
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 ~~[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 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)

