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

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



1 An employee who refuses to submit to drug testing under
2 this subsection shall be discharged for refusal to test.

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

5 (1) Refuse to allow or continue to allow participation in
6 teacher training;

7 (2) Terminate the employment of any employee; or

8 (3) Impose other administrative sanctions, including but
9 not limited to suspension without pay,

10 if the employer finds by reason of the nature and circumstances
11 of the use of controlled substances that the person poses a risk
12 to the health, safety, or well-being of children, or otherwise
13 adversely influences children by setting a detrimental example.

14 (c) In addition to the sanctions under subsection (b), the
15 department, by adoption of rules pursuant to chapter 91, shall
16 provide for substance abuse assessment by a substance abuse
17 professional. The employee shall be responsible for the cost of
18 any rehabilitation program, treatment, and counseling required
19 by the substance abuse professional. If a program, treatment,
20 or counseling is required, evidence of clinical discharge from
21 the required program, treatment, or counseling shall be a
22 prerequisite to continued employment.



1 (d) This section shall not apply to volunteers or other
2 nonremunerated personnel providing support services at
3 individual schools or any employee subject to a substance abuse
4 testing policy under a valid collective bargaining agreement."

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

8 "Provider" means any individual who intends to, or is
9 employed by an organization that intends to enter into a
10 contract with, or is currently contracted by the department to
11 provide services that place the provider in close proximity to
12 children.

13 "Subcontractor" means any individual that enters into or is
14 employed by an organization that enters into a contract or
15 agreement with a provider to provide services that place the
16 subcontractor in close proximity to children.

17 "Trainee from an institution of higher education" means a
18 student in an institution of higher education training program
19 that requires public school observation or participation that
20 places the student in close proximity to children."

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

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

20 (b) The employer or prospective employer may refuse to
21 employ~~[r]~~ or contract with an employee, prospective employee,



1 provider, or subcontractor, or may refuse to place a trainee
2 from an institution of higher education, and may:

3 ~~[(1) Refuse to issue a teaching or other educational~~
4 ~~certificate;~~

5 ~~(2) Revoke the teaching or other educational certificate;~~

6 ~~(3)]~~ (1) Refuse to allow or continue to allow teacher
7 training; ~~[or]~~

8 ~~[(4)]~~ (2) Terminate the employment of any employee; or
9 ~~[deny]~~

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



1 rights under [~~chapters~~] chapter 76 or 89, or administrative
2 regulation of the department [~~of education~~].

3 (c) This section shall not be used by the department to
4 secure criminal history record checks on persons who have been
5 employed continuously by the department, including the state
6 public library system, on a salaried basis prior to July 1,
7 1990.

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

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

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

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



- 1 (1) The department of health on operators of adult foster
2 homes or developmental disabilities domiciliary homes
3 and their employees, as provided by section 333F-22;
- 4 (2) The department of health on prospective employees, and
5 persons seeking to serve as providers[7] or
6 subcontractors in positions that place them in direct
7 contact with clients when providing non-witnessed
8 direct mental health services as provided by section
9 321-171.5;
- 10 (3) The department of health on all applicants for
11 licensure for, operators for, and prospective
12 employees, and volunteers at one or more of the
13 following: skilled nursing facility, intermediate
14 care facility, adult residential care home, expanded
15 adult residential care homes, assisted living
16 facility, home health agency, hospice, adult day
17 health center, special treatment facility, therapeutic
18 living program, intermediate care facility for the
19 mentally retarded, hospital, rural health center and
20 rehabilitation agency, and, in the case of any of the
21 above-related facilities operating in a private



- 1 residence, on any adult living in the facility other
2 than the client as provided by section 321-15.2;
- 3 (4) The department of education on employees, prospective
4 employees, providers, subcontractors, and [~~teacher~~]
5 trainees from an institution of higher education in
6 any public school in positions that necessitate close
7 proximity to children as provided by section
8 302A-601.5;
- 9 (5) The counties on employees and prospective employees
10 who may be in positions that place them in close
11 proximity to children in recreation or child care
12 programs and services;
- 13 (6) The county liquor commissions on applicants for liquor
14 licenses as provided by section 281-53.5;
- 15 (7) The department of human services on operators and
16 employees of child caring institutions, child placing
17 organizations, and foster boarding homes as provided
18 by section 346-17;
- 19 (8) The department of human services on prospective
20 adoptive parents as established under section
21 346-19.7;



- 1 (9) The department of human services on applicants to
2 operate child care facilities, prospective employees
3 of the applicant, and new employees of the provider
4 after registration or licensure as provided by section
5 346-154;
- 6 (10) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as
9 provided by section 346-152.5;
- 10 (11) The department of human services on operators and
11 employees of home and community-based case management
12 agencies and operators and other adults, except for
13 adults in care, residing in foster family homes as
14 provided by section 346-335;
- 15 (12) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;
- 18 (13) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing



- 1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
- 3 (14) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
- 5 (15) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
- 11 (16) The department of commerce and consumer affairs on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
- 14 (17) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to
17 children; provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided as provided by section
21 302C-1;



1 (18) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section
4 302A-601.5;

5 (19) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, dependent adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;

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

17 (21) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult and
20 community care services branch, as provided by section
21 346-97;



1 (22) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;

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

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

14 SECTION 5. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$, or so much
16 thereof as may be necessary for fiscal year 2007-2008, for the
17 department of education to conduct reasonable suspicion and
18 random testing in accordance with section 1 of this Act and
19 criminal history record checks in accordance with section 3 this
20 Act.

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



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

3 SECTION 7. This Act shall take effect on July 1, 2020.



REPORT Title:

DOE; Drug Testing; Criminal History Record Checks

Description:

Requires reasonable suspicion and random 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. (SB96 HD2)

