

ACT 117

H.B. NO. 1009

A Bill for an Act Relating to Fingerprint Retention by Hawaii Criminal Justice Data Center.

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

SECTION 1. The purpose of this Act is to allow the State to indefinitely retain fingerprints of employment and licensing applicants for whom criminal history record checks are authorized statutorily so that the State can implement a statewide “Rap Back” program.

In 2013, two new Federal Bureau of Investigation programs will go into effect:

- (1) The “Next Generation IAFIS”, which will include the retention of applicant prints collected by fifty states; and
- (2) The “Rap Back” program, which will allow employers to request notification if applicants are arrested in the future.

The State’s ability to take advantage of the information and capabilities that other states and the Federal Bureau of Investigation are using will help Hawaii develop its own program and be proactive in decision-making for our vulnerable populations, including children, the elderly, and the disabled. For example, if the department of education hires an applicant with no criminal record, the Hawaii criminal justice data center retains the applicant’s fingerprints. If the applicant is later arrested and the prints taken during the arrest booking match the previously retained applicant prints, the department of education would be notified.

The public will be better protected as employers and licensing agencies will get up-to-date criminal history information. In addition, employees and licensees may not need to be fingerprinted again as part of a re-application or renewal process because up-to-date information will be forwarded automatically to their employers or licensing agencies as part of the “Rap Back” program.

SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is amended to read as follows:

“§846-2.7 Criminal history record checks. (a) The agencies and other entities named in subsection (b) may conduct state and national criminal history record checks on the personnel identified in subsection (b), for the purpose of determining suitability or fitness for a permit, license, or employment; 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 subsection (b) shall notify applicants and employees subject to a criminal history record check pursuant to this section that their fingerprints shall be retained by the Hawaii criminal justice data center. 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.

~~[Criminal]~~ Except as otherwise provided in this section, criminal history record information shall be used exclusively for the stated purpose for which it was obtained.

- (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 health on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by 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 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;
 - (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
 - (9) 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;
 - (10) 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;
 - (11) 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;

- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) 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;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) 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;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) 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;
- (18) 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;
- (19) 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;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) 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;
- (24) 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;
- (25) 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;
- (26) 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;
- (27) The department of commerce and consumer affairs on:
- (A) Each principal of every non-corporate applicant for a money transmitter license; and
- (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, as provided by section 489D-9;
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (29) 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;
- (30) 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; and
- (31) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.
- (c) The applicant or employee subject to a criminal history record check shall provide to the requesting agency:
- (1) Consent to obtain the applicant's or employee's fingerprints and conduct the criminal history record check;
- (2) Identifying information required by the Federal Bureau of Investigation which shall include but not be limited to name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth; and
- (3) A statement indicating whether the applicant or employee has ever been convicted of a crime.
- (d) 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 and agencies as described in subsection (b) 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, re-

tention 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."

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

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)