



VOLUNTEERS & EMPLOYEE CRIMINAL HISTORY SERVICE (VECHS)
**AGREEMENT FOR ACCESS TO
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 the _____, (hereinafter referred to as Qualified Entity (“QE”), whose Hawaii address is _____, is intended to set forth the terms and conditions under which criminal history record checks 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 permitted by law.

- 1.1. National criminal history record checks are authorized under the **National Child Protection Act (NCPA), 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 collecting, compiling, and disseminating 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 current and/or prospective applicants, employees, and/or volunteers who provide care to children, vulnerable adults, or individuals with disabilities in the State of Hawaii.
- 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 (CHRI) derived from the systems of the HCJDC and Federal Bureau of Investigations (FBI).

Now, therefore, in light of the preceding 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 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. Read, understand, and comply with the HCJDC Criminal History Record Checks for Non-Criminal Justice Purposes Policy and Manual.
 - 3.5. Use CHRI for only the purpose authorized by state and federal law and regulations.
 - 3.6. Designate a Terminal Agency Coordinator (TAC) that acts as a liaison between the agency and the State CJIS Systems Officer (CSO).
 - 3.7. Designate a Local Agency Security Officer (LASO) responsible for ensuring compliance with security procedures and this Agreement.
 - 3.8. For each applicant, employee, and/or volunteer subject to a criminal history record check, the QE shall obtain and retain for 365 days the original completed and signed VECHS Consent and Waiver form that contains the following:
 - 3.8.1. Consent to obtain fingerprints and conduct criminal history record checks;

- 3.8.2. 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;
 - 3.8.3. Statement indicating whether the applicant, employee, or volunteer has ever been convicted of a crime and, if so, the particulars of the conviction;
 - 3.8.4. Acknowledgement of receipt of notification of retention of fingerprints by the HCJDC and the FBI and participation in the rap back program; and
 - 3.8.5. Acknowledgement of receipt of notification of the FBI Privacy Act Statement.
- 3.9. Provide for the security of all CHRI received. This includes, but is not limited to:
- 3.9.1. Ensure that all personnel with access to CHRI are aware of rules and responsibilities with regards to CHRI.
 - 3.9.2. Ensure that all personnel with access to CHRI complete the HCJDC Security Awareness Training within six months of initial assignment and biennially thereafter.
 - 3.9.3. Ensure that the HCJDC is notified immediately of personnel changes, including personnel with access to CHRI who have been terminated and must be disabled from accessing HCJDC systems.
 - 3.9.4. Ensure the designated LASO completes the HCJDC LASO Security Awareness Training within six months of initial assignment and annually thereafter.
 - 3.9.5. 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. CHRI's electronic documents shall be encrypted with a minimum of 128-bit encryption certified to meet Federal Information Processing Standards Publication 140-2.
 - 3.9.6. Ensure CHRI is used only for an authorized purpose consistent for which CHRI was accessed. Sharing of CHRI is only authorized when explicitly allowed by law and shall be logged. Dissemination to another agency is authorized if (a) the other agency is an Authorized Recipient of such information and is being serviced by the accessing agency, or (b) the other agency is performing personnel and appointment functions for criminal justice employment applicants.

- 3.9.7. Any CHRI released to another authorized agency must log such dissemination and shall include, at a minimum, the dissemination date, subject's name, subject's state identification (SID) or universal control number (UCN), name of individual receiving CHRI, name of authorized receiving agency, the reason for releasing CHRI, name of individual releasing CHRI, the method used to release CHRI.
- 3.9.8. Track and report to the HCJDC security incidents such as theft/loss of physical records or the penetration of electronic systems.
- 3.9.9. Dispose of records securely:
 - 3.9.9.1. Physical media shall be cross-shredded;
 - 3.9.9.2. Electronic media used to store CHRI shall be sanitized, overwritten at least three times, or degaussed by authorized personnel before disposal or release for reuse by unauthorized individuals. Written documentation of the steps taken to sanitize or destroy electronic media shall be maintained.
- 3.10. Notify the applicant, employee, or volunteer of their right to obtain a copy of their 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 decision 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, CJIS Division, Attn: Criminal History Analysis Team 1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.
- 3.11. Keep all records necessary to facilitate a security audit by the HCJDC and FBI. Permit and cooperate in such audit as the HCJDC, the FBI, or other authorities may deem necessary. Retain audit records for at least 365 days. Once the minimum retention 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 documents 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 Volunteer & Employee Criminal History Service Agreement for Access to Criminal History Record Information with the HCJDC.

- 3.12. The QE shall not disseminate any information associated with a request for criminal records without authorization by the HCJDC. Any requests for criminal record information received by the QE will be referred to and processed through the HCJDC.
- 3.13. Suppose a billing account with the HCJDC was established for services requested under this Agreement. In that case, the QE shall remit payment within thirty days of receiving the invoice to avoid being disabled from accessing the HCJDC system(s). If a billing account was not established, the QE shall pay for services provided by the HCJDC and the FBI concurrently with submitting fingerprints 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. The 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 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 and time 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. Liabilities

5.1. 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.

5.2. 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, under Section 846-16, HRS.

5.3. Title 28, United States Code, § 534, Public Law 92-544 and Title 28, Code of Federal Regulations, 20.33(b), provided 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 offender's identity, federal or state crimes may be charged for the willful, unauthorized disclosure of CHRI. Penalties may differ depending on the authority to which the CHRI was authorized for dissemination.

6. Termination

6.1. 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.

6.2. 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.

7. Outsourcing of Non-Criminal Justice Administrative Functions

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

- Accessing CHRI.
- Making fitness determinations.
- 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 CHRI's general handling, use, and storage.

7.2. Before 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); 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.

7.2.3. The QE shall execute a contract or agreement before providing the Contractor access to CHRI. The contract shall, at a minimum, incorporate by reference and have appended to it the most current 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 abide by 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 amendments made by HCJDC is binding upon the HCJDC and the QE and its respective employees, agents, officers, representatives, volunteers, contractors, vendors, successors in interest, beneficiaries, subsidiaries, assignees, etc.
- 8.4 No less than triennially, unless the signatory departs from the QE, the QE shall validate the signatory of this Agreement and provide an updated Agreement with the appropriate QE head or administrator, if necessary.

Qualified Entity:

HCJDC:

Signature

Print Name

Print Title

Name of Qualified Entity

Date

Signature

Christopher D. W. Young

Print Name

HCJDC Administrator

Print Title

Date