

ACT 116

H.B. NO. 3349

A Bill for an Act Relating to the Dissemination of Criminal History Record Information.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize the dissemination of disposition information, as public record, for cases adjudicated under chapter 704, Hawaii Revised Statutes, which are maintained in the offender-based transaction statistics/computerized criminal history (OBTS/CCH) system. Chapter 704 governs court proceedings relating to an individual's responsibility and fitness as a result of a physical or mental disease, disorder, or defect.

In cases involving the judgment of acquittal by reason of insanity, the court acquits the person on the grounds that while the person may have committed the alleged act, the person was lacking substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform to the requirements of the law as a result of a physical or mental disease, disorder, or defect.

The Hawaii criminal justice data center has surveyed all fifty states to gather information on their respective dissemination policies. Thirty-seven states have responded to the survey, of which twenty-two states disseminate disposition information from chapter 704-type cases to the general public. By disseminating this type of information, these states have recognized that the dissemination of this information is essential to maintaining the public's safety.

Further, there continues to be an increase in the number of non-criminal justice agencies and the general public accessing conviction criminal history record information. Many agencies rely on this information in making decisions on employees or volunteers having direct contact with children, the disabled, and the elderly. The availability of the information governed by chapter 704 may be especially warranted in these situations.

SECTION 2. Section 846-9, Hawaii Revised Statutes, is amended to read as follows:

“§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.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)