

ACT 209

H.B. NO. 1285

A Bill for an Act Relating to Criminal Record Clearance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-16, Hawaii Revised Statutes, is amended to read as follows:

“§346-16 Definitions. (a) As used in this chapter:

- [(1)] “Child caring institution” means any institution¹ other than an institution of the State, maintained for the purpose of receiving six or more minor children for care and maintenance, not of common parents, apart from their parents or guardians on a twenty-four hour basis for monetary payment. This term shall not apply to any boarding school which is essentially and primarily engaged in educational work[;].
- [(2)] “Child placing organization” means any person, agency, or organization, [excepting] except family courts and the department of social services and housing, engaged in the investigation, placement, and supervision of children in foster care[;].
- [(3)] “Criminal history record check” means an examination of an individual’s criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
- [(4)] “Foster boarding home” means any children’s boarding home in which one or more, but less than six, minor children are received for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge.

(b) None of the facilities defined in subsection (a) shall be considered a special treatment facility in the sense of section 321-11(10) unless clinical treatment of mental, emotional or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility.”

SECTION 2. Section 346-17, Hawaii Revised Statutes, is amended to read as follows:

“§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over and investigation of. No child placing

organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets with the standards of conditions, management, and competence set by the department of social services and housing.

No child caring institution shall be allowed to receive minor children for care and maintenance unless it meets with the standards of conditions, management, and competence to care for and train children set by the department.

No foster boarding home shall receive for care and maintenance any child unless it meets with the standards of conditions, management, and competence set by the department.

The department [may] shall make rules [and regulations] relating to (1) standards for the organization and administration of child placing organizations, (2) standards of conditions, management, and competence for the care and training of minor children in child caring institutions, and (3) standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

All rules [and regulations] of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than \$200.

As a condition for a certificate of approval, any organization, institution, or home shall meet the standards to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check under section 346- .

Upon approval of any such organization, institution, or home, the department or its authorized agents shall issue a certificate of approval which shall continue in force for one year unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual investigation, if the investigation discloses that the organization, institution, or home continues to meet with the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or foster boarding home, and no person or organization shall operate or maintain such organization, institution, or home without the certificate.

Any child placing organization, child caring institution, or foster boarding home shall be subject to investigation at any time and in such manner, place, and form as may be prescribed by the department or its authorized agents."

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- Criminal history record checks. The department shall develop standards to assure the reputable and responsible character of operators and employees of child caring institutions, child placing organizations and foster boarding homes as defined in this chapter which shall include but not be limited to criminal history record checks.

An applicant for a certificate of approval shall submit statements signed under penalty of perjury by the operators, employees and new employees of the facility, indicating whether the operators, employees or new employees were ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and employees of the facility shall be

fingerprinted for the purpose of complying with the criminal history record check. New employees of the facility shall be fingerprinted within five working days of employment for the purpose of complying with the criminal history record check.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of child care facilities subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, employees or new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny a certificate of approval if an operator, employee, or new employee of the facility was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety or well-being of the children in care."

SECTION 4. Section 352-1, Hawaii Revised Statutes, is amended to read as follows:

"§352-1 Definitions. In this chapter, unless the context clearly indicates otherwise:

- "Criminal history record check" means an examination of an individual's criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
- [(1)] "Department" means that portion of the department of social services and housing concerned with matters within the purview of this chapter[;].
- [(2)] "Director" means the director of social services[;].
- [(3)] "Discharge" means the ending of the director of social services' supervision of a person when the term of the person's commitment has ended or when the director believes the purpose of the term of commitment has been achieved[;].
- [(4)] "Furlough" means an authorized absence of short duration from a youth correctional facility[;].
- [(5)] "Parole" means the conditional release of a person committed to a youth correctional facility whereby the person remains in the custody of the director and under the supervision of the juvenile parole office[;].
- [(6)] "Term of commitment" means the time period during which family court retains jurisdiction over a person after adjudication. During the term of commitment, the family court may vest custody of the person in another person, organization, agency, facility, or other suitable entity."

SECTION 5. Chapter 352, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§352- Criminal history record checks. The department shall develop standards to assure the reputable and responsible characters of staff members of the Hawaii youth correctional facility which shall include but not be limited to criminal history record checks. Staff members, as defined in section 352-5, including any new staff members, shall submit a statement under penalty of

perjury indicating whether the staff member was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The staff members shall be fingerprinted for the purpose of complying with the criminal history record check. New staff members shall be fingerprinted within five working days of beginning employment for the purpose of complying with the criminal history record check.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff members and new staff members of the Hawaii youth correctional facility. The Hawaii criminal justice data center may assess the staff members and new staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny employment to a staff member or new staff member who was convicted of a crime other than a minor traffic violation involving fifty dollars or less and if the department finds that the criminal history record of the staff member or new staff member poses a risk to the health, safety, security or well-being of youths under supervision and confinement."

SECTION 6. Section 571-2, Hawaii Revised Statutes, is amended to read as follows:

"§571-2 Definitions. When used in this chapter, unless the context otherwise requires:

- [(6)] "Adult" means a person eighteen years of age or older.
- [(4)] "Board" means the board of family court judges.
- [(5)] "Child" or "minor" means a person less than eighteen years of age.
- [(12)] "Commit" means to transfer legal custody.
- [(1)] "Court" means one of the family courts as herein established.
- [(7)] "Criminal history record check" means an examination of an individual's criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
- [(7)] "Detention" means the temporary care of children who require custody in physically secure facilities:
 - (A) For their immediate welfare;
 - (B) For the protection of the community;
 - (C) While awaiting transfer to another jurisdiction or
 - (D) Because of violation of a family court order of probation or protective supervision.
- [(9)] "Guardianship of the person of a minor" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It includes but shall not necessarily be limited in either number or kind to:
 - (A) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;

- (B) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
 - (C) The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution;
 - (D) The authority to consent to the adoption of the minor and to make any other decision concerning him which his parents could make, when the rights of his parents, only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of his legal parents are deceased.
- [(16)] "Informal adjustment" means the effort by intake officers, the courts, or others to provide a child referred to them or brought before them, and where appropriate that child's family, opportunity and aid before and in lieu of formally processing the child under this chapter. The objective of this effort is to afford opportunity and aid so that the child, and where appropriate the child's family, may realize voluntary adjustment of behavior and obtain counseling and edification so as to better allow the child's appropriate emergence into adult society.
- [(2)] "Judge" means judge of the family court.
- [(10)] "Legal custody" means the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.
- [(13)] "Probation" means a legal status created by court order following adjudication in a case involving a violation of law whereby a minor is permitted to remain in his home or in a community residential or non-residential program subject to supervision by the court or an agency designated by the court and subject to return to the court for violation of probation at any time during the period of probation.
- [(14)] "Protective supervision" means a legal status created by court order in proceedings not involving violations of law but where the legal custody of the minor is subject to change, whereby the minor is permitted to remain in his home or in a community residential or non-residential program under the supervision of the court or an agency designated by the court and subject to return to the court during the period of protective supervision.
- [(11)] "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation, consent to adoption or marriage, and the responsibility for support.
- [(3)] "Senior judge" means the judge so designated, as provided in this chapter.
- [(8)] "Shelter" means the temporary care of children in physically unrestricting facilities pending court disposition.

“Status offender”² means any child coming within the family court’s jurisdiction under section 571-11(2)(D), (E), or (F). Such child is distinguished from (A) a law violator under section 571-11(1) who comes into the family court upon allegations such person has committed an act which would constitute a crime if committed by an adult, and (B) a neglected or abused child under section 571-11(2)(A), (B), or (C).

- [(15)] The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.”

SECTION 7. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§571- Criminal history record checks. The judiciary shall develop standards to assure the reputable and responsible character of employees of detention facilities defined in this chapter which shall include but not be limited to criminal history record checks. Employees of facilities established under section 571-33, including new employees shall submit a statement under penalty of perjury indicating whether the employee or new employee was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less. The statement shall provide consent to the judiciary to conduct a criminal history record check and to obtain other criminal history record information for verification. Employees shall be fingerprinted for the purpose of complying with the criminal history record check. New employees shall be fingerprinted for the purpose of complying with the criminal history record check.

The judiciary shall obtain criminal history record information through the Hawaii criminal justice data center on all employees and new employees. The Hawaii criminal justice data center may assess employees and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The judiciary may deny employment to an employee or new employee who was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the judiciary finds that the person’s criminal history record indicates that the employee or new employee poses a risk to the health, safety, security, or well-being of youths under detention.”

SECTION 8. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall prevail over any other law which purports to govern the denial or issuance of any permit, license, registration, or certificate by the State or any of its political subdivisions or agencies[.]; provided that this section shall not apply to:

- (1) Denials by the department of social services and housing of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapter 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352; and
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33.”

SECTION 9. The Hawaii criminal justice data center shall submit a report to the legislature on the progress of implementing the criminal history

record checks program. The report shall also contain a recommendation on the program's future including program goals, personnel needs, anticipated program activity levels, and measures of effectiveness; provided that the Hawaii criminal justice data center shall submit its findings and recommendations twenty days before the convening of the 1986 Regular Session.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$30,000 or so much thereof as may be necessary for fiscal year 1985-1986, for the implementation of the criminal history record checks program required under this Act.

SECTION 11. The sum appropriated shall be expended by the department of attorney general for the purposes of this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 13. This Act shall take effect upon its approval.

(Approved June 3, 1985.)

Notes

1. A “,” is missing.
2. Numeric designation missing.
3. Edited pursuant to HRS §23G-16.5.