



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

January 24, 2012  
9:00 am  
Conference room 309

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor and Public Employment

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

Re: H.B. No. 1765

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.

H.B. No. 1765 amends H.R.S. §846-2.7 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.

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).

However, 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).

The HCRC opposes H.B. No. 1765 in its original form, but will not oppose it if the bill is amended as the City and County of Honolulu has agreed.

**THE NEEDS OF THE CITY AND COUNTY OF HONOLULU  
AND THE PURPOSE OF THE H.B. NO. 1765**

H.R.S. § 846-2.7(a) allows agencies and entities named in 846-2.7(b) to conduct state and national history background checks for the purposes identified in (b), including HCJDC and FBI checks.

The City and County proposes to add five new agencies and entities to those authorized to conduct these criminal history background checks under § 846-2.7(b):

(7) County liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control.

(32) Counties on prospective employees who work with vulnerable adults or senior citizens in community based programs.

(33) Counties on prospective employees for fire department positions which involve contact with children or dependent adults.

(34) Counties on prospective employees for emergency medical positions which involve contact with children or dependent adults.

(35) Counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing Homeland Security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable and disabled citizens during emergencies or crises.

#### **HCRC CONCERNS OVER H.B. NO. 1765 AS DRAFTED**

As drafted, the H.B. No. 1765 amendments to H.R.S. § 846-2.7(b) would, by incorporation and reference in §378-2.5(d)(5), except the counties from three important limitations imposed on employer inquiries into consideration of records of conviction under § 378-2.5(b) and (c) – post offer inquiry, ten year look-back period excluding periods of incarceration, and withdrawal of conditional offers of employment only if a record of conviction bears a rational relationship to the duties and responsibilities of the position. The HCRC continues to oppose an exception for employees and prospective employees of the county liquor commissions, because there is no reason why those positions should not be subject to the post-offer, time period, and rational relationship limitations required under § 378-2.5.

#### **DISCUSSION AND AGREEMENT.ON PROPOSED AMENDMENTS**

The HCRC does not oppose adding the exemptions (32), (33), (34) and (35) for prospective employees who work with vulnerable adults, senior citizens or children. Other similar positions are exempted under H.R.S. § 78-2.5. However, the HCRC opposes exemption (7) for prospective employees involved in liquor control investigations because these positions do not involve unsupervised contact with vulnerable persons.

The City and County has emphasized that its primary concern and purpose is to secure authorization to conduct state and federal criminal history background checks under H.R.S. § 846-2.7(b). In fact, it does not conduct these background checks pre-offer, because of the number of checks it would have to conduct and the associated cost of doing pre-offer checks. Rather, the statutory authorization the City and County seeks is required to access federal FBI databases, in order for the employer to see non-Hawai'i records.

The HCRC has not opposed narrowly drawn statutory exceptions sought for positions that involve unsupervised contact with vulnerable persons as patients, clients, customers, or students, but has opposed creation of overly broad exceptions and the creation of a “slippery slope” where exceptions render the rule meaningless.

The HCRC and the City and County of Honolulu have met, discussed and agreed that H.B. No. 1765 can be amended to satisfy the City and Counties purpose and needs, by adding all of the county entities to the statutory authorization to conduct state and federal background checks under H.R.S. §846-2.7(b), while 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).

**PROPOSED LANGUAGE FOR H.D.1**

**§378-2.5 Employer inquiries into conviction record.**

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(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

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(5) The counties pursuant to section 846-2.7(b)(5), and (32)-(35);

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

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  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
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January 23, 2012

The Honorable Karl Rhoads, Chair  
Committee on Labor and Public Employment  
House of Representatives  
State Capitol, Room 326  
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: H.B. 1765 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. 268, 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.

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

Sincerely,

A handwritten signature in black ink that reads "Kenneth G. Silva".

KENNETH G. SILVA  
Chair

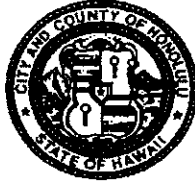
KGS/LR:cn

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

**AMENDED**

PETER B. CARLISLE  
MAYOR



NOEL T. ONO  
DIRECTOR  
ROBIN CHUN-CARMICHAEL  
ASSISTANT DIRECTOR

January 24, 2012

The Honorable Karl Rhoads, Chair  
and Members of the Committee on  
Labor and Public Employment  
The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

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

The Department of Human Resources **strongly supports** HB 1765. 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 Karl Rhodes, Chair  
and Members of the Committee on  
Labor and Public Employment  
The House of Representatives  
January 24, 2012  
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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,

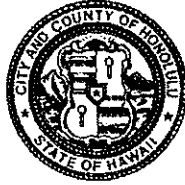
  
for Noel T. Ono  
Director



DEPARTMENT OF EMERGENCY MANAGEMENT  
CITY AND COUNTY OF HONOLULU

650 South King Street Honolulu, Hawaii 96813 / (808) 723-8960

Peter B. Carlisle  
MAYOR



Melvin N. Kaku  
DIRECTOR

January 23, 2012

The Honorable Karl Rhoads, Chair  
and Members of the Committee on  
Labor and Public Employment  
House of Representatives  
State Capitol, Room 309  
Honolulu, Hawaii 96813

Dear Chair Rhoads:

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

The Department of Emergency Management, City and County of Honolulu, strongly supports H.B. 1765.

When members of our community are faced with a natural or man-made hazard incident, they expect our emergency response personnel to uphold a certain standard of ethical care and professionalism. Emergency management personnel often interact with people who are in a vulnerable status. The public trust cannot be compromised and the community expects and deserves quality personnel who are entrusted with the duty to provide uncompromised emergency response services.

I urge your committee to pass H.B. 1765 and ensure our ability to have a cadre of reputable and responsible workers.

Sincerely,

  
Melvin N. Kaku  
Director

CC: Mayor's Office  
MD Douglas S. Chin  
Lori Nishimura  
Vera Onouye

**yamashita2 ----Aulii**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 23, 2012 11:31 AM  
**To:** LABtestimony  
**Cc:** gnishioka@honolulu.gov  
**Subject:** Testimony for HB1765 on 1/24/2012 9:30:00 AM

Testimony for LAB 1/24/2012 9:30:00 AM HB1765

Conference room: 309  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Greg I Nishioka  
Organization:  
E-mail: [gnishioka@honolulu.gov](mailto:gnishioka@honolulu.gov)  
Submitted on: 1/23/2012

Comments:

- Sent on behalf of Administrator Greg I. Nishioka, Honolulu Liquor Commission -

Dear Chair Rhoads and Vice Chair Yamashita:

Re: HB 1765 Relating to Criminal History Record Checks for County Employees  
Tuesday, January 24, 2012, 9:00 am

Position: Support HB 1765

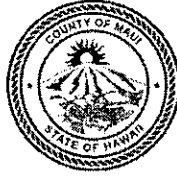
The Liquor Commission, City and County of Honolulu, concurs with the testimony submitted by the City's Department of Human Resources in strong support of HB 1765. We have been advised that the bill will enable county agencies such as the Liquor Commission to access national criminal history record information in addition to state conviction information for the purpose of determining employment suitability of current and prospective employees involved in liquor control investigations. Accordingly, this measure will assist the Liquor Commission in making a more complete evaluation of any individual selected for liquor control investigative work.

Thank you for the opportunity to provide testimony on this matter.

Sincerely yours,

Greg I. Nishioka  
Administrator  
Honolulu Liquor Commission  
711 Kapiolani Boulevard, Suite 600  
Honolulu, Hawaii 96813-5249  
Direct Dial: 768-7301  
Fax: 7687311  
Email: [gnishioka@honolulu.gov](mailto:gnishioka@honolulu.gov)

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  
FAX (808) 270-7919  
EMAIL: fire.dept@mauicounty.gov

January 23, 2012

The Honorable Karl Rhoads, Chair  
Committee on Labor and Public Employment  
House of Representatives  
State Capitol, Room 326  
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: H.B. 1765 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. 268, 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.

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".

JEFFREY A. MURRAY  
Fire Chief