

JAN 18 2019

A BILL FOR AN ACT

RELATING TO CRIMINAL RECORDS.

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

1 SECTION 1. Chapter 846, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . UNIFORM CRIMINAL RECORDS ACCURACY ACT

5 A. General Provisions

6 §846-A Short title. This part may be cited as the
7 "Uniform Criminal Records Accuracy Act".

8 §846-B Definitions. As used in this part:

9 "Noncriminal history record information" means information
10 collected:

11 (1) As a result of an inquiry about an activity, habit,
12 practice, possession, association, or financial status
13 of an individual; and

14 (2) To anticipate, prevent, monitor, or investigate
15 criminal activity.

16 "Reportable event" means any of the following relating to a
17 felony or misdemeanor, other than a traffic violation:



- 1 (1) Arrest resulting in booking into a detention facility
2 or collection of fingerprint identification
3 information;
- 4 (2) Disposition after an arrest described in paragraph (1)
5 without initiation of a criminal proceeding;
- 6 (3) Initiation of a criminal proceeding;
- 7 (4) Disposition of a criminal proceeding, including
8 diversion, dismissal, indefinite postponement,
9 acquittal, guilty plea, conviction, sentencing, and
10 modification, reversal, and revocation of the
11 disposition;
- 12 (5) Commitment to or release from a place of detention or
13 custodial supervision;
- 14 (6) Commencement or conclusion of noncustodial
15 supervision;
- 16 (7) Completion of a sentence;
- 17 (8) Expungement, sealing, or setting aside of criminal
18 history record information;
- 19 (9) Grant of clemency, including pardon or commutation, or
20 restoration of rights; or



1 (10) Finding of legal incapacity by a court at any stage of
2 a criminal proceeding.

3 "Subject" means an individual about whom criminal history
4 record information is collected, stored, maintained, submitted,
5 or disseminated as required or permitted by this part or any
6 other law.

7 **§846-C Public records.** Except as otherwise provided by
8 law, court rule, or order, the court docket, court file, and
9 information contained in a docket or file are public records.

10 **§846-D Dissemination log.** (a) A dissemination log
11 required by sections 846-J or 846-N shall include each criminal
12 history record information request and dissemination to a person
13 identifiable by the criminal justice agency or data center.

14 (b) A dissemination log required by section 846-J or 846-N
15 shall be separate from noncriminal history record information
16 and criminal history record information. The log shall include
17 at least:

18 (1) The name of the subject about whom criminal history
19 record information is requested;

20 (2) The name of the person making the request and its
21 associated address;



1 (3) The name of the individual making the dissemination;

2 (4) The date of the request;

3 (5) The date of the dissemination; and

4 (6) A statement whether the information was disseminated
5 for a purpose other than the administration of
6 criminal justice.

7 (c) A dissemination log required by section 846-J or 846-N
8 shall be made available to the public only as provided by law
9 other than this part.

10 (d) An entry in a dissemination log required by section
11 846-J or 846-N shall be maintained as long as the associated
12 criminal history record information is maintained.

13 **§846-E Establishment of procedures.** The rulemaking
14 requirements of chapter 91 shall not apply to the establishment
15 of procedures under this part.

16 B. Criminal Justice Agencies

17 **§846-F Collection and submission of information to the**
18 **data center.** A criminal justice agency that has custody of, or
19 control, authority, or jurisdiction over, an individual for a
20 reportable event shall collect, store, and maintain criminal
21 history record information on the event. No later than five



1 days after the criminal justice agency collects the information,
2 the criminal justice agency shall submit the information to the
3 data center in compliance with procedures established by the
4 data center.

5 **§846-G Collection and submission of fingerprint**

6 **identification information.** (a) A criminal justice agency that
7 has custody of, or control, authority, or jurisdiction over, an
8 individual as a result of the individual's involvement in a
9 reportable event shall determine whether fingerprint
10 identification information about the individual has been
11 collected and submitted to the data center. If the criminal
12 justice agency is a court, the attorney general shall make the
13 determination and report the results of its determination to the
14 court.

15 (b) If a criminal justice agency determines under
16 subsection (a) that fingerprint identification information has
17 not been collected and submitted to the data center, the
18 criminal justice agency, using any procedure available to it
19 under law other than this part, shall collect the missing
20 fingerprint identification information. No later than five days
21 after collection, the criminal justice agency shall submit the



1 information to the data center in compliance with procedures
2 established by the data center.

3 **§846-H Accuracy and correction of information.** (a) A
4 criminal justice agency shall collect, store, maintain, submit,
5 and disseminate accurate criminal history record information in
6 compliance with procedures established by the data center.

7 (b) No later than fourteen days after a criminal justice
8 agency discovers that it possesses inaccurate criminal history
9 record information, the criminal justice agency shall:

- 10 (1) Correct its records;
- 11 (2) Notify the data center of the inaccuracy and
12 correction; and
- 13 (3) If another criminal justice agency received the
14 information under section 846-I(b) within one year
15 before the discovery, notify the agency of the
16 inaccuracy and correction.

17 **§846-I Dissemination of criminal history record**
18 **information.** (a) A criminal justice agency may disseminate
19 criminal history record information only as required or
20 permitted by this part or by law other than this part.



1 (b) A criminal justice agency may disseminate criminal
2 history record information to another criminal justice agency
3 upon request from the other criminal justice agency in
4 connection with the duties of the requesting criminal justice
5 agency.

6 **§846-J Dissemination log of criminal justice agencies.** A
7 criminal justice agency shall create, store, and maintain a
8 dissemination log complying with section 846-D. No later than
9 fourteen days after the criminal justice agency disseminates
10 criminal history record information, the criminal justice agency
11 shall enter the information required by section 846-D in the
12 dissemination log.

13 C. Data Center

14 **§846-K Duty of the data center.** (a) The data center
15 shall receive, store, maintain, and disseminate criminal history
16 record information report to the data center under this part.

17 (b) The data center may disseminate criminal history
18 record information only as required or permitted by this part or
19 law other than this part.

20 (c) The data center shall receive, store, maintain, and
21 disseminate accurate criminal history record information in



1 compliance with procedures established by the attorney general
2 under section 846-GG.

3 (d) The data center shall establish procedures to resolve
4 data conflicts and discover missing data for accurate criminal
5 history record information.

6 §846-L Dissemination of information to subject. (a) No
7 later than fourteen days after the data center receives a
8 request from a subject for the subject's own criminal history
9 record information, the data center shall search its records
10 and:

11 (1) If the search discloses criminal history record
12 information about the subject, disseminate the
13 information to the subject; or

14 (2) If the search does not disclose criminal history
15 record information about the subject, notify the
16 subject of the fact.

17 (b) Criminal history record information disseminated under
18 this section must include a conspicuous notice that it is
19 provided for review by the subject and may not be relied on or
20 considered current for use by another person.



1 §846-M Dissemination of information to person authorized
2 by subject. (a) A subject may authorize another person to
3 receive the subject's criminal history record information from
4 the data center.

5 (b) Before the data center disseminates criminal history
6 record information under this section, the data center shall
7 determine whether the information contains:

8 (1) A disposition after an arrest without initiation of a
9 criminal proceeding; or

10 (2) A disposition of a criminal proceeding, including
11 diversion, dismissal, indefinite postponement,
12 acquittal, guilty plea, conviction, and sentencing,
13 and modification, reversal, and revocation of the
14 disposition, for every arrest or initiation of a
15 criminal proceeding.

16 (c) If the data center determines under subsection (b)
17 that the information does not contain a disposition, the data
18 center shall attempt to determine the disposition and, if the
19 data center determines the disposition, include that disposition
20 in:



1 (1) The relevant records maintained by the data center;
2 and

3 (2) The information to be disseminated.

4 (d) After complying with subsection (c), and before the
5 data center disseminates information under this section, the
6 data center shall remove from the information to be disseminated
7 any notation of an arrest or initiation of criminal proceedings
8 if:

9 (1) Eighteen months have elapsed since the later of the
10 date of the arrest or initiation of criminal
11 proceedings;

12 (2) A disposition has not been identified with respect to
13 the arrest;

14 (3) A warrant is not outstanding with respect to the
15 arrest; and

16 (4) A proceeding is not pending with respect to the arrest
17 which may result in a conviction.

18 (e) Subsection (d) does not apply if a law, other than
19 this part, requires that the person receive all criminal history
20 record information about the subject.



1 (f) No later than five days after the data center
2 disseminates information under this section, the data center
3 shall send the same information to the subject, based on the
4 contact information provided by the person requesting the
5 information.

6 **§846-N Dissemination log of data center.** The data center
7 shall create, store, and maintain a dissemination log complying
8 with 846-D. No later than fourteen days after the data center
9 disseminates criminal history record information, the data
10 center shall enter the information required by section 846-D in
11 the dissemination log.

12 **§846-O Correction of inaccurate information.** No later
13 than fourteen days after the data center determines that it
14 possesses inaccurate criminal history record information, the
15 data center shall follow the procedures in section 846-V(1)
16 through (4).

17 **§846-P Establishment of procedures.** The data center shall
18 establish procedures:

19 (1) Necessary to carry out its powers and duties under
20 this part;



- 1 (2) For the manner and form in which a criminal justice
- 2 agency collects, stores, maintains, submits, and
- 3 disseminates criminal history record information,
- 4 including fingerprint identification information;
- 5 (3) To ensure that all criminal history record information
- 6 for the same subject is linked; and
- 7 (4) For reporting, exchanging, and seeking correction of
- 8 criminal history record information under this part,
- 9 including forms.

10 **§846-Q Dissemination of information for statistical or**
11 **research purposes.** Consistent with law of the State other than
12 this part and the United States, the data center may:

- 13 (1) Subject to paragraph (2), disseminate criminal history
- 14 record information, including personally identifiable
- 15 information, for a statistical or research purpose;
- 16 and
- 17 (2) Limit the use and subsequent dissemination of
- 18 information disseminated under this section and the
- 19 procedures established by the data center.

20 **§846-R Public information.** (a) The data center shall
21 inform the public of the existence and accessibility of criminal



1 history record information collected, stored, maintained, and
2 disseminated by criminal justice agencies and the data center.

3 (b) The data center shall inform the public, at least
4 annually, concerning the:

5 (1) Extent and general nature of criminal history record
6 information collected, stored, maintained, and
7 disseminated in this State;

8 (2) Number of corrections to criminal history record
9 information made by the data center;

10 (3) Results of audits under section 846-EE and the status
11 of any correction of deficiencies identified; and

12 (4) Requirements and forms for a subject to access,
13 review, and seek correction of criminal history record
14 information received, stored, or maintained by the
15 data center, including the right to appeal an adverse
16 determination.

17 **§846-S Training.** (a) The data center shall regularly
18 provide training to criminal justice agencies concerning
19 submitting information on a reportable event and the importance
20 of the information to subjects, the public, and the criminal
21 justice system.



1 (b) The data center periodically shall identify, and
2 provide remedial training to, any criminal justice agency that
3 does not meet the requirements of this part.

4 D. Correction of Criminal History Record Information

5 **§846-T Request to correct.** A subject may seek correction
6 of criminal history record information by sending the criminal
7 justice agency storing the information or the data center a
8 request for correction, specifying the information alleged to be
9 inaccurate and providing the allegedly correct information. A
10 criminal justice agency that receives the request shall inform
11 the subject that only the data center can act on the subject's
12 request and that the criminal justice agency will forward the
13 request to the data center. No later than five days after
14 receiving the request, the criminal justice agency shall forward
15 to the data center the request and any criminal history record
16 information relating to the subject.

17 **§846-U Review of request.** (a) No later than forty days
18 after receipt of a request under section 846-T, the data center
19 shall review and approve or deny the request. The administrator
20 of the data center may extend the time to review and act on the
21 request for up to twenty-one days if the administrator certifies



1 that there is good cause for an extension and notifies the
2 subject. The extension may not be renewed unless the subject
3 agrees.

4 (b) If the data center does not act within the period
5 provided in subsection (a), the request is deemed denied.

6 (c) Chapter 91 governs review of action or nonaction by
7 the data center concerning a request under section 846-T.
8 Notwithstanding chapter 91, if the request is deemed denied
9 under subsection (b), the data center has the burden of proof in
10 a subsequent review.

11 **§846-V Correction of record.** If the data center approves
12 a request under section 846-T, no later than fourteen days after
13 the decision under section 846-U becomes final and not subject
14 to appeal, the data center shall:

- 15 (1) Correct its records;
- 16 (2) Disseminate notice of the inaccuracy and correction to
17 the subject and each person to whom the data center
18 disseminated inaccurate information for a purpose of
19 administration of criminal justice within one year
20 before the date of approval of the correction;



1 (3) Notify the criminal justice agency that provided the
2 inaccurate information of the inaccuracy and
3 correction; and

4 (4) On request of the subject:

5 (A) Disseminate notice of the inaccuracy and
6 correction to each person the subject identifies
7 as having received the inaccurate information
8 under section 846-M; and

9 (B) Provide the subject at no cost one certified copy
10 of the accurate information.

11 E. Mistaken Identity Prevention Registry

12 §846-W Creation and maintenance of registry. The data
13 center shall create and maintain a mistaken identity prevention
14 registry:

15 (1) Consisting of information voluntarily provided by:

16 (A) A victim of mistaken identity; or

17 (B) An individual whose name or other identifying
18 characteristic is similar to that of another
19 individual who is the subject of criminal history
20 record information; and

21 (2) Designed to prevent:



- 1 (A) Creation of inaccurate criminal history record
- 2 information;
- 3 (B) Inaccurate modification of criminal history
- 4 record information;
- 5 (C) Mistaken arrest; and
- 6 (D) Confusion of an individual with another
- 7 individual when criminal history record
- 8 information is searched.

9 **§846-X Requirements for registry.** (a) The data center
10 shall establish procedures for entry of information concerning
11 an individual in a mistaken identity prevention registry. The
12 procedures shall require:

- 13 (1) Submission by the individual of a request to be
- 14 entered in the registry; and
- 15 (2) Collection of fingerprint identification information
- 16 from the individual.

17 (b) Using the procedures under subsection (a), the data
18 center shall determine whether the individual has a name or
19 other identifying characteristic similar to that of another
20 individual who is the subject of criminal history record
21 information. If the data center determines the individual does



1 have such a name or characteristic, the data center shall enter
2 the information concerning the individual in the mistaken
3 identity protection registry. If the data center determines the
4 individual does not have such a name or characteristic, the
5 individual may seek relief under chapter 91.

6 **§846-Y Certification.** No later than fourteen days after
7 entering information concerning an individual in the mistaken
8 identity prevention registry under section 846-X, the data
9 center shall provide the individual a certification that the
10 individual is not a specified individual with a similar name or
11 identifying characteristic who is the subject of criminal
12 history record information. The certification is prima facie
13 evidence of the facts certified. A person may rely on the
14 accuracy of the information in the certification.

15 **§846-Z Dissemination of registry information.** (a) The
16 data center may not use or disseminate information from the
17 mistaken identity prevention registry except as provided in this
18 subpart.

19 (b) The data center shall disseminate information from the
20 mistaken identity prevention registry to a criminal justice
21 agency if the data center has reason to believe that identifying



1 information on a reportable event may be inaccurate or
2 incorrectly associated with an individual.

3 (c) The data center may disseminate information from the
4 mistaken identity prevention registry to a national mistaken
5 identity prevention registry if the national registry is created
6 and maintained by a federal law enforcement agency with a
7 purpose and protections similar to the registry created in this
8 subpart.

9 **§846-AA Verification of identity.** If a criminal justice
10 agency seeks to establish the identity of an individual and the
11 individual presents a certification issued under section 846-Y,
12 the criminal justice agency shall accept the certification of
13 the individual's identity unless the criminal justice agency has
14 a reasonable basis to doubt the individual's identity or the
15 authenticity of the certification, in which case the criminal
16 justice agency shall contact the data center to verify the
17 authenticity of the certification, using procedures established
18 by the data center.

19 **§846-BB Limitation on use of registry information.** (a) A
20 criminal justice agency and the data center may access or use



1 information from the mistaken identity prevention registry only
2 to:

3 (1) Identify accurately an individual about whom the
4 criminal justice agency or data center has requested
5 or received registry information; or

6 (2) Investigate, prosecute, or adjudicate an individual
7 for an offense relating to participating in, using, or
8 operating the registry.

9 (b) If information in the mistaken identity prevention
10 registry is accessed or used for a purpose other than permitted
11 under subsection (a):

12 (1) The information and any information acquired as a
13 result of the improper access or use are not
14 admissible in any criminal or civil action; and

15 (2) The data center shall notify the individual whose
16 information was accessed or used improperly, no later
17 than five days after it discovers the access or use.

18 **§846-CC Removal of information from registry.** (a) The
19 data center shall establish procedures regarding a request to
20 remove information from the mistaken identity prevention
21 registry.



1 (b) No later than fourteen days after receiving a request
2 complying with procedures established under subsection (a) from
3 an individual for removal of information the individual
4 voluntarily submitted under section 846-X(a), the data center
5 shall remove the information from the mistaken identity
6 prevention registry.

7 F. Systems Security and Audit

8 §846-DD Security requirements. To promote the
9 confidentiality and security of criminal history record
10 information collected, received, stored, maintained, submitted,
11 and disseminated under this part, the data center shall
12 establish procedures to:

- 13 (1) Protect information from loss or damage;
- 14 (2) Allow only an authorized person access to the
15 information;
- 16 (3) Select, supervise, and train individuals authorized to
17 access the information;
- 18 (4) If computerized data processing is used, meet the
19 technical guidance for the security of systems
20 established by the office of enterprise technology
21 services; and



1 (5) Maintain an index of each data breach.

2 §846-EE Audit. (a) The auditor shall cause an audit to
3 be conducted annually of a sample of criminal justice agencies
4 and at least once every three years of the data center.

5 (b) If the auditor certifies that an audit required by an
6 entity of the United States satisfies the requirements of this
7 section, an additional audit is not required of the data center
8 or criminal justice agency subject to the audit.

9 (c) An audit under this section must:

- 10 (1) Assess operational practices of the data center for
11 consistency, efficiency, and security;
- 12 (2) Assess the integrity of each computerized system and
13 database and each physical location where criminal
14 history record information is stored;
- 15 (3) Assess any data breach in the data center and response
16 to the breach; and
- 17 (4) Review a representative sample of criminal history
18 record information stored by a criminal justice agency
19 or the data center and determine the number of missing
20 reportable events and amount and nature of missing
21 fingerprint identification information in the sample,



1 in part by examining public records of the courts of
2 this State.

3 (d) A criminal justice agency and the data center shall
4 give the auditor access to the records, reports, listings, and
5 information required to conduct an audit under this section. An
6 officer, employee, or contractor of this State or a political
7 subdivision of this State with relevant information shall
8 cooperate with the auditor and provide information requested for
9 an audit.

10 (e) The auditor shall prepare and make available a public
11 report containing the results of audits under this section and a
12 list of any deficiencies and recommendations for correction of
13 deficiencies.

14 G. Enforcement and Implementation

15 **§846-FF Remedies.** (a) The attorney general, data center,
16 or a subject, in addition to other remedies provided by this
17 part and any other law, may commence an action to compel
18 compliance with or enjoin a violation of this part. The court
19 may award to a subject who prevails in the action reasonable
20 fees and expenses of attorneys and court costs.



1 (b) A subject has a cause of action for an intentional or
2 reckless violation of this part or procedures established under
3 this part. This subsection does not affect other remedies as
4 provided by this part or law other than this part. If the court
5 finds by a preponderance of the evidence that the subject was
6 injured by an intentional or reckless violation, the court shall
7 award:

8 (1) The greater of:

9 (A) Actual damages; or

10 (B) \$500 for each violation up to \$2,000 in the
11 action; and

12 (2) Reasonable fees and expenses of attorneys and court
13 costs.

14 **§846-GG Duties and authority of the attorney general.** (a)

15 The attorney general shall establish procedures to implement
16 this part. The procedures shall include provisions that:

17 (1) Govern the accuracy, dissemination, and review of, and
18 individual access to, criminal history record
19 information;



1 (2) Electronic data, including fingerprint identification
2 information, must be stored in a manner that complies
3 with the procedures established under section 846-DD;

4 (3) Establish technical guidance for the security of
5 systems described in paragraphs (1) and (2); and

6 (4) Set a reasonable maximum fee for the cost of
7 disseminating criminal history record information and
8 provide a subject free access to the subject's
9 information at least once each calendar year.

10 (b) The attorney general may designate any governmental
11 agency, other than the data center as a criminal justice agency.

12 (c) The attorney general may investigate any matter
13 relating to the administration and enforcement of this part.

14 H. Miscellaneous Provisions

15 **§846-HH Uniformity of application and construction.** In
16 applying and construing this uniform act, consideration must be
17 given to the need to promote uniformity of the law with respect
18 to its subject matter among states that enact it.

19 **§846-II Transitional provision.** Sections 846-H, 846-O,
20 846-T, 846-U, and 846-V apply to criminal history record
21 information that is in existence before, on, or after the



1 effective date of this part, regardless of the date the
2 information was created or when the reportable event occurred."

3 SECTION 2. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 3. In codifying the new sections added by section
10 1 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

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

14

INTRODUCED BY: Kal Rhoan



S.B. NO. 424

Report Title:

Uniform Criminal Records Accuracy Act

Description:

Establishes the Uniform Criminal Records Accuracy Act in the State.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

