

**SB 1137**



**HAWAII HEALTH SYSTEMS**  
C O R P O R A T I O N

*"Touching Lives Everyday"*

**Senate Committee on Health**  
**Senate Committee on Judiciary and Government Operations**

February 17, 2009, 9:00 A.M.

Conference Room #016

Hawaii State Capitol

**Testimony Supporting SB 1137- Relating to Hawaii Health Systems  
Corporation Background Checks**

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Good morning/afternoon Chair and Members of the Committee on.  
My name is Janice Wakatsuki, Vice President and Director of Human Resources for the Hawaii Health Systems Corporation (HHSC). Thank you for the opportunity to present testimony in strong support of HB 1123/SB 941 which is an administration bill.

**Criminal History Record Checks**

**Purpose:** HHSC is requesting the passage of a criminal history record check bill that would further define and allow the Hawaii Health Systems Corporation (HHSC) to perform criminal checks on all existing employees, prospective contractors, volunteers and vendors via the Hawaii Criminal Justice Data Center's (HCJDC) FBI checks. Such criminal history records checks are currently limited to prospective employees (applicants) after a conditional offer of employment is made.

The following legislation provides the justification to allow for the criminal history checks:

- ◆ The federal Volunteer for Children's Act, (**42 U.S.C. 5119** et. seq.) is federal legislation that allows the use of national fingerprint-based criminal history checks to screen out volunteers and employees with relevant criminal records for those organizations and businesses dealing with children, elderly and disabled.
- ◆ **HRS 378-2.5** and **831-3.1**, allow employers to inquire into an individual's criminal conviction background after a conditional offer of employment has been made. This offer of employment may be rescinded if there is a conviction within the applicant's

past ten years, excluding periods of incarceration that has a rational relationship to the duties and responsibilities of the position.

- ◆ **HRS 78-2.6** states that “All prospective employees, regardless of the position they will assume, shall demonstrate their suitability for public employment by: 1) passing a pre-employment controlled substance drug test if required by the employing jurisdiction; and 2) attesting that during the three-year period immediately preceding the date of application for employment, the person was not convicted of any controlled substance-related offense. If an applicant fails to meet the suitability requirements of the employing jurisdiction, the applicant shall be disqualified from further employment consideration or deemed ineligible for appointment under section HRS 76-29 on the basis of unsuitability for public employment.”

In addition, these codes also provide further rationale for such criminal history checks:

- ◆ **42 US Code 1320a-7(1)** lists types of crimes such as fraud, theft, abuse and neglect that may result in exclusion from the Medicare program.
- ◆ **Code of Federal Regulation 42 CFR 483.13** requires nursing homes to do pre-employment check of all employees and not hire individuals who have been found guilty of abuse, neglect or mistreatment of residents by a court of law or have a finding entered into the State nurse aide registry.
- ◆ **Code of Federal Regulation 42 CFR 455.106** requires providers to disclose to Medicaid the identity of any person who has been convicted of a criminal offense related to a program under Medicare, Medicaid, or the Title XX program.
- ◆ **Joint Commission** of Accreditation for Hospital Organizations (JCAHO) requires standards outlined in the HHSC's policies/guidelines to be followed in accordance with the above Federal regulations.

HHSC has conducted State criminal history checks with the assistance of the Hawaii Criminal Justice Data Center (HCJDC) and the Office of Inspector General (OIG) / General Services Administration (GSA) checks utilizing a private contractor. These within-State checks and the OIG/GSA checks have been done since the creation of HHSC in 1997. As a consequence of a shortage of health care workers, HHSC, by necessity has recruited heavily from out-of-state. Convictions from out-of-state are not in the Hawaii State's data bank and cannot be obtained through this source. Although HHSC could probably access county criminal data banks for every county where the applicant has worked, this process is lengthy and if an applicant wishes to hide conviction data, he or she can simply omit that county employment from the application. Therefore, the most efficient and effective process would be to access the FBI data bank where information on criminal history for all States is kept.

Since access to the FBI criminal history bank requires specific legislation granting this authority, HHSC has attempted several times to seek this legislation authority. With many other agencies requesting similar measures, the Legislature passed Act 263, SLH 2001, to create a working committee to resolve policy issues relating to the access and use of criminal history record information (for the purpose of employment and licensing). The Legislature implemented the recommendations of the working committee during the 2003 session. Accordingly, Act 95, SLH 2003, provided comprehensive amendments to various statutes pertaining to criminal history record checks, including revisions to chapters 78, 281, 302A, 302C, 321, 333F, 346, 352, 353C, 378-2.5, 421I, 463, 571, 831-3, 831-3.1, and 846, HRS. The working committee reminded all agencies and jurisdictions that individual legislative language for the respective agencies/jurisdictions would still be required in order to access the FBI files. HHSC has not been successful as yet with the proposed legislation authorizing HHSC to perform criminal history record checks utilizing the FBI fingerprint – based data bank and to be listed as one of the agencies in Chapter 846, HRS that grants this authority.

The HCJDC has recognized our problem and volunteered to assist the HHSC while we continue in our attempts to get the needed legislation. Therefore, in late January of 2004, HCJDC, utilizing their statutory authority, began doing FBI checks for HHSC. These checks were limited to prospective employees (those receiving employment offers). While we sincerely appreciate HCJDC efforts on our behalf, HHSC needs the proposed legislation to allow us direct access to the FBI files. Such legislation will enable HHSC to do the checks much faster and to expand the review of criminal history checks to current employees, vendors, consultants, volunteers and all others who may come into contact with our patients and residents. This authority will enable us to fulfill the intent of the various statutes, codes and regulations governing background history checks.

Thank you for this opportunity to testify before this committee. We strongly urge passage of this measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 15, 2009 8:51 PM  
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Testimony for HTH/JGO 2/17/2009 9:00:00 AM SB1137

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Comments:

I strongly urge the committee to pass this bill.