
A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 302A-601.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~+~~§302A-601.5~~+~~ **Employees of the department of**
4 **education ~~[and teacher]~~, providers, subcontractors, and trainees**
5 **from an institution of higher education in any public school;**
6 **criminal history record checks.** (a) The department of
7 education, including the Hawaii state public library system,
8 shall develop procedures for obtaining verifiable information
9 regarding the criminal history of persons who are employed or
10 seeking employment in any position~~[, including teacher]~~; persons
11 seeking to serve as providers or subcontractors; and trainees
12 from an institute of higher education that places them in close
13 proximity to children. These procedures shall include criminal
14 history record checks conducted in accordance with section 846-
15 2.7.

16 Information obtained pursuant to this subsection shall be
17 used exclusively by the employer or prospective employer for the
18 purpose of determining whether a person is suitable for working



1 in close proximity to children. All such decisions shall be
2 subject to applicable federal laws and regulations currently or
3 hereafter in effect.

4 (b) The employer or prospective employer may refuse to
5 employ~~[7]~~ an employee, prospective employee, or person seeking
6 to be a provider or subcontractor, or to place a trainee from an
7 institute of higher education and may:

8 ~~[(1) Refuse to issue a teaching or other educational~~
9 ~~certificate;~~

10 ~~-(2)- Revoke the teaching or other educational certificate;~~

11 ~~-(3)-~~ (1) Refuse to allow or continue to allow teacher
12 training; or

13 ~~[-(4)-~~ (2) Terminate the employment of any employee or deny
14 employment to an applicant,

15 if the person has been convicted of a crime, and if the employer
16 or prospective employer finds by reason of the nature and
17 circumstances of the crime that the person poses a risk to the
18 health, safety, or well-being of children. Refusal~~[7~~
19 ~~revocation,~~] or termination may occur only after appropriate
20 investigation and notification to the employee or applicant for
21 employment of results and planned action~~[7 and after]~~. After
22 notification, the employee ~~[or]~~, applicant ~~[for employment],~~



1 provider, subcontractor, or trainee from an institute of higher
2 education is given an opportunity to meet and rebut the finding.
3 Nothing in this subsection shall abrogate any applicable appeal
4 rights under chapters 76 or 89, or administrative regulation of
5 the department of education.

6 (c) This section shall not be used by the department to
7 secure criminal history record checks on persons who have been
8 employed continuously by the department, including the state
9 public library system, on a salaried basis prior to July 1,
10 1990.

11 (d) The fee charged by the Hawaii criminal justice data
12 center to perform criminal history record checks may be passed
13 on to applicants, providers, subcontractors, and trainees from
14 an institute of higher education.

15 [~~(d)~~] (e) Notwithstanding any other law to the contrary,
16 for purposes of this section, the department of education,
17 including the Hawaii state public library system, shall be
18 exempt from section 831-3.1 and need not conduct investigations,
19 notifications, or hearings under this section in accordance with
20 chapter 91.

21 (f) For purposes of this section:



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1 "Trainee from an institute of higher education" means a
2 student in an institute of higher education training program
3 that requires public school observation, participation, or
4 interaction in close proximity to children.

5 "Provider" means any organization or individual that
6 intends to enter into a contract with or is currently contracted
7 by the department to provide service in close proximity to
8 children.

9 "Subcontractor" means any organization or individual that
10 enters into a contract or agreement with a provider to provide
11 services in close proximity to children."

12 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) Criminal history record checks may be conducted by:

15 (1) The department of health on operators of adult foster
16 homes or developmental disabilities domiciliary homes
17 and their employees, as provided by section 333F-22;

18 (2) The department of health on prospective employees,
19 persons seeking to serve as providers, or
20 subcontractors in positions that place them in direct
21 contact with clients when providing non-witnessed



1 direct mental health services as provided by section
2 321-171.5;

3 (3) The department of health on all applicants for
4 licensure for, operators for, and prospective
5 employees, and volunteers at one or more of the
6 following: skilled nursing facility, intermediate
7 care facility, adult residential care home, expanded
8 adult residential care homes, assisted living
9 facility, home health agency, hospice, adult day
10 health center, special treatment facility, therapeutic
11 living program, intermediate care facility for the
12 mentally retarded, hospital, rural health center and
13 rehabilitation agency, and, in the case of any of the
14 above-related facilities operating in a private
15 residence, on any adult living in the facility other
16 than the client as provided by section 321-15.2;

17 (4) The department of education on employees, prospective
18 employees, providers, subcontractors, and [~~teacher~~]
19 trainees from an institute of higher education in any
20 public school in positions that necessitate close
21 proximity to children as provided by section
22 302A-601.5;



- 1 (5) The counties on employees and prospective employees
2 who may be in positions that place them in close
3 proximity to children in recreation or child care
4 programs and services;
- 5 (6) The county liquor commissions on applicants for liquor
6 licenses as provided by section 281-53.5;
- 7 (7) The department of human services on operators and
8 employees of child caring institutions, child placing
9 organizations, and foster boarding homes as provided
10 by section 346-17;
- 11 (8) The department of human services on prospective
12 adoptive parents as established under section
13 346-19.7;
- 14 (9) The department of human services on applicants to
15 operate child care facilities, prospective employees
16 of the applicant, and new employees of the provider
17 after registration or licensure as provided by section
18 346-154;
- 19 (10) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide
21 child care and receive child care subsidies as
22 provided by section 346-152.5;



- 1 (11) The department of human services on operators and
2 employees of home and community-based case management
3 agencies and operators and other adults, except for
4 adults in care, residing in foster family homes as
5 provided by section 346-335;
- 6 (12) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (13) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (14) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (15) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers
21 including the power of arrest as provided by section
22 353C-5;



- 1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided as provided by section
11 302C-1;
- 12 (18) The public library system on employees and prospective
13 employees whose positions place them in close
14 proximity to children as provided by section 302A-
15 601.5;
- 16 (19) The State or any of its branches, political
17 subdivisions, or agencies on applicants and employees
18 holding a position that has the same type of contact
19 with children, dependent adults, or persons committed
20 to a correctional facility as other public employees
21 who hold positions that are authorized by law to



- 1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;
- 3 (20) The department of human services on licensed adult day
4 care center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 346-97;
- 7 (21) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees serving clients of the adult and
10 community care services branch, as provided by section
11 346-97;
- 12 (22) The department of human services on foster grandparent
13 program, senior companion program, and respite
14 companion program participants as provided by section
15 346-97;
- 16 (23) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under Section 1915(c) of the Social
20 Security Act (42 U.S.C. §1396n(c)), as provided by
21 section 346-97; and



1 (24) Any other organization, entity, or the State, its
 2 branches, political subdivisions, or agencies as may
 3 be authorized by state law."

4 SECTION 3. There is appropriated out of the general
 5 revenues of the State of Hawaii the sum of \$112,000, or so much
 6 thereof as may be necessary for fiscal year 2007-2008, and the
 7 same sum, or so much thereof as may be necessary for fiscal year
 8 2008-2009, for the department of education to conduct criminal
 9 history record checks on providers, subcontractors, and trainees
 10 from an institute of higher education who work and train in
 11 close proximity to children.

12 SECTION 4. The sums appropriated shall be expended by the
 13 department of education for the purposes of this Act.

14 SECTION 5. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect on July 1, 2007.

17

INTRODUCED BY: *T. Frank*
Jyle B. Berg
 JAN 17 2007



Report Title:

Criminal History Record checks; Dept. of Ed.

Description:

Adds providers, subcontractors, and trainees from an institute of higher education to individuals subject to criminal history record check for employment purposes by department of education.

