

JAN 24 2024

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. The department of corrections and
2 rehabilitation requires that background checks be performed on
3 all current and prospective volunteers and purchase of service
4 contracted and subcontracted service providers and their
5 employees who are directly involved in providing correctional
6 programs, treatment, and services to persons committed to a
7 correctional facility. The background checks must be
8 comprehensive and must include a state and Federal Bureau of
9 Investigation fingerprint-based background check. To comply
10 with this requirement, an amendment is necessary to the
11 statutory authority covering criminal history record checks.
12 Multiple other departments and agencies have received this
13 authority.

14 The purpose of this Act is to authorize the department of
15 corrections and rehabilitation to search criminal histories and
16 fingerprint records of current and prospective volunteers and
17 purchase of service contracted and subcontracted service
18 providers and their employees who are directly involved in

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1 providing correctional programs, treatment, and services to
2 persons committed to a correctional facility or places them in
3 close proximity to persons committed when providing services on
4 behalf of the department or the correctional facility.

5 SECTION 2. Section 353-1.5, Hawaii Revised Statutes, is
6 amended by amending subsections (a), (b), and (c) to read as
7 follows:

8 "(a) The department shall develop standards to ensure the
9 reputable and responsible characters of staff members,
10 volunteers, and contract and subcontract service providers of
11 the State's correctional facilities, which shall include
12 criminal history record checks.

13 (b) For purposes of this section:

14 "Contract service provider" means an individual or employee
15 of an entity contracted directly by the department to provide a
16 specific service. Also included in this definition are students
17 who are in an official capacity (assigned internship) from a
18 university, learning to provide a specific service or are to
19 provide a specific service for the department. Student interns
20 may or may not receive a stipend from the particular program
21 they are assigned.

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1 "Prospective staff member" means any applicant for a job in
2 the department that is directly involved in the treatment and
3 care of persons committed to a facility.

4 "Staff member" means any employee of the department who is
5 directly involved with the treatment and care of persons
6 committed to a facility.

7 "Subcontract service provider" means an individual or
8 employee of an entity hired by a contract service provider.

9 "Volunteer" means an individual or organization who
10 provides goods or services to the department without monetary or
11 material compensation from the department.

12 (c) The department shall obtain criminal history record
13 information through the Hawaii criminal justice data center in
14 accordance with section 846-2.7, on all staff members and
15 prospective staff members, volunteers, and contract and
16 subcontract service providers of the department. Prospective
17 staff members, volunteers, and contract and subcontract service
18 providers shall be fingerprinted and the criminal history record
19 check shall be completed before beginning employment [-] or
20 volunteer start date.

21 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:

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- 1 (b) Criminal history record checks may be conducted by:
- 2 (1) The department of health or its designee on operators
- 3 of adult foster homes for individuals with
- 4 developmental disabilities or developmental
- 5 disabilities domiciliary homes and their employees, as
- 6 provided by section 321-15.2;
- 7 (2) The department of health or its designee on
- 8 prospective employees, persons seeking to serve as
- 9 providers, or subcontractors in positions that place
- 10 them in direct contact with clients when providing
- 11 non-witnessed direct mental health or health care
- 12 services as provided by section 321-171.5;
- 13 (3) The department of health or its designee on all
- 14 applicants for licensure or certification for,
- 15 operators for, prospective employees, adult
- 16 volunteers, and all adults, except adults in care, at
- 17 healthcare facilities as defined in section 321-15.2;
- 18 (4) The department of education on employees, prospective
- 19 employees, and teacher trainees in any public school
- 20 in positions that necessitate close proximity to
- 21 children as provided by section 302A-601.5;

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- 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 county liquor commissions on employees and
8 prospective employees involved in liquor
9 administration, law enforcement, and liquor control
10 investigations;
- 11 (8) The department of human services on operators and
12 employees of child caring institutions, child placing
13 organizations, and resource family homes as provided
14 by section 346-17;
- 15 (9) The department of human services on prospective
16 adoptive parents as established under section 346-
17 19.7;
- 18 (10) The department of human services or its designee on
19 applicants to operate child care facilities, household
20 members of the applicant, prospective employees of the
21 applicant, and new employees and household members of
22 the provider after registration or licensure as

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1 provided by section 346-154, and persons subject to
2 section 346-152.5;

3 (11) The department of human services on persons exempt
4 pursuant to section 346-152 to be eligible to provide
5 child care and receive child care subsidies as
6 provided by section 346-152.5;

7 (12) The department of health on operators and employees of
8 home and community-based case management agencies and
9 operators and other adults, except for adults in care,
10 residing in community care foster family homes as
11 provided by section 321-15.2;

12 (13) The department of human services on staff members of
13 the Hawaii youth correctional facility as provided by
14 section 352-5.5;

15 (14) The department of human services on employees,
16 prospective employees, and volunteers of contracted
17 providers and subcontractors in positions that place
18 them in close proximity to youth when providing
19 services on behalf of the office or the Hawaii youth
20 correctional facility as provided by section 352D-4.3;

21 (15) The judiciary on employees and applicants at detention
22 and shelter facilities as provided by section 571-34;

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- 1 (16) The department of corrections and rehabilitation on
2 employees and prospective employees, volunteers, and
3 contract and subcontract service providers who are
4 directly involved with the treatment and care of, or
5 directly involved in providing correctional programs
6 and services to, persons committed to a correctional
7 facility, or places them in close proximity to persons
8 committed when providing services on behalf of the
9 department or the correctional facility, as provided
10 by section 353-1.5 and the department of law
11 enforcement on employees and prospective employees
12 whose duties involve or may involve the exercise of
13 police powers including the power of arrest as
14 provided by section 353C-5;
- 15 (17) The board of private detectives and guards on
16 applicants for private detective or private guard
17 licensure as provided by section 463-9;
- 18 (18) Private schools and designated organizations on
19 employees and prospective employees who may be in
20 positions that necessitate close proximity to
21 children; provided that private schools and designated
22 organizations receive only indications of the states

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- 1 from which the national criminal history record
2 information was provided pursuant to section 302C-1;
- 3 (19) 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 (20) 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, vulnerable 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 (21) The department to health on licensed adult day care
16 center operators, employees, new employees,
17 subcontracted service providers and their employees,
18 and adult volunteers as provided by section 321-15.2;
- 19 (22) The department of human services on purchase of
20 service contracted and subcontracted service providers
21 and their employees and volunteers, as provided by
22 section 346-2.5 and 346-97;

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- 1 (23) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;
- 5 (24) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and community-
8 based services under section 1915(c) of the Social
9 Security Act, title 42 United States Code section
10 1396n(c), or under any other applicable section or
11 sections of the Social Security Act for the purposes
12 of providing home and community-based services, as
13 provided by section 346-97;
- 14 (25) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;
- 19 (26) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a
21 nondepository financial services loan company as
22 provided by section 412:3-301;

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- 1 (27) The department of commerce and consumer affairs on the
2 original chartering applicants and proposed executive
3 officers of a credit union as provided by section
4 412:10-103;
- 5 (28) The department of commerce and consumer affairs on:
6 (A) Each principal of every non-corporate applicant
7 for a money transmitter license;
8 (B) Each person who upon approval of an application
9 by a corporate applicant for a money transmitter
10 license will be a principal of the licensee; and
11 (C) Each person who upon approval of an application
12 requesting approval of a proposed change in
13 control of licensee will be a principal of the
14 licensee, as provided by sections 489D-9 and 489-
15 D-15;
- 16 (29) The department of commerce and consumer affairs on
17 applicants for licensure and persons licensed under
18 title 24;
- 19 (30) The Hawaii health systems corporation on:
20 (A) Employees;
21 (B) Applicants seeking employment;

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1 (C) Current or prospective members of the corporation
2 board or regional system board; or

3 (D) Current or prospective volunteers, providers, or
4 contractors, in any of the corporation's health
5 facilities as provided by section 323F-5.5;

6 (31) The department of commerce and consumer affairs on:

7 (A) An applicant for a mortgage loan originator
8 license, or license renewal; and

9 (B) Each control person, executive officer, director,
10 general partner, and managing member of an
11 applicant for a mortgage loan originator company
12 license or license renewal, as provided by
13 chapter 454F;

14 (32) The state public charter school commission or public
15 charter schools on employees, teacher trainees,
16 prospective employees, and prospective teacher
17 trainees in any public charter school for any position
18 that places them in close proximity to children, as
19 provided in section 302D-33;

20 (33) The counties on prospective employees who work with
21 children, vulnerable adults, or senior citizens in
22 community-based programs;

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- 1 (34) The counties on prospective employees for fire
2 department positions that involve contact with
3 children or vulnerable adults;
- 4 (35) The counties on prospective employees for emergency
5 medical services positions that involve contact with
6 children or vulnerable adults;
- 7 (36) The counties on prospective employees for emergency
8 management positions and community volunteers whose
9 responsibilities involve planning and executing
10 homeland security measures including viewing,
11 handling, and engaging in law enforcement or
12 classified meetings and assisting vulnerable citizens
13 during emergencies or crises;
- 14 (37) The State and counties on employees, prospective
15 employees, volunteers, and contractors whose position
16 responsibilities require unescorted access to secured
17 areas and equipment related to a traffic management
18 center;
- 19 (38) The State and counties on employees and prospective
20 employees whose positions involve the handling or use
21 of firearms for other than law enforcement purposes;

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- 1 (39) The State and counties on current and prospective
2 systems analysts and others involved in an agency's
3 information technology operation whose position
4 responsibilities provide them with access to
5 proprietary, confidential, or sensitive information;
- 6 (40) The department of commerce and consumer affairs on:
7 (A) Applicants for real estate appraiser licensure or
8 certification as provided by chapter 466K;
9 (B) Each person who owns more than ten per cent of an
10 appraisal management company who is applying for
11 registration as an appraisal management company,
12 as provided by section 466L-7; and
13 (C) Each of the controlling persons of an applicant
14 for registration as an appraisal management
15 company, as provided by section 466L-7;
- 16 (41) The department of health or its designee on all
17 license applicants, licensees, employees, contractors,
18 and prospective employees of medical cannabis
19 dispensaries, and individuals permitted to enter and
20 remain in medical cannabis dispensary facilities as
21 provided under sections 329D-15(a)(4) and 329D-
22 16(a)(3);

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- 1 (42) The department of commerce and consumer affairs on
2 applicants for nurse licensure or license renewal,
3 reactivation, or restoration as provided by sections
4 457-7, 457-8, 457-8.5, and 457-9;
- 5 (43) The county police departments on applicants for
6 permits to acquire firearms pursuant to section 134-2,
7 on individuals registering their firearms pursuant to
8 section 134-3, and on applicants for new or renewed
9 licenses to carry a pistol or revolver and ammunition
10 pursuant to section 134-9;
- 11 (44) The department of commerce and consumer affairs on:
- 12 (A) Each of the controlling persons of the applicant
13 for licensure as an escrow depository, and each
14 of the officers, directors, and principals who
15 will be in charge of the escrow depository's
16 activities upon licensure; and
- 17 (B) Each of the controlling persons of an applicant
18 for proposed change in control of an escrow
19 depository licensee, and each of the officers,
20 directors, and principals who will be in charge
21 of the licensee's activities upon approval of the
22 application, as provided by chapter 449;

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- 1 (45) The department of taxation on current or prospective
2 employees or contractors who have access to federal
3 tax information in order to comply with requirements
4 of federal law, regulation, or procedure, as provided
5 by section 231-1.6;
- 6 (46) The department of labor and industrial relations on
7 current or prospective employees or contractors who
8 have access to federal tax information in order to
9 comply with requirements of federal law, regulation,
10 or procedure, as provided by section 383-110;
- 11 (47) The department of human services on current or
12 prospective employees or contractors who have access
13 to federal tax information in order to comply with
14 requirements of federal law, regulation, or procedure,
15 and on current or prospective employees, volunteers,
16 contractors, or contractors' employees or volunteers,
17 subcontractors, or subcontractors' employees or
18 volunteers, whose position places or would place them
19 in close proximity to minors, young adults, or
20 vulnerable adults, as provided by section 346-2.5;
- 21 (48) The child support enforcement agency on current or
22 prospective employees, or contractors who have access

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1 to federal tax information in order to comply with
2 federal law, regulation, or procedure, as provided by
3 section 576D-11.5;

4 (49) The department of the attorney general on current or
5 prospective employees or employees or agents of
6 contractors who have access to federal tax information
7 to comply with requirements of federal law,
8 regulation, or procedure, as provided by section 28-
9 17;

10 (50) The department of commerce and consumer affairs on
11 each control person, executive officer, director,
12 general partner, and managing member of an installment
13 loan licensee, or an applicant for an installment loan
14 license, as provided in chapter 480J;

15 (51) The University of Hawaii on current and prospective
16 employees and contractors whose duties include
17 ensuring the security of campus facilities and
18 persons; and

19 (52) Any other organization, entity, or the State, its
20 branches, political subdivisions, or agencies as may
21 be authorized by state law.”

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

3 SECTION 5. This Act, upon its approval, shall take effect
4 on July 1, 2024.

5

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INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'M. N. M.', written over a horizontal line.

7

BY REQUEST

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Report Title:

Corrections and Rehabilitation; Department of the Attorney General Hawaii Criminal Justice Data Center; Background Checks

Description:

Authorizes the Department of Corrections and Rehabilitation to search criminal histories and fingerprint records of current and prospective volunteers and purchase of service contracted and subcontracted service providers and their employees who are directly involved in providing correctional programs, treatment, and services to persons committed to a correctional facility or places them in close proximity to persons committed when providing services on behalf of the Department or the correctional facility.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

SB. NO. 3172

DEPARTMENT: Corrections and Rehabilitation

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS.

PURPOSE: To authorize the Department of Corrections and Rehabilitation to search criminal histories and fingerprint records of current and prospective volunteers and purchase of service contracted and subcontracted service providers and their employees who are directly involved in providing correctional programs, treatment, and services to persons committed to a correctional facility or places them in close proximity to persons committed when providing services on behalf of the Department or the correctional facility.

MEANS: Amend sections 353-1.5 (a), (b), and (c) and 846-2.7 (b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Department's Corrections Program Services Division is unable to conduct comprehensive background checks on its volunteers and its contract and subcontract service providers entering a correctional facility.

Impact on the public: The ability to provide consistent comprehensive background checks on volunteers from the community and contract and subcontract services providers that provide correctional programs, treatment, and service to persons committed to a correctional facility directly impacts the Department's successful rehabilitation of its offenders and their eventual return to the community.

Impact on the department and other agencies: This bill will affect the Department of the Attorney General's Hawaii Criminal Justice Data Center by adding to section

846-2.7 (b) (16), HRS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: PSD 420.

OTHER AFFECTED
AGENCIES: Hawaii Criminal Justice Data Center.

EFFECTIVE DATE: July 1, 2024.