



VOLUNTEER & EMPLOYEE CRIMINAL HISTORY SERVICE (VECHS)  
USER AGREEMENT FOR CRIMINAL HISTORY RECORD INFORMATION

1. Purpose

This Agreement, entered into by the Hawaii Criminal Justice Data Center (hereinafter referred to as “HCJDC”), a division of the Department of the Attorney General, State of Hawaii whose address is 465 South King Street, Room 101, Honolulu, Hawaii 96813 and

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(hereinafter referred to as Qualified Entity (“QE”)), located at

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is intended to set forth the terms and conditions under which criminal history record information will be provided to the QE as an employer, licensing agency, or other agency authorized by State and/or Federal law. Fingerprint-based criminal history record checks must be explicitly mandated or authorized by law.

- 1.1. National criminal history record checks are authorized under the National Child Protection Act, Public Law 103-209, as amended.
- 1.2. State criminal history record checks are authorized under Section 846-2.7(c), Hawaii Revised Statutes (HRS).
- 1.3. HCJDC has established and maintains intrastate systems for the collection, compilation, and dissemination of state criminal history records and information in accordance with Chapter 846, HRS, and additionally, is authorized to and participates in federal criminal history records systems.
- 1.4. The QE is a  public,  private,  for profit,  or not-for-profit entity operating in the State of Hawaii and is authorized by section 846-2.7(c), HRS, to submit fingerprints and review resultant criminal history records of applicants for licensure or employment, employees, and volunteers who provide care to children, vulnerable adults, or individuals with disabilities.
- 1.5. HCJDC and the QE are subject to and shall comply with applicable state and federal law and regulations relating to the receipt, use, and dissemination of

criminal history record and criminal history record information derived from the systems of the HCJDC and Federal Bureau of Investigations (FBI).

Now, therefore, in light of the foregoing and of the promises, conditions, and terms hereinafter contained or incorporated by reference and made part hereof, the HCJDC and QE agree as follows:

2. The HCJDC will:

- 2.1. In response to fingerprint-based criminal history record checks requests:
  - 2.1.1. Provide state criminal history record information (CHRI) as reported to, processed, and contained in its systems, available to the QE under state statute.
  - 2.1.2. Act as an intermediary between the QE and the FBI, and secure federal and multi-state CHRI as may be available to the QE under federal laws and regulations.
- 2.2. Provide security awareness training to the QE.
- 2.3. Conduct audits of the QE to assure compliance with this Agreement.
- 2.4. Cease providing CHRI to the QE if this Agreement is violated or if the QE is suspected of violating this Agreement.

3. The QE will:

- 3.1. Abide by the terms and conditions contained in this Agreement.
- 3.2. Promptly advise HCJDC of any violations of this Agreement.
- 3.3. Comply with state and federal laws, rules, regulations, procedures, and policies regarding the use and dissemination of CHRI.
- 3.4. Use CHRI for only the purpose authorized by state and federal law and regulations.
- 3.5. For each applicant, employee, and/or volunteer subject to a criminal history record check, the QE shall obtain and retain the original of the applicant's, employee's or volunteer's completed and signed VECHS Consent and Waiver form (provided by HCJDC) that contains the following:

- 3.5.1. Consent to obtain fingerprints and conduct criminal history record checks;
- 3.5.2. Identifying information required by the FBI, such as the applicant's or employee's or volunteer's name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth;
- 3.5.3. Statement indicating whether the applicant, employee or volunteer has ever been convicted of a crime, and if so, the particulars of the conviction; and
- 3.5.4. Acknowledgement of receipt of notification of retention of fingerprints by the HCJDC and the FBI and participation in the rap back program.
- 3.6. Attach the FBI Privacy Act Notification (Attachment A) to each applicant, employee, and/or volunteer's VECHS Consent and Waiver form.
- 3.7. Provide for the security of all CHRI received. This includes, but is not limited to:
  - 3.7.1. Designate a Local Agency Security Officer who is responsible for ensuring compliance with security procedures and this Agreement.
  - 3.7.2. Ensure that all personnel with access to CHRI are aware of rules and responsibilities with regard to CHRI by completing the HCJDC Security Awareness program within six months of initial assignment and biennially thereafter.
  - 3.7.3. Restrict access to physical or electronic copies of CHRI to authorized personnel. Physical copies shall be maintained in a controlled, secured environment such as a locked cabinet in a room not accessible to all staff and visitors. Electronic copies of CHRI shall be encrypted with a minimum of 128-bit encryption that is certified to meet Federal Information Processing Standards Publication 140-2.
  - 3.7.4. Share CHRI only when explicitly allowed by law and log any CHRI sharing (either sending or receiving). Logs shall include, at a minimum, the date, sending and receiving agencies, record shared, statutory authority to share CHRI, means of transmission, and person who disseminated.
  - 3.7.5. Track and report to the HCJDC security incidents such as theft/loss of physical records or the penetration of electronic systems.
  - 3.7.6. Dispose of records securely:

3.7.6.1. Physical media shall be cross-shredded;

3.7.6.2. Electronic media used to store CHRI shall be sanitized, that is, overwritten at least three times or degaussed by authorized personnel prior to disposal or release for reuse by unauthorized individuals. Written documentation of the steps taken to sanitize or destroy electronic media shall be maintained.

- 3.8. Notify the applicant, employee, or volunteer of his or her right to obtain a copy of his or her criminal history records, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any such report, and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the QE reviewing the CHRI. Information on these rights may be obtained by contacting HCJDC, regarding any Hawaii criminal records, at: Hawaii Criminal Justice Data Center, 465 S. King Street, Room 101, Honolulu, Hawaii 96813, or by contacting the FBI, regarding federal or other non-Hawaii criminal records, at FBI, Criminal Justice Information Services Division, Attn: SCU, MOD D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.
- 3.9. Keep all records necessary to facilitate a security audit by the HCJDC and permit and cooperate in such audit as HCJDC or other authorities may deem necessary. Retain audit records for at least 365 days. Once the minimum retention time period has passed, the QE shall continue to retain audit records until they are no longer needed for administrative, legal, audit, or other operational purposes. Examples of records that may be subject to audit are criminal history records; notification that an individual has no criminal history; consent forms; internal policies and procedures articulating the provisions for physical security; records of all disseminations of CHRI, and a current executed VECHS User Agreement with the HCJDC.
- 3.10. The QE shall not disseminate any information associated with a request for criminal records. Any requests for criminal record information received by the QE will be referred to and processed through the HCJDC.

3.11. If set up on a billing account with the HCJDC for services requested pursuant to this Agreement, reimburse the HCJDC, in a timely manner, upon proper presentation of billing for state and federal services rendered. If not on a billing account, the QE shall pay for services provided by the HCJDC and the FBI concurrently with the submission of fingerprint cards and requests for criminal history record checks.

#### 4. Criminal History Record Information Limitations

4.1. Any information obtained from a fingerprint-based criminal history record check is considered confidential CHRI.

4.2. The arrest warrant file, sex offender registration file, or other databases maintained by the State or the HCJDC are not part of the State criminal history record check.

4.3. CHRI is compiled from information submitted to the HCJDC from law enforcement agencies, prosecutors, and courts (hereinafter referred to as “contributing agencies”). Although, the HCJDC makes reasonable efforts to ensure all information is submitted as required by law, it is not responsible for omissions from contributing agencies. HCJDC is not responsible for the accuracy or completeness of CHRI.

4.4. Before taking adverse action against an individual listed on the criminal history record check, the person in question must be afforded the opportunity to dispute and correct the record.

4.5. CHRI is constantly being updated as new arrests and other information are entered into the system by the contributing agencies. The record released is only valid as of the date the record check was performed.

4.6. Certain statutes allow for the expungement, suppression, or deletion of records; such information will not be provided to the QE.

4.7. The HCJDC retains records for the State of Hawaii only. Most fingerprinting authorizations include a check through the FBI, which the HCJDC will request on the QE’s behalf as a normal part of the criminal history record check, if allowed by law.

## 5. Termination

- 5.1. Either the HCJDC or the QE may terminate the performance of services under this Agreement when, in the reasonable estimation of HCJDC or QE, the other party has breached any material term of this Agreement. Furthermore, upon HCJDC becoming aware of a violation of this Agreement, which might jeopardize Hawaii's access to federal criminal history information, the HCJDC shall have the option of immediately terminating services under this Agreement by written notice to the QE. The HCJDC will consider entering into a new agreement with the QE when the HCJDC is satisfied in its sole discretion that the QE has taken the appropriate action to ensure violations will not recur.
- 5.2. When interests of the HCJDC or the QE so require, the HCJDC or the QE may terminate the performance of services under this Agreement by providing six (6) weeks prior written notice to the other party.

## 6. Liabilities

- 6.1. Sections 846-2.7 and 846-9, HRS, provide that state and national CHRI shall be used exclusively for the stated purpose for which it was obtained. National CHRI received from the FBI is made confidential by federal law and regulation.
- 6.2. Any person who knowingly permits unauthorized access to CHRI, or who knowingly disseminates CHRI in violation of the provisions of Chapter 846, HRS, or any person violating any agreement authorized by paragraphs (3) and (4) of Section 846-9, or any person who gains unauthorized access to CHRI shall be guilty of a misdemeanor, pursuant to Section 846-16, HRS.
- 6.3. Title 28, United States Code, § 534, Public Law 92-544 and Title 28, Code of Federal Regulations, 20.33(b), provide that the exchange of records and information is subject to cancellation if dissemination is made outside the receiving departments or related agencies. Furthermore, depending upon the nature of the offense and the identity of the offender, federal or state crimes may be charged for the willful, unauthorized disclosure of CHRI. Penalties may be

different depending on the authority to which the CHRI was authorized for dissemination.

## 7. Outsourcing of Non-Criminal Justice Administrative Functions

7.1. Non-criminal justice administrative functions means the routine non-criminal justice administrative functions related to the processing of CHRI, which include, but are not limited to:

- Making fitness determinations/recommendations.
- Obtaining missing dispositions.
- Disseminating CHRI as authorized by Federal statute, Federal Executive Order, or State Statute approved by the United States Attorney General.
- Other authorized activities relating to the general handling, use, and storage of CHRI.

7.2. Prior to engaging in outsourcing any non-criminal justice administrative functions, the QE shall:

7.2.1. Request and receive written permission from the State's National Crime Prevention and Privacy Compact Council Officer (State Compact Officer), Ms. Liane Moriyama of the HCJDC ; and

7.2.2. Provide the State Compact Officer copies of the specific authority for the outsourced work, criminal history record check requirements, and/or a copy of relevant portions of the contract as requested;

7.3. The QE shall execute a contract or agreement prior to providing a Contractor access to CHRI. The contract shall, at a minimum, incorporate by reference and have appended thereto the Compact Council's Security and Management Control Outsourcing Standard.

## 8. Miscellaneous

8.1. The QE agrees that:

8.1.1. QE is currently operating a lawful business or other entity in the State of Hawaii, with a physical address in Hawaii;

- 8.1.2. QE is legally authorized to operate its business or organization in the State of Hawaii;
  - 8.1.3. QE has complied and will continue to comply with all requirements to properly operate its business or organization in the State of Hawaii; and
  - 8.1.4. QE shall immediately notify HCJDC in writing upon any change in the above, including but not limited to name, address, and status as a business or organization.
- 8.2. This Agreement may be amended by HCJDC as needed, to comply with state or federal laws or regulations, or administrative needs of HCJDC, such amendment shall be in writing and signed by both parties.
- 8.3. This Agreement as it may be amended by amendments made by HCJDC as provided in 8.2 above, is binding upon the QE and all its employees, agents, officers, representatives, volunteers, contractors, vendors, successors in interest, beneficiaries, subsidiaries, and assigns.

**Qualified Entity**

\_\_\_\_\_  
 (Name of Qualified Entity)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Print Name)

\_\_\_\_\_  
 (Print Title)

\_\_\_\_\_  
 (Date)

**Hawaii Criminal Justice Data Center**

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Print Name)

\_\_\_\_\_  
 (Title)

\_\_\_\_\_  
 (Date)



## ATTACHMENT A

### FEDERAL BUREAU OF INVESTIGATION PRIVACY ACT NOTIFICATION

**Authority:** The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include Federal statutes, State statutes pursuant to Pub. L. 92-544, Presidential Executive Orders, and federal. Providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

**Social Security Account Number (SSAN).** Your SSAN is needed to keep records accurate because other people may have the same name and birth date. Pursuant to the Federal Privacy Act of 1974 (5 USC 552a), the requesting agency is responsible for informing you whether disclosure is mandatory or voluntary, by what statutory or other authority your SSAN is solicited, and what uses will be made of it. Executive Order 9397 also asks Federal agencies to use this number to help identify individuals in agency records.

**Principal Purpose:** Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based background checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

**Routine Uses:** During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine uses include, but are not limited to, disclosures to: employing, governmental or authorized non-governmental agencies responsible for employment, contracting licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.

**Additional Information:** The requesting agency and/or the agency conducting the application-investigation will provide you additional information pertinent to the specific circumstances of this application, which may include identification of other authorities, purposes, uses, and consequences of not providing requested information. In addition, any such agency in the Federal Executive Branch has also published notice in the Federal Register describing any systems(s) of records in which that agency may also maintain your records, including the authorities, purposes, and routine uses for the system(s).