

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

March 18, 2008

MEMORANDUM

TO: Honorable Tommy Waters, Chair
House Committee on Judiciary

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 3051, S.D. 2, H.D. 1 - RELATING TO CRIMINAL HISTORY
BACKGROUND CHECKS FOR SOCIAL SERVICES PROGRAMS
Hearing: Tuesday, March 18, 2008, 3:45 p.m.
Conference Room 325, State Capitol

PURPOSE: The purpose of S.B. 3051, S.D. 2, H.D. 1, is to authorize the Department or its designee to conduct criminal history record checks for those providing services to vulnerable adults and children.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports the passage of this Administration bill. Criminal history record checks are required for various Department programs to ensure the safety of clients and this bill is essential for the smooth operation of the Department's implementation of the Criminal Background Checks statutes.

The statutory amendments being proposed will clarify that the Department or its designee is authorized to conduct the criminal history record checks for the Department and its service providers,

including arrest records, as specified in chapter 846, Hawaii Revised Statutes (HRS).

The Office of the Attorney General advised us that statutory amendments were needed to expressly allow the Department to use a contracted "designee" to do the criminal history checks for all the Department's programs. Currently, only the Department's Residential Adult Community Care (RACC) homes has express statutory language in section 346-335(d), HRS, stating that "the department or its designee" is authorized to do the criminal history checks.

Acts 131 and 220, SLH 2006, increased the requests for background checks. Specifically, Act 220 (SLH 2006), codified as section 346-97, Hawaii Revised Statutes (HRS), added the requirement that all new employees and adult volunteers of service providers that have direct contact with individuals receiving services must be fingerprinted and criminal history checks must be completed prior to their employment or volunteering for certain DHS programs. Act 131 (SLH 2006), codified as section 352D-4.3, HRS, added the requirements for the Office of Youth Services.

As a result of both Acts 220 and 131 (SLH 2006), the Department will be required to complete an estimated 26,796 criminal history record checks per year - a more than five fold increase!

Authorizing the Department or its designee to conduct the necessary background checks will enable the Department to contract for such services in all of the programs for which the Department, or its administratively attached agencies, are required to do background

checks, to ensure that the required background checks are processed timely.

This will enable service providers to receive and provide to the Department, the background check information necessary to meet the licensing or other requirements of the Department's programs resulting in more timely services to vulnerable adults and children and will free up Department staff to provide other necessary social services.

The Federal government also recognizes the need nationally to outsource noncriminal justice administrative functions, and in the Federal Register, on December 15, 2005, Vol. 70, No. 240, the National Crime Prevention and Privacy Compact Council adopted final rules to allow the outsourcing of noncriminal justice administrative functions to a third party, when acting as an agent for a government agency or other authorized recipient of criminal history record information.

The Compact Council published the interim rules (which were adopted unamended on November 23, 2005) in the Federal Register, on December 16, 2004, Vol. 69, No. 241. The Compact Council recognized the need for both the local, State, and Federal entities to have the help of "private sector services" to do an increasing volume of criminal history checks. In the Background Information, Vol. 69, No 241, it states:

"In recent years, government and other statutorily authorized entities seeking improved efficiency and economy have become increasingly interested in permitting third party support services for noncriminal justice administrative functions. This is due in large part to the escalating demand for fingerprint-based risk assessments for

authorized licensing, employment, and national security purposes over the last several years. The escalating numbers of non criminal justice fingerprint submission has resulted in increased workloads for local, state, and federal government entities. In addition, under OMB Circular No. A-76, the federal government is encouraged wherever feasible to use private sector services."

Just as stated in the Federal Register, it will be impossible to receive, process, and report the greatly increased number of criminal history check clearances to the appropriate agencies and providers, on a timely basis, with the Department's limited staff unless we partner with private sector services.

Any backlog for criminal history checks has a tremendously negative impact on the provider community that relies on the timely turn-around of these criminal background checks for their businesses. Businesses cannot allow an employee to have contact with clients until the criminal background check comes back. The State of Hawaii does not issue licenses or certificates until these clearances come through.

In the fall of 2007, the media covered the issues that DHS was having in providing timely criminal background checks for the RACC program, as DHS implemented its new contract, with new equipment, and worked out the technical problems of the transfer of responsibility from the Hawaii Criminal Justice Data Center to DHS. Through extensive overtime, that backlog was able to be resolved, but this is not a long-term solution as allowing a contracted designee to assist would be.

The increase in criminal history background checks can be managed with a "designee" to assist. Without this authority, DHS does not have

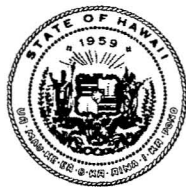
the staffing to avoid an on-going backlog and the Department will need authorization and funding to create at least 6 new positions at a minimal estimated cost of \$271,892.88 in order process the required background checks.

This bill also proposes to amend sections 346-97 and 846-2.7, HRS, to add a new program, the Retired and Senior Volunteer Program (new per Federal program awarded competitively to DHS last year), to the list of programs that require criminal history record checks and adult abuse perpetrator checks. Additionally, it adds clarifying language that will continue to allow home and community-based programs to require these checks, regardless of the type of Medicaid waiver that is administering the program.

The Department would also like to point out that the information required for the criminal history background checks are obtained directly from the FBI through the Department of the Attorney General, Hawaii Criminal Justice Data Center. The FBI files contain arrest and conviction information including all States, Federal and military information. The FBI responds to requests for information within 24 hours. The types of background check information that can be provided by a consumer reporting agency or consumer credit reporting agency are not the types of information required for the "criminal history" background checks required in our statutes.

We respectfully request your favorable consideration of this bill. Thank you for this opportunity to testify.

000077



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
820 Millilani Street, Suite 817
Honolulu, Hawaii 96813

Phone: (808) 587-5700
Fax: (808) 587-5734

March 18, 2008

TO: The Honorable Tommy Waters, Chair
House Committee on Judiciary

FROM: Martha T. Torney, Executive Director

**SUBJECT: SB 3051,SD2, HD1 RELATING TO CRIMINAL HISTORY
BACKGROUND CHECKS FOR SOCIAL SERVICES PROGRAMS**

Hearing: Tuesday, March 18, 2008, 3:45 pm
State Capitol, Conference Room 325

The Office of Youth Services (OYS) strongly supports the passage of SB 3051,HD2, SD1, an Administration bill, relating to Criminal History Background Checks for Social Services Programs, which authorizes the Department of Human Services (DHS) or its designee to conduct criminal history record checks.

Act 131, SLH 2006, mandates OYS to conduct criminal history records checks on employees, prospective employees, and volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office. Our intention was to have a contractor conduct the criminal history checks for us, but discovered through working with other DHS divisions that the contractor could not have access to arrest information. Yet, section 846-2.7, HRS, requires arrest information be collected for the initial check in order to be in compliance with our mandate.

000078

Section 846-2.7, HRS, reads:

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 nonconviction data.

In addition, OYS must conduct annual name inquiries in the state criminal records files for those who have completed the initial check. We estimate that 800 initial checks have to be completed just to cover our current providers and at least 200 new initial checks per year, plus about 800 name checks a year. We do not have the staff or expertise to collect and analyze the FBI and State data.

We urge the passage of SB 3051, SD2, HD1, as it provides OYS the method to comply with Act 131 and protect the children and youth we provide services to.

Thank you for the opportunity to present this testimony.

000079

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
ANNE T. HORIUCHI, ESQ.
MIHOKO E. ITO, ESQ.
JOANNA J. H. MARKLE*
LISA K. KAKAZU**

* Government Relations Specialist
** Legal Assistant

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:

gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com
jmarkle@goodsill.com
lkakazu@goodsill.com

March 17, 2008

TO: Representative Tommy Waters
Chair, House Committee on Judiciary
Hawaii State Capitol, Room 302
Via Email: JUDtestimony@Capitol.hawaii.com

FROM: Joanna Markle

RE: S.B. 3051, SD2, HD1 – Relating to Criminal History Background Checks
for Social Services Programs
Hearing Date: Tuesday, March 18, 2008 @ 3:45 p.m., Room 325

Dear Chair Waters and Members of the Committee on Judiciary:

I am Joanna Markle testifying on behalf of the Consumer Data Industry Association. Founded in 1906, the Consumer Data Industry Association (CDIA) is the international trade association that represents more than 400 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services.

CDIA supports the intent of S.B. 3051, SD2, HD1 as it is of the utmost importance to ensure the safety of the most vulnerable members of our community, children and seniors. However, the bill requires that the background check be conducted using only state resources, The Hawaii Criminal Justice Data Center. Private sector databases have more comprehensive information and can often do checks faster than the state's data source. More importantly, a criminal history in California will not show up on a Hawaii state database but will show up in a private sector database. These databases have the advantage of speed and comprehensiveness.

For these reasons, we respectfully request an amendment to add the use of a criminal history record report provided by a "consumer credit reporting agency" or "consumer reporting agency" as defined in HRS §489P-2 to every reference of the "Hawaii criminal justice data center" as it relates to obtaining criminal history record information.

Thank you for your consideration and for the opportunity to testify.

000080

March 18, 2008

TO: Rep. Tommy Waters, Chair
And members of the House Judiciary Committee

FROM: Debbie Shimizu, LSW, Executive Director
National Association of Social Workers (NASW)

RE: SB 3051 SD2 HD1- Relating to Criminal History Background Checks for Social Service Programs- **SUPPORT**

Chair Waters and members of the House Judiciary Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers, Hawaii Chapter. I am testifying in **SUPPORT of SB 3051 SD2 HD1- Relating to Criminal History Background Checks for Social Service Programs.**

Currently, HRS 346-335(d) allows for a "designee" to do criminal history checks for employees of Residential Adult Community Care (RACC) homes. This bill will enable DHS to extend its authority to have a "designee" do criminal history checks for department employees, prospective employees, persons seeking to serve as providers, volunteers, or subcontractors who are in direct contact with vulnerable children and adults in other state programs.

It will make the current practice consistent for all programs.

Thank you for the opportunity to testify.

000081