

# SB 2071

Measure Title: RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR COUNTY EMPLOYEES.

Report Title: Criminal History Record Checks for County Employees; City and County of Honolulu Package

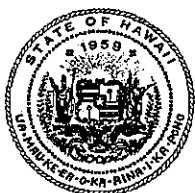
Description: Allows counties to conduct criminal history checks on prospective liquor commission employees, employees working with vulnerable adults or seniors, employees for fire, emergency medical services, and emergency management employees.

Companion:

Package: Honolulu

Current Referral: PGM/HMS, JDL

Introducer(s): TSUTSUI (BR)



# HAWAI'I CIVIL RIGHTS COMMISSION

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

February 9, 2012  
1:15 pm  
Conference room 016

To: The Honorable Suzanne Chun Oakland, Chair,  
and Members of the Senate Committee on Human Services

The Honorable Will Espero, Chair,  
and Members of the Senate Committee on Public Safety, Government  
Operations, and Military Affairs

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

Re: S.B. No. 2071

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 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).

The HCRC opposes S.B. No. 2071 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 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):

(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 S.B. NO. 2071 AS DRAFTED**

As drafted, the S.B. No. 2071 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): 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 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 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 have met, discussed and agreed that S.B. No. 2071 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 S.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), (32), (33), (34) and (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**

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February 3, 2012

The Honorable Suzanne Chun Oakland, Chair  
Committee on Human Services  
The State Senate  
State Capitol, Room 226  
Honolulu, Hawaii 96813

The Honorable Will Espero, Chair  
Committee on Public Safety, Government  
Operations, and Military Affairs  
The State Senate  
State Capitol, Room 231  
Honolulu, Hawaii 96813

Dear Chairs Chun Oakland and Espero:

Subject: S.B. 2071 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, 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 Honorable Suzanne Chun Oakland, Chair  
The Honorable Will Espero, Chair  
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The SFC and the HFD urge your committees' support on the passage of S.B. 2071.

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 black ink, appearing to read "Kenneth G. Silva". The signature is written in a cursive style with a large, sweeping initial "K".

KENNETH G. SILVA  
Chair

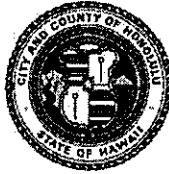
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DEPARTMENT OF INFORMATION TECHNOLOGY  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



GORDON J. BRUCE  
DIRECTOR & CIO

TESTIMONY  
of  
**GORDON J. BRUCE, DIRECTOR and CHIEF INFORMATION OFFICER**  
Department of Information Technology  
City and County of Honolulu  
before the  
**COMMITTEE ON HUMAN SERVICES**  
and  
**COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY  
AFFAIRS**  
on

Thursday, February 9, 2012  
1:15 p.m.  
State Capitol, Conference Room 016

In consideration of  
**SENATE BILL 2071 – RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR  
COUNTY EMPLOYEES.**

Chairs Oakland and Espero, Vice Chairs Ihara and Kidani, and Members of the Committee on Human Services, and Members of the Committee on Public Safety, Government Operations, and Military Affairs:

My name is Gordon J. Bruce, and as the Director of the Department of Information Technology and the Chief Information Officer for the City and County of Honolulu, I appreciate the benefits that can be derived in the passage of this legislation and am submitting testimony in support of SB 2071.

In 2004, Homeland Security Presidential Directive 12 (HSPD-12) was approved, requiring all federal employees and agencies to use a converged physical and logical identification badge (ID). In 2005, the City and County of Honolulu embarked on a program to provide a single, Federally-approved identification card to all of its employees. To date, we have issued approximately 9,000 ID cards that meet this standard. These cards that meet federal information processing standards (FIPS201) have set the stage for this issuing of Personal Identity Verification-Interoperable/First

The Honorable Suzanne Chun, Chair  
The Honorable Les Ihara, Vice Chair  
Committee on Human Services

The Honorable Will Espero, Chair  
The Honorable Michelle N. Kidani, Vice chair  
Committee on Public Safety, Government Operations, and Military Affairs

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Responder Authentication Credential (PIV-I/FRAC) credentials to first responders and those identified as support to first responders. PIV-I/FRAC are the equivalent State and County credential that meet the federal standard. Numerous states around the country have adopted or are adopting such a credential. A component that could be used to ensure that the credential is issued to the appropriate individual are background checks as proposed in this legislation.

These cards will be issued to not only provide physical access to facilities but logical access to various highly confidential computer systems resulting in enhanced cyber security. These cards, once issued, enable first responder agencies across state boundaries to confirm that individuals who support disasters are who they say they are and ensure that their access to disaster facilities is in the best interest of those in charge of managing the situation at hand.

Thank you for this opportunity to provide testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gordon J. Bruce", is written over a circular stamp or seal.

Gordon J. Bruce  
Director and Chief Information Officer