



GOV. MSG. NO. 778

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 3, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 3, 2008, the following bill was signed into law:

SB3051 SD2 HD1 CD1

A BILL FOR AN ACT RELATING TO CRIMINAL
HISTORY BACKGROUND CHECKS FOR SOCIAL
SERVICES PROGRAMS.
(ACT 136)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS FOR SOCIAL SERVICES PROGRAMS.

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

1 SECTION 1. Section 346-17, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (f) to read:

4 "(f) As a condition for a certificate of approval, any
5 organization, institution, or foster boarding home, including
6 all adults residing in the foster boarding home, shall:

7 (1) Meet all standards and requirements established by the
8 department;

9 (2) Be subject to criminal history record checks in
10 accordance with section 846-2.7, and child abuse and
11 neglect registry checks, in accordance with
12 departmental procedures; and

13 (3) Provide consent to the department or its designee to
14 obtain criminal history record and child abuse and
15 neglect registry information.

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



1 2. By amending subsection (j) to read:

2 " (j) The department or its designee shall request:

3 (1) A criminal history record check through the Hawaii
4 criminal justice data center on all operators,
5 employees, and new employees of child care
6 institutions, child placing organizations, and foster
7 boarding homes, including all adults residing in the
8 foster boarding homes, subject to licensure pursuant
9 to section 846-2.7; and

10 (2) A child abuse and neglect registry check on all
11 operators, employees, and new employees of child care
12 institutions, child placing organizations, and adults
13 residing in a foster boarding home subject to
14 licensure in accordance with departmental procedures."

15 3. By amending subsection (1) to read:

16 " (1) The department or its designee shall make a name
17 inquiry into the criminal history records for the first two
18 years of certification of a foster boarding home and annually or
19 biennially thereafter and into the child abuse and neglect
20 registry in accordance with departmental procedures depending on
21 the certification status of the home."



1 SECTION 2. Section 346-19.7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The department shall develop procedures for obtaining
4 verifiable information regarding the criminal history and child
5 abuse and neglect registry information of persons who are
6 seeking to become adoptive parents. [~~These procedures~~] The
7 department or its designee shall [include] obtain criminal
8 history record [checks] information through the Hawaii criminal
9 justice data center in accordance with section 846-2.7[-], and
10 child abuse record information from the department in accordance
11 with departmental procedures."

12 SECTION 3. Section 346-97, Hawaii Revised Statutes, is
13 amended by amending subsections (b), (c), and (d) to read as
14 follows:

15 "(b) The department shall adopt rules pursuant to chapter
16 91 establishing standards regarding the reputable and
17 responsible character of service providers who have direct
18 contact with individuals receiving services under this part,
19 including:

20 (1) Licensed adult day care center operators, employees,
21 new employees, subcontracted service providers and
22 their employees, and adult volunteers;



- 1 (2) Purchase of service contracted and subcontracted
2 service providers and their employees serving clients
3 of the adult and community care services branch;
- 4 (3) Foster grandparent program, retired and senior
5 volunteer program, senior companion program, and
6 respite companion program participants; and
- 7 (4) Contracted and subcontracted service providers and
8 their employees and new employees who provide home and
9 community-based services under Section 1915(c) of the
10 Social Security Act (42 U.S.C. § 1396n(c)) [~~-~~], or
11 under any other applicable section or sections of the
12 Social Security Act for the purposes of providing home
13 and community-based services.
- 14 (c) Individuals identified in subsection (b) shall:
- 15 (1) Meet the standards regarding the reputable and
16 responsible character of service providers;
- 17 (2) Be subject to criminal history record checks in
18 accordance with section 846-2.7;
- 19 (3) Shall sign a waiver form stating that the department
20 shall not be liable to the individual; and



1 (4) Provide consent to the department or its designee to
2 obtain criminal history record information for
3 verification.

4 New employees and adult volunteers shall consent to be
5 fingerprinted, shall supply the necessary information to enable
6 the criminal history record check prior to the start of
7 employment or volunteering, and shall sign a waiver form stating
8 that the department shall not be liable to the employee or
9 volunteer.

10 (d) The department or its designee shall obtain criminal
11 history record information through the Hawaii criminal justice
12 data center on individuals identified in subsection (b) for the
13 first two years that an individual identified in subsection (b)
14 is required to have such checks, and shall conduct a criminal
15 history record name inquiry into the state criminal history
16 records annually or biennially thereafter."

17 SECTION 4. Section 346-154, Hawaii Revised Statutes, is
18 amended by amending subsections (c) and (d) to read as follows:

19 "(c) A provider shall:

20 (1) Be subject to criminal history record checks in
21 accordance with section 846-2.7;



- 1 (2) Submit to the department a statement signed by any
2 employee hired after the initial licensure or
3 registration that requires the employee to indicate
4 under penalty of law, whether the employee has ever
5 been confirmed to have abused or neglected a child,
6 including threatened harm; and
- 7 (3) Provide consent to the department or its designee to
8 conduct a criminal history record check in accordance
9 with section 846-2.7 and a child abuse record check,
10 and to obtain criminal history and child abuse record
11 information for verification.
- 12 (d) The department or its designee shall obtain criminal
13 history record information through the Hawaii criminal justice
14 data center in accordance with section 846-2.7, and child abuse
15 record information from the department in accordance with
16 departmental procedures on the applicant and any prospective
17 employee of the applicant, including any new employee retained
18 after the applicant is issued a registration or license under
19 this part, which shall include an annual name inquiry into the
20 state criminal history record files."



1 SECTION 5. Section 346-335, Hawaii Revised Statutes, is
2 amended by amending subsections (a), (b), (c), (d), and (e) to
3 read as follows:

4 "(a) The department shall develop standards to ensure the
5 reputable and responsible character of operators [~~and~~],
6 employees, volunteers, and other adults regularly present,
7 except for adults in care, of the [~~home and community based case~~
8 management agencies and operators and other adults, except for
9 adults in care, residing in community care foster family homes
10 as defined in this chapter.] programs identified in section
11 346-97.

12 (b) An applicant for [~~a home and community based case~~
13 ~~management agency license and operators, employees, and new~~
14 ~~employees of a home and community based case management agency]~~
15 the programs identified in section 346-97 shall:

- 16 (1) Be subject to criminal history record checks in
17 accordance with section 846-2.7;
- 18 (2) Be subject to adult abuse perpetrator checks, if the
19 individual has direct contact with a client. For the
20 purposes of this section, "adult abuse perpetrator
21 check" means a search to determine whether an
22 individual is known to the department as a perpetrator



1 of abuse as defined in section 346-222, by means of a
2 search of the individual's name and birth date in the
3 department's adult protective service file; and

4 (3) Provide consent to the department or its designee to
5 conduct an adult abuse perpetrator check and to obtain
6 other criminal history record information for
7 verification.

8 (c) New employees of the [~~home and community based case~~
9 ~~management agency~~] programs identified in section 346-97 shall
10 be fingerprinted within five working days of employment, for the
11 purpose of complying with the criminal history record check
12 requirement.

13 (d) The department or its designee shall obtain criminal
14 history record information through the Hawaii criminal justice
15 data center in accordance with section 846-2.7 on applicants for
16 [~~home and community based case management agency licenses, and~~
17 ~~operators, employees, and new employees of home and community~~
18 ~~based case management agencies.~~] programs identified in section
19 346-97. The Hawaii criminal justice data center may assess the
20 applicants and operators, employees, and new employees a
21 reasonable fee for each criminal history record check conducted.
22 The information obtained shall be used exclusively for the



1 stated [~~purpose~~] purposes for which it was obtained and shall be
2 subject to federal laws and regulations as may be now or
3 hereafter adopted.

4 (e) The department or its designee shall make a name
5 inquiry into the criminal history records and the adult
6 protective service file for the first two years a home and
7 community-based case management agency is licensed and annually
8 or biennially thereafter depending on the licensure status of
9 the home and community-based case management agency."

10 SECTION 6. Section 352D-4.3, Hawaii Revised Statutes, is
11 amended by amending subsections (a) and (b) to read as follows:

12 "(a) Employees, prospective employees, and volunteers of
13 contracted providers or subcontractors in positions that place
14 them in close proximity to youth when providing services on
15 behalf of the office shall be required to agree to criminal
16 history record checks[~~-~~] conducted by the office or its designee
17 in accordance with section 846-2.7. The office shall develop
18 procedures for obtaining verifiable information regarding the
19 criminal history records of individuals seeking to serve as
20 employees or volunteers of contracted providers or
21 subcontractors in positions that place them in close proximity
22 to youth when providing services on behalf of the office.



1 (b) Except as otherwise specified, any individual who is
2 employed, seeks employment, or volunteers with a contracted
3 provider or subcontractor in a position that necessitates close
4 proximity to youth when providing services on behalf of the
5 office shall:

6 (1) Submit to the office a sworn statement indicating
7 whether the individual has ever been convicted of an
8 offense for which incarceration is a sentencing
9 option;

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

15 (3) Provide to the office written consent for the office
16 or its designee to obtain criminal history record
17 information for verification.

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



1 with services provided for youth at the Hawaii youth
2 correctional facility, while in custody, on furlough, or on
3 parole. All such decisions shall be subject to any applicable
4 federal laws and regulations."

5 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

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

8 (1) The department of health on operators of adult foster
9 homes or developmental disabilities domiciliary homes
10 and their employees, as provided by section 333F-22;

11 (2) The department of health on prospective employees,
12 persons seeking to serve as providers, or
13 subcontractors in positions that place them in direct
14 contact with clients when providing non-witnessed
15 direct mental health services as provided by section
16 321-171.5;

17 (3) The department of health on all applicants for
18 licensure for, operators for, and prospective
19 employees, and volunteers at one or more of the
20 following: skilled nursing facility, intermediate
21 care facility, adult residential care home, expanded
22 adult residential care [~~homes~~] home, assisted living



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

9 (4) The department of education on employees, prospective
10 employees, and teacher trainees in any public school
11 in positions that necessitate close proximity to
12 children as provided by section 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 in 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~~] vulnerable adults, or

11 persons committed to a correctional facility as other

12 public employees who hold positions that are

13 authorized by law to require criminal history record

14 checks as a condition of employment as provided by

15 section 78-2.7;

16 (20) The department of human services on licensed adult day

17 care center operators, employees, new employees,

18 subcontracted service providers and their employees,

19 and adult volunteers as provided by section 346-97;

20 (21) The department of human services on purchase of

21 service contracted and subcontracted service providers

22 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, retired and senior volunteer program, senior
5 companion program, and respite companion program
6 participants as provided by section 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)), or under any
12 other applicable section or sections of the Social
13 Security Act for the purposes of providing home and
14 community-based services, as provided by section
15 346-97; and

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

19 SECTION 8. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 9. This Act shall take effect on July 1, 2008.



S.B. NO. 3051
S.D. 2
H.D. 1
C.D. 1

APPROVED this 3 day of JUN, 2008



GOVERNOR OF THE STATE OF HAWAII