



HAWAI'I CIVIL RIGHTS COMMISSION

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

March 13, 2012
9:30 a.m.
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: S.B. No. 2071, S.D.2

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.2 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.2 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.2, and urges favorable consideration.

**THE NEEDS OF THE CITY AND COUNTY OF HONOLULU
AND THE PURPOSE OF 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.2 incorporates the agreed upon recommended changes. As agreed, the HCRC no longer has any opposition to the bill as amended.

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

Phone: (808) 586-8842 / Fax: (808) 586-9099

Email: dlir.director@hawaii.gov

March 12, 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: S.B. 2071, S.D. 2 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. 2, 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. 2

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Kenneth G. Silva".

KENNETH G. SILVA
Chair

KGS/LR:cn

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
850 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR
ROBIN CHUN-CARMICHAEL
ASSISTANT DIRECTOR

March 13, 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: Senate Bill 2071, SD2
Relating to Criminal History Record Checks for County Employees

The Department of Human Resources **strongly supports** Senate Bill 2071, SD2 and appreciates the committees on Human Services and Public Safety, Government Operations, and Military Affairs' efforts to strike a balance between public safety and civil rights concerns in SD2. The purpose of this measure 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 the employment suitability of prospective employees and employees. 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 Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
The House of Representatives
March 13, 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,



Noel T. Ono
Director