

S.B. NO. 1455

IAN 2 2 2007

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS OF PERSONS
PROVIDING SERVICES TO CONSUMERS OF THE ADULT MENTAL
HEALTH DIVISION OF THE DEPARTMENT OF HEALTH.

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

1 SECTION 1. Chapter 334, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§334- Employees of the department, its providers and
5 subcontractors; criminal history checks. (a) The department
6 shall develop procedures for obtaining verifiable information
7 regarding the criminal history of persons who are seeking
8 employment, or seeking to serve as providers or
9 subcontractors, in positions that place them in direct contact
10 with individuals with mental illness when providing non-
11 witnessed direct mental health services on behalf of the adult
12 mental health division of the department. These procedures
13 shall include but not be limited to criminal history record
14 checks in accordance with section 846-2.7.

15 (b) Except as otherwise specified, any person who seeks
16 employment with the department, or who is employed or seeks

1 employment with a provider or subcontractor in a position that
2 necessitates non-witnessed direct contact with individuals
3 with mental illness when providing non-witnessed direct mental
4 health services on behalf of the adult mental health division,
5 shall:

6 (1) Be subject to criminal history record checks in
7 accordance with section 846-2.7; and

8 (2) Provide to the department written consent for the
9 department to obtain criminal history record
10 information for verification.

11 Information obtained pursuant to subsection (a) and this
12 subsection shall be used exclusively by the department for
13 purposes of determining whether a person is suitable for
14 working in a position that necessitates non-witnessed direct
15 contact with individuals with mental illness when providing
16 non-witnessed direct mental health services on behalf of the
17 adult mental health division. All such decisions shall be
18 subject to federal laws and regulations currently or hereafter
19 in effect.

20 (c) The department may refuse to employ or may terminate
21 the employment of any employee or applicant for employment if
22 the person has been convicted of an offense for which
23 incarceration is a sentencing option, and if the department

1 finds by reason of the nature and circumstances of the crime
2 that the person poses a risk to the health, safety, or well-
3 being of individuals with mental illness receiving non-
4 witnessed direct mental health services on behalf of the adult
5 mental health division. Such refusal or termination may occur
6 only after appropriate investigation, notification of results
7 and planned action, and opportunity to meet and rebut the
8 finding, all of which need not be conducted in accordance with
9 chapter 91. Nothing in this subsection shall abrogate any
10 applicable appeal rights under chapter 76 or 89.

11 (d) This section shall not be used by the department to
12 secure criminal history record checks on persons who have been
13 employed continuously on a salaried basis prior to July 1,
14 2007.

15 (e) Nothing in this section shall prohibit criminal
16 history record checks on employees of all providers and
17 subcontractors.

18 (f) For purposes of this section:

19 "Provider" means any organization or individual that
20 intends to enter into a contract with or is currently
21 contracted by the adult mental health division of the
22 department to provide direct mental health services to the
23 department's eligible population.

1 "Subcontractor" means any organization or individual that
2 enters into a contract or agreement with a provider to provide
3 direct mental health services to the department's eligible
4 population.

5 (g) Notwithstanding any other law to the contrary, the
6 department shall be exempt from section 831-3.1 for purposes
7 of this section and need not conduct investigations,
8 notifications, or hearings under this section in accordance
9 with chapter 91."

10 SECTION 2. Section 378-2.5, Hawaii Revised Statutes, is
11 amended by amending subsection (d) to read as follows:

12 "(d) Notwithstanding subsections (b) and (c), the
13 requirement that inquiry into and consideration of a
14 prospective employee's conviction record may take place only
15 after the individual has received a conditional job offer, and
16 the limitation to the most recent ten-year period, excluding
17 the period of incarceration, shall not apply to employers who
18 are expressly permitted to inquire into an individual's
19 criminal history for employment purposes pursuant to any
20 federal or state law other than subsection (a), including:

21 (1) The State or any of its branches, political
22 subdivisions, or agencies pursuant to section 831-
23 3.1 and section 78-2.7;

- 1 (2) The department of education pursuant to section
2 302A-601.5;
- 3 (3) The department of health with respect to employees,
4 providers, or subcontractors in positions that place
5 them in direct contact with clients when providing
6 non-witnessed direct mental health services pursuant
7 to ~~[section]~~ sections 321-171.5[+] and 334- ;
- 8 (4) The judiciary pursuant to section 571-34;
- 9 (5) The counties pursuant to section 846-2.7;
- 10 (6) Armed security services pursuant to section 261-
11 17(b);
- 12 (7) Providers of a developmental disabilities
13 domiciliary home pursuant to section 333F-22;
- 14 (8) Private schools pursuant to section 378-3(8) and
15 section 302C-1;
- 16 (9) Financial institutions in which deposits are insured
17 by a federal agency having jurisdiction over the
18 financial institution pursuant to section 378-3(9);
- 19 (10) Detective agencies and security guard agencies
20 pursuant to sections 463-6(b) and 463-8(b);
- 21 (11) Employers in the business of insurance pursuant to
22 section 431:2-201.3;

- 1 (12) Employers of individuals or supervisors of
2 individuals responsible for screening passengers or
3 property under 49 U.S.C. §44901 or individuals with
4 unescorted access to an aircraft of an air carrier
5 or foreign carrier or in a secured area of an
6 airport in the United States pursuant to 49 U.S.C.
7 §44936(a);
- 8 (13) The department of human services pursuant to
9 sections 346-97 and 352-5.5;
- 10 (14) The public library system pursuant to section 302A-
11 601.5;
- 12 (15) The department of public safety pursuant to section
13 353C-5;
- 14 (16) The board of directors of a cooperative housing
15 corporation or the manager of a cooperative housing
16 project pursuant to section 421I-12;
- 17 (17) The board of directors of an association of
18 apartment owners, or the manager of a condominium
19 project pursuant to section 514B-133; and
- 20 (18) The department of health pursuant to section 321-
21 15.2."

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

- 1 "(b) Criminal history record checks may be conducted by:
- 2 (1) The department of health on operators of adult
- 3 foster homes or developmental disabilities
- 4 domiciliary homes and their employees, as provided
- 5 by section 333F-22;
- 6 (2) The department of health on prospective employees,
- 7 persons seeking to serve as providers, or
- 8 subcontractors in positions that place them in
- 9 direct contact with clients when providing non-
- 10 witnessed direct mental health services, as provided
- 11 by ~~section~~ sections 321-171.5 ~~[+]~~ and 334- ;
- 12 (3) The department of health on all applicants for
- 13 licensure for, operators for, and prospective
- 14 employees, and volunteers at one or more of the
- 15 following: skilled nursing facility, intermediate
- 16 care facility, adult residential care home, expanded
- 17 adult residential care homes, assisted living
- 18 facility, home health agency, hospice, adult day
- 19 health center, special treatment facility,
- 20 therapeutic living program, intermediate care
- 21 facility for the mentally retarded, hospital, rural
- 22 health center and rehabilitation agency, and, in the
- 23 case of any of the above-related facilities

1 operating in a private residence, on any adult
2 living in the facility other than the client as
3 provided by section 321-15.2;

4 (4) The department of education on employees,
5 prospective employees, and teacher trainees in any
6 public school in positions that necessitate close
7 proximity to children as provided by section 302A-
8 601.5;

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

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

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

19 (8) The department of human services on prospective
20 adoptive parents as established under section 346-
21 19.7;

22 (9) The department of human services on applicants to
23 operate child care facilities, prospective employees

1 of the applicant, and new employees of the provider
2 after registration or licensure as provided by
3 section 346-154;

4 (10) The department of human services on persons exempt
5 pursuant to section 346-152 to be eligible to
6 provide child care and receive child care subsidies
7 as provided by section 346-152.5;

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

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

16 (13) The department of human services on employees,
17 prospective employees, and volunteers of contracted
18 providers and subcontractors in positions that place
19 them in close proximity to youth when providing
20 services on behalf of the office or the Hawaii youth
21 correctional facility as provided by section 352D-
22 4.3;

23 (14) The judiciary on employees and applicants at

1 detention and shelter facilities as provided by
2 section 571-34;

3 (15) The department of public safety on employees and
4 prospective employees who are directly involved with
5 the treatment and care of persons committed to a
6 correctional facility or who possess police powers
7 including the power of arrest as provided by section
8 353C-5;

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

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

20 (18) The public library system on employees and
21 prospective employees whose positions place them in
22 close proximity to children as provided by section
23 302A-601.5;

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

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

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

19 (22) The department of human services on foster
20 grandparent program, senior companion program, and
21 respite companion program participants as provided
22 by section 346-97;

23 (23) The department of human services on contracted and

S.B. NO. 1455

1 subcontracted service providers and their current
2 and prospective employees that provide home and
3 community-based services under Section 1915(c) of
4 the Social Security Act (42 U.S.C §1396n(c)), as
5 provided by section 346-97; and

6 (24) Any other organization, entity, or the State, its
7 branches, political subdivisions, or agencies as may
8 be authorized by state law."

9 SECTION 4. Statutory material to be repealed is
10 bracketed and stricken. New statutory material is
11 underscored.

12 SECTION 5. This Act shall take effect on July 1, 2007.

13
14 INTRODUCED BY:


BY REQUEST

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A Bill FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS OF PERSONS PROVIDING SERVICES TO CONSUMERS OF THE ADULT MENTAL HEALTH DIVISION OF THE DEPARTMENT OF HEALTH.

PURPOSE: This bill authorizes the Department of Health to expand its capacity to obtain verifiable information regarding criminal history of potential employees and contract providers of the adult mental health division.

MEANS: Add a new section to chapter 334, Hawaii Revised Statutes (HRS); amend sections 378-2.5(d) and 846-2.7(b), HRS.

JUSTIFICATION: In 2004, the Legislature passed Act 79 with the intent to expand DOH's authority to conduct criminal history record checks on potential employees and contract providers of the adult mental health division. However, the law amended section 321-171.5, HRS, which has been determined by the Attorney General to narrowly affect only mental health services for children and youth under the corresponding part XV of chapter 321. As a result, this measure is introduced to amend the enabling legislation for adult mental health division services, chapter 334, Hawaii Revised Statutes. This correction will allow AMHD statutory authority to conduct criminal history background record checks as originally intended by Act 79, Session Laws of Hawaii 2004.

Impact on the public: Increased confidence that healthcare workers have been screened for criminal offenses that could affect their work with vulnerable patients. A decreased risk of abuse of members of the public receiving services provided or

contracted by the adult mental health division.

Impact on the department and other agencies:

- 1) Administrative rules will need to be developed prior to implementation of the practice allowed by this bill.
- 2) The procedures may need to be reflected in collective bargaining agreements.
- 3) Private nonprofit agencies will need to absorb the cost of criminal history background checks and this will increase the cost of contracting with these agencies.

GENERAL FUND:

None.

OTHER FUNDS:

The special fund will be influenced by the cost of conducting criminal history background checks. The adult mental health division and its contractors will implement criminal background checks, following the adaption of administrative rules, for newly hired employees having non-witnessed contact with division consumers.

Criminal history record checks consist of two parts, state and national, each with an associated cost, approximately \$25 and \$24 respectively. Funds paid to the Hawaii Criminal Justice Data Center for purposes of conducting the national record check are placed into the Criminal History Record Improvement Revolving Fund (CHRIRF). These funds are later paid to the Federal Bureau of Investigation after the record check is conducted and an invoice from the FBI is received. The passage of this bill may require an increase in the appropriation ceiling of the CHRIRF to correspond to the expected increase in special funds that pass through the CHRIRF as a result of this act.

Page 3

PPBS PROGRAM

DESIGNATION: HTH-495, HTH-420.

OTHER AFFECTED

AGENCIES: Agencies who are represented on the Criminal History Task Force. Department of the Attorney General, Hawaii Criminal Justice Data Center.

EFFECTIVE DATE: July 1, 2007.