

JAN 25 2006

S.B. NO. 2330

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR SERVICE PROVIDERS
OF THE OFFICE OF YOUTH SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 352D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§352D- Criminal history record checks. (a) Employees,
5 prospective employees, and volunteers who seek employment with
6 contracted providers or subcontractors in positions that place
7 them in close proximity to youth when providing services on
8 behalf of the office of youth services shall be required to
9 agree to criminal history record checks. The office of youth
10 services shall develop procedures for obtaining verifiable
11 information regarding the criminal history records of persons
12 seeking to serve as employees or volunteers of contracted
13 providers or subcontractors in positions that place them in
14 close proximity to youth when providing services on behalf of
15 the office of youth services.

16 (b) Except as otherwise specified, any person who is
17 employed, seeks employment, or volunteers with a contracted

1 provider or subcontractor in a position that necessitates close
2 proximity to youth when providing services on behalf of the
3 office of youth services shall:

4 (1) Submit to the office of youth services a sworn
5 statement indicating whether the person has ever been
6 convicted of an offense for which incarceration is a
7 sentencing option;

8 (2) Be subject to criminal history record checks through
9 the Hawaii criminal justice data center in accordance
10 with section 846-2.7. An annual name inquiry shall be
11 conducted into the state criminal history record
12 files; and

13 (3) Provide to the office of youth services written
14 consent to obtain criminal history record information
15 for verification.

16 Information obtained pursuant to this section shall be used
17 exclusively by the office of youth services for purposes of
18 determining whether a person is suitable for working in a
19 position that necessitates close proximity to youth when
20 providing contracted services on behalf of the office of youth
21 services or in conjunction with services provided for youth at
22 the Hawaii youth correctional facility, while in custody, or on

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1 furlough or parole. All such decisions shall be subject to any
2 applicable federal laws and regulations.

3 (c) The office of youth services may require the
4 contracted provider or subcontractor to refuse employment to an
5 applicant for employment, terminate the employment of an
6 employee, or terminate the services of a volunteer if:

7 (1) The employee, prospective employee, or volunteer of
8 the contracted provider or subcontractor has been
9 convicted of an offense for which incarceration is a
10 sentencing option; and

11 (2) The office of youth services finds that the criminal
12 history record of the employee, prospective employee,
13 or volunteer of the contracted provider or
14 subcontractor indicates that the employee, prospective
15 employee, or volunteer may pose a risk to the health,
16 safety, or well-being of youth receiving direct
17 services by that employee, prospective employee, or
18 volunteer.

19 (d) For purposes of this section:

20 "Prospective employee" means any applicant for a position
21 with a contracted provider or subcontractor that provides direct
22 services to youth on behalf of the office of youth services;

1 "Provider" means any organization or individual that enters
2 into, or intends to enter into, a contract with or is currently
3 contracted by the office of youth services to provide direct
4 services to youth. The term includes all persons who may
5 provide direct services to youth under the contract with the
6 organization or individual.

7 "Subcontractor" means any organization or individual that
8 enters into, or intends to enter into, a contract or agreement
9 with a contracted provider to provide direct services to youth.
10 The term includes all persons who may provide direct services to
11 youth under the contract with the organization or individual.

12 "Volunteer" means any organization or individual that
13 provides, or intends to provide, direct services to youth on a
14 non-compensatory basis.

15 (e) Notwithstanding any other law to the contrary, the
16 office of youth services shall be exempt from section 831-3.1
17 for purposes of this section and need not conduct its
18 investigations, notifications, or hearings in accordance with
19 chapter 91."

20 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

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

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- 1 (1) The department of health on operators of adult foster
2 homes or developmental disabilities domiciliary homes
3 and their employees, as provided by section 333F-22;
- 4 (2) The department of health on prospective employees,
5 persons seeking to serve as providers, or
6 subcontractors in positions that place them in direct
7 contact with clients when providing non-witnessed
8 direct mental health services, as provided by section
9 321-171.5;
- 10 (3) The department of education on employees, prospective
11 employees, and teacher trainees in any public school
12 in positions that necessitate close proximity to
13 children as provided by section 302A-601.5;
- 14 (4) The counties on employees and prospective employees
15 who may be in positions that place them in close
16 proximity to children in recreation or child care
17 programs and services;
- 18 (5) The county liquor commissions on applicants for liquor
19 licenses as provided by section 281-53.5;
- 20 (6) The department of human services on operators and
21 employees of child caring institutions, child placing

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- 1 organizations, and foster boarding homes as provided
2 by section 346-17;
- 3 (7) The department of human services on prospective
4 adoptive parents as established under section 346-
5 19.7;
- 6 (8) The department of human services on applicants to
7 operate child care facilities, prospective employees
8 of the applicant, and new employees of the provider
9 after registration or licensure as provided by section
10 346-154;
- 11 (9) The department of human services on persons exempt
12 pursuant to section 346-152 to be eligible to provide
13 child care and receive child care subsidies as
14 provided by section 346-152.5;
- 15 (10) The department of human services on operators and
16 employees of home and community-based case management
17 agencies and operators and other adults, except for
18 adults in care, residing in foster family homes as
19 provided by section 346-335;
- 20 (11) The department of human services on staff members of
21 the Hawaii youth correctional facility as provided by
22 section 352-5.5;

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- 1 (12) The department of human services on employees,
2 prospective employees, and volunteers of contracted
3 providers and subcontractors in positions that place
4 them in close proximity to youth when providing
5 services on behalf of the office of youth services or
6 the Hawaii youth correctional facility as provided by
7 section 352D- ;
- 8 [~~(12)~~] (13) The judiciary on employees and applicants at
9 detention and shelter facilities as provided by
10 section 571-34;
- 11 [~~(13)~~] (14) The department of public safety on employees and
12 prospective employees who are directly involved with
13 the treatment and care of persons committed to a
14 correctional facility or who possess police powers
15 including the power of arrest as provided by section
16 353C-5;
- 17 [~~(14)~~] (15) The department of commerce and consumer affairs
18 on applicants for private detective or private guard
19 licensure as provided by section 463-9;
- 20 [~~(15)~~] (16) Private schools and designated organizations on
21 employees and prospective employees who may be in
22 positions that necessitate close proximity to

1 children; provided that private schools and designated
2 organizations receive only indications of the states
3 from which the national criminal history record
4 information was provided as provided by section 302C-
5 1;

6 [~~(16)~~] (17) The public library system on employees and
7 prospective employees whose positions place them in
8 close proximity to children as provided by section
9 302A-601.5;

10 [~~(17)~~] (18) The State or any of its branches, political
11 subdivisions, or agencies on applicants and employees
12 holding a position that has the same type of contact
13 with children, dependent adults, or persons committed
14 to a correctional facility as other public employees
15 who hold positions that are authorized by law to
16 require criminal history record checks as a condition
17 of employment as provided by section 78-2.7; and

18 [~~(18)~~] (19) Any other organization, entity, or the State,
19 its branches, political subdivisions, or agencies as
20 may be authorized by state law."

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

4

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Human Services.

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR SERVICE PROVIDERS OF THE OFFICE OF YOUTH SERVICES.

PURPOSE: The purpose of this bill is to authorize the Office of Youth Services (OYS) to obtain criminal history record information on employees, prospective employees, and volunteers of its contracted providers and subcontractors in positions that necessitate close proximity to youth when providing services on behalf of the OYS.

MEANS: Add a new section to chapter 352D, Hawaii Revised Statutes, and amend section 846-2.7, Hawaii Revised Statutes.

JUSTIFICATION: The OYS provides a range of services to at-risk youth. Services include, but are not limited to, youth services centers, alternatives to incarceration, intensive supervision of juvenile offenders released into the community, and diversion services for status offenders and non-violent law violators. The large majority of these services are provided via contracts with private agencies. It is in the best interest of the State, youth, and provider agencies to obtain criminal history record information on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that necessitate close proximity to youth when providing services on behalf of the OYS. Statutory authorization is necessary in order for the OYS to obtain criminal history record information from the Federal Bureau of Investigation (FBI).

Obtaining criminal history record information will assist the OYS in determining whether employees, prospective employees, and volunteers of contracted providers and subcontractors are suitable for working in positions that necessitate close proximity to youth or may pose a risk to the health, safety, or well-being of youth receiving direct services.

Impact on the public: Obtaining criminal history records on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that necessitate close proximity to youth will help to ensure the health and safety of youth and increase public confidence in the services provided to youth.

Impact on the department and other agencies: The OYS will be required to maintain records of sworn statements, consent to conduct criminal history record checks, permission to fingerprint, and the reports provided by the Hawaii Criminal Justice Data Center and the FBI, for all persons subject to criminal history record checks pursuant to this bill. The OYS will also be required to process criminal history record checks for all persons subject to criminal history record checks pursuant to this bill and to develop rules, standards, policies, and procedures relating to this bill.

The Hawaii Criminal Justice Data Center will assess OYS contracted providers and subcontractors a reasonable fee for each request for criminal history record check.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 501.

OTHER AFFECTED AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.