
A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to allow qualified
2 entities that may be non-governmental agencies to request state
3 and national fingerprint-based criminal history record checks on
4 their applicants for employment, employees, and volunteers who
5 provide care for children, vulnerable adults, or individuals
6 with disabilities, and to receive the results directly.

7 Section 5119a of the National Child Protection Act of 1993,
8 Public Law No. 103-209, as amended, authorizes public, private,
9 nonprofit, or for-profit entities to submit requests for
10 fingerprint-based criminal history record checks on their
11 applicants, employees, and volunteers who provide care to
12 children, vulnerable adults, or individuals with disabilities.
13 Generally, an authorized government agency must receive the
14 results and make the suitability determination. However, other
15 jurisdictions have been permitted to provide the information
16 directly to a non-governmental agency upon receipt of a waiver
17 from the individual on whom the criminal history record check is
18 being run.



1 This Act will allow a qualified entity to receive national
2 and state fingerprint-based criminal history records directly
3 for those individuals who provide care or care placement
4 services for children, vulnerable adults, or individuals with
5 disabilities who provide a waiver to the Hawaii criminal justice
6 data center.

7 This Act amends the version of section 846-2.7, Hawaii
8 Revised Statutes, that will go into effect on July 1, 2014,
9 pursuant to Act 93, Session Laws of Hawaii 2012. It is intended
10 that this Act go into effect one day after Act 93 goes into
11 effect.

12 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§846-2.7 Criminal history record checks.** (a) The
15 agencies and other entities named in [~~subsection (b)~~]
16 subsections (b) and (c) may conduct state and national criminal
17 history record checks on the personnel identified in [~~subsection~~
18 ~~(b)~~], subsections (b) and (c), and participate in the rap back
19 program, for the purpose of determining suitability or fitness
20 for a permit, license, [~~or employment~~], employment, or volunteer
21 service; provided that the Hawaii criminal justice data center
22 may charge a reasonable fee for the criminal history record



1 checks performed. The agencies and other entities named in
 2 [~~subsection (b)~~] subsections (b) and (c) shall notify
 3 [~~applicants and employees~~] applicants, employees, and volunteers
 4 subject to a criminal history record check pursuant to this
 5 section that their fingerprints shall be retained by the Hawaii
 6 criminal justice data center and the Federal Bureau of
 7 Investigation[-] for all purposes and uses authorized for
 8 fingerprint submissions. Notification shall also be given to
 9 the [~~applicants and employees~~] applicants, employees, and
 10 volunteers subject to the rap back program. The criminal
 11 history record check shall include the submission of
 12 fingerprints to:

- 13 (1) The Federal Bureau of Investigation for a national
- 14 criminal history record check; and
- 15 (2) The Hawaii criminal justice data center for a state
- 16 criminal history record check that shall include
- 17 nonconviction data.

18 Except as otherwise provided in this section, criminal history
 19 record information shall be used exclusively for the stated
 20 purpose for which it was obtained[-] in accordance with section
 21 378-2.5.

22 (b) Criminal history record checks may be conducted by:



- 1 (1) The department of health or the department's designee
2 on operators of adult foster homes or developmental
3 disabilities domiciliary homes and their employees, as
4 provided by section 333F-22;
- 5 (2) The department of health or the department's designee
6 on prospective employees, persons seeking to serve as
7 providers, or subcontractors in positions that place
8 them in direct contact with clients when providing
9 non-witnessed direct mental health services as
10 provided by section 321-171.5;
- 11 (3) The department of health or the department's designee
12 on all applicants for licensure for, operators for,
13 prospective employees, and volunteers at one or more
14 of the following: skilled nursing facility,
15 intermediate care facility, adult residential care
16 home, expanded adult residential care home, assisted
17 living facility, home health agency, hospice, adult
18 day health center, special treatment facility,
19 therapeutic living program, intermediate care facility
20 for individuals with intellectual disabilities,
21 hospital, rural health center and rehabilitation
22 agency, and, in the case of any of the above



1 facilities operating in a private residence, on any
2 adult living in the facility other than the client as
3 provided by section 321-15.2;

4 (4) The department of education on employees, prospective
5 employees, and teacher trainees in any public school
6 in positions that necessitate close proximity to
7 children as provided by section 302A-601.5;

8 (5) The counties on employees and prospective employees
9 who may be in positions that place them in close
10 proximity to children in recreation or child care
11 programs and services;

12 (6) The county liquor commissions on applicants for liquor
13 licenses as provided by section 281-53.5;

14 (7) The county liquor commissions on employees and
15 prospective employees involved in liquor
16 administration, law enforcement, and liquor control
17 investigations;

18 (8) The department of human services on operators and
19 employees of child caring institutions, child placing
20 organizations, and foster boarding homes as provided
21 by section 346-17;



- 1 (9) The department of human services on prospective
2 adoptive parents as established under section 346-
3 19.7;
- 4 (10) The department of human services on applicants to
5 operate child care facilities, prospective employees
6 of the applicant, and new employees of the provider
7 after registration or licensure as provided by section
8 346-154;
- 9 (11) The department of human services on persons exempt
10 pursuant to section 346-152 to be eligible to provide
11 child care and receive child care subsidies as
12 provided by section 346-152.5;
- 13 (12) The department of health on operators and employees of
14 home and community-based case management agencies and
15 operators and other adults, except for adults in care,
16 residing in foster family homes as provided by section
17 321-484;
- 18 (13) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;
- 21 (14) The department of human services on employees,
22 prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place
2 them in close proximity to youth when providing
3 services on behalf of the office or the Hawaii youth
4 correctional facility as provided by section 352D-4.3;

5 (15) The judiciary on employees and applicants at detention
6 and shelter facilities as provided by section 571-34;

7 (16) The department of public safety on employees and
8 prospective employees who are directly involved with
9 the treatment and care of persons committed to a
10 correctional facility or who possess police powers
11 including the power of arrest as provided by section
12 353C-5;

13 (17) The board of private detectives and guards on
14 applicants for private detective or private guard
15 licensure as provided by section 463-9;

16 (18) Private schools and designated organizations on
17 employees and prospective employees who may be in
18 positions that necessitate close proximity to
19 children; provided that private schools and designated
20 organizations receive only indications of the states
21 from which the national criminal history record
22 information was provided pursuant to section 302C-1;



- 1 (19) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section 302A-
4 601.5;
- 5 (20) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, vulnerable adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;
- 13 (21) The department of health on licensed adult day care
14 center operators, employees, new employees,
15 subcontracted service providers and their employees,
16 and adult volunteers as provided by section 321-496;
- 17 (22) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult and
20 community care services branch, as provided by section
21 346-97;



1 (23) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;

5 (24) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and community-
8 based services under section 1915(c) of the Social
9 Security Act, title 42 United States Code section
10 1396n(c), or under any other applicable section or
11 sections of the Social Security Act for the purposes
12 of providing home and community-based services, as
13 provided by section 346-97;

14 (25) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;

19 (26) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a
21 nondepository financial services loan company as
22 provided by section 412:3-301;



1 (27) The department of commerce and consumer affairs on the
2 original chartering applicants and proposed executive
3 officers of a credit union as provided by section
4 412:10-103;

5 (28) The department of commerce and consumer affairs on:
6 (A) Each principal of every non-corporate applicant
7 for a money transmitter license; and
8 (B) The executive officers, key shareholders, and
9 managers in charge of a money transmitter's
10 activities of every corporate applicant for a
11 money transmitter license,
12 as provided by sections 489D-9 and 489D-15;

13 (29) The department of commerce and consumer affairs on
14 applicants for licensure and persons licensed under
15 title 24;

16 (30) The Hawaii health systems corporation on:
17 (A) Employees;
18 (B) Applicants seeking employment;
19 (C) Current or prospective members of the corporation
20 board or regional system board; or
21 (D) Current or prospective volunteers, providers, or
22 contractors,



- 1 in any of the corporation's health facilities as
2 provided by section 323F-5.5;
- 3 (31) The department of commerce and consumer affairs on:
4 (A) An applicant for a mortgage loan originator
5 license; and
6 (B) Each control person, executive officer, director,
7 general partner, and manager of an applicant for
8 a mortgage loan originator company license,
9 as provided by chapter 454F;
- 10 (32) The state public charter school commission or public
11 charter schools on employees, teacher trainees,
12 prospective employees, and prospective teacher
13 trainees in any public charter school for any position
14 that places them in close proximity to children, as
15 provided in section 302D-33;
- 16 (33) The counties on prospective employees who work with
17 vulnerable adults or senior citizens in community-
18 based programs;
- 19 (34) The counties on prospective employees for fire
20 department positions which involve contact with
21 children or dependent adults;

1 (35) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or dependent adults;

4 (36) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable and
10 disabled citizens during emergencies or crises; and

11 (37) Any other organization, entity, or the State, its
12 branches, political subdivisions, or agencies as may
13 be authorized by state law.

14 (c) A qualified entity may conduct a criminal history
15 record check on applicants for licensure or employment,
16 employees, and volunteers who provide care to children,
17 vulnerable adults, or individuals with disabilities. A
18 qualified entity shall comply with the following requirements:

19 (1) A qualified entity shall register with the Hawaii
20 criminal justice data center before submitting a
21 request for a criminal history record check under this
22 subsection. As a part of the registration, the



1 qualified entity shall agree to comply with state and
2 federal law by signing an agreement approved by the
3 attorney general, or the attorney general's duly
4 authorized representative within the department of the
5 attorney general;

6 (2) A qualified entity shall verify that the applicant,
7 employee, or volunteer for whom a request is being
8 made, will be or is physically working or volunteering
9 in the State;

10 (3) A qualified entity shall submit to the Hawaii criminal
11 justice data center a request for a criminal history
12 record check on an applicant, employee, or volunteer
13 with a complete set of electronic fingerprints and a
14 signed waiver allowing the release of state and
15 national criminal history record information to the
16 qualified entity. Each waiver shall be voluntary by
17 the applicant, employee, or volunteer and conform to
18 the requirements established under the National Child
19 Protection Act of 1993, Public Law No. 103-209, as
20 amended;

21 (4) The Hawaii criminal justice data center shall provide
22 directly to the qualified entity the state and



1 national criminal history records to use only for the
2 purpose of screening applicants, employees, or
3 volunteers, as authorized by the written waiver
4 required for submission of a request;

5 (5) The determination whether the criminal history record
6 shows that the applicant, employee, or volunteer has
7 been convicted of or is under pending indictment for
8 any crime that bears upon the fitness of the
9 applicant, employee, or volunteer to have
10 responsibility for the safety and well-being of
11 children, vulnerable adults, or individuals with
12 disabilities shall be made solely by the qualified
13 entity. This subsection does not require the Hawaii
14 criminal justice data center to make such a
15 determination on behalf of any qualified entity;

16 (6) The qualified entity shall notify the applicant,
17 employee, or volunteer in writing of the person's
18 right to obtain a copy of any background screening
19 report, including the criminal history records
20 obtained under this subsection, if any, contained in
21 the report, and of the person's right to challenge the
22 accuracy and completeness of any information contained



1 in any such report and to obtain a determination as to
2 the validity of such challenge before a final
3 determination regarding the person is made by the
4 qualified entity reviewing the background screening,
5 including the criminal history record check, if any;

6 (7) A qualified entity shall allow the periodic audit by
7 the Hawaii criminal justice data center to ensure
8 compliance with applicable federal law and this
9 subsection; and

10 (8) The State, any political subdivision of the State, or
11 any agency, officer, or employee of the State or a
12 political subdivision shall not be liable for damages
13 for providing the information requested under this
14 subsection.

15 As used in this subsection, unless a different meaning
16 plainly is required:

17 "Care" means the provision of care, treatment, education,
18 training, instruction, supervision, or recreation to children,
19 vulnerable adults, or individuals with disabilities.

20 "Qualified entity" means a business or organization,
21 whether public, private, operated for profit, operated not for
22 profit, or voluntary, which provides care or care placement



1 services, including a business, organization, or agency that
2 licenses or certifies others to provide care or care placement
3 services that are not covered under subsection (b), and
4 including those agencies described in subsection (b) but only to
5 the extent that they seek criminal history record checks on
6 volunteers.

7 ~~[(e)]~~ (d) The ~~[applicant or employee]~~ applicant, employee,
8 or volunteer subject to a criminal history record check shall
9 provide to the requesting agency~~[-]~~ or qualified entity:

- 10 (1) Consent to obtain the ~~[applicant's or]~~ applicant's,
11 employee's, or volunteer's fingerprints, conduct the
12 criminal history record check, and participate in the
13 rap back program;
- 14 (2) Identifying information required by the Federal Bureau
15 of Investigation, such as the ~~[applicant's or]~~
16 applicant's, employee's, or volunteer's name, date of
17 birth, height, weight, eye color, hair color, gender,
18 race, and place of birth; and
- 19 (3) A statement indicating whether the ~~[applicant or]~~
20 applicant, employee, or volunteer has ever been
21 convicted of a crime~~[-]~~ and, if so, the particulars of
22 the conviction.



1 ~~[(d)]~~ (e) Fingerprints and information and records
2 relating to the fingerprints acquired by the Hawaii criminal
3 justice data center under this section shall be retained and
4 maintained in an appropriate form and in an appropriate office
5 in the custody and control of the Hawaii criminal justice data
6 center, and shall at all times be kept separate from any similar
7 records relating to the identification of criminals. The
8 information shall be available only to authorized ~~[entities and]~~
9 entities, agencies, and qualified entities as described in
10 ~~[subsection (b)]~~ subsections (b) and (c) and such other persons
11 or agencies as the attorney general shall authorize, subject to
12 any restriction that the attorney general shall prescribe. The
13 Hawaii criminal justice data center may dispose of any record of
14 fingerprints and information and records relating to the
15 fingerprints without regard to chapter 94, whenever, in the
16 attorney general's discretion, retention of the record is no
17 longer required or practicable. No officer or employee of the
18 Hawaii criminal justice data center shall disclose any records
19 of fingerprints or information and records relating to the
20 fingerprints acquired in the performance of any of the officer's
21 or employee's duties under this section to any person not
22 authorized to receive the same pursuant to this section or



1 pursuant to the orders of the attorney general. No person
2 acquiring from the records of fingerprints or information and
3 records relating to the fingerprints any information concerning
4 any individual shall disclose the information to any person not
5 so authorized to receive the same."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 2, 2014.



Report Title:

Hawaii Criminal Justice Data Center; Criminal History Checks

Description:

Allows 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 individuals with disabilities, and to receive the results directly. Effective July 2, 2014.
(SD1)

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