
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF EDUCATION.

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

1 SECTION 1. Chapter 302A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§302A- Employees of the department and teacher trainees
5 in any public school; individual suspicion testing; employee
6 assistance. (a) The department, including the Hawaii state
7 public library system, shall develop procedures for
8 individualized suspicion testing to obtain verifiable
9 information regarding use of controlled substances under chapter
10 329, by persons who are employed in any position, including
11 teacher trainees, that places them in close proximity to
12 children. These procedures shall comply with chapter 329B.

13 Information obtained pursuant to this subsection shall be
14 used exclusively by the employer for the purpose of determining
15 whether a person is suitable for working in close proximity to
16 children.



1 An employee who refuses to submit to drug testing under
2 this subsection shall be placed on mandatory administrative
3 leave of thirty days.

4 (b) If the test results under subsection (a) are positive,
5 the employer may impose the following sanctions:

6 (1) Refuse to allow or continue to allow participation in
7 teacher training;

8 (2) Terminate the employment of any employee or deny
9 employment to an applicant; or

10 (3) Impose other administrative sanctions, including but
11 not limited to, administrative leave,

12 if the employer finds by reason of the nature and circumstances
13 of the use of controlled substances that the person poses a risk
14 to the health, safety, or well-being of children, or otherwise
15 negatively influences children by setting a detrimental example.

16 Sanctions under this subsection may occur only after appropriate
17 investigation and notification to the employee of the results

18 and planned action, and after the employee is given an

19 opportunity to meet and rebut the finding. Nothing in this

20 subsection shall abrogate any applicable appeal rights under

21 chapter 76 or 89, or administrative rule of the department.



1 (c) In addition to the sanctions under subsection (b), the
2 department, by adoption of rules pursuant to chapter 91, shall
3 provide for substance abuse assessment, treatment, and
4 counseling, and referral to the employee assistance program
5 under subsection (d) if suitable, if the department determines
6 to retain the employee; provided that evidence of clinical
7 discharge from substance abuse treatment or substance abuse
8 counseling shall be a prerequisite to continued employment.

9 (d) This section shall not apply to volunteers or other
10 non-remunerated personnel providing support services at
11 individual schools or any employee subject to a substance abuse
12 testing policy under a valid collective bargaining agreement."

13 SECTION 2. Section 302A-101, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:

16 "Provider" means any individual that intends to, or is
17 employed by an organization that intends to enter into a
18 contract with, or is currently contracted by the department to
19 provide services that place the provider in close proximity to
20 children.

21 "Subcontractor" means any individual that enters into or is
22 employed by an organization that enters into a contract or



1 agreement with a provider to provide services that place the
2 subcontractor in close proximity to children.

3 "Trainee from an institution of higher education" means a
4 student in an institution of higher education training program
5 that requires public school observation or participation that
6 places the student in close proximity to children."

7 SECTION 3. Section 302A-601.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§302A-601.5[+] **Employees of the department [ef**
10 **~~education and teacher trainees in any public school,~~],**
11 **providers, subcontractors, and trainees from an institution of**
12 **higher education; criminal history record checks.** (a) The
13 department [~~ef education~~], including the Hawaii state public
14 library system, shall develop procedures for obtaining
15 verifiable information regarding the criminal history of persons
16 who are employed or seeking employment in any position,
17 including [~~teacher trainees,~~] persons who are seeking to serve
18 as providers, subcontractors, or trainees from an institution of
19 higher education, that places them in close proximity to
20 children. These procedures shall include criminal history
21 record checks in accordance with section 846-2.7.



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

7 (b) The employer or prospective employer may refuse to
8 employ[~~7~~] or contract with an employee, prospective employee,
9 provider, or subcontractor, or may refuse to place a trainee
10 from an institution of higher education, and may:

11 [~~(1)~~] ~~Refuse to issue a teaching or other educational~~
12 ~~certificate;~~

13 [~~(2)~~] ~~Revoke the teaching or other educational certificate;~~

14 [~~(3)~~] (1) Refuse to allow or continue to allow teacher
15 training; or

16 [~~(4)~~] (2) Terminate the employment of any employee or deny
17 employment to an applicant,

18 if the person has been convicted of a crime, and if the employer
19 or prospective employer finds by reason of the nature and
20 circumstances of the crime that the person poses a risk to the
21 health, safety, or well-being of children. Refusal[~~7~~

22 ~~revocation,~~] or termination may occur only after appropriate



1 investigation and notification to the employee or applicant for
2 employment of results and planned action, [~~and~~] after the
3 employee [~~or~~], applicant for employment, provider,
4 subcontractor, or trainee from an institution of higher
5 education is given an opportunity to meet and rebut the finding.
6 Nothing in this subsection shall abrogate any applicable appeal
7 rights under [~~chapters~~] chapter 76 or 89, or administrative
8 regulation of the department [~~of education~~].

9 (c) This section shall not be used by the department to
10 secure criminal history record checks on persons who have been
11 employed continuously by the department, including the state
12 public library system, on a salaried basis prior to July 1,
13 1990.

14 (d) The fee charged by the Hawaii criminal justice data
15 center to perform criminal history record checks may be passed
16 on to applicants, providers, subcontractors, and trainees from
17 an institution of higher education.

18 [~~(d)~~] (e) Notwithstanding any other law to the contrary,
19 for the purposes of this section, the department [~~of education~~],
20 including the Hawaii state public library system, shall be
21 exempt from section 831-3.1 and need not conduct investigations,



1 notifications, or hearings under this section in accordance with
2 chapter 91."

3 SECTION 4. Section 846-2.7, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

- 6 (1) The department of health on operators of adult foster
7 homes or developmental disabilities domiciliary homes
8 and their employees, as provided by section 333F-22;
- 9 (2) The department of health on prospective employees,
10 persons seeking to serve as providers[7] or
11 subcontractors in positions that place them in direct
12 contact with clients when providing non-witnessed
13 direct mental health services as provided by section
14 321-171.5;
- 15 (3) The department of health on all applicants for
16 licensure for, operators for, and prospective
17 employees, and volunteers at one or more of the
18 following: skilled nursing facility, intermediate
19 care facility, adult residential care home, expanded
20 adult residential care homes, assisted living
21 facility, home health agency, hospice, adult day
22 health center, special treatment facility, therapeutic



1 living program, intermediate care facility for the
2 mentally retarded, hospital, rural health center and
3 rehabilitation agency, and, in the case of any of the
4 above-related facilities operating in a private
5 residence, on any adult living in the facility other
6 than the client as provided by section 321-15.2;

7 (4) The department of education on employees, prospective
8 employees, providers, subcontractors, and [~~teacher~~]
9 trainees from an institution of higher education in
10 any public school in positions that necessitate close
11 proximity to children as provided by section
12 302A-601.5;

13 (5) The counties on employees and prospective employees
14 who may be in positions that place them in close
15 proximity to children in recreation or child care
16 programs and services;

17 (6) The county liquor commissions on applicants for liquor
18 licenses as provided by section 281-53.5;

19 (7) The department of human services on operators and
20 employees of child caring institutions, child placing
21 organizations, and foster boarding homes as provided
22 by section 346-17;



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



1 providers and subcontractors in positions that place
2 them in close proximity to youth when providing
3 services on behalf of the office or the Hawaii youth
4 correctional facility as provided by section 352D-4.3;
5 (14) The judiciary on employees and applicants at detention
6 and shelter facilities as provided by section 571-34;
7 (15) The department of public safety on employees and
8 prospective employees who are directly involved with
9 the treatment and care of persons committed to a
10 correctional facility or who possess police powers
11 including the power of arrest as provided by section
12 353C-5;
13 (16) The department of commerce and consumer affairs on
14 applicants for private detective or private guard
15 licensure as provided by section 463-9;
16 (17) Private schools and designated organizations on
17 employees and prospective employees who may be in
18 positions that necessitate close proximity to
19 children; provided that private schools and designated
20 organizations receive only indications of the states
21 from which the national criminal history record



- 1 information was provided as provided by section
2 302C-1;
- 3 (18) The public library system on employees and prospective
4 employees whose positions place them in close
5 proximity to children as provided by section
6 302A-601.5;
- 7 (19) The State or any of its branches, political
8 subdivisions, or agencies on applicants and employees
9 holding a position that has the same type of contact
10 with children, dependent adults, or persons committed
11 to a correctional facility as other public employees
12 who hold positions that are authorized by law to
13 require criminal history record checks as a condition
14 of employment as provided by section 78-2.7;
- 15 (20) The department of human services on licensed adult day
16 care center operators, employees, new employees,
17 subcontracted service providers and their employees,
18 and adult volunteers as provided by section 346-97;
- 19 (21) The department of human services on purchase of
20 service contracted and subcontracted service providers
21 and their employees serving clients of the adult and



1 community care services branch, as provided by section
2 346-97;

3 (22) The department of human services on foster grandparent
4 program, senior companion program, and respite
5 companion program participants as provided by section
6 346-97;

7 (23) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under Section 1915(c) of the Social
11 Security Act (42 U.S.C. §1396n(c)), as provided by
12 section 346-97; and

13 (24) Any other organization, entity, or the State, its
14 branches, political subdivisions, or agencies as may
15 be authorized by state law."

16 SECTION 5. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$, or so much
18 thereof as may be necessary for fiscal year 2007-2008, for the
19 department of education to conduct criminal history record
20 checks in accordance with section 3 this Act.

21 The sum appropriated shall be expended by the department of
22 education for the purposes of this Act.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2050.



REPORT Title:

DOE; Drug Testing; Criminal History Record Checks

Description:

Requires reasonable suspicion drug testing of public school employees, teachers, and public library employees; requires department of education to adopt rules to determine sanctions for positive drug tests. Requires the department of education to develop procedures for obtaining the criminal history of certain persons who are seeking to serve as providers or subcontractors and trainees from an institution of higher education. Allows the department to pass on fees charged by the Hawaii criminal justice data center. Repeals the authority of the department to refuse to issue or to revoke a teaching or other educational certificate. Makes appropriation. (SB96 HD1)

