

NEIL ABERCROMBIE
GOVERNOR



DWIGHT TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

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February 6, 2012

The Honorable Gilbert Keith-Agaran, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: H.B. 1765, H.D. 1 Relating to Criminal History Record Checks for County Employees

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support H.B. 1765, H.D. 1, which proposes to allow criminal history record checks on prospective county fire department employees who may have contact with children or dependent adults.

With the elimination of residency requirements for prospective fire department employment, the number of out-of-state applicants has increased with no legal means to verify whether or not these individuals possess the necessary qualities for dealing with children or vulnerable adults.

Public trust must not be compromised when individuals are hired as emergency responders. The public expects and deserves the utmost quality and care from the people who are entrusted to provide emergency services and fire and life safety education presentations. Conducting criminal record checks is one way to ensure that prospective fire department employees have no criminal or abuse record.

The SFC and the HFD urge your committee's support on the passage of H.B. 1765, H.D. 1,

Should you have any questions, please contact SFC Administrator Socrates Bratakos at 723-7151 or sbratakos@honolulu.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken G. Silva".

KENNETH G. SILVA
Chair

KGS/LR:cn

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR
ROBIN CHUN-CARMICHAEL
ASSISTANT DIRECTOR

February 7, 2012

The Honorable Gilbert Keith-Agaran, Chair
and Members of the Committee on Judiciary
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 1765, HD1
Relating to Criminal History Record Checks for County Employees

The Department of Human Resources **strongly supports** HB 1765 and appreciates the Labor Committee's efforts to strike a balance between public safety and civil rights concerns in HD1. The purpose of this bill is to provide county agencies the ability to access national criminal history record information in addition to state conviction information for the purpose of determining employment suitability. Specifically, this bill will enable us to obtain criminal history record information for current and prospective employees involved in liquor control investigations, and prospective employees for firefighting, emergency medical services, emergency management, and for community based personnel who work with vulnerable adults.

The Hawaii Revised Statutes, the Revised Charter of the City and County of Honolulu, and our Civil Service Rules require that our system of personnel administration be based on merit principles. State law defines the merit principle as it pertains to employment and selection, as "the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance." Part of the City's process in determining the "fitness" of prospective employees is reviewing whether or not they have a criminal history record, and if they do, determining the relevancy and impact that the conviction(s) would have on their fitness (i.e., suitability) for the job for which they are being considered.

The Honorable Gilbert Keith-Agaran, Chair
and Members of the Committee on Judiciary
The House of Representatives
February 7, 2012
Page 2

It is our duty to make prudent hiring decisions regarding the suitability of the individuals who are hired for the kinds of jobs that this bill addresses. Applicants are NOT automatically disqualified for having an arrest or court record. Rather, a careful study is done which includes an opportunity for the prospective candidate to provide relevant information or input on the findings.

Since technological advances have made it possible for individuals outside of the State of Hawaii to view and apply for jobs in Hawaii, we have seen an increase in the number of out-of-state and recently relocated candidates who apply for civil service jobs in our jurisdiction. Without the proposed changes, we will not have an effective means of reviewing prospective employees' convictions that occurred out-of-state. The proposed legislation will give us the ability to efficiently obtain national criminal history record information not just for our prospective employees in recreational or child care programs who work in close proximity to children, but also for the other specified categories of employees/prospective employees who we believe work with similarly vulnerable citizens.

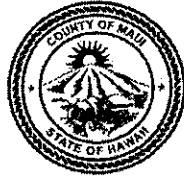
Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono".

Noel T. Ono
Director

ALAN M. ARAKAWA
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY

200 DAIRY ROAD
KAHULUI, MAUI, HAWAII 96732
(808) 270-7561
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February 3, 2012

The Honorable Gilbert Keith-Agaran, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: H.B. 1765, H.D. 1 Relating to Criminal History Record Checks for County Employees

I am Jeffrey A. Murray, Fire Chief of the County of Maui, Department of Fire & Public Safety (MFD) and a member of the State Fire Council (SFC). The MFD and the SFC support H.B. 1765, H.D. 1, which proposes to allow criminal history record checks on prospective county fire department employees who may have contact with children or dependent adults.

With the elimination of residency requirements for prospective fire department employment, the number of out-of-state applicants has increased with no legal means to verify whether or not these individuals possess the necessary qualities for dealing with children or vulnerable adults.

Public trust must not be compromised when individuals are hired as emergency responders. The public expects and deserves the utmost quality and care from the people who are entrusted to provide emergency services and fire and life safety education presentations. Conducting criminal record checks is one way to ensure that prospective fire department employees have no criminal or abuse record.

The MFD and the SFC urge your committee's support on the passage of H.B. 1765, H.D. 1.

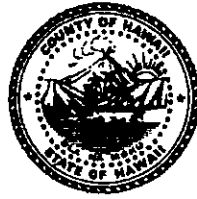
Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Murray", is written over a horizontal line.

JEFFREY A. MURRAY
Fire Chief

William P. Keno
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i

FIRE DEPARTMENT

25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720

(808) 932-2900 • Fax (808) 932-2928

February 6, 2012

The Honorable Gilbert Keith-Agaran, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: H.B. 1765, H.D. 1 Relating to Criminal History Record Checks for County Employees

I am Darren J. Rosario, member of the State Fire Council (SFC) and Fire Chief of the Hawaii Fire Department (HFD) of the County of Hawaii. The SFC and the HFD support H.B. 1765, H.D. 1, which proposes to allow criminal history record checks on prospective county fire department employees who may have contact with children or dependent adults.

With the elimination of residency requirements for prospective fire department employment, the number of out-of-state applicants has increased with no legal means to verify whether or not these individuals possess the necessary qualities for dealing with children or vulnerable adults.

Public trust must not be compromised when individuals are hired as emergency responders. The public expects and deserves the utmost quality and care from the people who are entrusted to provide emergency services and fire and life safety education presentations. Conducting criminal record checks is one way to ensure that prospective fire department employees have no criminal or abuse record.

The SFC and the HFD urge your committee's support on the passage of H.B. 1765, H.D. 1.

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Rosario".

Darren J. Rosario
Member



County of Hawai'i is an Equal Opportunity Provider and Employer.

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Gary K. Heu
Managing Director

John T. Blalock
Deputy Fire Chief

KAUA'I FIRE DEPARTMENT
County of Kauai, State of Hawaii
3083 Akahi Street, Suite 101, Lihue, Hawaii 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 3, 2012

The Honorable Gilbert Keith-Agaran, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: H.B. 1765, H.D. 1 Relating to Criminal History Record Checks for County Employees

I am Robert F. Westerman, member of the State Fire Council (SFC) and Fire Chief of the Kauai Fire Department (KFD). The SFC and the KFD support H.B. 1765, H.D. 1, which proposes to allow criminal history record checks on prospective county fire department employees who may have contact with children or dependent adults.

With the elimination of residency requirements for prospective fire department employment, the number of out-of-state applicants has increased with no legal means to verify whether or not these individuals possess the necessary qualities for dealing with children or vulnerable adults.

Public trust must not be compromised when individuals are hired as emergency responders. The public expects and deserves the utmost quality and care from the people who are entrusted to provide emergency services and fire and life safety education presentations. Conducting criminal record checks is one way to ensure that prospective fire department employees have no criminal or abuse record.

The SFC and the KFD urge your committee's support on the passage of H.B. 1765, H.D. 1.

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman".

Robert F. Westerman
Fire Chief, County of Kauai

RFW/LR:cz



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 7, 2012
2:00 p.m.
Conference room 325

To: The Honorable Gilbert Keith-Agaran, Chair
and Members of the House Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1765, H.D.1

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports H.B. No. 1765, H.D.1, in part and opposes it in part.

The HCRC Supports Amendment of H.R.S. § 846-2.7(b) to Give the Counties Broader Authorization to Conduct Criminal History Background Checks.

The HCRC opposed H.B. No. 1765 in its original form, but the House Committee on Labor and Public Employment amended the bill to incorporate the changes suggested and agreed upon by the HCRC and the City and County. As agreed, the HCRC will not

oppose the express authorization for the City and County to conduct criminal history checks by amendment of H.R.S. § 846-2.7(b).

H.B. No. 1765, H.D.1, amends H.R.S. §846-2.7(b) to provide the counties with express authority to conduct criminal history record checks on liquor commission employees and prospective employees involved in liquor control investigations, as well as prospective employees who will work with vulnerable adults, senior citizens or children in community based programs, with the fire department, with emergency medical services or in Homeland Security measures.

For several years, the City and County of Honolulu (“City and County”) has sought this authority to conduct criminal history background checks under § 846-2.7(b). In the past, the HCRC has opposed legislation similar to H.B. No. 1765, based on concerns that it would result in overly broad exceptions to the requirements and limitations imposed on employer inquiries into and consideration of records of conviction under H.R.S. § 378-2.5(b) and (c). Prior to the 2012 session, HCRC and City and County of Honolulu Employment and Personnel Services Division staff met to discuss this proposed bill and were able to reach agreement on amendments to the bill that would accomplish the City and County’s purpose without eroding the arrest and court record protections by incorporating overly broad exception language into H.R.S. § 378-2.5(d).

H.B. No. 1765, H.D. 1, incorporates language addressing concerns raised by the HCRC, amending the bill so that the City and County will have its needed authority to conduct criminal history record checks under H.R.S. § 846-2.7(b), and addressing the HCRC’s concerns by amending §378-2.5(d)(5) to create specific narrow exceptions for the counties where appropriate, rather than a broad exception for all county agencies

authorized to conduct checks under § 846-2.7(b). The HCRC supports this part of H.B. No. 1765, H.D.1, which accomplishes the purpose of the bill and meets the needs of the City and County.

The HCRC Opposes the Amendment of H.R.S. § 378-2.5(d) to Eliminate the Ten-Year Period, Excluding Periods of Incarceration, Limitation on Conviction Records that Employers Can Consider in Hiring, Termination, or the Terms, Conditions, or Privileges of Employment.

In decision-making on H.B. No. 1765, the House Committee on Labor & Public Employment decided to amend the bill to incorporate a substantive change that fundamentally alters the balance of H.R.S. § 378-2.5(a) – (c), which allows employers to inquire into and consider records of conviction in hiring, termination, or in terms, conditions, or privileges of employment, with these specific limitations, summarized in relevant part: (a) provided that the conviction record bears a rational relationship to the duties and responsibilities of the position; (b) inquiry into and consideration of conviction records for prospective employees shall take place only after the employee has received a conditional offer of employment, which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position; and, (c) “conviction” means an adjudication by a court of competent jurisdiction that the defendant has committed a crime, provided that the employer may consider (or “look back”) at an employee’s conviction record falling within a period that shall not exceed the most recent ten year period, excluding periods of incarceration.

The Committee on Labor and Public Employment decided to amend the bill to incorporate an increase in the H.R.S. § 378-2.5 “look back” period from ten to fifteen years in the H.D.1., despite the facts that:

1. The sub-section in which the ten year look back period is found, H.R.S. § 378-2.5(c) is not amended in the H.D.1, only the language in subsection § 378-2.5(d) that refers to the statutory limitation is amended.
2. The change in the ten year look back period was not addressed in public hearing. No one testified in support or opposition to an increase in the look-back period.
3. Other than the recommendation of the Chair, there was no discussion in decision-making of the amendment to the provisions of H.R.S. § 378-2.5 relating to extension of the ten year look back period to fifteen years.
4. The amendment of H.R.S. § 378-2.5 to extend the look back period from ten to fifteen years falls outside the scope of the bill title, because it affects all employees, not just county employees.

This substantive amendment of the arrest and court record protection is of great concern to the HCRC, in light of the legislative history and development of the provisions of H.R.S. § 378-2.5.

H.R.S. §378-2 prohibits discrimination on the basis of arrest and court record.

H.R.S. § 378-1 defines arrest and court record:

“Arrest and court record:” includes any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant, tried, or convicted pursuant to any law enforcement or military authority.

There were legitimate concerns raised over application of this protected basis, particularly with regard to job positions that involve proximity to vulnerable population, as well as health and safety interests. As a result, H.R.S. § 368-2.5 was enacted in 1998, as the result of intense controversy, negotiation, and compromise, with everyone at the table – business, labor, law enforcement, the HCRC, civil rights advocates, and government employers. Pursuant to 2002 legislation, a Criminal History Record Check Working Group was convened, and its recommendations were incorporated into 2003 amendments to H.R.S. § 378-2.5 as part of an omnibus bill submitted by the CHRCWG. The HCRC participated in the Criminal History Record Check Working Group, which broadened and clarified the broad exceptions to the arrest and court record exceptions, without effectively repealing the protection or setting a “slippery slope” that would result in further erosion of the protection.

The HCRC enforces the arrest and court record protection, including the broad statutory exceptions found in H.R.S. § 378-2.5. We respectfully urge that it is not time to revisit and erode these protections, especially when policy-makers here and across the nation are paying renewed attention to reentry and reintegration of ex-offenders into society, and other jurisdictions are looking at Hawai‘i law as a model as they consider similar employment protections against discrimination.

Conclusion

The HCRC and the City and County of Honolulu are in agreement that the original purpose of H.B. No. 1765 has merit, and the HCRC will support the bill in an H.D.2 if the provision affecting the H.R.S. § 378-2.5 ten year look back period is deleted. Without that change, the HCRC will oppose H.B. No. 1765, H.D.1, and the bill will

likely become the subject of a controversy no one has asked for. If the legislature decides to address the fundamental issues raised in the H.D.1, we suggest that this bill is not the appropriate vehicle for that discussion.

Thank you for your consideration of the discussion and agreement between the City and County of Honolulu and the HCRC on this bill.