

## ACT 166

H.B. NO. 1749

A Bill for an Act Relating to Adult Residential Care Homes.

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

SECTION 1. On September 30, 2000, the operator of an adult residential care home (ARCH) in the State was allegedly murdered by one of her residents who, unbeknownst to the victim, had previously been acquitted of murder and attempted murder by reason of insanity in 1984. As a result of that acquittal, the current suspect was committed to the state hospital but was later placed on conditional release in 1988. The suspect's conditional release was revoked and reinstated several times and the suspect was on conditional release at the time of the killing.

The legislature finds that the disclosure of a prospective adult residential care home resident's criminal history under certain circumstances is warranted and in the interest of the people of the State. The legislature further finds that certain ARCH residents with physical and mental impairments may live many years with the same level of care and same caregivers. The legislature believes that even if the level of care required for the patient changes, if the ARCH operator, the resident, and interested parties agree that the resident should remain at the ARCH, current department of health practices and laws should allow the resident to remain is to require the department of health to disclose to the operator of an adult residential care home the criminal history of a prospective resident under certain circumstances, and to allow "aging in place" for certain ARCH residents, by providing the department of health with the discretion to allow these residents to continue to live in adult residential care homes even though their level of care has exceeded ARCH placement criteria.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§321- Criminal history disclosure.** Notwithstanding any other law to the contrary, the department of health shall disclose to the operator of an adult residential care home, to the extent that the division or office of the department that is referring the individual to the care home possesses, the information in existing records at the time of, and as part of, the application for admission, the criminal

history of a prospective resident applying for entry to the care home when the prospective resident had previously been:

- (1) Convicted of an offense involving violence to a person; or
- (2) Admitted to the state hospital under the jurisdiction of the department of health as a result of an acquittal under chapter 704 for an offense involving violence to a person.”

SECTION 3. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The department shall develop and adopt a social model of health care to ensure the health, safety, and welfare of individuals placed in adult residential care homes. The social model of care shall provide for aging in place and be designed to protect the health, safety, civil rights, and rights of choice of the persons to reside in a nursing facility or in home- or community-based care.”

SECTION 4. Section 321-15.62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director shall adopt rules regarding expanded adult residential care homes in accordance with chapter 91 which shall ~~be~~ implement a social model of health care designed to:

- (1) Protect the health, safety, civil rights, and rights of choice of the persons to reside in a nursing facility or in home- or community-based care;
- (2) Provide for the licensing of expanded adult residential care homes for persons who are certified by the department of human services, a physician, advanced practice registered nurse, or registered nurse case manager as requiring skilled nursing facility level or intermediate care facility level of care who have no financial relationship with the home care operator or facility staff; provided that the rules shall allow group living in two categories of expanded adult residential care homes as licensed by the department of health:
  - (A) Type I home shall consist of five or less residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department; and
  - (B) Type II home shall consist of six or more residents, with no more than twenty per cent of the home’s licensed capacity as nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department[-]; provided further that the department shall exercise its discretion for a resident presently residing in a Type I or Type II home, to allow the resident to remain as an additional nursing facility level resident based upon the best interests of the resident. The best interests of the resident shall be determined by the department after consultation with the resident, the resident’s family, primary physician, case manager, primary caregiver, and home operator;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

**SECTION 6.** This Act shall take effect upon its approval.

(Approved June 18, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.