

A Bill for an Act Relating to Education.

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

SECTION 1. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§846- Employees of private schools; criminal history record checks.**

(a) Private schools may develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in positions which place them in close proximity to children. These procedures shall include criminal history record checks. For the purposes of this section, “criminal history record check” means an examination or search for evidence of an individual’s criminal history by means of a criminal history record check conducted by the Hawaii criminal justice data center; provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed at the request of a private school.

(b) Except as otherwise specified, any person who is employed or seeks employment with a private school in a position which necessitates close proximity to children may be required to provide to the private school a sworn statement indicating whether or not the person has ever been convicted of an offense for which incarceration is a sentencing option, and the details of the offense. Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the private school for the purpose of determining whether or not a person is suitable for working in close proximity to children. All decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) Private schools may refuse to employ or may terminate the employment of an employee or applicant if the person has been convicted of an offense for which incarceration is a sentencing option, and if the private school finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. This refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding.”

SECTION 2. Section 846-43, Hawaii Revised Statutes, is amended to read as follows:

**“§846-43 Employees of the department of education,<sup>1</sup> [and] the counties[;], and teacher trainees in any public school; criminal history checks.** (a) The department of education[, and the counties[, and respective private schools, may] shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed [or are], seeking employment, or seeking to serve as teacher trainees in any public [or private schools] school, or who are employed or seeking employment in any county in positions which place them in close proximity to children. These procedures shall include but not be limited to criminal history record checks. For the purposes of this section, “criminal history record check” means an examination or search for evidence of an individual’s criminal history by means of:

- (1) A search [for] of the individual’s fingerprints in the Federal Bureau of Investigation criminal history record files and, if found, an analysis and any other information available pertaining thereto; and

- (2) A criminal history record check conducted by the Hawaii criminal justice data center;

provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed [for private schools and] for Federal Bureau of Investigation criminal history record checks.

(b) Except as otherwise specified, any person who is employed or seeks employment with a public [or private] school, or as a teacher trainee in any public school, or who is employed or seeks employment with any county in a position [which] that necessitates close proximity to children [may] shall be required to provide to the employer or prospective employer:

- (1) A sworn statement indicating whether or not the person has ever been convicted of [a crime (other than a traffic violation involving a fine of \$50 or less)] an offense for which incarceration is a sentencing option, and the details thereof;
- (2) Written consent for the employer to conduct a criminal history record check as provided in subsection (a) and to obtain other information for verification; and
- (3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether or not a person is suitable for working in close proximity to children. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The employer or prospective employer may refuse to employ, may refuse to issue a teaching or other educational certificate to, may revoke the teaching or other educational certificate of, may refuse to allow or continue to allow teacher training, or may terminate the employment of any employee or applicant if the person has been convicted of [a crime, other than a minor traffic offense involving a fine of \$50 or less,] an offense for which incarceration is a sentencing option, and if the employer or prospective employer finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. Such refusal, revocation, or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91.

(d) This section shall not be used by the department of education to secure criminal history record checks on persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990.

(e) This section shall not be used by a county to secure criminal history record checks on persons who have been employed continuously on a salaried basis prior to June 1, 1998.

(f) For the [purposes] purpose of this section, “close proximity to children” as applied to the counties, applies to programs and services for recreation or child care, or both.

(g) For the purpose of this section, notwithstanding any other law to the contrary, the department of education[, and the counties[, and private schools]] shall be exempt from section 831-3.1 and need not conduct its investigations, notifications, or hearings in accordance with chapter 91.”

SECTION 3. Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

## **ACT 73**

SECTION 4. This Act shall take effect on July 1, 1999.

(Approved June 10, 1999.)

### **Notes**

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.