H.B. NO. 3129

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS FOR SOCIAL SERVICES PROGRAMS.

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

SECTION 1. Section 346-17, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) As a condition for a certificate of approval, any organization, institution, or foster boarding home, including all adults residing in the foster boarding home, shall:

(1) Meet all standards and requirements established by the department;

(2) Be subject to criminal history record checks in accordance with section 846-2.7, and child abuse and neglect registry checks, in accordance with departmental procedures; and

(3) Provide consent to the department or its designee to obtain criminal history record and child abuse and neglect registry information.

New employees of the organization, institution, or home shall be fingerprinted within five working days of employment."

SECTION 2. Section 346-17, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) The department or its designee shall request:

(1) A criminal history record check through the Hawaii criminal justice data center on all operators, employees, and new employees of child care institutions, child placing organizations, and foster boarding homes, including all adults residing in the foster boarding homes, subject to licensure pursuant to section 846-2.7; and

(2) A child abuse and neglect registry check on all operators, employees, and new employees of child care institutions, child placing organizations, and adults residing in a foster boarding home subject to licensure in accordance with departmental procedures."

SECTION 3. Section 346-17, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

"(l) The department or its designee shall make a name inquiry into the criminal history records for the first two years of certification of a foster boarding home and annually or biennially thereafter and into the child abuse and neglect

registry in accordance with departmental procedures depending on the certification status of the home."

SECTION 4. Section 346-19.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall develop procedures for obtaining verifiable information regarding the criminal history and child abuse and neglect registry information of persons who are seeking to become adoptive parents. [~~These procedures~~] The department or its designee shall [~~include~~] obtain criminal history record [~~checks~~] information through the Hawaii criminal justice data center in accordance with section 846-2.7[~~.~~] and child abuse record information from the department in accordance with departmental procedures."

SECTION 5. Section 346-97, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall adopt rules pursuant to chapter 91 establishing standards regarding the reputable and responsible character of service providers who have direct contact with individuals receiving services under this part, including:

(1) Licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers;

(2) Purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch;

(3) Foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants; and

(4) Contracted and subcontracted service providers and their employees and new employees who provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c))[~~.~~] or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services."

SECTION 6. Section 346-154, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) A provider shall:

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

(2) Submit to the department a statement signed by any employee hired after the initial licensure or registration that requires the employee to indicate under penalty of law, whether the employee has ever been confirmed to have abused or neglected a child, including threatened harm; and

(3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7 and a child abuse record check, and to obtain criminal history and child abuse record information for verification.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7, and child abuse record information from the department in accordance with departmental procedures on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a registration or license under this part, which shall include an annual name inquiry into the state criminal history record files."

SECTION 7. Section 346-335, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§346-335**[~~]~~] **Background checks.** (a) The department shall develop standards to ensure the reputable and responsible character of operators [~~and~~], employees, volunteers, and other adults regularly present, except for adults in care, of the [~~home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter.~~] programs identified in section 346-97.

(b) An applicant for [~~a home and community-based case management agency license and operators, employees, and new employees of a home and community-based case management agency~~] the programs identified in section 346-97 shall:

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

(2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, "adult abuse perpetrator check" means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual's name and birth date in the department's adult protective service file; and

(3) Provide consent to the department to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(c) New employees of the [~~home and community-based case management agency~~] programs identified in section 346-97 shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7 on applicants for [~~home and community-based case management agency licenses, and operators, employees, and new employees of home and community-based case management agencies.~~] programs identified in section 346-97. The Hawaii criminal justice data center may assess the applicants and operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purposes for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted."

SECTION 8. Section 352D-4.3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Employees, prospective employees, and volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office shall be required to agree to criminal history record checks[~~,~~] conducted by the office or its designee in accordance with section 846-2.7. The office shall develop procedures for obtaining verifiable information regarding the criminal history records of individuals seeking to serve as employees or volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office.

(b) Except as otherwise specified, any individual who is employed, seeks employment, or volunteers with a contracted provider or subcontractor in a position that necessitates close proximity to youth when providing services on behalf of the office shall:

(1) Submit to the office a sworn statement indicating whether the individual has ever been convicted of an offense for which incarceration is a sentencing option;

(2) Be subject to criminal history record checks through the Hawaii criminal justice data center in accordance with section 846-2.7. An annual name inquiry shall be conducted in the state criminal history record files; and

(3) Provide to the office written consent for the office or its designee to obtain criminal history record information for verification.

Information obtained pursuant to this section shall be used exclusively by the office for purposes of determining whether a person is suitable for working or volunteering in a position that necessitates close proximity to youth when providing contracted services on behalf of the office or in conjunction with services provided for youth at the Hawaii youth correctional facility, while in custody, on furlough or on parole. All such decisions shall be subject to any applicable federal laws and regulations."

SECTION 9. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

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

1 adult living in the facility other than the client as
2 provided by section 321-15.2;
3 (4) The department of education on employees, prospective
4 employees, and teacher trainees in any public school in
5 positions that necessitate close proximity to children
6 as provided by section 302A-601.5;
7 (5) The counties on employees and prospective employees who
8 may be in positions that place them in close proximity
9 to children in recreation or child care programs and
10 services;
11 (6) The county liquor commissions on applicants for liquor
12 licenses as provided by section 281-53.5;
13 (7) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and foster boarding homes as provided by
16 section 346-17;
17 (8) The department of human services on prospective
18 adoptive parents as established under section 346-19.7;
19 (9) The department of human services on applicants to
20 operate child care facilities, prospective employees of
21 the applicant, and new employees of the provider after

registration or licensure as provided by section 346-154;

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

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

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

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

(14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;

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

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

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

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

(19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact

with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;

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

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

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

(23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social

1 Security Act (42 U.S.C. § 1396n(c)), as provided by
2 section 346-97; and
3 (24) Any other organization, entity, or the State, its
4 branches, political subdivisions, or agencies as may be
5 authorized by state law."
6 SECTION 10. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.
8 SECTION 11. This Act shall take effect upon its approval.
9
10 INTRODUCED BY: Calvin K.Y. Say
11 BY REQUEST

JAN 22 2008

H.B. NO. 3129

Report Title:
Criminal history background checks; social services programs.

Description:
Authorizes the Department of Human Services or its designee to conduct criminal history record checks for those providing services to vulnerable adults and children.

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JUSTIFICATION SHEET

DEPARTMENT: Human Services.

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS FOR SOCIAL SERVICES PROGRAMS.

PURPOSE: To authorize the department or its designee to conduct criminal history record checks for service providers and to correct omissions in Acts 131 and 220, Session Laws of Hawaii (SLH) 2006, as well as the various statutes authorizing the department to conduct criminal history background checks.

MEANS: Amend sections 346-17(f), (j), and (l), 346-19.7(b), 346-97(b), 346-154(c) and (d), 346-335, 352D-4.3(a) and (b), and 846-2.7(b), Hawaii Revised Statutes.

JUSTIFICATION: Criminal history record checks are required for various department programs to ensure the safety of clients. Acts 131 and 220, SLH 2006, increased the number of programs requiring criminal history record checks. However, in order for the department to fully operationalize the required increase in record checks, amendments are needed to correct omissions in Acts 131 and 220, SLH 2006, as well as the various statutes authorizing the department to conduct criminal history background checks.

The statutory amendments being proposed will clarify that the department or its designee is authorized to conduct the criminal history record checks for the department and its service providers, including arrest records, as specified in chapter 846, HRS.

Currently, such background checks may only be conducted by department staff, except for one of the department's programs, i.e., community care foster family homes, for which section 346-335 specifies that the

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department's "designee" may perform these functions for the department.

The increase of requests for background checks resulting from Acts 131 and 220, SLH 2006, is greater than current department staff can process on a timely basis. Authorizing the department or its designee to conduct the necessary background checks will enable the department to contract for such services in all of the programs for which the department, or its administratively attached agencies, are required to do background checks, to ensure that the required background checks are processed timely.

This bill will also enable service providers to receive and provide to the department, the background check information necessary to meet the licensing or other requirements of the department's programs. This will result in more timely services to vulnerable adults and children and free up department staff to provide other necessary social services.

This bill also proposes to amend sections 346-97 and 846-2.7, HRS, to add a new program to the list of programs that require criminal history record checks and adult abuse perpetrator checks. Additionally, it adds clarifying language that will continue to allow home and community-based programs to require these checks, regardless of the type of Medicaid waiver that is administering the program.

These proposed amendments will clarify that a designee of the department may conduct the criminal history record checks on behalf of the department, pursuant to chapter 846, HRS.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 301, 302, 501, 601

OTHER AFFECTED AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: July 1, 2008