

ACT 95

S.B. NO. 830

A Bill for an Act Relating to Criminal History Record Checks.

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

SECTION 1. Each year the legislature is faced with an ever-growing number of new requests for statutory authorization to use criminal history record information as part of employment background checks, certifications, and licensing of individuals.

The large amount of legislation, spread across an equally large number of statutes, has made it a difficult task to ensure that all affected statutes are covered when making statutory changes. The variety of legislation that covers these pro-

grams has resulted in a piecemeal approach that is reflected in conflicting language and inconsistencies across the programs, which the affected programs and the legislature want addressed.

Senate Concurrent Resolution No. 122 (2000) requested that the legislative reference bureau conduct a comprehensive study of this area that would provide a review of a number of issues including current legislation, both federal and state, with recommendations for determining who should be subject to these background checks, whether Hawaii should be an open records state, and if legislation was necessary. The bureau's study was submitted to the 2001 legislature, along with legislation that was enacted as Act 263, Session Laws of Hawaii 2001.

The bureau's study found that Hawaii's laws relating to criminal history record checks were entangled in a significant state of confusion, not quickly or easily clarified. When considered together, the various laws that govern access and use of criminal history records and laws that authorize criminal history record checks are often redundant, unnecessary, duplicative, or inconsistent, overlapping in some areas and conflicting in others. Moreover, the study found that there was little common understanding of what is meant by the term "criminal history record check", what criminal history records are available to employers or the general public, and how those records can be used in employment and licensing decisions.

Criminal history record checks cannot be examined in isolation; related laws governing access and use must also be considered. All stakeholders must be involved and informed. Accordingly, the study recommended the creation of a criminal history record check working group of all stakeholders to resolve policy issues raised by the study relating to the access and use of criminal history record information for the noncriminal justice purposes of employment and licensing, and to submit recommendations to the legislature. The criminal history record check working group was subsequently formed pursuant to Act 263, and in 2003, submitted a report to the legislature, detailing its proceedings and recommendations.

The purpose of this Act is to implement the recommendations of the criminal history record check working group to address disparate practices, inconsistencies, and duplicative language in the statutes authorizing criminal history record checks for employment background checks, certifications, and licensing of individuals.

This Act:

- (1) Clarifies and eliminates conflicting language in sections 378-2.5, 831-3, and 831-3.1, Hawaii Revised Statutes;
- (2) Eliminates inconsistencies in individual program statutes by adopting standard language in the criminal justice data center law under chapter 846; and
- (3) Amends the authorizing program statutes by referencing these standard requirements for criminal history record checks.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- Criminal history record checks. (a) The State or any of its branches, political subdivisions, or agencies shall develop standards and procedures to ensure the reputable and responsible character of applicants and employees, which shall include criminal history record checks in accordance with section 846-

(b) The State or any of its branches, political subdivisions, or agencies shall obtain criminal history information through the Hawaii criminal justice data center on an applicant for a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public

employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment; provided that:

- (1) The information obtained shall be used exclusively for the purpose of determining whether a person is suitable for working in close proximity with children, dependent adults, or persons committed to a correctional facility;
- (2) The use of the information shall be subject to those federal laws and regulations as may be now or hereafter adopted; and
- (3) The Hawaii criminal justice data center may assess applicants a reasonable fee for each criminal history record check conducted.

(c) The State or any of its branches, political subdivisions, or agencies may deny employment on the basis of criminal conviction in accordance with applicable laws and regulations as follows:

- (1) For positions with contact with children or dependent adults, if it finds that the applicant has been convicted of a crime and that by reason of the nature and circumstances of the crime, the applicant poses a risk to the health, safety, or well-being of children or dependent adults; and
- (2) For positions with contact with persons committed to a correctional facility, if it finds that the applicant has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and because of the nature of the conviction, the applicant poses a risk to the health, safety, security, or well-being of persons committed to a correctional facility, the correctional facility's staff, or the public at large.

Nothing in this subsection prohibits the State or any of its branches, political subdivisions, or agencies from denying employment for other reasons as permitted by applicable laws and regulations.

(d) For purposes of implementing this section:

- (1) For employees holding positions with contact with children or dependent adults on the effective date of this Act, no employee who has been continuously employed on a salaried basis prior to July 1, 1990, shall be subject to a criminal history record check for the position held on the effective date of this Act;
- (2) For employees holding positions with contact with persons committed to a correctional facility on the effective date of this Act, no employee shall be terminated based on convictions in the criminal history record check except those convictions occurring after July 1, 1990, or under circumstances in which the employee is a fugitive from justice; and
- (3) Nothing in this section shall abrogate an employee's rights under collective bargaining to appeal a termination of employment.

(e) As used in this section:

"Applicant" means a person who is applying for a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.

"Employee" means a person holding a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.

"Public employees who hold positions that are authorized by law" means a public employee whose position requires a criminal history record check as a condition of employment and the authorization for the criminal history record check is not provided by this section."

SECTION 3. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§281- County liquor commissions; criminal history record check.

(a) The respective county liquor commissions may request a criminal history record check of an applicant for a liquor license in accordance with section 846-. The criminal history record check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for obtaining a liquor license; and
- (2) The judgment of conviction has not been vacated.

For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the liquor commission by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant’s name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section.

(b) The applicant shall submit to the liquor commission:

- (1) A statement signed under penalty of law as to whether the applicant has ever been convicted of a crime other than a minor traffic violation;
- (2) Written consent to request and obtain criminal history record information for verification; and
- (3) Permission to be fingerprinted.

(c) The liquor commission shall obtain criminal history record information through the Hawaii criminal justice data center on the applicant. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations currently or hereafter in effect.”

SECTION 4. Chapter 302A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§302A-A Employees of the department of education and teacher trainees in any public school; criminal history record checks. (a) The department of education, including the Hawaii state public library system, shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment in any position, including teacher trainees, that places them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-

Information obtained pursuant to this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations currently or hereafter in effect.

- (b) The employer or prospective employer may refuse to employ, and may:
- (1) Refuse to issue a teaching or other educational certificate;
 - (2) Revoke the teaching or other educational certificate;
 - (3) Refuse to allow or continue to allow teacher training; or
 - (4) Terminate the employment of any employee or deny employment to an applicant,

if the person has been convicted of a crime, 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. Refusal, revoca-

tion, or termination may occur only after appropriate investigation and notification to the employee or applicant for employment of results and planned action, and after the employee or applicant for employment is given an opportunity to meet and rebut the finding. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89, or administrative regulation of the department of education.

(c) This section shall not be used by the department to secure criminal history record checks on persons who have been employed continuously by the department, including the state public library system, on a salaried basis prior to July 1, 1990.

(d) Notwithstanding any other law to the contrary, for purposes of this section, the department of education, including the Hawaii state public library system, shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.

§302A-B Employees of private schools; criminal history record checks.

(a) Private schools shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in positions that place them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-. 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 fee charged by the Hawaii criminal justice data center to perform criminal history record checks may be passed on to the applicant for employment by the private school or designated organization.

(b) Information obtained pursuant to this section shall be used exclusively by the private school or designated organization for the purpose of determining whether 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 for employment 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. Refusal or termination may occur only after appropriate investigation, notification to the employee or applicant for employment of results and planned action, and after the employee or applicant for employment is given an 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 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) As used in this section:

“Designated organization” means a private organization that receives criminal history record check information from the Hawaii criminal justice data center on behalf of private schools.”

SECTION 5. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- 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 in accordance with section 846-

(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:

- (1) Be subject to criminal history record checks in accordance with section 846- ; and
- (2) Provide to the department of health written consent for the department to obtain criminal history record information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for 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 for employment 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. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89.

(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 purposes of this section:

“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 investigations, notifications, or hearings under this section in accordance with chapter 91.”

SECTION 6. Chapter 421I, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§421I- Employees of cooperative housing corporations; background checks. The board of directors of a cooperative housing corporation, or the manager of a cooperative housing project, upon the written authorization of an applicant for employment as a security guard or manager or for a position that would allow the employee access to the keys of or entry into the units in the project or access to corporation funds, may conduct a background check on the applicant, or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for employment. The background check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant is unsuited for employment as an employee with access to corporation funds or the keys of or entry to the units in the project; and
- (2) The judgment of conviction has not been vacated.

For purposes of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. The board or manager may conduct a criminal history record check directly through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant’s name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section. Failure of a cooperative housing corporation or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against the corporation or manager for acts and omissions of the employee hired.”

SECTION 7. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§846- Criminal history record checks. (a) The agencies and other entities named in subsection (b) may conduct state and national criminal history record checks on the personnel identified in subsection (b), for the purpose of determining suitability or fitness for a permit, license, or employment; provided that the Hawaii criminal justice data center may charge a reasonable fee for the criminal history record checks performed. The criminal history record check shall include the submission of fingerprints to:

- (1) The Federal Bureau of Investigation for a national criminal history record check; and
- (2) The Hawaii criminal justice data center for a state criminal history record check that shall include non-conviction data.

Criminal history record information shall be used exclusively for the stated purpose for which it was obtained.

(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons 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, as provided by section 321- ;
- (3) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by 302A-A;
 - (4) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
 - (5) The county liquor commissions on applicants for liquor licenses as provided by section 281- ;
 - (6) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
 - (7) The department of human services on prospective adoptive parents as established under chapter 346;
 - (8) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-19.7;
 - (9) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-154;
 - (10) The department of human services on operators and employees of home- and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-E;
 - (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
 - (12) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
 - (13) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
 - (14) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
 - (15) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302A-B;
 - (16) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-A;
 - (17) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78- ; and
 - (18) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

(c) The applicant or employee subject to a criminal record check shall provide to the requesting agency:

- (1) Consent to obtain the applicant's or employee's fingerprints and conduct the criminal history record check;
- (2) Identifying information required by the Federal Bureau of Investigation which shall include but not be limited to name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth; and
- (3) A statement indicating whether the applicant or employee has ever been convicted of a crime."

SECTION 8. Chapter 333F, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definitions of "criminal history record check" and "criminal history record information" in section 333F-1.

~~["Criminal history record check" means an examination of an individual's criminal history records by means including, but not limited to, fingerprint analysis and name inquiry into state and national criminal history record files.~~

~~"Criminal history record information" means criminal history information received from state and national criminal history record checks."]~~

2. By amending section 333F-22(a) to read:

~~"(a) The department shall adopt rules pursuant to chapter 91 to [assure] ensure the reputable and responsible character of an applicant to operate an adult foster home or developmental disabilities domiciliary home, of existing providers and their employees, of current and prospective employees of the applicant, and of new employees of the provider after certification or licensure, which shall provide for, but not be limited to, criminal history record checks[.] in accordance with section 846-____."~~

3. By amending section 333F-22(c), (d), and (e) to read:

~~"(c) An applicant to operate an adult foster home or developmental disabilities domiciliary home [shall submit to the department, with the applicant's application for certification or licensure, statements signed under penalty of perjury by the applicant] and all current and prospective employees of the applicant [indicating whether the applicant or any of the current or prospective employees of the applicant have ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing] shall be subject to criminal history record checks in accordance with section 846-____, and shall provide consent to the department to [conduct a criminal history record check and to] obtain [other] criminal history record information for verification. [The applicant and current or prospective employees of the applicant shall also be fingerprinted for the purpose of a national criminal history record check.]~~

~~(d) Each existing provider or provider [shall submit to the department statements signed under penalty of perjury by] and all employees hired after the initial licensure or certification of the existing provider or provider [indicating whether any of the employees has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing] shall be subject to criminal history record checks in accordance with section 846-____, and shall provide consent to the department to [conduct a criminal history record check and] obtain [other] criminal history record information for verification. [The employees shall also be fingerprinted for the purpose of the national criminal history record check.]~~

~~(e) The department is authorized to obtain criminal history record information through the Hawaii criminal justice data center on existing providers and their employees upon their next licensure or certification renewal date, and on any applicant and all current and prospective employees of the applicant, including all new employees after the applicant is issued a certification or license under this chapter. [The Hawaii criminal justice data center may assess the existing providers~~

and their employees, applicants, current or prospective employees, or new employees of the applicant a reasonable fee for each criminal history record check performed.]”

SECTION 9. Chapter 346, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definition of “criminal history record check” in section 346-16.

[““Criminal history record check” means an examination of an individual’s criminal history record through:

- (1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;
 - (2) Subsequent fingerprint analyses for new hires and rehires; and
 - (3) A name inquiry into the state criminal history record files.”]
2. By amending section 346-17 to read:

“§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over, investigation of, and standards for. (a)

No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets the standards of conditions, management, and competence set by the department of human services.

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

(c) No foster boarding home shall receive for care and maintenance any child unless:

- (1) It meets with the standards of conditions, management, and competence set by the department; and
- (2) The foster boarding home applicant successfully completes foster parent training; provided that after July 1, 1999, new special licensed or relative foster home care providers shall successfully complete foster parent training within the first year following placement of the first child into the new special licensed or relative foster home.
- (d) The department shall adopt rules pursuant to chapter 91 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 foster boarding homes; and
 - (3) Standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

(e) All rules 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.

(f) As a condition for a certificate of approval, any organization, institution, or home shall [meet]:

- (1) Meet the standards [to assure] ensuring the reputable and responsible character of its operators and employees [by complying with the requirements of a];
- (2) Be subject to criminal history record [check under section 346-19.6.] checks in accordance with section 846- ; and
- (3) Provide consent to the department to obtain criminal history record information.

New employees of the organization, institution, or home shall be fingerprinted within five working days of employment.

(g) Upon approval of the organization, institution, or home, the department or its authorized agents shall issue a certificate of approval that shall continue in force for one year or for two years if the organization, institution, or home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial 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 the organization, institution, or home without the certificate.

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

(i) As used in this section, "foster parent training" means training or instruction in special skills and knowledge to care for foster children.

(j) The department shall request a criminal history record check through the Hawaii criminal justice data center on all operators, employees, and new employees of child care institutions, child placing organizations, and foster boarding homes subject to licensure pursuant to section 846-_____.

(k) 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 \$50 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.

(l) The department shall make a name inquiry into the criminal history records for the first two years of certification of a foster boarding home and annually or biennially thereafter depending on the certification status of the home.'

3. By repealing section 346-19.6.

4. By amending section 346-19.7 to read:

~~"[H]§346-19.7 [Criminal history record checks: prospective] Prospective adoptive parents; standards and home studies.[H]~~ (a) The department shall develop standards to [assure] ensure the reputable and responsible character of prospective adoptive parents as defined in this chapter.

(b) The department shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking to become adoptive parents. These procedures shall include [~~but not be limited to~~] criminal history record checks[. ~~The Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed by the Federal Bureau of Investigation.~~] in accordance with section 846-_____.

(c) Except as otherwise specified, any person who seeks to become an adoptive parent shall [~~meet~~]:

(1) ~~Meet all standards and requirements [as] established by the department [and shall be required to provide to the department:~~

(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 thereof];~~

(2) [~~Written consent for the department to conduct a~~] Be subject to criminal history record [check as provided in subsection (b)] checks in accordance with section 846-_____; and

(3) Provide consent to the department to obtain [other] criminal history record 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 (b) and this subsection shall be used exclusively by the department for the purpose of determining whether or not a person is suitable to be an adoptive parent. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(d) The department may deny a person's application to adopt a child or children if either of the prospective adoptive parents was convicted of an offense for which incarceration is a sentencing option, and if the department finds by reason of the nature and circumstances of the crime that either of the prospective adoptive parents poses a risk to the health, safety, or well being of the child or children. Such denial 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.

(e) The department may authorize or contract for home studies of prospective adoptive parents for children under the department's custody by experienced social workers with specialized adoption experience.

~~[(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 by the Hawaii criminal justice data center.]'~~

5. By deleting the definition of "criminal history record check" in section 346-151.

~~[""Criminal history record check" means an examination of an individual's criminal history record through:~~

- ~~(1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;~~
- ~~(2) Subsequent fingerprint analyses for new hires and rehires; and~~
- ~~(3) An annual name inquiry into the state criminal history record files.]"~~

6. By amending section 346-154(a), (b), (c), and (d) to read:

~~“(a) The department shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include [but not be limited to] criminal history record checks in accordance with section 846-_____ and child abuse record checks.~~

~~(b) An applicant to operate a child care facility shall [submit]:~~

~~(1) Be subject to criminal history record checks in accordance with section 846-_____;~~

~~(2) Submit to the department under penalty of [false swearing,] law, statements signed by the applicant and prospective employees of the applicant];~~

~~(4) Indicating] indicating whether the applicant or any of the prospective employees has ever been [convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been] confirmed to have abused or neglected a child, including threatened harm; and~~

~~[(2) Providing] (3) Provide consent to the department to conduct a criminal history record check in accordance with section 846-_____ and a child abuse record check, and to obtain criminal history and child abuse record information for verification. [The applicant and prospective employee of the applicant shall be fingerprinted for the purpose of complying with the criminal history record check.]~~

~~(c) A provider shall [submit]:~~

- (1) Be subject to criminal history record checks in accordance with section 846-_____;
- (2) Submit to the department [~~under penalty of false swearing,~~] a statement signed by any employee hired after the initial licensure or registration[~~:~~ ~~indicating~~] that requires the employee to indicate under penalty of law, whether the employee has ever been [~~convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been~~] confirmed to have abused or neglected a child, including threatened harm; and
- (3) Provide consent to the department to conduct a criminal history record check in accordance with section 846-_____ and a child abuse record check, and to obtain criminal history and child abuse record information for verification. [~~The employee shall be fingerprinted for the purpose of complying with the criminal history record check.~~]

(d) The department shall obtain criminal history record information through the Hawaii criminal justice data center and child abuse record information from the department on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a registration or license under this part. [~~The Hawaii criminal justice data center may assess the applicant, prospective employee, or new employee 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 applicable federal laws and regulations.~~], which shall include an annual name inquiry into the state criminal history record files.”

SECTION 10. Chapter 352, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definition of “criminal history record check” in section 352-1.

[““Criminal history record check” means an examination of an individual’s criminal history record through:

- (1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;
- (2) Subsequent fingerprint analyses for new hires and rehires; and
- (3) An annual name inquiry into the state criminal history record files.”]

2. By amending section 352-5.5 to read:

“[E]§352-5.5[H] **Criminal history record checks.** (a) The department shall develop standards to [assure] ensure 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[~~:~~] in accordance with section 846-_____.

(b) 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]:

- (1) Be subject to criminal history record checks in accordance with section 846-_____ ; and
- (2) Provide 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.

(c) 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 shall conduct an annual name inquiry into the state criminal history record files.

(d) 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]~~ \$50 or less and if the department finds that because of the criminal history record of the staff member or new staff member, the staff member poses a risk to the health, safety, security, or well-being of youths under supervision and confinement.”

SECTION 11. Section 353C-5, Hawaii Revised Statutes, is amended to read as follows:

“§353C-5 Criminal history record checks. (a) The department shall develop standards to ~~[assure]~~ ensure the reputable and responsible characters of staff members of its correctional facilities which shall include ~~[but not be limited to]~~ criminal history record checks.

(b) For ~~[the]~~ purposes of this section~~[-“staff”]~~:

“Staff member” means any employee of the department of public safety who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers, including the power of arrest~~[-and “pro-~~
~~spective”]~~.

“Prospective staff member” means any applicant for a job in the department of public safety that is directly involved with the treatment and care of persons committed to a facility or that requires the exercise of police powers, including the power to arrest in the performance of its duties.

~~[Every staff member and prospective staff member shall submit a statement under penalty of unsworn falsification to authorities indicating whether the staff member or prospective staff member was ever convicted of a crime other than a minor traffic violation involving a fine of \$50 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 member shall be fingerprinted for the purpose of complying with the criminal history record check. The prospective staff member shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.]~~

(c) The department shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-____, on all staff and prospective staff members of the department of public safety. ~~[The Hawaii criminal justice data center may assess prospective 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.]~~ Prospective staff members shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.

(d) The department may deny employment to a prospective staff member who was convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds from the prospective staff member’s criminal history record that the prospective staff member poses a risk to the health, safety,

security, or well-being of inmates under supervision and confinement, other staff, or the public at large.

(e) Staff members shall not be subject to termination based on findings in their criminal records except for those whose conviction of a crime occurred after May 8, 1989, or under circumstances in which a staff member is ~~[[a]]~~ fugitive from justice. ~~[The convictions of staff]~~ Staff members shall be subject to termination ~~[must be]~~ for crimes other than a minor traffic violation involving a fine of \$50 or less, ~~[and] where because of the staff member's conviction record, the staff member [must pose]~~ poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large."

SECTION 12. Section 378-2.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§378-2.5]] Employer inquiries into conviction record. (a) Subject to subsection (b), an employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the ~~[period for which the]~~ employer may ~~[examine]~~ consider the employee's conviction record falling within a period that shall not exceed the most recent ten years~~[-]~~, excluding periods of incarceration. If the employee or prospective employee claims that the period of incarceration was less than what is shown on the employee's or prospective employee's conviction record, an employer shall provide the employee or prospective employee with an opportunity to present documentary evidence of a date of release to establish a period of incarceration that is shorter than the sentence imposed for the employee's or prospective employee's conviction.

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-_____;
- (2) The department of education pursuant to section 302A-A;
- (3) The department of health with respect to employees, 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 pursuant to section 321-_____;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-_____;
- (6) Armed security services pursuant to section 261-17(b);

- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302A-B;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-A;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-____; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514A-82.1.”

SECTION 13. Section 463-9, Hawaii Revised Statutes, is amended to read as follows:

“**§463-9 Form of application for license.** Application for a license shall be made on a form prescribed by the board which may require a statement of the applicant’s full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant’s background, character, competency, and integrity as it deems appropriate, and shall request, in accordance with section 846-____, criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs.”

SECTION 14. Section 514A-82.1, Hawaii Revised Statutes, is amended to read as follows:

“**[§514A-82.1] Employees of condominiums; background check.** The board of directors of an association of apartment owners or the manager of a condominium project, upon the written authorization of an applicant for employment as security guard or manager or for a position which would allow the employee access to the keys of or entry into the units in the condominium project or access to

association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as a condominium employee with access to association funds or the keys of or entry into the units in the condominium project, and the judgment of conviction has not been vacated. For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant's name, social security number, date of birth, and gender. This information shall be used only for the purpose of conducting the criminal history record check authorized by this section. Failure of an association of apartment owners or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association or manager for acts and omissions of the employee hired."

SECTION 15. Chapter 571, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "criminal history record check" in section 571-2 to read:

~~"~~"Criminal history record check" means [an examination of an individual's criminal history record through:

- ~~(1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;~~
- ~~(2) Subsequent fingerprint analyses for new hires and rehires; and~~
- ~~(3) An annual name inquiry into the state criminal history record files.]~~

submission of an individual's fingerprints and other identifying information to the Federal Bureau of Investigation and to the Hawaii criminal justice data center in accordance with chapter 846."

2. By amending section 571-34 to read:

~~"[§571-34] Criminal history record checks. The judiciary shall develop standards to [assure] ensure 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] All employees and applicants for employment at 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 be subject to criminal history record checks and 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.] applicants. The judiciary may [~~deny employment to~~] terminate an employee or [~~new employee~~] deny employment to an applicant 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] applicant poses a risk to the health, safety, security, or well-being of youths under detention.'

SECTION 16. Chapter 831, Hawaii Revised Statutes, is amended to read as follows:

1. By amending section 831-3 to read:

“§831-3 Rights retained by convicted person. Except as otherwise provided by [~~this chapter and chapter 351, part VI,~~] law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of the person's rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law.”

2. By amending section 831-3.1 to read:

“§831-3.1 Prior convictions; criminal records; noncriminal standards.

(a) A person shall not be disqualified from public office or employment by the State or any of its branches, political subdivisions, or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its branches, political subdivisions, or agencies, solely by reason of a prior conviction of a crime; provided that [with]:

- (1) With respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission[-]; and
- (2) A person who within the past ten years, excluding any period of incarceration, has been convicted of a crime that bears a rational relationship to the duties and responsibilities of a job, occupation, trade, vocation, profession, or business may be denied employment, a permit, license, registration, or certificate. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89.

(b) [~~The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:~~

- (1) ~~Records of arrest not followed by a valid conviction;~~
- (2) ~~Convictions which have been annulled or expunged;~~
- (3) ~~Convictions of a penal offense for which no jail sentence may be imposed;~~
- (4) ~~Conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction.~~

Except as provided in paragraphs (1) to (4), the] The State or any of its branches, political subdivisions, or agencies may consider as a [possible] justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of [a penal offense] any crime, except those which have been expunged, occurring within the past ten years, excluding any period of incarceration, when that crime bears a rational relationship to the duties and responsibilities of the job, occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

(c) The State or any of its branches, political subdivisions, or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a crime, not occurring within the past ten years, excluding any period of incarceration, except those which have been expunged, when [such] the offense directly relates [(i) to the] to:

- (1) The applicant's possible performance in the job applied for[; or (ii) to the];
- (2) The employee's possible performance in the job [which] that the employee holds[;]; or [(iii) to the]
- (3) The applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service, 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, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust[; ~~provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, may be considered as one of many factors to determine sufficiency of rehabilitation. A person deemed ineligible for employment in the civil service shall be entitled to appeal any and all adverse decisions to the civil service commission within twenty days after the notice of action has been sent to the person.~~]

~~[(e)] (d) When considering noncriminal standards [such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like,] in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the [agency] State or any of its branches, political subdivisions, or agencies shall not take into consideration the conviction of any crime except as provided by [subsection] subsections (b)[-] and (c). [Nothing in this section shall be construed to otherwise affect a proceeding before any agency which does not involve the conviction of a crime.]~~

(e) A person who applies for a position in the civil service and is denied employment in that position on the basis of a criminal conviction pursuant to this section, may appeal the adverse decision to the civil service commission or merit appeals board, as appropriate, within twenty days after the notice of action has been sent to the person.

~~[(d) This] (f) Notwithstanding any law to the contrary, this section shall not apply to:~~

- (1) Denials by the department of human services, the department of health, or any other branch, political subdivision, or agency of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under [chapter] chapters 321, 333F, and 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33; [and]
- (4) Denials of employment as a staff member of a correctional facility [operated under] pursuant to chapter 353[-], or as a staff member that requires the exercise of police powers, including the power to arrest, in

- the performance of the staff member's duties pursuant to chapter 353C; and
- (5) Denials of employment of applicants or employees pursuant to section 78-_____.

SECTION 17. Act 273, Session Laws of Hawaii 2001, is amended as follows:

1. By deleting the definition of "criminal history record check" in section 346-A in the new part added to the Hawaii Revised Statutes in section 1.

["~~"Criminal history record check" means an examination of an individual's criminal history record through:~~

- (1) ~~A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files;~~
- (2) ~~Further analysis and search for other information available for individuals found in the Federal Bureau of Investigation criminal history record files;~~
- (3) ~~Subsequent fingerprint analyses for required individuals; and~~
- (4) ~~A name inquiry into the state criminal history record files.'~~"]

2. By amending section 346-E in the new part added to the Hawaii Revised Statutes in section 1 to read:

"§346-E Criminal history record checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators and employees of the home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter, which shall include but not be limited to criminal history record checks[.] in accordance with section 846-_____.

(b) ~~An applicant for a home and community-based case management agency license [shall submit statements signed under penalty of perjury by the] and operators, employees, and new employees of [the] a home and community-based case management agency[., indicating whether the operators, employees, or new employees have ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, and the details thereof.~~

The operators, employees, and new employees shall also provide 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 home and community-based case management agency shall be fingerprinted for the purpose of complying with the] shall be subject to criminal history record [check.] checks in accordance with section 846-_____, and shall provide consent to obtain other criminal history record information for verification. New employees of the home and community-based case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

~~[The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of home and community-based case management agencies subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, 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 federal laws and regulations as may be now or hereafter adopted.]~~

The department shall make a name inquiry into the criminal history records for the first two years a home and community-based case management agency is

licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.

(c) An applicant for a certificate of approval as a community care foster family home ~~[shall submit to the home and community based case management agency, statements signed under penalty of perjury by the operators]~~ and operators and other adults residing in ~~[the]~~ a community care foster family home~~], except for adults receiving care, indicating whether they have been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less. The operators and other adults residing in the home, except for adults receiving care, shall also provide consent to the certifying agency to conduct a]~~ shall be subject to criminal history record ~~[check]~~ checks in accordance with section 846-~~____~~, and ~~[to]~~ shall obtain other criminal history record information for verification. ~~[The operators and other adults residing in the home, except for adults receiving care, shall be fingerprinted for the purpose of complying with the criminal history record check.]~~

The certifying agency shall obtain criminal history record information through the Hawaii criminal justice data center on all operators and other adults residing in the community care foster family home, except for adults receiving care, subject to certification pursuant to this section. The Hawaii criminal justice data center may assess the operators and other adults 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 federal laws and regulations as may be now or hereafter adopted.

The certifying agency shall make a name inquiry into the criminal history records for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.”

SECTION 18. Part III of chapter 846, Hawaii Revised Statutes, is repealed.

SECTION 19. The criminal history record checks working group established by Act 263, Session Laws of Hawaii 2001, is hereby extended to June 30, 2005, to continue its work on tasks as shall be assigned by the legislature relating to a comprehensive review and analysis of all issues related to the use of criminal history record information for employment, licensing, and other matters. The office of the public defender shall be included in the working group to represent the interests of persons with conviction and arrest or nonconviction data in their criminal history records. The working group shall submit a report to the legislature of its responses, findings, and recommendations not less than twenty days before the convening of the regular session of 2005, including proposed legislation and identification of resources necessary to support or enforce recommendations for new or amended law and policy. The department of the attorney general and department of human resources development shall jointly provide administrative support upon request from the working group. The legislative reference bureau shall provide technical assistance to the working group in drafting legislation.

SECTION 20. In codifying the new sections added by section 4 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 22. This Act shall take effect upon its approval; provided that section 17 of this Act shall take effect on June 29, 2003, if a bill that repeals or

extends the sunset provision in section 6 of Act 273, Session Laws of Hawaii 2001, is passed by the legislature in the regular session of 2003, and becomes an Act.

(Approved May 28, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.