

JAN 26 2011

A BILL FOR AN ACT

RELATING TO FINGERPRINT RETENTION BY HAWAII CRIMINAL JUSTICE
DATA CENTER.

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

1 SECTION 1. The purpose of this Act is to allow the State
2 to retain, indefinitely, fingerprints of employment and
3 licensing applicants for whom criminal history record checks are
4 authorized statutorily so that the State can implement a
5 statewide "Rapback" program.

6 In addition, in 2013, two new Federal Bureau of
7 Investigation programs will go into effect: (1) The Federal
8 Bureau of Investigation "Next Generation IAFIS" will include the
9 retention of applicant prints collected by fifty states; and (2)
10 the Federal Bureau of Investigation "Rapback" program will allow
11 employers to request notification if applicants are arrested in
12 the future. The State's ability to take advantage of the
13 information and the capabilities that other states and the
14 Federal Bureau of Investigation are using will help Hawaii
15 develop its own program and be proactive in decision-making for
16 our vulnerable populations (children, the elderly, and the
17 disabled). For example, the department of education hires an

1 applicant with no criminal record; the Hawaii criminal justice
2 data center retains the fingerprints; the applicant is later
3 arrested; the prints taken during the arrest booking match the
4 previously retained applicant prints; and the match triggers
5 notification to the department of education.

6 The public will be better protected as employers and
7 licensing agencies will get up-to-date criminal history
8 information. In addition, employees and licensees that would
9 have needed to be fingerprinted again as part of a re-
10 application or renewal process may not have to be fingerprinted
11 again, because up-to-date information will be forwarded
12 automatically to their employers or licensing agencies as part
13 of the "Rapback" program.

14 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§846-2.7 Criminal history record checks.** (a) The
17 agencies and other entities named in subsection (b) may conduct
18 state and national criminal history record checks on the
19 personnel identified in subsection (b), for the purpose of
20 determining suitability or fitness for a permit, license, or
21 employment; provided that the Hawaii criminal justice data
22 center may charge a reasonable fee for the criminal history

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1 record checks performed. The agencies and other entities named
2 in subsection (b) shall notify the personnel identified in
3 subsection (b) that their fingerprints will be retained by the
4 Hawaii criminal justice data center. The criminal history
5 record check shall include the submission of fingerprints to:

6 (1) The Federal Bureau of Investigation for a national
7 criminal history record check; and

8 (2) The Hawaii criminal justice data center for a state
9 criminal history record check that shall include
10 nonconviction data.

11 [~~Criminal~~] Except as otherwise provided in this section,
12 criminal history record information shall be used exclusively
13 for the stated purpose for which it was obtained.

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

15 (1) The department of health on operators of adult
16 foster homes or developmental disabilities domiciliary
17 homes and their employees, as provided by section
18 333F-22;

19 (2) The department of health on prospective employees,
20 persons seeking to serve as providers, or
21 subcontractors in positions that place them in direct
22 contact with clients when providing non-witnessed

- 1 director mental health services as provided by
2 section 321-171.5;
- 3 (3) The department of health on all applicants for
4 licensure for, operators for, prospective employees,
5 and volunteers at one or more of the following:
6 skilled nursing facility, intermediate care facility,
7 adult residential care home, expanded adult
8 residential care home, assisted living facility, home
9 health agency, hospice, adult day health center,
10 special treatment facility, therapeutic living
11 program, intermediate care facility for the mentally
12 retarded, hospital, rural health center and
13 rehabilitation agency, and, in the case of any of the
14 above facilities operating in a private residence, on
15 any adult living in the facility other than the client
16 as provided by section 321-15.2;
- 17 (4) The department of education on employees, prospective
18 employees, and teacher trainees in any public school
19 in positions that necessitate close proximity to
20 children as provided by section 302A-601.5;
- 21 (5) The counties on employees and prospective employees
22 who may be in positions that place them in close

- 1 proximity to children in recreation or child care
2 programs and services;
- 3 (6) The county liquor commissions on applicants for liquor
4 licenses as provided by section 281-53.5;
- 5 (7) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
- 9 (8) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
- 12 (9) The department of human services on applicants to
13 operate child care facilities, prospective employees
14 of the applicant, and new employees of the provider
15 after registration or licensure as provided by
16 section 346-154;
- 17 (10) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;
- 21 (11) The department of human services on operators and
22 employees of home and community-based case management

1 agencies and operators and other adults, except
2 for adults in care, residing in foster family homes
3 as provided by section 346-335;

4 (12) The department of human services on staff members of
5 the Hawaii youth correctional facility as provided
6 by section 352-5.5;

7 (13) The department of human services on employees,
8 prospective employees, and volunteers of contracted
9 providers and subcontractors in positions that place
10 them in close proximity to youth when providing
11 services on behalf of the office or the Hawaii youth
12 correctional facility as provided by section 352D-4.3;

13 (14) The judiciary on employees and applicants at detention
14 and shelter facilities as provided by section 571-34;

15 (15) The department of public safety on employees and
16 prospective employees who are directly involved with
17 the treatment and care of persons committed to a
18 correctional facility or who possess police powers
19 including the power of arrest as provided by section
20 353C-5;

21 (16) The department of commerce and consumer affairs on
22 applicants for private detective or private guard

- 1 licensure as provided by section 463-9;
- 2 (17) Private schools and designated organizations on
3 employees and prospective employees who may be
4 in positions that necessitate close proximity to
5 children; provided that private schools and
6 designated organizations receive only indications
7 of the states from which the national criminal
8 history record information was provided pursuant
9 to section 302C-1;
- 10 (18) The public library system on employees and
11 prospective employees whose positions place them in
12 close proximity to children as provided by section
13 302A-601.5;
- 14 (19) The State or any of its branches, political
15 subdivisions, or agencies on applicants and employees
16 holding a position that has the same type of contact
17 with children, vulnerable adults, or persons committed
18 to a correctional facility as other public employees
19 who hold positions that are authorized by law to
20 require criminal history record checks as a condition
21 of employment as provided by section 78-2.7;
- 22 (20) The department of human services on licensed adult

1 day care center operators, employees, new employees,
2 subcontracted service providers and their employees,
3 and adult volunteers as provided by section 346-97;

4 (21) The department of human services on purchase of
5 service contracted and subcontracted service
6 providers and their employees serving clients of the
7 adult and community care services branch, as provided
8 by section 346-97;

9 (22) The department of human services on foster grandparent
10 program, retired and senior volunteer program, senior
11 companion program, and respite companion program
12 participants as provided by section 346-97;

13 (23) The department of human services on contracted and
14 subcontracted service providers and their current
15 and prospective employees that provide home and
16 community-based services under Section 1915(c) of the
17 Social Security Act, 42 United States Code Section
18 1396n(c) or under any other applicable section or
19 sections of the Social Security Act for the purposes
20 of providing home and community-based services, as
21 provided by section 346-97;

22 (24) The department of commerce and consumer affairs on

1 proposed directors and executive officers of a bank,
2 savings bank, savings and loan association, trust
3 company, and depository financial services loan
4 company as provided by section 412:3-201;

5 (25) The department of commerce and consumer affairs on
6 proposed directors and executive officers of a
7 nondepository financial services loan company as
8 provided by section 412:3-301;

9 (26) The department of commerce and consumer affairs on
10 the original chartering applicants and proposed
11 executive officers of a credit union as provided by
12 section 412:10-103;

13 (27) The department of commerce and consumer affairs on:
14 (A) Each principal of every non-corporate applicant
15 for a money transmitter license; and
16 (B) The executive officers, key shareholders, and
17 managers in charge of a money transmitter's
18 activities of every corporate applicant for a
19 money transmitter license,
20 as provided by section 489D-9;

21 (28) The department of commerce and consumer affairs on
22 applicants for licensure and persons licensed under

1 title 24;

2 (29) The Hawaii health systems corporation on:

3 (A) Employees;

4 (B) Applicants seeking employment;

5 (C) Current or prospective members of the corporation
6 board or regional system board; or

7 (D) Current or prospective volunteers, providers, or
8 contractors,

9 in any of the corporation's health facilities as
10 provided by section 323F-5.5;

11 (30) The department of commerce and consumer affairs on:

12 (A) An applicant for a mortgage loan originator
13 license; and

14 (B) Each control person, executive officer, director,
15 general partner, and manager of an applicant for
16 a mortgage loan originator company license,
17 as provided by chapter 454F; and

18 (31) Any other organization, entity, or the State, its
19 branches, political subdivisions, or agencies as
20 may be authorized by state law.

21 (c) The applicant or employee subject to a criminal
22 history record check shall provide to the requesting agency:

- 1 (1) Consent to obtain the applicant's
2 or employee's fingerprints and conduct the criminal
3 history record check;
- 4 (2) Identifying information required by the Federal Bureau
5 of Investigation which shall include but not be
6 limited to name, date of birth, height, weight,
7 eye color, hair color, gender, race, and place of
8 birth; and
- 9 (3) A statement indicating whether the applicant or
10 employee has ever been convicted of a crime.
- 11 (d) All information and records, including fingerprints,
12 acquired by the Hawaii criminal justice data center under this
13 section shall be retained and maintained in an appropriate form
14 and in an appropriate office in the custody and control of the
15 Hawaii criminal justice data center, which shall at all times be
16 kept separate from any similar records relating to the
17 identification of criminals. The information shall be available
18 only to authorized entities and agencies as described in
19 subsection (a) and such other persons or agencies as the
20 attorney general shall authorize, under such restrictions as the
21 attorney general shall prescribe. The Hawaii criminal justice
22 data center may dispose of any information or record, without

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1 regard to the provisions of chapter 94, whenever, in the
2 attorney general's discretion, retention of such information or
3 record is no longer required or practicable. No officer or
4 employee of the Hawaii criminal justice data center shall
5 divulge any information concerning the information or records or
6 acquired in the performance of any of the officer's or
7 employee's duties under this section to any person not
8 authorized to receive the same pursuant to this section or
9 pursuant to the orders of the attorney general. No person
10 acquiring from the records any information concerning any
11 individual shall divulge the information to any person not so
12 authorized to receive the same."

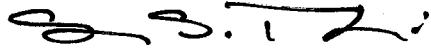
13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2011.

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INTRODUCED BY: 

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BY REQUEST

Report Title:

Hawaii Criminal Justice Data Center; Fingerprint Retention

Description:

Allows the State to retain fingerprints of employment and licensing applicants for whom criminal history record checks are authorized statutorily so that the State can implement a statewide "Rapback" program.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO FINGERPRINT RETENTION BY HAWAII CRIMINAL JUSTICE DATA CENTER.

PURPOSE: To allow the State to retain, indefinitely, fingerprints of employment and licensing applicants for whom criminal history record checks are authorized statutorily.

MEANS: Amend section 846-2.7, Hawaii Revised Statutes.

JUSTIFICATION: In 2013, two new FBI programs will go into effect: (1) The FBI "Next Generation IAFIS" will include the retention of applicant prints collected by 50 states; and (2) the FBI "Rapback" program will allow employers to request notification if applicants are arrested in the future. In addition, the Hawaii Criminal Justice Data Center (HCJDC) is also looking at developing a state "Rapback" program. For example, the Department of Education (DOE) hires an applicant with no criminal record; HCJDC retains the fingerprint; the applicant is later arrested; the prints taken during the arrest booking match the previously retained applicant prints; and the match triggers notification to DOE.

The State's ability to take advantage of the information and the capabilities that other states and the FBI are using will help Hawaii develop its own program and be proactive in decision-making for our vulnerable populations (children, the elderly, and the disabled).

Impact on the public: The public will be better protected as employers and licensing agencies will get up-to-date criminal history

information. In addition, employees and licensees that need to be fingerprinted again as part of a re-application or renewal process may not have to do this as up-to-date information will be forwarded automatically to their employers or licensing agency as part of the "Rapback" program.

Impact on the department and other agencies:
The HCJDC maintains the Automated Fingerprint Identification System (AFIS) and coordinates all criminal history background checks as detailed in section 846-2.7. The HCJDC will be impacted as it will have more fingerprints stored in its database and more hits as a result. The other agencies that participate in the "Rapback" program will also have more hits to review.

GENERAL FUND:

None.

OTHER FUNDS:

Additional funding for increased storage for the State's AFIS will be solicited.

PPBS PROGRAM
DESIGNATION:

ATG-12(11)

OTHER AFFECTED
AGENCIES:

Department of Education, Department of Health, Department of Human Services, Department of Commerce and Consumer Affairs, county departments, and any other departments or organizations authorized to conduct background checks in section 846-2.7.

EFFECTIVE DATE:

July 1, 2011.