

JAN 27 2016

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# A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORDS CHECKS UNDER THE CHILD  
PROTECTIVE ACT.

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

1           SECTION 1. The purpose of this Act is to amend the Child  
2 Protective Act, chapter 587A, Hawaii Revised Statutes, to allow  
3 the department of human services to conduct initial and periodic  
4 criminal history records checks of alleged perpetrators of harm  
5 of child abuse and/or neglect, and all individuals who may  
6 reside in the same household with the alleged child victim, to  
7 better identify and address immediate and potential safety and  
8 risk factors.

9           SECTION 2. Chapter 587A, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12           "§587A- Authority to conduct criminal history records  
13 checks without consent. The department is authorized to conduct  
14 criminal history checks, without consent, of an alleged  
15 perpetrator of harm or threat of harm and all adult household  
16 members to ensure the safety of the child."

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SECTION 3. Section 587A-11, Hawaii Revised Statutes, is amended to read as follows:

" ~~[§]~~587A-11 ~~[§]~~ Investigation; department powers. Upon receiving a report that a child is subject to imminent harm, has been harmed, or is subject to threatened harm, the department shall cause such investigation to be made as it deems to be appropriate. In conducting the investigation, the department may:

- (1) Enlist the cooperation and assistance of appropriate state and federal law enforcement authorities, who may conduct an investigation and, if an investigation is conducted, shall provide the department with all preliminary findings, including the results of a criminal history record check of an alleged perpetrator of harm or threatened harm to the child;
- (2) Conduct a criminal history check of an alleged perpetrator and all adults living in the family home to ensure the safety of the child, with or without consent;
- ~~[(2)]~~ (3) Interview the child without the presence or prior approval of the child's family and temporarily

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1 assume protective custody of the child for the purpose  
2 of conducting the interview;

3 [~~3~~] (4) Resolve the matter in an informal fashion that  
4 it deems appropriate under the circumstances;

5 [~~4~~] (5) Close the matter if the department finds, after  
6 an assessment, that the child is residing with a  
7 caregiver who is willing and able to meet the child's  
8 needs and provide a safe and appropriate placement for  
9 the child;

10 [~~5~~] (6) Immediately enter into a service plan:

11 (A) To safely maintain the child in the family home;

12 or

13 (B) To place the child in voluntary foster care  
14 pursuant to a written agreement with the child's  
15 parent.

16 If the child is placed in voluntary foster care and  
17 the family does not successfully complete the service  
18 plan within three months after the date on which the  
19 department assumed physical custody of the child, the  
20 department shall file a petition. The department is  
21 not required to file a petition if the parents agree  
22 to adoption or legal guardianship of the child and the

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1 child's safety is ensured; provided that the adoption  
2 or legal guardianship hearing is conducted within six  
3 months of the date on which the department assumed  
4 physical custody of the child;

5 ~~[(6)]~~ (7) Assume temporary foster custody of the child and  
6 file a petition with the court within three days,  
7 excluding Saturdays, Sundays, and holidays, after the  
8 date on which the department assumes temporary foster  
9 custody of the child, with placement preference being  
10 given to an approved relative; or

11 ~~[(7)]~~ (8) File a petition or ensure that a petition is  
12 filed by another appropriate authorized agency in  
13 court under this chapter."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:



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BY REQUEST

**Report Title:**

Child Protective Act; Criminal History Records Checks

**Description:**

Amends the Child Protective Act to allow the Department of Human Services to access criminal history records without consent of individuals identified as alleged perpetrators of harm or threatened harm to a child, and individuals identified as adult household members living in the family home with the alleged victim child.

*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: Human Services

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORDS CHECKS UNDER THE CHILD PROTECTIVE ACT.

PURPOSE: To ensure the safety of children who are victims of child abuse and neglect.

MEANS: Add a new section to chapter 587A, Hawaii Revised Statutes, and amend section 587A-11, Hawaii Revised Statutes.

JUSTIFICATION: There is a compelling State interest to protect children from potential harm. Under current law, the department does not clearly have the authority to complete criminal background checks without the individual's consent. This limits the department's ability to assess the safety risks for children, and risks for its own staff required to intervene and provide services to families.

Federal best practice guidelines from the Administration on Children and Families include Child Welfare Services staff performing criminal record checks on all adults residing in the child's home.

Florida, New Jersey, New York, and Delaware all have state laws which allow Child Welfare Services staff to conduct criminal background checks on all adult household members without consent.

Immediate identification of potential risks is critical to ensure child safety. Access to criminal history information assists the department workers in assessing safety and risk of abuse and neglect. This assessment helps determine the appropriate level of response to keep children safe.

Specifically, the criminal history information assists the department to identify: the behavioral patterns of the caregivers of the child and all the adults living in the family home, conditions or activities in the home environment, and potential factors, which may place children at imminent risk of harm. Examples are below.

- When the Child Welfare Services (CWS) 24-Hour Hotline receives a report of alleged child abuse and/or neglect, if the intake staff, who is assessing the safety risk to the child, is able to determine that the alleged perpetrator has prior recent convictions for abuse of a household member, the intake staff will have important and highly relevant information to use to make his or her determination for the appropriate level of response to ensure the child's safety.
- If the CWS Hotline staff discovers through the criminal history check that the alleged perpetrator has weapons in the home and a history of convictions for assault and drug-related offenses, to ensure the safety of the family, CWS worker, community, and law enforcement, the department will ask for police assistance when the CWS investigator goes to the family home.

Ongoing safety assessment is critical to ensure the child's safety throughout the duration of the CWS case, and is important when referring family members to appropriate services. The criminal history check on the alleged perpetrator and all adults living in the household is critical when allowing a child victim to remain in the home with a safety plan in place, and when returning a child victim to the family home from foster care.

If department workers do not have access to this criminal history information, their assessments and decisions regarding children's safety may be compromised.

Impact on the public: These changes will allow the department to access criminal history records without consent of individuals identified as alleged perpetrators of harm or threatened harm to a child, and all individuals identified as adults living in the family home of the child victim.

With the proposed authorization, it is anticipated that CWS will be better able to assess safety risks of children at the outset and for the duration of a case, and allow staff to assess their own safety risks and plan appropriately.

Impact on the department and other agencies: Department staff will conduct their own criminal history checks.

GENERAL FUND: None. There will be no additional cost to the State to allow these criminal checks. All the necessary staff are already trained in performing confidential criminal background checks and access to the system has been set up for the staff, because these checks are currently performed, with consent, for potential resource caregivers for foster children.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HMS 301

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.