

JAN 18 2007

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

4 "Trainee from an institution of higher education" means
5 students in an institution of higher education training program
6 that requires public school observation, participation, or
7 interaction in close proximity to children.

8 "Provider" means any organization or individual that
9 intends to enter into a contract with or is currently contracted
10 by the department to provide service in close proximity to
11 children.

12 "Subcontractor" means any organization or individual that
13 enters into a contract or agreement with a provider to provide
14 services in close proximity to children."

15 SECTION 2. Section 302A-601.5, Hawaii Revised Statutes, is
16 amended to read as follows:



1 " ~~[§302A-601.5]~~ Employees of the department of
2 education ~~[and teacher trainees in any public school;]~~,
3 providers, subcontractors, and trainees; criminal history record
4 checks. (a) The department of education, including the Hawaii
5 state public library system, shall develop procedures for
6 obtaining verifiable information regarding the criminal history
7 of persons who are employed or seeking employment in any
8 position, including ~~[teacher trainees;]~~ persons who are seeking
9 to serve as providers or subcontractors, and trainees from an
10 institution of higher education, that places them in close
11 proximity to children. These procedures shall include criminal
12 history record checks in accordance with section 846-2.7.

13 Information obtained pursuant to this subsection shall be
14 used exclusively by the employer or prospective employer for the
15 purpose of determining whether a person is suitable for working
16 in close proximity to children. All such decisions shall be
17 subject to applicable federal laws and regulations currently or
18 hereafter in effect.

19 (b) The employer or prospective employer may refuse to
20 employ ~~[~~ an employee or prospective employee, a provider or
21 subcontractor, or may refuse to place a trainee from an
22 institution of higher education, and may:



1 ~~[(1) Refuse to issue a teaching or other educational~~
2 ~~certificate,~~

3 ~~(2) Revoke the teaching or other educational certificate,~~

4 ~~(3)]~~ (1) Refuse to allow or continue to allow teacher
5 training; or

6 ~~[(4)]~~ (2) Terminate the employment of any employee or deny
7 employment to an applicant,

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

21 (c) This section shall not be used by the department to
22 secure criminal history record checks on persons who have been



1 employed continuously by the department, including the state
2 public library system, on a salaried basis prior to July 1,
3 1990.

4 (d) The fee charged by the Hawaii criminal justice data
5 center to perform criminal history record checks may be passed
6 on to applicants, providers, subcontractors, and trainees from
7 an institution of higher education.

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

14 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Criminal history record checks may be conducted by:

17 (1) The department of health on operators of adult foster
18 homes or developmental disabilities domiciliary homes
19 and their employees, as provided by section 333F-22;

20 (2) The department of health on prospective employees,
21 persons seeking to serve as providers, or
22 subcontractors in positions that place them in direct



1 contact with clients when providing non-witnessed
2 direct mental health services as provided by section
3 321-171.5;

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

- 18 (4) The department of education on employees, prospective
19 employees, providers, subcontractors, and [~~teacher~~]
20 trainees from an institution of higher education in
21 any public school in positions that necessitate close



- 1 proximity to children as provided by section
2 302A-601.5;
- 3 (5) The counties on employees and prospective employees
4 who may be in positions that place them in close
5 proximity to children in recreation or child care
6 programs and services;
- 7 (6) The county liquor commissions on applicants for liquor
8 licenses as provided by section 281-53.5;
- 9 (7) The department of human services on operators and
10 employees of child caring institutions, child placing
11 organizations, and foster boarding homes as provided
12 by section 346-17;
- 13 (8) The department of human services on prospective
14 adoptive parents as established under section
15 346-19.7;
- 16 (9) The department of human services on applicants to
17 operate child care facilities, prospective employees
18 of the applicant, and new employees of the provider
19 after registration or licensure as provided by section
20 346-154;
- 21 (10) The department of human services on persons exempt
22 pursuant to section 346-152 to be eligible to provide



1 child care and receive child care subsidies as
2 provided by section 346-152.5;

3 (11) The department of human services on operators and
4 employees of home and community-based case management
5 agencies and operators and other adults, except for
6 adults in care, residing in foster family homes as
7 provided by section 346-335;

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

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

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

19 (15) The department of public safety on employees and
20 prospective employees who are directly involved with
21 the treatment and care of persons committed to a
22 correctional facility or who possess police powers



1 including the power of arrest as provided by section
2 353C-5;

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

6 (17) Private schools and designated organizations on
7 employees and prospective employees who may be in
8 positions that necessitate close proximity to
9 children; provided that private schools and designated
10 organizations receive only indications of the states
11 from which the national criminal history record
12 information was provided as provided by section
13 302C-1;

14 (18) The public library system on employees and prospective
15 employees whose positions place them in close
16 proximity to children as provided by section
17 302A-601.5;

18 (19) The State or any of its branches, political
19 subdivisions, or agencies on applicants and employees
20 holding a position that has the same type of contact
21 with children, dependent adults, or persons committed
22 to a correctional facility as other public employees



1 who hold positions that are authorized by law to
2 require criminal history record checks as a condition
3 of employment as provided by section 78-2.7;

4 (20) The department of human services on licensed adult day
5 care center operators, employees, new employees,
6 subcontracted service providers and their employees,
7 and adult volunteers as provided by section 346-97;

8 (21) The department of human services on purchase of
9 service contracted and subcontracted service providers
10 and their employees serving clients of the adult and
11 community care services branch, as provided by section
12 346-97;

13 (22) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by section
16 346-97;

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



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

4 SECTION 4. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$112,000 or so much
6 thereof as may be necessary for fiscal year 2007-2008, for the
7 department of education to conduct criminal history record
8 checks in accordance with section 2 this Act.

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

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on July 1, 2007.

14

INTRODUCED BY: Norman Sakuma



Report Title:

Criminal History Record Checks; Department of Education

Description:

Requires the department of education to develop procedures for obtaining the criminal history of 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.

