
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 individuals with disabilities,
6 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-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



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

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

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

10 Except as otherwise provided in this section, criminal history
11 record information shall be used exclusively for the stated
12 purpose for which it was obtained[~~-~~] in accordance with section
13 378-2.5.

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

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

19 (2) The department of health or the department's designee
20 on prospective employees, persons seeking to serve as
21 providers, or subcontractors in positions that place
22 them in direct contact with clients when providing



1 non-witnessed direct mental health services as
2 provided by section 321-171.5;

3 (3) The department of health or the department's designee
4 on all applicants for licensure for, operators for,
5 prospective employees, and volunteers at one or more
6 of the following: skilled nursing facility,
7 intermediate care facility, adult residential care
8 home, expanded adult residential care home, assisted
9 living facility, home health agency, hospice, adult
10 day health center, special treatment facility,
11 therapeutic living program, intermediate care facility
12 for individuals with intellectual disabilities,
13 hospital, rural health center and rehabilitation
14 agency, and, in the case of any of the above
15 facilities operating in a private residence, on any
16 adult living in the facility other than the client as
17 provided by section 321-15.2;

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



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



- 1 (11) The department of human services on persons exempt
2 pursuant to section 346-152 to be eligible to provide
3 child care and receive child care subsidies as
4 provided by section 346-152.5;
- 5 (12) The department of health on operators and employees of
6 home and community-based case management agencies and
7 operators and other adults, except for adults in care,
8 residing in foster family homes as provided by section
9 321-484;
- 10 (13) The department of human services on staff members of
11 the Hawaii youth correctional facility as provided by
12 section 352-5.5;
- 13 (14) The department of human services on employees,
14 prospective employees, and volunteers of contracted
15 providers and subcontractors in positions that place
16 them in close proximity to youth when providing
17 services on behalf of the office or the Hawaii youth
18 correctional facility as provided by section 352D-4.3;
- 19 (15) The judiciary on employees and applicants at detention
20 and shelter facilities as provided by section 571-34;
- 21 (16) The department of public safety on employees and
22 prospective employees who are directly involved with



1 the treatment and care of persons committed to a
2 correctional facility or who possess police powers
3 including the power of arrest as provided by section
4 353C-5;

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

8 (18) Private schools and designated organizations on
9 employees and prospective employees who may be in
10 positions that necessitate close proximity to
11 children; provided that private schools and designated
12 organizations receive only indications of the states
13 from which the national criminal history record
14 information was provided pursuant to section 302C-1;

15 (19) The public library system on employees and prospective
16 employees whose positions place them in close
17 proximity to children as provided by section
18 302A-601.5;

19 (20) The State or any of its branches, political
20 subdivisions, or agencies on applicants and employees
21 holding a position that has the same type of contact
22 with children, vulnerable adults, or persons committed



1 to a correctional facility as other public employees
2 who hold positions that are authorized by law to
3 require criminal history record checks as a condition
4 of employment as provided by section 78-2.7;

5 (21) The department of health on licensed adult day care
6 center operators, employees, new employees,
7 subcontracted service providers and their employees,
8 and adult volunteers as provided by section 321-496;

9 (22) The department of human services on purchase of
10 service contracted and subcontracted service providers
11 and their employees serving clients of the adult and
12 community care services branch, as provided by section
13 346-97;

14 (23) The department of human services on foster grandparent
15 program, senior companion program, and respite
16 companion program participants as provided by section
17 346-97;

18 (24) The department of human services on contracted and
19 subcontracted service providers and their current and
20 prospective employees that provide home and community-
21 based services under Section 1915(c) of the Social
22 Security Act, Title 42 United States Code Section



1 1396n(c), or under any other applicable section or
2 sections of the Social Security Act for the purposes
3 of providing home and community-based services, as
4 provided by section 346-97;

5 (25) The department of commerce and consumer affairs on
6 proposed directors and executive officers of a bank,
7 savings bank, savings and loan association, trust
8 company, and depository financial services loan
9 company as provided by section 412:3-201;

10 (26) The department of commerce and consumer affairs on
11 proposed directors and executive officers of a
12 nondepository financial services loan company as
13 provided by section 412:3-301;

14 (27) The department of commerce and consumer affairs on the
15 original chartering applicants and proposed executive
16 officers of a credit union as provided by section
17 412:10-103;

18 (28) The department of commerce and consumer affairs on:
19 (A) Each principal of every non-corporate applicant
20 for a money transmitter license; and
21 (B) The executive officers, key shareholders, and
22 managers in charge of a money transmitter's



1 activities of every corporate applicant for a
2 money transmitter license,

3 as provided by sections 489D-9 and 489D-15;

4 (29) The department of commerce and consumer affairs on
5 applicants for licensure and persons licensed under
6 title 24;

7 (30) The Hawaii health systems corporation on:

8 (A) Employees;

9 (B) Applicants seeking employment;

10 (C) Current or prospective members of the corporation
11 board or regional system board; or

12 (D) Current or prospective volunteers, providers, or
13 contractors,

14 in any of the corporation's health facilities as
15 provided by section 323F-5.5;

16 (31) The department of commerce and consumer affairs on:

17 (A) An applicant for a mortgage loan originator
18 license; and

19 (B) Each control person, executive officer, director,
20 general partner, and manager of an applicant for
21 a mortgage loan originator company license,

22 as provided by chapter 454F;



- 1 (32) The state public charter school commission or public
2 charter schools on employees, teacher trainees,
3 prospective employees, and prospective teacher
4 trainees in any public charter school for any position
5 that places them in close proximity to children, as
6 provided in section 302D-33;
- 7 (33) The counties on prospective employees who work with
8 vulnerable adults or senior citizens in community-
9 based programs;
- 10 (34) The counties on prospective employees for fire
11 department positions which involve contact with
12 children or dependent adults;
- 13 (35) The counties on prospective employees for emergency
14 medical services positions which involve contact with
15 children or dependent adults;
- 16 (36) The counties on prospective employees for emergency
17 management positions and community volunteers whose
18 responsibilities involve planning and executing
19 homeland security measures including viewing,
20 handling, and engaging in law enforcement or
21 classified meetings and assisting vulnerable and
22 disabled citizens during emergencies or crisis; and



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

4 (c) In this subsection, unless a different meaning plainly
5 is required:

6 "Care" means the provision of care, treatment, education,
7 training, instruction, supervision, or recreation to children,
8 vulnerable adults, or individuals with disabilities.

9 "Qualified entity" means a business or organization,
10 whether public, private, operated for profit, operated not for
11 profit, or voluntary, which provides care or care placement
12 services, including a business or organization that licenses or
13 certifies others to provide care or care placement services, but
14 not covered under subsection (b), and those agencies described
15 in subsection (b) but only to the extent that they seek criminal
16 history record checks on volunteers.

17 A qualified entity may conduct a criminal history record
18 check on applicants, employees, and volunteers who provide care
19 to children, vulnerable adults, or individuals with
20 disabilities. A qualified entity shall comply with the
21 following requirements:



- 1 (1) Register with the Hawaii criminal justice data center
2 before submitting a request for a criminal history
3 record check under this subsection. As a part of the
4 registration, the qualified entity shall agree to
5 comply with state and federal law and shall so
6 indicate by signing an agreement approved by the
7 attorney general, or the attorney general's duly
8 authorized representative within the department of the
9 attorney general;
- 10 (2) Verify that the applicant, employee, or volunteer for
11 whom a request is being made will be or is physically
12 working or volunteering in the State;
- 13 (3) Submit to the Hawaii criminal justice data center a
14 request for a criminal history record check on an
15 applicant, employee, or volunteer with a complete set
16 of electronic fingerprints and a signed waiver
17 allowing the release of state and national criminal
18 history record information to the qualified entity.
19 Each such request shall be voluntary by the applicant,
20 employee, or volunteer and conform to the requirements
21 established under the National Child Protection Act of
22 1993, Public Law No. 103-209, as amended;



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

13 (5) Allow the periodic audit by the Hawaii criminal
14 justice data center to ensure compliance with
15 applicable federal law and this subsection.

16 The Hawaii criminal justice data center shall provide
17 directly to the qualified entity the state and national criminal
18 history records to use only for the purpose of screening
19 applicants, employees, or volunteers, as authorized by the
20 written waiver required for submission of a request.

21 The determination whether the criminal history record shows
22 that the applicant, employee, or volunteer has been convicted of



1 or is under pending indictment for any crime that bears upon the
2 fitness of the applicant, employee, or volunteer to have
3 responsibility for the safety and well-being of children,
4 vulnerable adults, or individuals with disabilities shall be
5 made solely by the qualified entity. This subsection does not
6 require the Hawaii criminal justice data center to make such a
7 determination on behalf of any qualified entity.

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

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

15 (1) Consent to obtain the applicant's [~~e~~], employee's, or
16 volunteer's fingerprints, conduct the criminal history
17 record check, and participate in the rap back program;

18 (2) Identifying information required by the Federal Bureau
19 of Investigation, such as the applicant's [~~e~~],
20 employee's, or volunteer's name, date of birth,
21 height, weight, eye color, hair color, gender, race,
22 and place of birth; and



1 (3) A statement indicating whether the applicant [~~or~~],
2 employee, or volunteer has ever been convicted of a
3 crime[-] and, if so, the particulars of the
4 conviction.

5 [~~(d)~~] (e) Fingerprints and information and records
6 relating to the fingerprints acquired by the Hawaii criminal
7 justice data center under this section shall be retained and
8 maintained in an appropriate form and in an appropriate office
9 in the custody and control of the Hawaii criminal justice data
10 center, and shall at all times be kept separate from any similar
11 records relating to the identification of criminals. The
12 information shall be available only to authorized entities
13 [~~and~~], agencies, and qualified entities as described in
14 [~~subsection~~] subsections (b) and (c) and such other persons or
15 agencies as the attorney general shall authorize, subject to any
16 restriction that the attorney general shall prescribe. The
17 Hawaii criminal justice data center may dispose of any record of
18 fingerprints and information and records relating to the
19 fingerprints without regard to chapter 94, whenever, in the
20 attorney general's discretion, retention of the record is no
21 longer required or practicable. No officer or employee of the
22 Hawaii criminal justice data center shall disclose any records



1 of fingerprints or information and records relating to the
2 fingerprints acquired in the performance of any of the officer's
3 or employee's duties under this section to any person not
4 authorized to receive the same pursuant to this section or
5 pursuant to the orders of the attorney general. No person
6 acquiring from the records of fingerprints or information and
7 records relating to the fingerprints any information concerning
8 any individual shall disclose the information to any person not
9 so authorized to receive the same."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act, upon its approval, shall take effect
13 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. Takes effect 7/2/2014.
(SD1)

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