

Synopsis of Criminal History Law Requirements

Background:

In 1984, allegations of sexual abuse of children in child care facilities alarmed parents, child care providers, policy makers and the general public across the nation. In an attempt to address this concern, Congress enacted in October, 1984 Public Law 98-473, the Continuing Appropriations Act of 1985. This law requires that states accepting a one year increase in Title XX training funds establish procedures by state law or regulation to provide for criminal history, employment history and background checks for all operators and prospective operators, staff and employees of child caring programs having primary custody of a child at least 20 hours a week. To comply with the criminal history requirement, states must also establish a law requiring criminal checks by fingerprint analysis through the Federal Bureau of Investigation (FBI).

On June 3, 1985, Act 208 SLH 1985 and Act 209, SLH 1985, were signed into law. Act 208 contains criminal history check requirements for day care homes and centers while Act 209 requires criminal history checks for foster boarding homes, child-caring institutions and child-placing organizations which fall under the licensing or certification purview of the department.

Although we recognize that criminal history, employment and background checks will not identify or deter all individuals who may pose a risk to children, such checks will identify individuals with criminal convictions who are a risk to children; it is an additional means of assessing the character of caregivers.

Acts 208 and 209, SLH 1985: establishes the following requirements for criminal history checks:

1. "Criminal history record check" means an examination of an individual's criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
2. The department shall develop standards to assure the reputable and responsible character of operators and employees of family child care homes, group child care centers, group child care homes, child-caring institutions, child placing-organizations and foster homes, which shall include but not be limited to, criminal history record checks.
3. As a condition for a certificate of approval, any facility, organization, institution, or home shall meet the standards to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check.

4. Operators, employees and new employees shall submit statements signed under penalty of perjury which:
 - (a) Indicate whether the operators, employees or new employees were ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less; and
 - (b) Provide consent to the department to conduct a criminal history check and to obtain other criminal history record information for verification.
5. Operators and employees shall be fingerprinted for the purpose of complying with the criminal history check; new employees shall be fingerprinted within five working days of employment.
6. Criminal history information shall be obtained by the department through the Hawaii Criminal Justice Data Center, which may assess a reasonable fee. Information obtained shall be used exclusively for the purpose for which it was obtained and shall be subject to federal laws and federal regulations as now or hereafter adopted.
7. The department may deny a certificate of approval if an operator, employee or new employee was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds that the criminal history poses a risk to the health, safety or well-being of children in care.