

A Bill for an Act Relating to Criminal History.

*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 part III to be appropriately designated and to read as follows:

**“§846- Employees of the department of health, its providers and subcontractors; criminal history checks.** (a) The department of health shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking employment, or seeking to serve as providers or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division of the department of health. These procedures shall include but not be limited to criminal history record checks.

The Hawaii criminal justice data center may assess providers and subcontractors a reasonable fee for criminal history record checks performed. Providers and subcontractors shall be responsible for payment to the Hawaii criminal justice data center for the cost of the criminal history record checks.

(b) Except as otherwise specified, any person who seeks employment with the department of health, or who is employed or seeks employment with a provider or subcontractor in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division, shall be required to provide to the department of health:

- (1) A sworn statement indicating whether the person has ever been convicted of an offense for which incarceration is a sentencing option and the details thereof;
- (2) Written consent for the department of health to conduct a criminal history record check as provided for 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 department of health for the purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The department of health may refuse to employ or may terminate the employment of any employee or applicant if the person has been convicted of an offense for which incarceration is a sentencing option, and if the department of health 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 clients receiving non-witnessed direct mental health services. Such refusal 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 health to secure criminal history record checks on persons who have been employed continuously on a salaried basis prior to July 1, 2000.

(e) Nothing in this section shall prohibit criminal history record checks on employees of all providers and subcontractors.

(f) 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 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 through the files maintained by the Hawaii criminal justice data center.

“Provider” means any organization or individual that intends to enter into a contract with or is currently contracted by the child and adolescent mental health division of the department of health to provide direct mental health services to the department’s eligible clients.

“Subcontractor” means any organization or individual that enters into a contract or agreement with a provider to provide direct mental health services to the department’s eligible clients.

(g) Notwithstanding any other law to the contrary, the department of health shall be exempt from section 831-3.1 for purposes of this section and need not conduct its investigations, notifications, or hearings in accordance with chapter 91.”

SECTION 2. Section 846-44, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§846-44]] Employees of private schools; criminal history record checks.~~** (a) Private schools [may] shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in positions [which] that 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 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.] The private school and designated organization shall establish safeguards and procedures to protect against inadvertent or inappropriate disclosure of information obtained under this section. The Hawaii criminal justice data center may charge a private school or designated organization a reasonable fee to cover the cost of the state and Federal Bureau of Investigation criminal history record check, which may be passed on to the applicant by the private school or designated organization.

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

- (1) 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.] thereof;
- (2) Written consent for the private school or designated organization to conduct a criminal history record check; and
- (3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history check.

Information obtained pursuant to [subsection (a) and this subsection] this section shall be used exclusively by the private school or designated organization 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.

(d) The State, the Hawaii criminal justice data center, and their respective officers and employees, shall be immune from civil liability for any official act, decision, or omission performed pursuant to this section that is not the result of gross negligence or wilful misconduct. The State, the Hawaii criminal justice data center, and their respective officers and employees shall be immune from civil liability for any act, decision, omission to act or decide, or use of the information by any private school or designated organization authorized to receive or who receives information pursuant to this section.

(e) This section shall not be used by the private schools to secure criminal history record checks on persons who have been employed continuously by the private school on a salaried basis prior to July 1, 2000.

(f) 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 of the individual’s fingerprints in the Federal Bureau of Investigation criminal history record files, and, if found, an indication of the state from which the records were provided; and
- (2) A criminal history record check through the files maintained by the Hawaii criminal justice data center.

“Designated organization” means a private organization that receives the criminal history record checks on behalf of private schools.”

SECTION 3. There is appropriated out of the state criminal history record improvement revolving fund the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2000-2001 to effectuate the purposes of this act. The sum appropriated shall be expended by the department of the attorney general for the purpose of this Act.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval; provided that section 1 of this Act shall be repealed on June 30, 2001.

(Approved May 30, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.