A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

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

SECTION 1. The purpose of this Act is to allow qualified entities that may be non-governmental agencies to request state and national fingerprint-based criminal history record checks on their applicants for employment, employees, and volunteers who provide care for children, vulnerable adults, or individuals with disabilities, and to receive the results directly.

Section 5119a of the National Child Protection Act of 1993, Public Law No. 103-209, as amended, authorizes public, private, nonprofit, or for-profit entities to submit requests for fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care to children, vulnerable adults, or individuals with disabilities.

Generally, an authorized government agency must receive the results and make the suitability determination. However, other jurisdictions have been permitted to provide the information directly to a non-governmental agency upon receipt of a waiver from the individual on whom the criminal history record check is being run.
This Act will allow a qualified entity to receive national and state fingerprint-based criminal history records directly for those individuals who provide care or care placement services for children, vulnerable adults, or individuals with disabilities who provide a waiver to the Hawaii criminal justice data center.

This Act amends the version of section 846-2.7, Hawaii Revised Statutes, that will go into effect on July 1, 2014, pursuant to Act 93, Session Laws of Hawaii 2012. It is intended that this Act go into effect one day after Act 93 goes into effect.

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

"§846-2.7 Criminal history record checks. (a) The agencies and other entities named in [subsection (b)] subsections (b) and (c) may conduct state and national criminal history record checks on the personnel identified in [subsection (b)] subsections (b) and (c), and participate in the rap back program, for the purpose of determining suitability or fitness for a permit, license, [or employment; ] employment, or volunteer service; provided that the Hawaii criminal justice data center may charge a reasonable fee for the criminal history record.
checks performed. The agencies and other entities named in subsection (b) shall notify applicants, employees, and volunteers subject to a criminal history record check pursuant to this section that their fingerprints shall be retained by the Hawaii criminal justice data center and the Federal Bureau of Investigation for all purposes and uses authorized for fingerprint submissions. Notification shall also be given to the applicants, employees, and volunteers subject to the rap back program. The criminal history record check shall include the submission of fingerprints to:

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

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

Except as otherwise provided in this section, criminal history record information shall be used exclusively for the stated purpose for which it was obtained in accordance with section 378-2.5.

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

(2) The department of health or the department's designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;

(3) The department of health or the department's designee on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center and rehabilitation agency, and, in the case of any of the above
facilities operating in a private residence, on any
adult living in the facility other than the client as
provided by section 321-15.2;

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

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

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

(7) The county liquor commissions on employees and
prospective employees involved in liquor
administration, law enforcement, and liquor control
investigations;

(8) The department of human services on operators and
employees of child caring institutions, child placing
organizations, and foster boarding homes as provided
by section 346-17;
The department of human services on prospective adoptive parents as established under section 346-19.7;

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

The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;

The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 321-484;

The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;

The department of human services on employees, prospective employees, and volunteers of contracted
providers and subcontractors in positions that place
them in close proximity to youth when providing
services on behalf of the office or the Hawaii youth
correctional facility as provided by section 352D-4.3;
(15) The judiciary on employees and applicants at detention
and shelter facilities as provided by section 571-34;
(16) The department of public safety on employees and
prospective employees who are directly involved with
the treatment and care of persons committed to a
correctional facility or who possess police powers
including the power of arrest as provided by section
353C-5;
(17) The board of private detectives and guards on
applicants for private detective or private guard
licensure as provided by section 463-9;
(18) Private schools and designated organizations on
employees and prospective employees who may be in
positions that necessitate close proximity to
children; provided that private schools and designated
organizations receive only indications of the states
from which the national criminal history record
information was provided pursuant to section 302C-1;
(19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;

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

(21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-496;

(22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
(23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;

(24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;

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

(26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
(27) The department of commerce and consumer affairs on the
original chartering applicants and proposed executive
officers of a credit union as provided by section
412:10-103;

(28) The department of commerce and consumer affairs on:

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

(B) The executive officers, key shareholders, and
managers in charge of a money transmitter's
activities of every corporate applicant for a
money transmitter license,
as provided by sections 489D-9 and 489D-15;

(29) The department of commerce and consumer affairs on
applicants for licensure and persons licensed under
title 24;

(30) The Hawaii health systems corporation on:

(A) Employees;

(B) Applicants seeking employment;

(C) Current or prospective members of the corporation
board or regional system board; or

(D) Current or prospective volunteers, providers, or
contractors,
in any of the corporation's health facilities as provided by section 323F-5.5;

(31) The department of commerce and consumer affairs on:

(A) An applicant for a mortgage loan originator license; and

(B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, as provided by chapter 454F;

(32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;

(33) The counties on prospective employees who work with vulnerable adults or senior citizens in community-based programs;

(34) The counties on prospective employees for fire department positions which involve contact with children or dependent adults;
The counties on prospective employees for emergency medical services positions which involve contact with children or dependent adults;

The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable and disabled citizens during emergencies or crises; and

Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

(c) A qualified entity may conduct a criminal history record check on applicants for licensure or employment, employees, and volunteers who provide care to children, vulnerable adults, or individuals with disabilities. A qualified entity shall comply with the following requirements:

(1) A qualified entity shall register with the Hawaii criminal justice data center before submitting a request for a criminal history record check under this subsection. As a part of the registration, the
qualified entity shall agree to comply with state and federal law by signing an agreement approved by the attorney general, or the attorney general's duly authorized representative within the department of the attorney general;

(2) A qualified entity shall verify that the applicant, employee, or volunteer for whom a request is being made, will be or is physically working or volunteering in the State;

(3) A qualified entity shall submit to the Hawaii criminal justice data center a request for a criminal history record check on an applicant, employee, or volunteer with a complete set of electronic fingerprints and a signed waiver allowing the release of state and national criminal history record information to the qualified entity;

(4) The Hawaii criminal justice data center shall provide directly to the qualified entity the state and national criminal history records to use only for the purpose of screening applicants, employees, or volunteers, as authorized by the written waiver required for submission of a request;
The determination whether the criminal history record shows that the applicant, employee, or volunteer has been convicted of or is under pending indictment for any crime that bears upon the fitness of the applicant, employee, or volunteer to have responsibility for the safety and well-being of children, vulnerable adults, or individuals with disabilities shall be made solely by the qualified entity. This subsection does not require the Hawaii criminal justice data center to make such a determination on behalf of any qualified entity;

The qualified entity shall notify the applicant, employee, or volunteer in writing of the person's right to obtain a copy of any background screening report, including the criminal history records obtained under this subsection, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any such report and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the
qualified entity reviewing the background screening, including the criminal history record check, if any;

(7) A qualified entity shall allow the periodic audit by the Hawaii criminal justice data center to ensure compliance with applicable federal law and this subsection; and

(8) The State, any political subdivision of the State, or any agency, officer, or employee of the State or a political subdivision shall not be liable for damages for providing the information requested under this subsection.

As used in this subsection, unless a different meaning plainly is required:

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, vulnerable adults, or individuals with disabilities.

"Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business, organization, or agency that licenses or certifies others to provide care or care placement services that are not covered under subsection (b), and
including those agencies described in subsection (b) but only to
the extent that they seek criminal history record checks on
volunteers.

(d) The [applicant or employee] applicant, employee,
or volunteer subject to a criminal history record check shall
provide to the requesting agency[+] or qualified entity:

1. Consent to obtain the [applicant's or] applicant's,
   employee's, or volunteer's fingerprints, conduct the
criminal history record check, and participate in the
rap back program;

2. Identifying information required by the Federal Bureau
   of Investigation, such as the [applicant's or]
   applicant's, employee's, or volunteer's name; date of
   birth, height, weight, eye color, hair color, gender,
race, and place of birth; and

3. A statement indicating whether the [applicant or]
   applicant, employee, or volunteer has ever been
   convicted of a crime[+] and, if so, the particulars of
   the conviction.

(e) Fingerprints and information and records
relating to the fingerprints acquired by the Hawaii criminal
justice data center under this section shall be retained and
maintained in an appropriate form and in an appropriate office in the custody and control of the Hawaii criminal justice data center, and shall at all times be kept separate from any similar records relating to the identification of criminals. The information shall be available only to authorized entities, agencies, and qualified entities as described in subsections (b) and (c) and such other persons or agencies as the attorney general shall authorize, subject to any restriction that the attorney general shall prescribe. The Hawaii criminal justice data center may dispose of any record of fingerprints and information and records relating to the fingerprints without regard to chapter 94, whenever, in the attorney general's discretion, retention of the record is no longer required or practicable. No officer or employee of the Hawaii criminal justice data center shall disclose any records of fingerprints or information and records relating to the fingerprints acquired in the performance of any of the officer's or employee's duties under this section to any person not authorized to receive the same pursuant to this section or pursuant to the orders of the attorney general. No person acquiring from the records of fingerprints or information and records relating to the fingerprints any information concerning
any individual shall disclose the information to any person not so authorized to receive the same."

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

SECTION 4. This Act shall take effect on July 2, 2014.
Report Title:
Hawaii Criminal Justice Data Center; Criminal History Checks

Description:
Allows qualified entities to conduct state and national fingerprint-based criminal history record checks on their applicants, employees, and volunteers who provide care for children, vulnerable adults, or individuals with disabilities, and to receive the results directly. (HB2243 CD1)

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