request criminal background checks on those individuals.
 - 3) Requires the UC to submit to the DOJ fingerprint images of a prospective employee or volunteer, that the UC obtains, and related information required by the DOJ, for purposes of a state and federal level criminal history background check, as specified.
 - 4) Requires the DOJ to provide a state or federal response, or both if applicable, to the UC as specified.
 - 5) Authorizes the UC to investigate the criminal history of any prospective employee or volunteer to make a final determination as to their fitness to perform duties that would include access to any records, documents, information, or items, as specified.

EXISTING LAW:

- 1) Federal law authorizes the Federal Bureau of Investigation (FBI) to collect national criminal history information for centralization in the Criminal Justice Information System (CJIS), and to disseminate this information to state agencies for employment purposes (Public Law Sections 92-544).
- 2) Establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9) (a) of the California Constitution).
- 3) Specifies that a fingerprint-based criminal history information check that is required pursuant to any statute to be requested from the DOJ. When a government agency or other entity requests such a criminal history check for purposes of employment, licensing, or certification, existing law requires the DOJ to disseminate specified information in response to the request, including information regarding convictions and arrests for which the applicant is presently awaiting trial. (Penal Code Section 11105 (u))

FISCAL EFFECT: Unknown.

COMMENTS: *Purpose.* According to the author, "The [UC] needs to maintain access to the FBI's [CJIS] for fingerprint-based background checks during the hiring process of critical University positions. Without this access to FBI criminal background check data, UC campuses, medical centers and other locations will continue to spend excessive time, and resources to

access federal criminal conviction history results through third-party vendors, creating additional costs, significant hiring delays, and increased exposure for potential liabilities.”

Background. The FBI collects and securely stores criminal history data, including fingerprints, from nearly 18,000 law enforcement agencies across the nation in the CJIS. When a federal criminal background check is requested by an authorized user, fingerprint images are forwarded to the FBI and a fingerprint-based search of records in the national criminal history database is performed. If the applicant’s fingerprints match data in the national criminal history database, the FBI sends the DOJ criminal history information from any state or federal agencies that have reported the information to the FBI.

In December 2022, the FBI notified the California Department of Justice that the current state statutory authority for the FBI process fingerprint-based background checks for state employees no longer qualified for CJIS access. Instead, applicant agencies wishing to restore access to the CJIS for the purpose of servicing state employee fingerprint-based background checks must enact new statutory authority that:

- 1) Explicitly references a national criminal history check.
- 2) Includes an express or implied reference such as “submit to the FBI.”
- 3) Authorizes the use of FBI records for screening of applicants.
- 4) Identifies the specific categories of licensees and employees that fall within its purview to avoid being overly broad.

This bill will allow the UC to maintain access CJIS for the purpose of conducting background checks on its prospective employees and contractors.

Background checks for postsecondary education institutions. Each of the CCC, CSU, and the UC conduct background checks for potential applicants for academic and administrative positions. Based on the Fair Chance Act of 2018, postsecondary education institutions do not conduct the background check until after a condition of employment is provided and the check is limited to crime committed in the last seven years that are related to the duties of the intended job. For example, the CCC conducts a U.S. Department of Justice background check for academic instructional staff as CCC districts are not permitted to hire someone with convicted sex offenses or controlled substance offenses according to Education Code Section 87405 subdivision (a). The background check is provided to the applicant who is then given the opportunity to explain the findings to the hiring board.

Existing UC Policy: The UC’s current policy on hiring, “PPSM-21 Selection and Appointment,” published in October of 2023, stipulates that it is the policy of the UC to select and hire, in its judgment, the candidate who possesses the skills, knowledge, and abilities to best perform the duties and responsibilities of the position. It also affirms that UC is generally prohibited, consistent with existing law, from asking an applicant to disclose prior conviction information on the initial job application. The information will be requested once the applicant has been identified as the recommended candidate and has received a conditional offer of employment in a critical position.

The policy also stipulates that a background check is required after the candidate has received a conditional offer of employment in a critical position. According to the policy, candidates hired into critical positions have sensitive administrative/programmatic/managerial duties and responsibilities that could potentially cause human, financial or property loss or other significant risk to the UC. The Chancellor will designate certain positions as “critical” in accordance with the policy, however all UC Health Medical Center and Student Health Center positions are considered critical. Generally, Senior Management Group (SMG) positions are designated as critical.

An offer of employment, oral or written, must be contingent upon completion of a satisfactory pre-employment background check. The policy specifies that the background check process should be initiated only after a conditional offer of employment has been extended to the candidate. The background check must only be used for evaluating the candidate for employment and cannot be used for discriminatory or retaliatory reasons as prohibited by state and federal law and UC policies. This policy is applicable to external and internal candidates, including UC employees under consideration for a promotion or when a UC employee is subject to a background check due to a change in University policies or practices related to specific positions.

Arguments in support. The UC Office of the President wrote in support of this bill, noting that, “UC policy requires a background check for critical positions. The UC obtains fingerprint images and related information from a prospective employee who has accepted a conditional offer of employment in a critical position to conduct a background check. Candidates considered for critical positions have sensitive administrative, programmatic, and/or managerial duties and responsibilities that could potentially cause human, financial or property loss, or other significant risk. Not having access to DOJ and FBI criminal conviction history has resulted in locations spending excessive time and resources to access federal criminal conviction history through third-party vendors, which has created additional financial costs, significant hiring delays, and increased exposure for potential liabilities.”

“This bill is necessary to ensure the UC has access to DOJ and FBI federal criminal conviction history so that it can conduct timely background checks for critical positions. This will allow the UC to continue to provide a safe and secure environment for its employees, students, and others in the University community, protect its property and assets, and uphold the reputation and integrity of the University.

Arguments in opposition. The American Civil Liberties Union California Action wrote in opposition, stating that “AB 922 is unneeded as UC policy already accomplishes the bill’s intent. UC Policy PPSM-21 requires a criminal history check for anyone working in a ‘Critical Position’. The Policy lists out the essential elements that would lead to a job being designated as a Critical Position – the essential elements parallel the job functions AB 922 would require a background check for. There is no need to clog the Education Code with a practice the UCs already regulate and engage in.”

“Notably, AB 992 problematically leaves out a constitutional safeguard, creating confusion and legal liability for UC administrators. The California Supreme Court has stated that the Constitution requires that state employment requirements be “directly related” to an individual’s fitness to perform the job duties required by the position. Specifically, the Fourteenth Amendment of the Constitution requires that the state employment requirements must be

‘directly related’ to the individual’s capacity and fitness to perform the duties which the individual is required to perform. (*Morrison v. State Board of Education*, (1969) 1 Cal.3d 214; *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232; *Hallinan v. Committee of Bar Examiners of the State Bar* (1966) 54 Cal.2d 447.). To determine an individual’s fitness for a job many factors must be considered and evaluated, including the severity of the underlying offense, the length of time since the conviction occurred, and evidence of rehabilitation. While UC Policy PPSM-21 requires a determination that a person’s conviction history have a ‘direct and adverse relationship’ to specific job duties to be considered, no equivalent provision appears in AB 992. If the bill passes, the UC’s policy will be replaced with AB 992’s overbroad, unconstitutional scheme.”

Prior legislation. AB 94 (Alvarez), Chapter 94, Statutes of 2023, required the California State Auditor (CSA) to collect fingerprints from prospective employees and contractors, as specified, and complete a background check with the DOJ.

REGISTERED SUPPORT / OPPOSITION:

Support

University of California

Opposition

ACLU California Action

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