

DEPARTMENT OF HUMAN SERVICES  
SOCIAL SERVICES DIVISION  
ADULT and COMMUNITY CARE SERVICES BRANCH

CRIMINAL HISTORY RECORD AND PROTECTIVE SERVICES CENTRAL REGISTRY  
CHECK STANDARDS

I. PURPOSE

To protect the health, safety and welfare of Adult and Community Care Services Branch (ACCSB) clients, both criminal history and Protective Services Central Registry information shall be reviewed on an individual who wishes to serve as a direct service provider and shall be considered in determining whether the individual is suitable to serve as a direct service provider to ACCSB clients.

These standards apply to all ACCSB programs and all entities that the ACCSB designee licenses or certifies. For the purpose of these standards the individuals receiving services through ACCSB programs and in ACCSB licensed or certified settings will be referred to as ACCSB clients.

II. CRIMINAL HISTORY RECORD CHECKS

- A. The ACCSB utilized Hawaii Revised Statutes §346-97, Criminal History Record Check, in developing these standards.
- B. The criminal history record check shall include the submission of fingerprints to the Federal Bureau of Investigation (FBI) and Criminal Justice Information System (CJIS) data system for a State criminal history record check.
- C. Individuals shall have a criminal history record check upon initial hire or before they serve in direct contact with ACCSB clients and a second criminal history record check twelve months later. Thereafter, State name checks shall be conducted every other year.
- D. The responsibility for assuring a criminal history record check is conducted shall rest with the employer hiring the individual as a direct service provider or an individual who serves in direct contact with ACCSB clients.
- E. The criminal history record checks shall be conducted through:
  - 1. The Department of Human Services (DHS) designee contracted to fingerprint applicants and to submit information to and receive information from the FBI and CJIS. The applicant shall register with the DHS designee for fingerprint collection.

2. The applicant shall electronically sign a waiver stating that the Department and its designee acting for the Department shall not be liable to the individual.
3. State name checks are to be obtained from the Hawaii Criminal Justice Data Center (HCJDC) website: (<http://ecrim.ehawaii.gov/ahewa/>). Individuals who do not have access to a computer may request information from the following:

**Oahu:** Hawaii Criminal Justice Data Center  
465 South King Street, Room 101  
Honolulu, Hawaii 96813

The Oahu office, for an additional fee, will process mailed-in requests for criminal history records checks.

**Neighbor Islands:** County police stations where HCJDC computer terminals are available. Molokai and Lanai are covered through the main police station on Maui.

- F. When name checks into the State name inquiry system are required for employment or for any individual providing direct service to ACCSB clients, a printed report of each certified name record check accompanied by a signed Statement of Authenticity that the criminal history record report is a true and unaltered copy shall be retained in the hired individual's personnel file and made available for review by DHS staff or its designee for compliance monitoring purposes.
- G. Fingerprint results dated no more than six (6) months before the date an initial criminal history record check is required, may be accepted instead of a new criminal history record check being performed.
- H. DHS shall not be directly responsible for any cost related to the criminal history record check.

### III. PROTECTIVE SERVICES CENTRAL REGISTRY CHECK STANDARDS

- A. The ACCSB utilizes Hawaii Revised Statutes §346-335, Background Checks, and TITLE VI--TRANSPARENCY AND PROGRAM INTEGRITY, PART III--Improving Staff Training, Section 6201 of the Affordable Care Act (ACA) of 2010 in developing these standards.
- B. The Protective Services Central Registry check shall include the search of the individual's name in the Adult Protective Services (APS) and Child Abuse and Neglect (CAN) registries for confirmed abuse.

- C. Individuals shall have a registry check upon initial hire or before they begin to serve in direct contact with ACCSB clients and a second registry check twelve months later. Thereafter, registry checks shall be conducted every other year for all ACCSB providers.
- D. The responsibility for assuring a Protective Services Central Registry check is conducted shall rest with the employer hiring the individual as a direct service provider or an individual who serves in direct contact with an ACCSB client.
- E. The registry checks shall be conducted through:
  - 1. The Department of Human Services (DHS) designee contracted to review the registry checks. The applicant shall register with the DHS designee for registry checks as part of the fingerprint collection or for registry checks alone.
  - 2. The applicant shall electronically sign a waiver stating that the Department and its designee acting for the Department shall not be liable to the individual.
- F. Registry results dated no more than six (6) months before the date an initial registry check may be accepted instead of a new registry check being performed.
- G. DHS shall not be directly responsible for any cost related to the registry checks.

#### IV. HIRING AND TERMINATING EMPLOYEES

Information contained in criminal history records and protective service central registry reports shall be taken into consideration when hiring or terminating individuals as direct service providers or for individuals serving in direct contact with an ACCSB client. The DHS' designee shall apply the standards DHS has set that are listed in Section IV, A. and B. below to make a fitness determination. The DHS' designee, in acting on the DHS' behalf, is presumed to be acting in good faith and shall be immune from civil liability for recommending action based upon the criminal history record or registry check information.

An offer of employment shall be withdrawn or the position of a current direct service provider direct service provider or an individual who serves in direct contact with ACCSB clients shall be terminated when the individual has a criminal history record or abuse record as indicated below:

- A. The criminal conviction or confirmation of abuse shall have occurred within ten (10) years of the date of the criminal history record check or Protective Services Central Registry check A criminal conviction or confirmation of abuse occurring more than ten (10) years prior to the date of the criminal history record check or Protective Services Central Registry check may be considered when the criminal

history or abuse history of the individual may pose a risk to the health, welfare and safety of service recipients; and

- B. The crime for which there is a conviction or the confirmation of abuse shall have a rational relationship to the direct service provider's position. Rational relationship means the crime or confirmation of abuse for which there is a history is substantially related to the qualifications, duties and responsibilities of the direct service provider position. Crimes having rational relationships to direct service provider positions consist of any felony, including but not limited to murder, manslaughter, assault, sexual offenses, domestic violence, theft or forgery, arson, kidnapping, or possession, use, sale, manufacture, distribution of dangerous drugs or controlled substances, or Driving Under the Influence (DUI).
- C. If the employee has been employed when the criminal history record check or Protective Services Central Registry check is conducted and found to have a conviction record or confirmation of abuse that is described in III A. and B., then they may continue their employment with the following conditions:
- An appeal or exemption has been filed with the DHS designee;
  - The employee does NOT perform any direct services to ACCSB clients; and
  - Anytime that the employee is around ACCSB clients, they must be under direct supervision or accompanied by another staff member who has been screened for convictions without incident.
- D. Appeals or exemptions from the requirements of sections III. A. or B. may be approved for ACCSB providers by the DHS designee.
1. Requests for exemptions shall be made in writing by using form DHS 1673, "Request for Exemption (From Criminal History Records Check Standards or Protective Services Central Registry Check Standards)", or a similar form within thirty (30) days of applicant's receipt of fitness determination. The individual seeking the exemption must complete the DHS 1673 or similar form. A copy of the individual's current results of a name inquiry into the State criminal history records check must accompany the request. Fingerprint and registry check results for ACCSB providers should already be on file with the DHS designee.
  2. The "Checklist for Exemption Request" may be used as a reminder of the documents to be submitted for EACH exemption request. All documents shall be submitted to the DHS designee.
  3. Unless an individual is self-employed, the employer agency must be involved in the exemption process to assure the timely submittal of all required documents and appropriateness of the exemption request. Requests for exemptions shall be routed through the prospective employer agency prior to submittal to the Department or its designee.

4. All documents shall be submitted to the DHS designee. Upon receipt of the written exemption request and other required documents listed on the “Checklist for Exemption Request”, the DHS designee shall convene a panel consisting of three (3) professional level multi-disciplinary team members to review the request. The panel shall include individuals in at least two different professions with backgrounds in criminal justice, legal and/or the therapeutic mental health field to include social work.
  6. The exemption panel shall consider the following:
    - a. The relevancy of the individual’s conviction record to the qualifications, functions and duties of the direct service provider position the individual wishes to fill;
    - b. Passage of time since the crime was committed; and
    - c. Any evidence of rehabilitation, such as letters from counselors or therapists attesting to a sustained improvement in the individual’s behavior, character references, and activities since conviction, such as employment.
  7. A single factor may not be evidence of rehabilitation. If necessary, the panel shall request additional information from the individual seeking the exemption.
  8. Individuals requesting exemptions shall be informed in writing of the panel’s decision within 45 calendar days from the date the panel receives all documents needed for a decision to be made. The panel may extend the 45-day period with cause and a written explanation to the individual seeking the exemption.
  9. Individuals who are dissatisfied with the panel decisions on their exemption requests may appeal the panel’s decision to the Social Service Division Administrator within thirty (30) days of receipt of exemption results.
- E. ACCSB clients may choose not to conduct criminal history record checks and protective services central registry checks on individuals they hire on their own. Clients who choose not to have criminal history record checks shall complete form DHS 1672, “Consumer-Employer Choice Regarding Criminal History Record Check and Adult Protective Services (APS) Central Registry Check”, to acknowledge their understanding of these standards and the purpose for the checks, and their decision not to conduct criminal history record checks or APS/CAN Central Registry checks on individuals they plan to hire as direct service providers.

#### Attachments

DHS 1672 with instructions - If this is applicable your worker will provide the form to you

DHS 1673 with instructions

Statement of Authenticity

Checklist for Exemption Request