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# 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 "Provider" means any individual that intends to, or is  
5 employed by an organization that intends to, enter into a  
6 contract with, or is currently contracted by the department to,  
7 provide services involving direct contact with children.

8 "Subcontractor" means any individual that enters into, or  
9 is employed by an organization that enters into, a contract or  
10 agreement with a provider to provide services involving direct  
11 contact with children.

12 "Trainee from an institution of higher education" means  
13 students in an institution of higher education training program  
14 that requires public school observation, participation, or  
15 direct contact with children."

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



1           " ~~[+]§302A-601.5[+]~~ Employees of the department ~~[ef~~  
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 ~~[ef 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~~[,]~~ 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 deny  
9 employment to an applicant,  
10 if the person has been convicted of a crime, and if the employer  
11 or prospective employer finds by reason of the nature and  
12 circumstances of the crime that the person poses a risk to the  
13 health, safety, or well-being of children. Refusal~~[-~~  
14 ~~revocation]~~ or termination may occur only after appropriate  
15 investigation and notification to the employee or applicant for  
16 employment of results and planned action, ~~[and]~~ after the  
17 employee ~~[or]~~, applicant for employment, provider,  
18 subcontractor, or trainee from an institution of higher  
19 education is given an opportunity to meet and rebut the finding.  
20 Nothing in this subsection shall abrogate any applicable appeal  
21 rights under ~~[chapters]~~ chapter 76 or 89, or administrative  
22 regulation of the department ~~[of education]~~.



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

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

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

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

18 "(b) Criminal history record checks may be conducted by:  
19 (1) The department of health on operators of adult foster  
20 homes or developmental disabilities domiciliary homes  
21 and their employees, as provided by section 333F-22;



- 1           (2) The department of health on prospective employees,  
2           persons seeking to serve as providers, or  
3           subcontractors in positions that place them in direct  
4           contact with clients when providing non-witnessed  
5           direct mental health services as provided by section  
6           321-171.5;
- 7           (3) The department of health on all applicants for  
8           licensure for, operators for, and prospective  
9           employees, and volunteers at one or more of the  
10          following: skilled nursing facility, intermediate  
11          care facility, adult residential care home, expanded  
12          adult residential care homes, assisted living  
13          facility, home health agency, hospice, adult day  
14          health center, special treatment facility, therapeutic  
15          living program, intermediate care facility for the  
16          mentally retarded, hospital, rural health center and  
17          rehabilitation agency, and, in the case of any of the  
18          above-related facilities operating in a private  
19          residence, on any adult living in the facility other  
20          than the client as provided by section 321-15.2;
- 21          (4) The department of education on employees, prospective  
22          employees, providers, subcontractors, and [teacher]



1           trainees from an institution of higher education in  
2           any public school in positions that necessitate close  
3           proximity to children as provided by section  
4           302A-601.5;

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

9           (6) The county liquor commissions on applicants for liquor  
10          licenses as provided by section 281-53.5;

11          (7) The department of human services on operators and  
12          employees of child caring institutions, child placing  
13          organizations, and foster boarding homes as provided  
14          by section 346-17;

15          (8) The department of human services on prospective  
16          adoptive parents as established under section  
17          346-19.7;

18          (9) The department of human services on applicants to  
19          operate child care facilities, prospective employees  
20          of the applicant, and new employees of the provider  
21          after registration or licensure as provided by section  
22          346-154;



- 1           (10) The department of human services on persons exempt  
2           pursuant to section 346-152 to be eligible to provide  
3           child care and receive child care subsidies as  
4           provided by section 346-152.5;
- 5           (11) The department of human services on operators and  
6           employees of home and community-based case management  
7           agencies and operators and other adults, except for  
8           adults in care, residing in foster family homes as  
9           provided by section 346-335;
- 10          (12) The department of human services on staff members of  
11          the Hawaii youth correctional facility as provided by  
12          section 352-5.5;
- 13          (13) The department of human services on employees,  
14          prospective employees, and volunteers of contracted  
15          providers and subcontractors in positions that place  
16          them in close proximity to youth when providing  
17          services on behalf of the office or the Hawaii youth  
18          correctional facility as provided by section 352D-4.3;
- 19          (14) The judiciary on employees and applicants at detention  
20          and shelter facilities as provided by section 571-34;
- 21          (15) The department of public safety on employees and  
22          prospective employees who are directly involved with



1 the treatment and care of persons committed to a  
2 correctional facility or who possess police powers  
3 including the power of arrest as provided by section  
4 353C-5;

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

8 (17) Private schools and designated organizations on  
9 employees and prospective employees who may be in  
10 positions that necessitate close proximity to  
11 children; provided that private schools and designated  
12 organizations receive only indications of the states  
13 from which the national criminal history record  
14 information was provided as provided by section  
15 302C-1;

16 (18) The public library system on employees and prospective  
17 employees whose positions place them in close  
18 proximity to children as provided by section  
19 302A-601.5;

20 (19) The State or any of its branches, political  
21 subdivisions, or agencies on applicants and employees  
22 holding a position that has the same type of contact





1 with children, dependent adults, or persons committed  
2 to a correctional facility as other public employees  
3 who hold positions that are authorized by law to  
4 require criminal history record checks as a condition  
5 of employment as provided by section 78-2.7;

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

10 (21) The department of human services on purchase of  
11 service contracted and subcontracted service providers  
12 and their employees serving clients of the adult and  
13 community care services branch, as provided by section  
14 346-97;

15 (22) The department of human services on foster grandparent  
16 program, senior companion program, and respite  
17 companion program participants as provided by section  
18 346-97;

19 (23) The department of human services on contracted and  
20 subcontracted service providers and their current and  
21 prospective employees that provide home and community-  
22 based services under Section 1915(c) of the Social



1 Security Act (42 U.S.C. §1396n(c)), as provided by  
2 section 346-97; and  
3 (24) Any other organization, entity, or the State, its  
4 branches, political subdivisions, or agencies as may  
5 be authorized by state law."

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

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

13 SECTION 5. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

DOE; Criminal History Record Checks

**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. (SD1)

