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

13           Information obtained pursuant to this subsection shall be  
14 used exclusively by the employer or prospective employer for the  
15 purpose of determining whether a person is suitable for working  
16 in close proximity to children. All such decisions shall be  
17 subject to applicable federal laws and regulations currently or  
18 hereafter in effect.



1 (b) The employer or prospective employer may [~~refuse~~]:  
2 (1) Refuse to employ[~~, and may~~] an applicant for  
3 employment; or  
4 [~~(1) Refuse to issue a teaching or other educational~~  
5 ~~certificate;~~  
6 ~~(2) Revoke the teaching or other educational certificate;~~  
7 ~~(3) Refuse to allow or continue to allow teacher training;~~  
8 ~~or~~  
9 ~~(4)]~~ (2) Terminate the employment of any employee [~~or deny~~  
10 ~~employment to an applicant]~~,  
11 if the person has been convicted of a crime, and if the employer  
12 or prospective employer finds by reason of the nature and  
13 circumstances of the crime that the person poses a risk to the  
14 health, safety, or well-being of children. Refusal[ ~~or~~  
15 ~~revocation~~] or termination may occur only after appropriate  
16 investigation and notification to the employee or applicant for  
17 employment of results and planned action[~~, and after~~]. After  
18 notification, the employee or applicant for employment [~~is~~]  
19 shall be given an opportunity to meet and rebut the finding.  
20 Nothing in this subsection shall abrogate any applicable appeal  
21 rights under [~~chapters~~] chapter 76 or 89, or administrative  
22 regulation of the department [~~of education~~].



1 (c) This section shall not be used by the department to  
2 secure criminal history record checks on persons who have been  
3 employed continuously by the department, including the state  
4 public library system, on a salaried basis prior to July 1,  
5 1990.

6 (d) The fee charged by the Hawaii criminal justice data  
7 center to perform criminal history record checks may be passed  
8 on to applicants for employment.

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

15 (f) For purposes of this section:

16 "Employee", "employed", and "employment" includes providers  
17 and subcontractors.

18 "Provider" means any organization that, or individual who,  
19 intends to enter into a contract with or is currently contracted  
20 by the department to provide services in close proximity to  
21 children.



1       "Subcontractor" means any organization that, or individual  
2 who, enters into a contract or agreement with a provider to  
3 provide services in close proximity to children."

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

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

- 7       (1) The department of health on operators of adult foster  
8       homes or developmental disabilities domiciliary homes  
9       and their employees, as provided by section 333F-22;
- 10       (2) The department of health on prospective employees,  
11       persons seeking to serve as providers, or  
12       subcontractors in positions that place them in direct  
13       contact with clients when providing non-witnessed  
14       direct mental health services as provided by section  
15       321-171.5;
- 16       (3) The department of health on all applicants for  
17       licensure for, operators for, and prospective  
18       employees, and volunteers at one or more of the  
19       following: skilled nursing facility, intermediate  
20       care facility, adult residential care home, expanded  
21       adult residential care homes, assisted living  
22       facility, home health agency, hospice, adult day



1 health center, special treatment facility, therapeutic  
2 living program, intermediate care facility for the  
3 mentally retarded, hospital, rural health center and  
4 rehabilitation agency, and, in the case of any of the  
5 above-related facilities operating in a private  
6 residence, on any adult living in the facility other  
7 than the client as provided by section 321-15.2;

8 (4) The department of education on employees[7] and  
9 prospective employees[~~7 and teacher trainees~~] in any  
10 public school in positions that necessitate close  
11 proximity to children as provided by section  
12 302A-601.5;

13 (5) The counties on employees and prospective employees  
14 who may be in positions that place them in close  
15 proximity to children in recreation or child care  
16 programs and services;

17 (6) The county liquor commissions on applicants for liquor  
18 licenses as provided by section 281-53.5;

19 (7) The department of human services on operators and  
20 employees of child caring institutions, child placing  
21 organizations, and foster boarding homes as provided  
22 by section 346-17;



- 1 (8) The department of human services on prospective  
2 adoptive parents as established under section  
3 346-19.7;
- 4 (9) The department of human services on applicants to  
5 operate child care facilities, prospective employees  
6 of the applicant, and new employees of the provider  
7 after registration or licensure as provided by section  
8 346-154;
- 9 (10) The department of human services on persons exempt  
10 pursuant to section 346-152 to be eligible to provide  
11 child care and receive child care subsidies as  
12 provided by section 346-152.5;
- 13 (11) The department of human services on operators and  
14 employees of home and community-based case management  
15 agencies and operators and other adults, except for  
16 adults in care, residing in foster family homes as  
17 provided by section 346-335;
- 18 (12) The department of human services on staff members of  
19 the Hawaii youth correctional facility as provided by  
20 section 352-5.5;
- 21 (13) The department of human services on employees,  
22 prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place  
2 them in close proximity to youth when providing  
3 services on behalf of the office or the Hawaii youth  
4 correctional facility as provided by section 352D-4.3;

5 (14) The judiciary on employees and applicants at detention  
6 and shelter facilities as provided by section 571-34;

7 (15) The department of public safety on employees and  
8 prospective employees who are directly involved with  
9 the treatment and care of persons committed to a  
10 correctional facility or who possess police powers,  
11 including the power of arrest as provided by section  
12 353C-5;

13 (16) The department of commerce and consumer affairs on  
14 applicants for private detective or private guard  
15 licensure as provided by section 463-9;

16 (17) Private schools and designated organizations on  
17 employees and prospective employees who may be in  
18 positions that necessitate close proximity to  
19 children; provided that private schools and designated  
20 organizations receive only indications of the states  
21 from which the national criminal history record



- 1 information was provided as provided by section  
2 302C-1;
- 3 (18) The public library system on employees and prospective  
4 employees whose positions place them in close  
5 proximity to children as provided by section 302A-  
6 601.5;
- 7 (19) The State or any of its branches, political  
8 subdivisions, or agencies on applicants and employees  
9 holding a position that has the same type of contact  
10 with children, dependent adults, or persons committed  
11 to a correctional facility as other public employees  
12 who hold positions that are authorized by law to  
13 require criminal history record checks as a condition  
14 of employment as provided by section 78-2.7;
- 15 (20) The department of human services on licensed adult day  
16 care center operators, employees, new employees,  
17 subcontracted service providers and their employees,  
18 and adult volunteers as provided by section 346-97;
- 19 (21) The department of human services on purchase of  
20 service contracted and subcontracted service providers  
21 and their employees serving clients of the adult and



1 community care services branch, as provided by section  
2 346-97;

3 (22) The department of human services on foster grandparent  
4 program, senior companion program, and respite  
5 companion program participants as provided by section  
6 346-97;

7 (23) The department of human services on contracted and  
8 subcontracted service providers and their current and  
9 prospective employees that provide home and community-  
10 based services under Section 1915(c) of the Social  
11 Security Act (42 U.S.C. §1396n(c)), as provided by  
12 section 346-97; and

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

16 SECTION 3. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$ or so  
18 much thereof as may be necessary for fiscal year 2007-2008 and  
19 the same sum or so much thereof as may be necessary for fiscal  
20 year 2008-2009 for the department of education to conduct  
21 criminal history record checks on providers and subcontractors  
22 who work and train in close proximity to children.



1           The sums appropriated shall be expended by the department  
2 of education for the purposes of this Act.

3           SECTION 4. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 5. This Act shall take effect on January 30, 2112.



**Report Title:**

Criminal History Record Checks; Department of Education

**Description:**

Adds providers and subcontractors to the individuals subject to criminal history record checks for purposes of employment with the Department of Education. Appropriates funds. (HB23 HD3)

