



## HAWAI'I CIVIL RIGHTS COMMISSION

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

February 22, 2012  
9:45 a.m.  
Conference room 016

To: The Honorable Clayton Hee, Chair,  
and Members of the Senate Committee on Judiciary and Labor

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

Re: S.B. No. 2071, S.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.

S.B. No. 2071, S.D.1 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 S.B. No. 2071, 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).

S.B. No. 2071, S.D.1 incorporates amendments that reflect the changes agreed upon by the HCRC and the City and County of Honolulu and address the concerns of the HCRC. Accordingly, the HCRC does not oppose S.B. No. 2071, S.D.1, and urges favorable consideration.

**THE NEEDS OF THE CITY AND COUNTY OF HONOLULU  
AND THE PURPOSE OF THE S.B. NO. 2071**

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).

**HCRC CONCERNS OVER S.B. NO. 2071 AS ORIGINALLY DRAFTED**

As originally drafted, the S.B. No. 2071 amendments to H.R.S. § 846-2.7(b) would have, by incorporation and reference in §378-2.5(d)(5), excepted the counties from three important limitations imposed on employer inquiries into consideration of records of conviction under § 378-2.5(b) and (c): 1) inquiries must be made post offer; 2) a ten year look-back period excluding periods of incarceration; and 3) 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 did not oppose adding the exemptions 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 opposed the exemption for prospective employees involved in liquor control investigations because these positions do not involve unsupervised contact with vulnerable persons and 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 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 met, discussed and agreed that S.B. No. 2071 could be amended to satisfy the City and Counties purpose and needs, 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). S.B. 2071, S.D. 1 incorporates the agreed upon recommended changes. As agreed, the HCRC no longer has any opposition to the bill as amended.

**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 Kaua'i, State of Hawai'i**  
3083 Akahi Street, Suite 101, Lihu'e, Hawai'i 96766  
TEL (808) 241-4980 FAX (808) 241-6508

February 21, 2012

STATE TESTIMONY

The Honorable Clayton Hee, Chair  
Committee on Judiciary and Labor  
The State Senate  
State Capitol, Room 407  
Honolulu, Hawaii 96813

Dear Chair Hee:

**Subject: S.B. 2071, S.D. 1 Relating to Criminal History Record Checks for County Employees**

I am Robert F. Westerman, Fire Chief of the Kauai Fire Department (KFD) and a member of the State Fire Council. The KFD and the SFC support S.B. 2071, S.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 KFD and the SFC urge your committees' support on the passage of S.B. 2071, S.D. 1. Please call me at (808) 241-4980 should you have any questions regarding this matter.

Sincerely,



Robert Westerman  
Fire Chief, County of Kaua'i

RFW/eld

NEIL ABERCROMBIE  
GOVERNOR



DWIGHT TAKAMINE  
DIRECTOR

AUDREY HIDANO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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LATE TESTIMONY

February 21, 2012

The Honorable Clayton Hee, Chair  
Committee on Judiciary and Labor  
The State Senate  
State Capitol, Room 407  
Honolulu, Hawaii 96813

Dear Chair Hee:

Subject: S.B. 2071, S.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 S.B. 2071, S.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 S.B. 2071, S.D. 1.

Should you have any questions, please contact SFC Administrator Socrates Bratakos at 723-7151 or [sbratakos@honolulu.gov](mailto:sbratakos@honolulu.gov).

Sincerely,

A handwritten signature in cursive script that reads "Kenneth G. Silva".

KENNETH G. SILVA  
Chair

KGS/LR:cn