

ACT 131

H.B. NO. 2367

A Bill for an Act Relating to Criminal History Record Checks for Service Providers of the Office of Youth Services.

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

SECTION 1. Chapter 352D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§352D- Criminal history record checks. (a) Employees, prospective employees, and volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office shall be required to agree to criminal history record checks. The office shall develop procedures for obtaining verifiable information regarding the criminal history records of individuals seeking to serve as employees or volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office.

(b) Except as otherwise specified, any individual who is employed, seeks employment, or volunteers with a contracted provider or subcontractor in a position that necessitates close proximity to youth when providing services on behalf of the office shall:

- (1) Submit to the office a sworn statement indicating whether the individual has ever been convicted of an offense for which incarceration is a sentencing option;
- (2) Be subject to criminal history record checks through the Hawaii criminal justice data center in accordance with section 846-2.7. An annual name inquiry shall be conducted in the state criminal history record files; and
- (3) Provide to the office written consent to obtain criminal history record information for verification.

Information obtained pursuant to this section shall be used exclusively by the office for purposes of determining whether a person is suitable for working or volunteering in a position that necessitates close proximity to youth when providing contracted services on behalf of the office or in conjunction with services provided for youth at the Hawaii youth correctional facility, while in custody, on furlough or on parole. All such decisions shall be subject to any applicable federal laws and regulations.

(c) The office may require the contracted provider or subcontractor to refuse employment to an applicant for employment, terminate the employment of an employee, or terminate the services of a volunteer if:

- (1) The employee, prospective employee, or volunteer of the contracted provider or subcontractor has been convicted of an offense for which incarceration is a sentencing option; and
- (2) The office finds that the criminal history record of the employee, prospective employee, or volunteer of the contracted provider or subcontractor indicates that the employee, prospective employee, or volunteer may pose a risk to the health, safety, or well-being of youth receiving direct services by that employee, prospective employee, or volunteer.

- (d) For the purposes of this section:

“Prospective employee” means any applicant for a position with a contracted provider or subcontractor that provides direct services to youth on behalf of the office.

“Provider” means any organization that or individual who enters into, or intends to enter into, a contract with or is currently contracted by the office to provide direct services to youth. The term includes all individuals who are authorized to provide direct services to youth under the contract with the organization or individual.

“Subcontractor” means any organization that or individual who enters into, or intends to enter into, a contract or agreement with a contracted provider to provide direct services to youth. The term includes all persons who may provide direct services to youth under the contract with the organization or individual.

“Volunteer” means any individual who provides, or intends to provide, direct services to youth on a non-compensatory basis.

(e) Notwithstanding any other law to the contrary, the office shall be exempt from section 831-3.1 for purposes of this section and need not conduct its investigations, notifications, or hearings in accordance with chapter 91.”

SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Criminal history record checks may be conducted by:
- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
 - (2) The department of health 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 services, as provided by section 321-171.5;
 - (3) 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;
 - (4) 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;
 - (5) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - (6) 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;
 - (7) The department of human services on prospective adoptive parents as established under section 346-19.7;
 - (8) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
 - (9) 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;
 - (10) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
 - (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;

- (12) 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- ;
- [(12)] (13) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- [(13)] (14) 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;
- [(14)] (15) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- [(15)] (16) 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 as provided by section 302C-1;
- [(16)] (17) 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;
- [(17)] (18) 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, dependent 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; and
- [(18)] (19) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved May 24, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.