



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 2243, RELATING TO CRIMINAL HISTORY RECORD CHECKS.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, February 6, 2014

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Liane Moriyama, Administrator, Hawaii Criminal Justice Data Center

Chair Aquino and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to allow qualified entities that may be non-governmental agencies to request state and national fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care for children, vulnerable adults, or individuals with disabilities, and to receive the results directly.

The National Child Protection Act of 1993, Public Law No. 103-209, as amended, authorizes public, private, nonprofit, or for-profit entities to submit requests for fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care to children, vulnerable adults, or individuals with disabilities. However, an authorized government agency must receive the results and make the suitability determination, 42 U.S.C. § 5119A(b)(4). Other jurisdictions, such as Florida, Missouri, and Illinois among many, have implemented programs similar to that being proposed in this bill. These Volunteer and Employee Criminal History Service (VECHS) programs have been permitted to provide the information directly to a non-government agency when a waiver is received from the individual on whom the criminal history record check is being processed.

This bill would allow qualified entities such as youth sport associations, senior meal delivery programs, private rehabilitation programs, etc., who are not currently authorized by section 846-2.7, Hawaii Revised Statutes (HRS), to perform both state and national criminal history record checks on employees, applicants, and volunteers who directly contact these vulnerable populations in our community. Also, this bill would permit agencies currently authorized to conduct certain background

checks pursuant to section 846-2.7(b), HRS, to conduct these checks on volunteers under the proposed new subsection. This has long been an unfortunate loophole in non-criminal justice background checks and will result in improved care and protection of these sectors of our community.

By requiring qualified entities to obtain a waiver from each individual being processed, this bill would allow qualified entities to obtain the information directly and make their own suitability determination. The Federal Bureau of Investigation has no legal objection to the dissemination of criminal history record information with the consent of the individual, as the practice does not conflict with federal law.

The changes proposed in this bill will allow Hawaii's qualified entities, employers, and licensing agencies to make better and faster decisions in situations that may affect the safety and well-being of Hawaii's children, the elderly, and the disabled.

We respectfully ask the Committee to approve and pass this bill.

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR
BARBARA A. YAMASHITA
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February 6, 2014

MEMORANDUM

TO: The Honorable Henry J.C. Aquino, Chair
House Committee on Public Safety

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2243 – RELATING TO CRIMINAL HISTORY RECORD
CHECKS**

Hearing: Thursday, February 6, 2014; 10:00 a.m.
Conference Room 309, State Capitol

PURPOSE: The purpose of H.B. 2243 is to allow qualified entities to conduct state and national fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care for children, vulnerable adults, or the disabled, and to receive the results directly.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this Administration bill.

Section 346-152(a), Hawaii Revised Statutes (HRS), allows programs or homes that fall under one of the twelve exemptions to be exempt from licensure or registration with the DHS, and the Department does not conduct background checks for individuals operating or employed by these exempt programs, unless the program is providing care to a child receiving DHS child care subsidies.

Under H.B. 2243, however, any such program that is providing care for children and exempt from licensure under Section 346-152(a), HRS, may apply with the Department of the Attorney General to be a qualified entity to conduct and receive national and state fingerprint-based criminal history records directly from the Hawaii Criminal Justice Data Center.

The Department supports that qualified entities must register with the Department of the Attorney General and agree to comply with state and federal law. Those programs which are exempt from DHS licensure may then apply to be a qualified entity with the Department of the Attorney General and have direct access to national and state fingerprint-based criminal history records for their employees or volunteers to ensure the health and safety of children in their care.

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