

JAN 23 2014

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**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, employees, and volunteers who provide care for  
5 children, vulnerable adults, or the disabled, and to receive the  
6 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-government agency upon receipt of a waiver  
17 from the individual of 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 this vulnerable population, who provide a waiver to  
5 the Hawaii criminal justice data center.

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

8           "**§846-2.7 Criminal history record checks.** (a) The  
9 agencies and other entities named in [~~subsection~~] subsections  
10 (b) and (c) may conduct state and national criminal history  
11 record checks on the personnel identified in [~~subsection~~]  
12 subsections (b) [✓] and (c), and participate in the rap back  
13 program, for the purpose of determining suitability or fitness  
14 for a permit, license, [~~or~~] employment [✓], or volunteer service;  
15 provided that the Hawaii criminal justice data center may charge  
16 a reasonable fee for the criminal history record checks  
17 performed. The agencies and other entities named in  
18 [~~subsection~~] subsections (b) and (c) shall notify applicants  
19 [~~and~~], employees, and volunteers subject to a criminal history  
20 record check pursuant to this section that their fingerprints  
21 shall be retained by the Hawaii criminal justice data center and  
22 the Federal Bureau of Investigation[~~-~~] for all purposes and uses  
23 authorized for fingerprint submissions. Notification shall also

1 be given to the applicants [~~and~~], employees, and volunteers  
2 subject to the rap back program. The criminal history record  
3 check shall include the submission of fingerprints to:

4 (1) The Federal Bureau of Investigation for a national  
5 criminal history record check; and

6 (2) The Hawaii criminal justice data center for a state  
7 criminal history record check that shall include  
8 nonconviction data.

9 Except as otherwise provided in this section, criminal history  
10 record information shall be used exclusively for the stated  
11 purpose for which it was obtained[~~-~~] in accordance with section  
12 378-2.5.

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

14 (1) The department of health or the department's designee  
15 on operators of adult foster homes or developmental  
16 disabilities domiciliary homes and their employees, as  
17 provided by section 333F-22;

18 (2) The department of health or the department's designee  
19 on prospective employees, persons seeking to serve as  
20 providers, or subcontractors in positions that place  
21 them in direct contact with clients when providing  
22 non-witnessed direct mental health services as  
23 provided by section 321-171.5;

- 1           (3) The department of health or the department's designee  
2           on all applicants for licensure for, operators for,  
3           prospective employees, and volunteers at one or more  
4           of the following: skilled nursing facility,  
5           intermediate care facility, adult residential care  
6           home, expanded adult residential care home, assisted  
7           living facility, home health agency, hospice, adult  
8           day health center, special treatment facility,  
9           therapeutic living program, intermediate care facility  
10          for individuals with intellectual disabilities,  
11          hospital, rural health center and rehabilitation  
12          agency, and, in the case of any of the above  
13          facilities operating in a private residence, on any  
14          adult living in the facility other than the client as  
15          provided by section 321-15.2;
- 16          (4) The department of education on employees, prospective  
17          employees, and teacher trainees in any public school  
18          in positions that necessitate close proximity to  
19          children as provided by section 302A-601.5;
- 20          (5) The counties on employees and prospective employees  
21          who may be in positions that place them in close  
22          proximity to children in recreation or child care  
23          programs and services;

- 1           (6) The county liquor commissions on applicants for liquor  
2           licenses as provided by section 281-53.5;
- 3           (7) The county liquor commissions on employees and  
4           prospective employees involved in liquor  
5           administration, law enforcement, and liquor control  
6           investigations;
- 7           (8) The department of human services on operators and  
8           employees of child caring institutions, child placing  
9           organizations, and foster boarding homes as provided  
10          by section 346-17;
- 11          (9) The department of human services on prospective  
12          adoptive parents as established under section 346-  
13          19.7;
- 14          (10) The department of human services on applicants to  
15          operate child care facilities, prospective employees  
16          of the applicant, and new employees of the provider  
17          after registration or licensure as provided by section  
18          346-154;
- 19          (11) The department of human services on persons exempt  
20          pursuant to section 346-152 to be eligible to provide  
21          child care and receive child care subsidies as  
22          provided by section 346-152.5;

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- 1           (12) The department of health on operators and employees of  
2                   home and community-based case management agencies and  
3                   operators and other adults, except for adults in care,  
4                   residing in foster family homes as provided by section  
5                   321-484;
- 6           (13) The department of human services on staff members of  
7                   the Hawaii youth correctional facility as provided by  
8                   section 352-5.5;
- 9           (14) The department of human services on employees,  
10                   prospective employees, and volunteers of contracted  
11                   providers and subcontractors in positions that place  
12                   them in close proximity to youth when providing  
13                   services on behalf of the office or the Hawaii youth  
14                   correctional facility as provided by section 352D-4.3;
- 15           (15) The judiciary on employees and applicants at detention  
16                   and shelter facilities as provided by section 571-34;
- 17           (16) The department of public safety on employees and  
18                   prospective employees who are directly involved with  
19                   the treatment and care of persons committed to a  
20                   correctional facility or who possess police powers  
21                   including the power of arrest as provided by section  
22                   353C-5;

- 1           (17) The board of private detectives and guards on  
2                    applicants for private detective or private guard  
3                    licensure as provided by section 463-9;
- 4           (18) Private schools and designated organizations on  
5                    employees and prospective employees who may be in  
6                    positions that necessitate close proximity to  
7                    children; provided that private schools and designated  
8                    organizations receive only indications of the states  
9                    from which the national criminal history record  
10                  information was provided pursuant to section 302C-1;
- 11          (19) The public library system on employees and prospective  
12                  employees whose positions place them in close  
13                  proximity to children as provided by section 302A-  
14                  601.5;
- 15          (20) The State or any of its branches, political  
16                  subdivisions, or agencies on applicants and employees  
17                  holding a position that has the same type of contact  
18                  with children, vulnerable adults, or persons committed  
19                  to a correctional facility as other public employees  
20                  who hold positions that are authorized by law to  
21                  require criminal history record checks as a condition  
22                  of employment as provided by section 78-2.7;

- 1           (21) The department of health on licensed adult day care  
2           center operators, employees, new employees,  
3           subcontracted service providers and their employees,  
4           and adult volunteers as provided by section 321-496;
- 5           (22) The department of human services on purchase of  
6           service contracted and subcontracted service providers  
7           and their employees serving clients of the adult and  
8           community care services branch, as provided by section  
9           346-97;
- 10          (23) The department of human services on foster grandparent  
11          program, senior companion program, and respite  
12          companion program participants as provided by section  
13          346-97;
- 14          (24) The department of human services on contracted and  
15          subcontracted service providers and their current and  
16          prospective employees that provide home and community-  
17          based services under Section 1915(c) of the Social  
18          Security Act, Title 42 United States Code Section  
19          1396n(c), or under any other applicable section or  
20          sections of the Social Security Act for the purposes  
21          of providing home and community-based services, as  
22          provided by section 346-97;



- 1           (25) The department of commerce and consumer affairs on  
2                   proposed directors and executive officers of a bank,  
3                   savings bank, savings and loan association, trust  
4                   company, and depository financial services loan  
5                   company as provided by section 412:3-201;
- 6           (26) The department of commerce and consumer affairs on  
7                   proposed directors and executive officers of a  
8                   nondepository financial services loan company as  
9                   provided by section 412:3-301;
- 10          (27) The department of commerce and consumer affairs on the  
11                   original chartering applicants and proposed executive  
12                   officers of a credit union as provided by section  
13                   412:10-103;
- 14          (28) The department of commerce and consumer affairs on:  
15                   (A) Each principal of every non-corporate applicant  
16                         for a money transmitter license; and  
17                   (B) The executive officers, key shareholders, and  
18                         managers in charge of a money transmitter's  
19                         activities of every corporate applicant for a  
20                         money transmitter license,  
21                   as provided by sections 489D-9 and 489D-15;

- 1           (29) The department of commerce and consumer affairs on  
2                    applicants for licensure and persons licensed under  
3                    title 24;
- 4           (30) The Hawaii health systems corporation on:  
5                    (A) Employees;  
6                    (B) Applicants seeking employment;  
7                    (C) Current or prospective members of the corporation  
8                    board or regional system board; or  
9                    (D) Current or prospective volunteers, providers, or  
10                    contractors,  
11                    in any of the corporation's health facilities as  
12                    provided by section 323F-5.5;
- 13          (31) The department of commerce and consumer affairs on:  
14                    (A) An applicant for a mortgage loan originator  
15                    license; and  
16                    (B) Each control person, executive officer, director,  
17                    general partner, and manager of an applicant for  
18                    a mortgage loan originator company license,  
19                    as provided by chapter 454F; and
- 20          (32) The state public charter school commission or public  
21                    charter schools on employees, teacher trainees,  
22                    prospective employees, and prospective teacher  
23                    trainees in any public charter school for any position

1 that places them in close proximity to children, as  
2 provided in section 302D-33;

3 (33) The counties on prospective employees who work with  
4 vulnerable adults or senior citizens in community-  
5 based programs;

6 (34) The counties on prospective employees for fire  
7 department positions which involve contact with  
8 children or dependent adults;

9 (35) The counties on prospective employees for emergency  
10 medical services positions which involve contact with  
11 children or dependent adults;

12 (36) The counties on prospective employees for emergency  
13 management positions and community volunteers whose  
14 responsibilities involve planning and executing  
15 homeland security measures including viewing,  
16 handling, and engaging in law enforcement or  
17 classified meetings and assisting vulnerable and  
18 disabled citizens during emergencies or crisis; and

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

22 (c) (1) In this subsection, unless a different meaning  
23 plainly is required:



1           this subsection. As a part of the registration,  
2           the qualified entity must agree to comply with  
3           state and federal law and must so indicate by  
4           signing an agreement approved by the attorney  
5           general, or the attorney general's duly  
6           authorized representative within the department  
7           of the attorney general;

8           (B) A qualified entity shall verify that the  
9           applicant, employee, or volunteer for whom a  
10          request is being made, will be or is physically  
11          working or volunteering in the State of Hawaii;

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

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1           (D) The Hawaii criminal justice data center shall  
2           provide directly to the qualified entity the  
3           state and national criminal history records to  
4           use only for the purpose of screening applicants,  
5           employees, or volunteers, as authorized by the  
6           written waiver required for submission of a  
7           request;

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

20          (F) The qualified entity shall notify the person in  
21          writing of the person's right to obtain a copy of  
22          any background screening report, including the  
23          criminal history records obtained under this

1 subsection, if any, contained in the report, and  
2 of the person's right to challenge the accuracy  
3 and completeness of any information contained in  
4 any such report and to obtain a determination as  
5 to the validity of such challenge before a final  
6 determination regarding the person is made by the  
7 qualified entity reviewing the background  
8 screening, including the criminal history record  
9 check, if any;

10 (G) A qualified entity shall allow the periodic audit  
11 by the Hawaii criminal justice data center to  
12 ensure compliance with applicable federal law and  
13 this subsection; and

14 (H) The State, any political subdivision of the  
15 State, or any agency, officer, or employee of the  
16 State or a political subdivision is and shall not  
17 be liable for damages for providing the  
18 information requested under this subsection.

19 ~~[(e)]~~ (d) The applicant ~~[e]~~, employee, or volunteer  
20 subject to a criminal history record check shall provide to the  
21 requesting agency~~[+]~~ or qualified entity:

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

13 ~~[(d)]~~ (e) Fingerprints and information and records  
14 relating to the fingerprints acquired by the Hawaii criminal  
15 justice data center under this section shall be retained and  
16 maintained in an appropriate form and in an appropriate office  
17 in the custody and control of the Hawaii criminal justice data  
18 center, and shall at all times be kept separate from any similar  
19 records relating to the identification of criminals. The  
20 information shall be available only to authorized entities  
21 ~~[and]~~, agencies, and qualified entities as described in  
22 ~~[subsection]~~ subsections (b) and (c) and such other persons or  
23 agencies as the attorney general shall authorize, subject to any




1 restriction that the attorney general shall prescribe. The  
2 Hawaii criminal justice data center may dispose of any record of  
3 fingerprints and information and records relating to the  
4 fingerprints without regard to chapter 94, whenever, in the  
5 attorney general's discretion, retention of the record is no  
6 longer required or practicable. No officer or employee of the  
7 Hawaii criminal justice data center shall disclose any records  
8 of fingerprints or information and records relating to the  
9 fingerprints acquired in the performance of any of the officer's  
10 or employee's duties under this section to any person not  
11 authorized to receive the same pursuant to this section or  
12 pursuant to the orders of the attorney general. No person  
13 acquiring from the records of fingerprints or information and  
14 records relating to the fingerprints any information concerning  
15 any individual shall disclose the information to any person not  
16 so authorized to receive the same."

17 SECTION 3. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act, upon its approval, shall take effect  
20 on July 2, 2014.

21

22

INTRODUCED BY: 

23

BY REQUEST

S .B. NO. 2792

**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 the disabled, and to receive the results directly.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS.

PURPOSE: 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, the elderly, or the disabled, and to receive the results directly.

MEANS: Amend section 846-2.7, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 5119a of the National Child Protection Act (NCPA), Public Law No. 103-209, as amended, authorizes public, private, nonprofit, or for-profit entities to submit fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care for children, vulnerable adults, or individuals with disabilities. However, an authorized government agency must receive the results and make the suitability determination.

Under NCPA, an authorized government agency receiving the criminal history record information on behalf of a qualified entity would receive Hawaii arrest and conviction information only if that information had been sent to the Federal Bureau of Investigation (FBI). However, records at the FBI do not always have all arrests or court dispositions from the states. A qualified entity would need to be authorized by statute to conduct state fingerprint-based criminal history record checks and receive Hawaii's full criminal history record information on a more timely basis.

This bill would allow qualified entities who are not currently authorized by section 846-2.7 to perform state and national criminal history

record checks on not only employees, but also on applicants and volunteers who have direct contact with these very vulnerable populations for a more thorough and complete background check. It also allows agencies authorized to conduct certain background checks pursuant to section 846-2.7(b) to be considered as qualified entities to conduct criminal history record checks on volunteers under the proposed new subsection. By requiring qualified entities to obtain an executed consent form, or waiver from each individual being processed, this bill would also allow them to obtain the information directly and make its own suitability determination. The FBI has no legal objection to the dissemination of criminal history record information at the consent of the individual, as the practice does not conflict with federal law.

As provided in section 846-10.5, HRS, fees for these services shall apply.

Impact on the public: The public will directly benefit from this bill because more complete and up-to-date criminal history record information will be available to any qualifying organization that engages individuals for the care of children, the elderly, and the disabled. The qualified entity can also do this record check prior to using an individual's services. This will result in improved care and protection of these sectors of our community.

Impact on the department and other agencies: There will be minimal impact to the Hawaii Criminal Justice Data Center because procedures are already in place to receive fingerprints, conduct criminal history record checks, and send search results back to the requesting entity electronically.

GENERAL FUND: None.  
 OTHER FUNDS: None.  
 PPBS PROGRAM DESIGNATION: ATG 231.

OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

July 2, 2014 (one day after amendments made by section 6 of Act 93, Session Laws of Hawaii 2012, take effect on July 1, 2014).