
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF EDUCATION.

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

1 SECTION 1. Chapter 302A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§302A- Employees of the department and teacher trainees
5 in any public school; reasonable suspicion testing; employee
6 assistance. (a) The department, including the Hawaii state
7 public library system, shall develop procedures for reasonable
8 suspicion testing to obtain verifiable information regarding use
9 of controlled substances under chapter 329, by persons who are
10 employed in any position, including teacher trainees, that
11 places them in close proximity to children. These procedures
12 shall comply with chapter 329B.

13 Information obtained pursuant to this subsection shall be
14 used exclusively by the employer for the purpose of determining
15 whether a person is suitable for working in close proximity to
16 children.



1 An employee who refuses to submit to drug testing under
2 this subsection shall be placed on mandatory administrative
3 leave of thirty days.

4 (b) If the test results under subsection (a) are positive,
5 the employer may impose the following sanctions:

6 (1) Refuse to issue a teaching or other educational
7 certificate;

8 (2) Revoke the teaching or other educational certificate;

9 (3) Refuse to allow or continue to allow participation in
10 teacher training;

11 (4) Terminate the employment of any employee or deny
12 employment to an applicant; or

13 (5) Impose other administrative sanctions, including but
14 not limited to, administrative leave,

15 if the employer finds by reason of the nature and circumstances
16 of the use of controlled substances that the person poses a risk
17 to the health, safety, or well-being of children, or otherwise
18 negatively influences children by setting a detrimental example.

19 Sanctions under this subsection may occur only after appropriate
20 investigation and notification to the employee of the results
21 and planned action, and after the employee is given an
22 opportunity to meet and rebut the finding. Nothing in this



1 subsection shall abrogate any applicable appeal rights under
2 chapter 76 or 89, or administrative rule of the department.

3 (c) In addition to the sanctions under subsection (b), the
4 department, by adoption of rules pursuant to chapter 91, shall
5 provide for substance abuse assessment, treatment, and
6 counseling, and referral to the employee assistance program
7 under subsection (e) if suitable, if the department determines
8 to retain the employee; provided that evidence of clinical
9 discharge from substance abuse treatment or substance abuse
10 counseling shall be a prerequisite to continued employment.

11 (d) Notwithstanding any other law to the contrary, for
12 purposes of this section, the department need not conduct
13 investigations, notifications, or hearings under this section in
14 accordance with chapter 91.

15 (e) This section shall not apply to volunteers or other
16 non-remunerated personnel providing support services at
17 individual schools or any employee subject to a substance abuse
18 testing policy under a valid collective bargaining agreement."

19 SECTION 2. Section 302A-101, Hawaii Revised Statutes, is
20 amended by adding three new definitions to be appropriately
21 inserted and to read as follows:



1 "Provider" means any individual that intends to, or is
2 employed by an organization that intends to, enter into a
3 contract with, or is currently contracted by the department to,
4 provide services that place the provider in close proximity to
5 children.

6 "Subcontractor" means any individual that enters into, or
7 is employed by an organization that enters into, a contract or
8 agreement with a provider to provide services that place the
9 subcontractor in close proximity to children.

10 "Trainee from an institution of higher education" means a
11 student in an institution of higher education training program
12 that requires public school observation or participation that
13 places the student in close proximity to children."

14 SECTION 3. Section 302A-601.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§~~302A-601.5~~§~~ **Employees of the department [of**
17 **~~education and teacher trainees in any public school],~~**
18 **providers, subcontractors, and trainees from an institution of**
19 **higher education; criminal history record checks.** (a) The
20 department [~~of education~~], including the Hawaii state public
21 library system, shall develop procedures for obtaining
22 verifiable information regarding the criminal history of persons



1 who are employed or seeking employment in any position,
2 including ~~[teacher trainees,]~~ persons who are seeking to serve
3 as providers, subcontractors, or trainees from an institution of
4 higher education, that places them in close proximity to
5 children. These procedures shall include criminal history
6 record checks in accordance with section 846-2.7.

7 Information obtained pursuant to this subsection shall be
8 used exclusively by the employer or prospective employer for the
9 purpose of determining whether a person is suitable for working
10 in close proximity to children. All ~~[such]~~ decisions shall be
11 subject to applicable federal laws and regulations currently or
12 hereafter in effect.

13 (b) The employer or prospective employer may refuse to
14 employ~~[r]~~ or contract with an employee, prospective employee,
15 provider, or subcontractor, or may refuse to place a trainee
16 from an institution of higher education, and may:

- 17 ~~[(1) Refuse to issue a teaching or other educational~~
18 ~~certificate;~~
19 ~~(2) Revoke the teaching or other educational certificate;~~
20 ~~(3)]~~ (1) Refuse to allow or continue to allow teacher
21 training; or



1 [~~4~~] (2) Terminate the employment of any employee or deny
2 employment to an applicant,
3 if the person has been convicted of a crime, and if the employer
4 or prospective employer finds by reason of the nature and
5 circumstances of the crime that the person poses a risk to the
6 health, safety, or well-being of children. Refusal[~~7~~
7 ~~revocation~~] or termination may occur only after appropriate
8 investigation and notification to the employee or applicant for
9 employment of results and planned action, [~~and~~] after the
10 employee [~~or~~], applicant for employment, provider,
11 subcontractor, or trainee from an institution of higher
12 education is given an opportunity to meet and rebut the finding.
13 Nothing in this subsection shall abrogate any applicable appeal
14 rights under [~~chapters~~] chapter 76 or 89, or administrative
15 regulation of the department [~~of education~~].

16 (c) This section shall not be used by the department to
17 secure criminal history record checks on persons who have been
18 employed continuously by the department, including the state
19 public library system, on a salaried basis prior to July 1,
20 1990.

21 (d) The fee charged by the Hawaii criminal justice data
22 center to perform criminal history record checks may be passed



1 on to applicants, providers, subcontractors, and trainees from
2 an institution of higher education.

3 [~~d~~] (e) Notwithstanding any other law to the contrary,
4 for the purposes of this section, the department [~~of education~~],
5 including the Hawaii state public library system, shall be
6 exempt from section 831-3.1 and need not conduct investigations,
7 notifications, or hearings under this section in accordance with
8 chapter 91."

9 SECTION 4. Section 846-2.7, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

- 11 "(b) Criminal history record checks may be conducted by:
- 12 (1) The department of health on operators of adult foster
13 homes or developmental disabilities domiciliary homes
14 and their employees, as provided by section 333F-22;
- 15 (2) The department of health on prospective employees,
16 persons seeking to serve as providers~~[7]~~ or
17 subcontractors in positions that place them in direct
18 contact with clients when providing non-witnessed
19 direct mental health services as provided by section
20 321-171.5;
- 21 (3) The department of health on all applicants for
22 licensure for, operators for, and prospective



1 employees, and volunteers at one or more of the
2 following: skilled nursing facility, intermediate
3 care facility, adult residential care home, expanded
4 adult residential care homes, assisted living
5 facility, home health agency, hospice, adult day
6 health center, special treatment facility, therapeutic
7 living program, intermediate care facility for the
8 mentally retarded, hospital, rural health center and
9 rehabilitation agency, and, in the case of any of the
10 above-related facilities operating in a private
11 residence, on any adult living in the facility other
12 than the client as provided by section 321-15.2;

13 (4) The department of education on employees, prospective
14 employees, providers, subcontractors, and [teacher]
15 trainees from an institution of higher education in
16 any public school in positions that necessitate close
17 proximity to children as provided by section
18 302A-601.5;

19 (5) The counties on employees and prospective employees
20 who may be in positions that place them in close
21 proximity to children in recreation or child care
22 programs and services;



- 1 (6) The county liquor commissions on applicants for liquor
2 licenses as provided by section 281-53.5;
- 3 (7) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;
- 7 (8) The department of human services on prospective
8 adoptive parents as established under section
9 346-19.7;
- 10 (9) The department of human services on applicants to
11 operate child care facilities, prospective employees
12 of the applicant, and new employees of the provider
13 after registration or licensure as provided by section
14 346-154;
- 15 (10) The department of human services on persons exempt
16 pursuant to section 346-152 to be eligible to provide
17 child care and receive child care subsidies as
18 provided by section 346-152.5;
- 19 (11) The department of human services on operators and
20 employees of home and community-based case management
21 agencies and operators and other adults, except for



1 adults in care, residing in foster family homes as
2 provided by section 346-335;

3 (12) The department of human services on staff members of
4 the Hawaii youth correctional facility as provided by
5 section 352-5.5;

6 (13) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;

12 (14) The judiciary on employees and applicants at detention
13 and shelter facilities as provided by section 571-34;

14 (15) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;

20 (16) The department of commerce and consumer affairs on
21 applicants for private detective or private guard
22 licensure as provided by section 463-9;



- 1 (17) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided as provided by section
8 302C-1;
- 9 (18) The public library system on employees and prospective
10 employees whose positions place them in close
11 proximity to children as provided by section
12 302A-601.5;
- 13 (19) The State or any of its branches, political
14 subdivisions, or agencies on applicants and employees
15 holding a position that has the same type of contact
16 with children, dependent adults, or persons committed
17 to a correctional facility as other public employees
18 who hold positions that are authorized by law to
19 require criminal history record checks as a condition
20 of employment as provided by section 78-2.7;
- 21 (20) The department of human services on licensed adult day
22 care center operators, employees, new employees,



1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 346-97;

3 (21) The department of human services on purchase of
4 service contracted and subcontracted service providers
5 and their employees serving clients of the adult and
6 community care services branch, as provided by section
7 346-97;

8 (22) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by section
11 346-97;

12 (23) The department of human services on contracted and
13 subcontracted service providers and their current and
14 prospective employees that provide home and community-
15 based services under Section 1915(c) of the Social
16 Security Act (42 U.S.C. §1396n(c)), as provided by
17 section 346-97; and

18 (24) Any other organization, entity, or the State, its
19 branches, political subdivisions, or agencies as may
20 be authorized by state law."

21 SECTION 5. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$, or so much



1 thereof as may be necessary for fiscal year 2007-2008, for the
2 department of education to conduct criminal history record
3 checks in accordance with section 2 this Act.

4 The sum appropriated shall be expended by the department of
5 education for the purposes of this Act.

6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect on July 1, 2050.



REPORT Title:

DOE; Drug Testing; Criminal History Record Checks

Description:

Requires reasonable suspicion drug testing of public school employees, teachers, and public library employees; requires department of education to adopt rules to determine sanctions for positive drug tests. Requires the department of education to develop procedures for obtaining the criminal history of certain persons who are seeking to serve as providers or subcontractors and trainees from an institution of higher education. Allows the department to pass on fees charged by the Hawaii criminal justice data center. Repeals the authority of the department to refuse to issue or to revoke a teaching or other educational certificate. Makes appropriation. (SD3)

