

JAN 21 2009

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

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

1 SECTION 1. Section 302A-601.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " [†] §302A-601.5 [†] Employees of the department of
4 education [and], teacher trainees, and volunteers in any public
5 school; criminal history record checks. (a) The department of
6 education, including the Hawaii state public library system,
7 shall develop procedures for obtaining verifiable information
8 regarding the criminal history of persons who are employed or
9 seeking employment in any position, including teacher
10 trainees[-] and volunteers, that places them in close proximity
11 to children. These procedures shall include criminal history
12 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 or volunteering in close proximity to children. All such



1 decisions shall be subject to applicable federal laws and
2 regulations currently or hereafter in effect.

3 (b) The employer or prospective employer may refuse to
4 employ ~~[7]~~ or accept a volunteer and may:

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

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

8 (3) Refuse to allow or continue to allow teacher training;

9 ~~[or]~~

10 (4) Terminate the employment of any employee or deny
11 employment to an applicant ~~[7]~~; or

12 (5) Terminate or refuse the services of any volunteer,

13 if the person has been convicted of a crime, and if the employer
14 or prospective employer finds by reason of the nature and

15 circumstances of the crime that the person poses a risk to the

16 health, safety, or well-being of children. Refusal, revocation,

17 or termination may occur only after appropriate investigation

18 and notification to the employee or applicant for employment or

19 a volunteer position of results and planned action, and after

20 the employee or applicant for employment or the volunteer

21 position is given an opportunity to meet and rebut the finding.

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

14 (e) For the purposes of this section:

15 "Volunteer" means any individual who provides, or intends
16 to provide, direct services, assistance, or supervision, to
17 students on a non-compensatory basis."

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

20 "§846-2.7 Criminal history record checks. (a) The
21 agencies and other entities named in subsection (b) may conduct
22 state and national criminal history record checks on the



1 personnel identified in subsection (b), for the purpose of
2 determining suitability or fitness for a permit, license, or
3 employment[~~r~~], including volunteers and prospective volunteers;
4 provided that the Hawaii criminal justice data center may charge
5 a reasonable fee for the criminal history record checks
6 performed. The criminal history record check shall include the
7 submission of fingerprints to:

8 (1) The Federal Bureau of Investigation for a national
9 criminal history record check; and

10 (2) The Hawaii criminal justice data center for a state
11 criminal history record check that shall include
12 nonconviction data.

13 Criminal history record information shall be used exclusively
14 for the stated purpose for which it was obtained.

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

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

19 (2) The department of health on prospective employees,
20 persons seeking to serve as providers, or
21 subcontractors in positions that place them in direct
22 contact with clients when providing non-witnessed



1 direct mental health services as provided by section
2 321-171.5;

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

17 (4) The department of education on employees, prospective
18 employees, [and] teacher trainees, volunteers, and
19 prospective volunteers in any public school in
20 positions that necessitate close proximity to children
21 as provided by section 302A-601.5;



- 1 (5) The counties on employees and prospective employees
2 who may be in positions that place them in close
3 proximity to children in recreation or child care
4 programs and services;
- 5 (6) The county liquor commissions on applicants for liquor
6 licenses as provided by section 281-53.5;
- 7 (7) The department of human services on operators and
8 employees of child caring institutions, child placing
9 organizations, and foster boarding homes as provided
10 by section 346-17;
- 11 (8) The department of human services on prospective
12 adoptive parents as established under section 346-
13 19.7;
- 14 (9) The department of human services on applicants to
15 operate child care facilities, prospective employees
16 of the applicant, and new employees of the provider
17 after registration or licensure as provided by section
18 346-154;
- 19 (10) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide
21 child care and receive child care subsidies as
22 provided by section 346-152.5;



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

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

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

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

17 (15) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers
21 including the power of arrest as provided by section
22 353C-5;



- 1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided as provided by section
11 302C-1;
- 12 (18) The public library system on employees and prospective
13 employees whose positions place them in close
14 proximity to children as provided by section 302A-
15 601.5;
- 16 (19) The State or any of its branches, political
17 subdivisions, or agencies on applicants and employees
18 holding a position that has the same type of contact
19 with children, vulnerable adults, or persons committed
20 to a correctional facility as other public employees
21 who hold positions that are authorized by law to



1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;

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

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

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

16 (23) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under Section 1915(c) of the Social
20 Security Act (Title 42 United States Code Section
21 1396n(c)), or under any other applicable section or
22 sections of the Social Security Act for the purposes



1 of providing home and community-based services, as
2 provided by section 346-97;

3 (24) The department of commerce and consumer affairs on
4 proposed directors and executive officers of a bank,
5 savings bank, savings and loan association, trust
6 company, and depository financial services loan
7 company as provided by section 412:3-201;

8 (25) The department of commerce and consumer affairs on
9 proposed directors and executive officers of a
10 nondepository financial services loan company as
11 provided by section 412:3-301;

12 (26) The department of commerce and consumer affairs on the
13 original chartering applicants and proposed executive
14 officers of a credit union as provided by section
15 412:10-103;

16 [+] (27) [+] The department of commerce and consumer affairs on:

17 (A) Each principal of every non-corporate applicant
18 for a money transmitter license; and

19 (B) The executive officers, key shareholders, and
20 managers in charge of a money transmitter's
21 activities of every corporate applicant for a
22 money transmitter license,



1 as provided by section 489D-9; and
 2 ~~[+]~~ (28) ~~[+]~~ Any other organization, entity, or the State, its
 3 branches, political subdivisions, or agencies as may
 4 be authorized by state law.

5 (c) The applicant or employee, including volunteers and
 6 prospective volunteers, subject to a criminal history record
 7 check shall provide to the requesting agency:

8 (1) Consent to obtain the applicant's or employee's
 9 fingerprints and conduct the criminal history record
 10 check;

11 (2) Identifying information required by the Federal Bureau
 12 of Investigation which shall include but not be
 13 limited to name, date of birth, height, weight, eye
 14 color, hair color, gender, race, and place of birth;
 15 and

16 (3) A statement indicating whether the applicant or
 17 employee has ever been convicted of a crime."

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

20 SECTION 4. This Act shall take effect upon its approval.

21

INTRODUCED BY: 

Report Title:

DOE; Volunteers; Criminal History Record Check

Description:

Authorizes the department of education to conduct criminal history record checks on volunteers in positions that place them in close proximity to children.

