

CHAPTER 846
HAWAII CRIMINAL JUSTICE DATA CENTER;
CIVIL IDENTIFICATION

Part I. Data Center

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Note

Chapter heading amended by L 1983, c 78, §3(1); L 1984, c 95, §12.

Cross References

International matchmaking organizations, see chapter 489N.
Registration of sex offenders and other offenders, see chapter 846E.

"PART I. DATA CENTER

Note

Part heading added by L 1983, c 78, §3(2).

§846-1 Definitions. In this chapter, unless a different meaning plainly is required:

"Accurate" refers to the fact that criminal history record information contains no erroneous information of a material nature.

"Administration of criminal justice" means performance of any of the following activities: detection; apprehension; detention; pretrial release; post-trial release; prosecution; adjudication; correctional supervision; or rehabilitation of accused persons or criminal offenders; and includes criminal identification activities and the collection, storage, and dissemination of criminal history record information; but does not include crime prevention activities or criminal defense functions.

"Complete" refers to the fact that criminal history record information should show all dispositions as the case moves through the various segments of the criminal justice system.

"Criminal history record check" means a search by name using the state computerized criminal history record information system, and by fingerprints using the state automated fingerprint identification system.

"Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal

justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals.

"Criminal history record information system" or "system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of intrastate, interstate, and national criminal justice data.

"Criminal history record name inquiry" means a search by name and other identifying information using the state computerized criminal history record information system.

"Criminal justice agency" means:

- (1) Courts; or
- (2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

"Data center" means the state agency responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data and related functions, including but not limited to, functioning as the state repository for criminal history records, providing technical assistance in the development of information systems, and conducting appropriate research and statistical studies.

"Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of the proceedings, or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement, and shall include but is not limited to acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, nolo contendere plea, convicted, youthful offender determination or transfer to juvenile jurisdiction, deceased, deferred disposition, dismissed-civil action, found insane or mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial- defendant discharged, executive clemency, placed on probation, paroled, released from correctional supervision, or fugitive from justice.

"Dissemination" means transmission of criminal history record information to individuals and agencies, other than the criminal justice agency which maintains the criminal history record information, but it does not include the reporting of such information as required by law, the reporting of data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings, the use of such information by an employee or officer of the agency maintaining the records, and the reporting of a criminal justice transaction to a state, local, or federal repository.

"Nonconviction data" means arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals. [L 1979, c 129, pt of §2; am L 1983, c 78, §3(3); am L 2006, c 132, §1]

Revision Note

Definitions restyled and rearranged.

" **§846-1.5 REPEALED.** L 1985, c 165, §1.

" **§846-2 Establishment of the Hawaii criminal justice data center.** There shall be a data center, to be known as the "Hawaii criminal justice data center", established in the department of the attorney general. The data center shall be directed and managed by an administrator appointed by the attorney general subject to chapter 76. [L 1979, c 129, pt of §2; am L 1980, c 269, §2; am L 1982, c 57, §1; am L 1983, c 78, §3(4); am L 1985, c 165, §2; am L 1986, c 65, §1; am L 1987, c 146, §3; am L 2000, c 253, §150]

" **§846-2.5 Purpose of the criminal justice data center.** (a) The Hawaii criminal justice data center, hereinafter referred to as the "data center", shall be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies, including, the collection, storage, and dissemination of criminal history record information by criminal justice agencies in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to utilize the tools needed to

prevent crimes and detect criminals in support of the right of the public to be free from crime and the fear of crime.

(b) The attorney general shall select and enforce systems of identification, including fingerprinting, of: all adults arrested for a criminal offense; all persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge; and without the necessity of a court order, children who are twelve years of age or older who come within section 571-11(1) and who are taken into custody for committing an act that, if committed by an adult, would be a felony, a misdemeanor, or a petty misdemeanor. The attorney general shall provide for the collection, recording, and compilation of data and statistics relating to crime. Unless a child's physical fingerprint record is otherwise authorized to be entered into the system, and notwithstanding any law to the contrary, the attorney general shall purge any child's electronic fingerprint record entered into the identification system pursuant to this subsection either, upon court order or when: the child attains the age of twenty-five years; the child is determined not to be responsible for committing the act for which the fingerprints were taken; or the child is not informally adjusted under section 571-31.4 and a petition is not filed within one year from the date the child is taken into custody. The court shall notify the attorney general when a child is determined not to be responsible for committing the act for which the fingerprints were taken. A child's fingerprint record shall not be transmitted to any system outside the State.

Notwithstanding any law to the contrary, upon the conviction of a person to whom a penal summons complaint has been issued for a criminal offense, or upon the granting of a deferred acceptance of a guilty or nolo contendere plea or a conditional discharge to such person, the court shall order the person to report, within seven days, to the appropriate police department, sheriff's office, or other governmental agency for identification processing, including fingerprinting and photographing, as provided under this subsection. Failure to comply with a court order for identification processing under this subsection will constitute criminal contempt of court in violation of section 710-1077.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of the systems of identification and statistics in their respective jurisdictions; provided that those expenses in connection with matters exclusively within the control of the State shall be borne by the State; and provided

further that the State shall provide for the management and equipment maintenance of the computerized fingerprint identification system.

The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in a manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics.

The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable for the:

- (1) Study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law; and
- (2) Examination of the records of the operations of those officers and the results thereof.

(c) The attorney general may prescribe, establish, and change forms to be followed in keeping records and in making reports to the data center. All courts and the judges and other officers thereof and all prosecuting officers, chiefs of police, and other agencies and officers for the prevention or detection of crime and for the enforcement of law shall use such forms, keep such records, and make such reports to the data center as may be so required.

(d) In order to accomplish this purpose, the data center shall develop systems and provide the structure that support criminal justice information systems, provide statistical research and data analysis, and make public periodic reports which shall provide the public with a clear view of the criminal justice systems. [L 1980, c 269, §1; am L 1982, c 57, §2; am L 1983, c 78, §3(5); am L 1985, c 119, §1; am L 1988, c 58, §1; am L 1995, c 100, §3; am L 1997, c 292, §2; am L 2001, c 196, §2]

" **[§846-2.6] Computerized fingerprint identification system.** There is established within the Hawaii criminal justice data center a computerized fingerprint identification system. The computerized fingerprint identification system shall use as its primary resource an automatic fingerprint identification system. The department of the attorney general shall coordinate the use of this system and equipment with federal, state, and county law enforcement agencies. [L 1987, c 380, §2]

" **§846-2.7 Criminal history record checks.** (a) The agencies and other entities named in subsections (b) and (c) may conduct state and national criminal history record checks on the

personnel identified in subsections (b) and (c), and participate in the rap back program, for the purpose of determining suitability or fitness for a permit, license, employment, or volunteer service; provided that the Hawaii criminal justice data center may charge a reasonable fee for the criminal history record checks performed. The agencies and other entities named in subsections (b) and (c) shall notify applicants, employees, and volunteers subject to a criminal history record check pursuant to this section that their fingerprints shall be retained by the Hawaii criminal justice data center and the Federal Bureau of Investigation for all purposes and uses authorized for fingerprint submissions. Notification shall also be given to the applicants, employees, and volunteers subject to the rap back program. The criminal history record check shall include the submission of fingerprints to:

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

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

- (b) Criminal history record checks may be conducted by:
 - (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
 - (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
 - (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;
 - (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
 - (5) The counties on employees and prospective employees who may be in positions that place them in close

- proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
 - (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
 - (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
 - (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;
 - (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
 - (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
 - (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
 - (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
 - (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
 - (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers

- including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
 - (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
 - (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
 - (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
 - (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
 - (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch, as provided by section 346-97;
 - (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
 - (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;

- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license;
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license; and
 - (C) The persons who are to assume control of a money transmitter licensee in connection with an application requesting approval of a proposed change in control of licensee,as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors,in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher

- trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
- (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
 - (34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
 - (35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;
 - (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
 - (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
 - (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
 - (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
 - (40) The department of commerce and consumer affairs on applicants for real estate appraiser licensure or certification as provided by chapter 466K;
 - (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);
 - (42) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;

[(43)] The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;

[(44)] The department of commerce and consumer affairs on:
(A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
(B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application,
as provided by chapter 449; and

[(45)] Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

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

- (1) A qualified entity shall register with the Hawaii criminal justice data center before submitting a request for a criminal history record check under this subsection. As a part of the registration, the qualified entity shall agree to comply with state and federal law by signing an agreement approved by the attorney general, or the attorney general's duly authorized representative within the department of the attorney general;
- (2) A qualified entity shall verify that the applicant, employee, or volunteer for whom a request is being made, will be or is physically working or volunteering in the State;
- (3) A qualified entity shall submit to the Hawaii criminal justice data center a request for a criminal history record check on an applicant, employee, or volunteer with a complete set of electronic fingerprints and a signed waiver allowing the release of state and national criminal history record information to the qualified entity;
- (4) The Hawaii criminal justice data center shall provide directly to the qualified entity the state and

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

- (5) The determination whether the criminal history record shows that the applicant, employee, or volunteer has been convicted of or is under pending indictment for any crime that bears upon the fitness of the applicant, employee, or volunteer to have responsibility for the safety and well-being of children, vulnerable adults, or individuals with disabilities shall be made solely by the qualified entity. This subsection does not require the Hawaii criminal justice data center to make such a determination on behalf of any qualified entity;
- (6) The qualified entity shall notify the applicant, employee, or volunteer in writing of the person's right to obtain a copy of any background screening report, including the criminal history records obtained under this subsection, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any such report and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the background screening, including the criminal history record check, if any;
- (7) A qualified entity shall allow the periodic audit by the Hawaii criminal justice data center to ensure compliance with applicable federal law and this subsection; and
- (8) The State, any political subdivision of the State, or any agency, officer, or employee of the State or a political subdivision shall not be liable for damages for providing the information requested under this subsection.

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

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

"Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business, organization, or agency that licenses or certifies others to provide care or care placement services that are not covered under subsection (b), and

including those agencies described in subsection (b) but only to the extent that they seek criminal history record checks on volunteers.

(d) The applicant, employee, or volunteer subject to a criminal history record check shall provide to the requesting agency or qualified entity:

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

(e) Fingerprints and information and records relating to the fingerprints acquired by the Hawaii criminal justice data center under this section shall be retained and maintained in an appropriate form and in an appropriate office in the custody and control of the Hawaii criminal justice data center, and shall at all times be kept separate from any similar records relating to the identification of criminals. The information shall be available only to authorized entities, agencies, and qualified entities as described in subsections (b) and (c) and such other persons or agencies as the attorney general shall authorize, subject to any restriction that the attorney general shall prescribe. The Hawaii criminal justice data center may dispose of any record of fingerprints and information and records relating to the fingerprints without regard to chapter 94, whenever, in the attorney general's discretion, retention of the record is no longer required or practicable. No officer or employee of the Hawaii criminal justice data center shall disclose any records of fingerprints or information and records relating to the fingerprints acquired in the performance of any of the officer's or employee's duties under this section to any person not authorized to receive the same pursuant to this section or pursuant to the orders of the attorney general. No person acquiring from the records of fingerprints or information and records relating to the fingerprints any information concerning any individual shall disclose the information to any person not so authorized to receive the same. [L 2003, c 95, §7; am L 2004, c 10, §12 and c 79, §6; am L 2006, c 131, §2 and c 220, §5; am L 2008, c 136, §7, c 154, §28, c 195, §15, and c 196, §11; am L 2009, c 77, §18 and c 182, §7; am L Sp 2009, c 32, §7; am L 2010, c 84, §26; am L 2011, c 117, §2 and c 220,

§11; am L 2012, c 93, §6, c 210, §2, c 285, §5, and c 299, §2; am L 2013, c 159, §16 and c 167, §15; am L 2014, c 18, §2, c 38, §1, and c 196, §2; am L 2015, c 35, §35, c 190, §3, and c 241, §9; am L 2016, c 88, §5, c 97, §7, c 108, §4, c 224, §7, and c 251, §3]

" **§846-3 Reporting to data center.** The chiefs of the police of the counties of the State and agencies of state and county governments having power of arrest shall furnish the data center with descriptions of all such persons who are arrested by them for any felony or misdemeanor, or as fugitives from the criminal justice system of another jurisdiction, or for any offense declared by rule or regulation promulgated by the attorney general to be a significant offense necessary to be reported for the proper administration of criminal justice. The data center shall in all appropriate cases forward necessary identifying data and other information to the system maintained by the Federal Bureau of Investigation. [L 1979, c 129, pt of §2]

" **§846-4 Query of data center.** Criminal justice agencies shall query the data center to assure that the most up-to-date disposition data is being used. Such inquiries shall be made prior to any dissemination except in those cases where the agency determines that time is of the essence and the center is technically incapable of responding within the necessary time period, provided, however, that where local criminal justice agencies have entered into agreements for the sharing of a computerized criminal history record information system, the agency operating such system shall not be required to query the data center prior to disseminating information to the agencies which are party to the agreements. [L 1979, c 129, pt of §2]

" **§846-5 Reporting of dispositions.** It shall be the responsibility of every criminal justice agency in this State to report to the data center the disposition of cases which enter their area in the administration of criminal justice to insure that all systems maintained in this State shall contain complete and accurate criminal history record information. All dispositions shall be reported as promptly as feasible but not later than ninety days after the happening of an event which constitutes a disposition. [L 1979, c 129, pt of §2]

" **§846-6 Systematic audit.** All criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds

that it has reported inaccurate information of a material nature shall forthwith notify all criminal justice agencies known to have received such information. All criminal justice agencies shall:

- (1) Maintain for a minimum period of one year a listing of the individuals or agencies both in and outside of the State to which criminal history record information was released, a record of what information was released, and the date such information was released;
- (2) Establish a delinquent disposition monitoring system; and
- (3) Verify all record entries for accuracy and completeness. [L 1979, c 129, pt of §2]

" **§846-7 Security.** Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system shall:

- (1) Have power to determine for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;
- (2) Select and supervise all personnel authorized to have direct access to such information;
- (3) Assure that an individual or agency authorized direct access is administratively held responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure, or dissemination;
- (4) Institute procedures to reasonably protect any data center of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;
- (5) Provide that each employee working with or having access to criminal history record information is to be made familiar with the substance and intent of this chapter and of regulations promulgated thereunder; and
- (6) Require that direct access to criminal history record information is to be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Where a noncriminal justice agency operates a system, the participating criminal justice agency shall be responsible for

review, approval, and monitoring of procedures developed to assure compliance with this section. [L 1979, c 129, pt of §2]

" **§846-8 Exclusions.** This chapter shall not apply to criminal history record information contained in:

- (1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
- (2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis;
- (3) Court records of public judicial proceedings;
- (4) Published court or administrative opinions or public judicial, administrative, or legislative proceedings;
- (5) Records of traffic offenses maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's, or other operators' license;
- (6) Announcements of executive clemency or pardon, by the Hawaii paroling authority or the governor of the State.

Nothing in this chapter shall prevent a criminal justice agency from disclosing, to the public, criminal history record information related to the offense for which an individual is currently within the criminal justice system, including the individual's place of incarceration; and, nothing in this chapter shall prevent a criminal justice agency from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or other formal charge was filed, on a specific date, if the arrest record information or criminal history record information disclosed is based on data excluded by the first paragraph of this section. Nothing in this chapter prohibits the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship. [L 1979, c 129, pt of §2; gen ch 1985]

" **§846-9 Limitations on dissemination.** Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

- (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
- (2) Individuals and agencies specified in section 846-10;

- (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement; provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;
- (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;
- (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and
- (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data. These dissemination limitations also do not apply to data relating to cases in which the defendant is acquitted, or charges are dismissed, by reason of physical or mental disease, disorder, or defect under chapter 704.

Criminal history record information disseminated to noncriminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself. [L 1979, c 129, pt of §2; am L 1996, c 116, §2]

" **§846-10 Dissemination.** Criminal history record information may be disseminated to:

- (1) The governor in individual cases or situations wherein the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with

the governor's constitutional duty to insure that the laws be faithfully executed;

- (2) The attorney general in connection with the attorney general's statutory authority and duties in the administration and enforcement of the criminal laws and for the purpose of administering and insuring compliance with the provisions of this chapter;
- (3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation. [L 1979, c 129, pt of §2; gen ch 1985]

" **§846-10.5 Fees.** (a) Except for services provided to criminal justice agencies and state or county agencies for employment purposes, the Hawaii criminal justice data center and state and county criminal justice agencies shall assess the following fees for services provided or to be provided, which shall be deposited into the criminal history record improvement revolving fund:

- (1) For each criminal history record check or criminal history record name inquiry conducted by the data center and other state and county agencies, \$20;
- (2) For each criminal history record name inquiry via an electronic database maintained by the data center that is accessible to users through an interactive computer-based system, for which a certified printout is requested, \$10 per printout;
- (3) For processing of each application for the expungement of arrest records, \$25;
- (4) For certification of documents, \$10 per document;
- (5) For each duplicate expungement certificate requested, \$15; and
- (6) For each complete set of fingerprints taken, \$15.

(b) Criminal history record checks mandated for child care facilities shall be exempt from the requirement to pay fees.

(c) Nonprofit charitable organizations that are tax-exempt under Internal Revenue Code section 501(c)(3) shall be exempt from fees for criminal history record checks conducted on adult volunteers having direct contact with minors, the elderly, or the disabled.

(d) Any other law to the contrary notwithstanding, the data center may adopt rules pursuant to chapter 91 to establish reasonable fees for services provided by the data center and to establish other exemptions from the requirement to pay fees. [L 1987, c 146, §1; am L Sp 1995, c 7, §3; am L 1997, c 165, §2; am L 1998, c 311, §10; am L 2006, c 132, §2]

" **[§846-10.6] Criminal history record improvement revolving fund; established.** There is established a criminal history record improvement revolving fund. All proceeds accumulated by the Hawaii criminal justice data center or any state or county criminal justice agency through the assessment of fees for services as provided in section 846-10.5 related to criminal history record information from the state system shall be deposited into this revolving fund. Moneys in the revolving fund shall be expended by the Hawaii criminal justice data center and used to improve the criminal history record information system established under this chapter. [L Sp 1995, c 7, §2]

Note

Transfer of certain interest earnings to general fund until June 30, 2015. L 2009, c 79, §30(a)(42).

" **§846-11 Coordination with department of public safety.** The data center shall coordinate its activities with the records system of the intake service centers of the department of public safety. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated so that there will be no overlap, or duplication of efforts. [L 1979, c 129, pt of §2; am L 1990, c 281, §8]

" **§846-12 Juvenile records.** Dissemination and disposition of records concerning proceedings relating to the adjudication of a juvenile as a delinquent or in need of supervision (or the equivalent) in family court to noncriminal justice agencies is prohibited, unless a statute, court order, rule, or decision, or federal executive order specifically authorizes such dissemination, except that juvenile records may be disseminated to individuals and agencies set forth in paragraphs (3) and (4) of section 846-9. Juvenile records disseminated to noncriminal justice agencies shall be used only for the purposes for which they were given and may not be disseminated further. [L 1979, c 129, pt of §2]

" **§846-13 Annual audits.** The attorney general shall conduct annual audits of a representative sample of criminal justice agencies which may be chosen on a random basis, to verify the accuracy and completeness of criminal history record information maintained by such agencies, and to determine adherence with this chapter and regulations promulgated thereunder. Criminal justice agencies shall retain appropriate records to facilitate

the annual audits. Audit of the data center shall be performed by another state agency. [L 1979, c 129, pt of §2]

" **§846-14 Access and review.** Any individual who asserts that the individual has reason to believe that criminal history record information relating to the individual is maintained by any information system in this State shall be entitled to review such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory identification which shall be positively verified by fingerprints. Rules and regulations promulgated under this section shall include provisions for administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete; provisions for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates; provisions for supplying to an individual whose record has been corrected, upon the individual's request, the names of all noncriminal justice agencies to which the data have been given; and provisions requiring the correcting agency to notify all criminal justice recipients of corrected information. The review authorized by this section shall be limited to a review of criminal history record information. [L 1979, c 129, pt of §2; gen ch 1985]

" **§846-15 Rules and regulations.** The attorney general shall adopt rules and regulations, as may be necessary, which will insure compliance with the provisions of this chapter by the most efficient and effective means possible. [L 1979, c 129, pt of §2]

" **§846-16 Violations.** Any person who knowingly permits unauthorized access to criminal history record information, or who knowingly disseminates criminal history record information in violation of the provisions of this chapter, or any person violating any agreement authorized by paragraphs (3) and (4) of section 846-9, or any person who gains unauthorized access to criminal history record information shall be guilty of a misdemeanor. [L 1979, c 129, pt of §2]

" **[§846-17 Administration of National Crime Prevention and Privacy Compact.]** (a) The Hawaii criminal justice data center is the central repository of criminal history records for purposes of the National Crime Prevention and Privacy Compact and shall do all things necessary or incidental to carrying out the compact.

(b) The administrator of the Hawaii criminal justice data center, or the administrator's designee, is the State's compact officer and shall administer the compact within the State. The administrator may adopt rules and establish procedures for the cooperative exchange of criminal history records between this State and other state governments and with the federal government for the use in noncriminal justice background checks. [L 2006, c 83, §3]

Cross References

National Crime Prevention and Privacy Compact, see chapter 846C.

" **[§846-18] Statistical crime reporting responsibility of county chiefs of police and state and county agencies.** The chiefs of police of the counties and state and county agencies having the power of arrest shall provide to the attorney general crime incident reports and any other information regarding crimes committed within their respective jurisdictions as necessary for the attorney general to operate a statewide crime reporting program and to cooperate with the Federal Bureau of Investigation's uniform crime reporting program. The reports and information shall be submitted to the attorney general in the manner, form, and time schedule as the attorney general may prescribe.

The attorney general may audit the reporting entities to determine the accuracy of the reports and other information required by this section. [L 2016, c 155, §2]

"PART II. CIVIL IDENTIFICATION--REPEALED

§§846-21 to 846-38 REPEALED. L 1998, c 183, §9; L 2012, c 310, §9.

Cross References

For present provisions, see chapter 286, pt XVI.

" **§846-38 REPEALED.** L 1988, c 183, §9.

"PART III. BACKGROUND CHECKS--REPEALED

§§846-41 to 846-45 REPEALED. L 2003, c 95, §18.

"[PART IV.] HATE CRIME REPORTING

§846-51 Definitions. As used in this part, the following terms have the following meanings:

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression; regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Hate crime" means any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person.

"Hate crime data" means information, incident reports, records, and statistics relating to hate crimes, collected by the attorney general.

"Incident report" means an account of occurrence of a hate crime received or collected by the attorney general.

"Sexual orientation" means:

- (1) Having a preference for heterosexuality, homosexuality, or bisexuality;
- (2) Having a history of any one or more of these preferences; or
- (3) Being identified with any one or more of these preferences. [L 2001, c 240, pt of §2; am L 2003, c 33, §§1, 3]

" **[§846-52] Responsibility for system.** (a) The department of the attorney general shall be responsible for the collection, storage, dissemination, and analysis of all hate crime data from all agencies that have primary investigative, action, or program responsibility for adult or juvenile offenses, including the county police departments, the county prosecutors, the family courts, and the departments or agencies responsible for administering any correctional facilities.

(b) The attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information concerning the commission of hate crimes and obtaining the agreement of agencies permitted to directly input and access information.

(c) Hate crime data collected by the attorney general may be shared with other agencies in accordance with section 92F-19. Public dissemination of this information shall be subject to section 92F-13. [L 2001, c 240, pt of §2]

" **[\$846-53] Responsibility of agencies.** Agencies that have investigative, detention, custodial, adjudicative, or program responsibility for adult or juvenile offenses shall cooperate with the attorney general in establishing the hate crime reporting system by:

- (1) Providing information in the agency files that can be included pursuant to the format approved by the attorney general;
- (2) Maintaining procedures internally consistent with uniform procedures and guidelines provided by the attorney general;
- (3) Reporting information to the attorney general that is timely, complete, and accurate after the occurrence of an event over which the agency had direct responsibility; and
- (4) Maintaining procedures for the periodic checking of information to minimize the possibility of storing and maintaining inaccurate information. [L 2001, c 240, pt of §2]

" **[\$846-54] Annual reports.** The attorney general shall summarize and analyze reports of hate crimes data that are received, and shall compile and transmit an annual report of hate crime data to the governor, the judiciary, the department of public safety, and the legislature. [L 2001, c 240, pt of §2]