

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 11, 2008

MEMORANDUM

TO: Honorable Maile S.L. Shimabukuro, Chair
House Committee on Human Services and Housing

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 3051, S.D. 2 - RELATING TO CRIMINAL HISTORY BACKGROUND
CHECKS FOR SOCIAL SERVICES PROGRAMS

Hearing: Tuesday, March 11, 2008, 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of S.B. 3051, S.D. 2 is to authorize the Department or its designee to conduct criminal history record checks for service providers. This bill will correct omissions in Acts 131 and 220, SLH 2006, as well as the various statutes authorizing the Department to conduct criminal history background checks. It will also add the authorization for a new program to conduct criminal history record checks.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly urges that this bill be amended with a House Draft 1, to contain the original language of S.B. 3051, by reinserting the sections deleted in S.D. 2 of this bill and by reinserting "or its designee" every place from which it was deleted in S.D. 2.

Passage of this bill with these suggested amendments is essential for the smooth operation of the Department's implementation of the Criminal Background Checks statutes.

As indicated in the Senate Judiciary and Labor Committee report, S.S.C.R. 2733, there is merit in allowing an outside entity (designee) to help DHS achieve timely processing of criminal background checks.

AN EQUAL OPPORTUNITY AGENCY

The Senate Judiciary Committee also noted that further discussion and deliberation would be beneficial. We present the following information to assist this Committee in its deliberations.

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. Further, Act 131 (SLH 2006), codified as section 352D-4.3, HRS, added the requirement that employees, prospective employees, and volunteers of contracted providers or subcontractors of contracted providers or subcontractors of the Office of Youth Services (OYS) must have their criminal history checked before working in close proximity to any of the youth in the program.

Currently, DHS is processing approximately 4,810 criminal history record checks per year for its Residential Adult Community Care (RACC) homes. This program 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, thus allowing a contracted designee to assist in processing the criminal background checks.

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!

Should S.B. 3051 pass without the "or its designee" language in the bill, 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.

When these Acts 131 and 220 were passed, DHS indicated that we would not need additional staffing to take on the expanded volume of criminal history checks. We anticipated the work of processing the anticipated increased number of criminal checks, including arrest records, would be handled by the Department's designee under our contract for such services. However, subsequently, the Attorney

General's office advised us to obtain a statutory amendment to expressly allow the Department to use a contracted "designee" to do the criminal history checks for the Department's programs.

This five fold increase can be managed with a "designee" to assist. However, if that does not occur, DHS does not have the staffing to avoid an on-going backlog.

Any backlog 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.

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.

Therefore, the Department respectfully urges that S.B. 3051 be amended to include the language "or its designee," allowing the Department to work with a contracted designee to assist in the completion of this important work for the safety of our clients and the community.

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.

Again, the Department respectfully requests that the "designee" language originally proposed in S. B. 3051 is restored.

Thank you for this opportunity to testify.



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

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

March 11, 2008

TO: The Honorable Maile S.L. Shimabukuro, Chair
House Committee on Human Services and Housing

FROM: Martha T. Torney, Executive Director

**SUBJECT: Senate Bill 3051, Senate Draft 2, RELATING TO CRIMINAL
HISTORY BACKGROUND CHECKS FOR SOCIAL SERVICES
PROGRAMS**

Hearing: Tuesday, March 11, 2008; 8:30 a.m.
State Capitol, Conference Room 329

The Office of Youth Services (OYS) strongly opposes Senate Bill 3051, Senate Draft 2, relating to Criminal History Background Checks for Social Services Programs, as written and urges that it be amended to reflect previous language. Senate Draft 2 no longer addresses the original intent of this Administration bill to allow OYS and other state social services agencies to designate a contractor to conduct the criminal history background checks.

Act 131, SLH 2006, mandates OYS to conduct criminal history records checks be conducted in accordance with Section 846-2.7, HRS, 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. 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 that Senate Draft 2 be amended to reflect the language contained in House Bill 3129, House Draft 1, 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.