H.B. NO. 3158

A BILL FOR AN ACT

RELATING TO HAWAII HEALTH SYSTEMS CORPORATION BACKGROUND CHECKS.

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

SECTION 1. SECTION 1. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§323F- Criminal history record checks.** (a) The Hawaii health systems corporation shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment, or are current or prospective contractors, providers or volunteers in any of the corporation's health facilities. The procedures shall include but not be limited to criminal history record checks in accordance with section 846-2.7.

The Hawaii criminal justice data center may assess providers and contractors a reasonable fee for criminal history record checks performed. Providers and contractors shall be responsible for payment to the Hawaii criminal justice data center of the fee for the criminal history records checks.

(b) Except as otherwise specified, any person who is employed or who seeks employment with Hawaii health systems corporation, or is a current or prospective contractor, provider, or volunteer in any of the corporation's health facilities may be required to provide to the corporation:

(1) A sworn statement indicating whether or not the person has ever been convicted of an offense for which incarceration was a sentencing option, and the details thereof;

(2) Written consent for the corporation to obtain criminal history record check information for verification; and

(3) Written consent to be fingerprinted for the purpose of a criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the Hawaii health systems corporation for the purposes of determining whether a person is suitable for working or providing services in any of the corporation's health facilities. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) Any Hawaii health systems corporation employee, applicant for employment, or current or prospective contractor,

provider, or volunteer, who has been convicted of a criminal offense for which incarceration is a sentencing option, may be terminated, not hired, released, or not be utilized. This action will be based on the corporation's analysis of whether the nature and circumstances of the crime may pose a risk to the health, safety, or well-being of patients and residents in its health facilities.

(d) For the purposes of this section:

"Contractor" means any organization or individual that enters into a contract or agreement to provide services to the patients or residents in any of the Hawaii health systems corporation's health facilities.

"Criminal history record check" means an examination of an individual's criminal history records by means including, but not limited to, fingerprint analysis and name inquiry into state and national criminal history record files.

"Provider" means any organization or individual that currently provides or intends to enter into a contract or agreement to provide services to the patients or residents in any of the Hawaii health systems corporation's health facilities,

or is a student in any program at any of Hawaii health systems corporation's health facilities.

(e) Notwithstanding any other law to the contrary, for purposes of this section, the Hawaii health systems corporation shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearing under this section in accordance with chapter 91."

SECTION 2. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

(1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-2.7;

(2) The department of education pursuant to section 302A-601.5;

(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;

(4) The judiciary pursuant to section 571-34;

(5) The counties pursuant to section 846-2.7;

(6) Armed security services pursuant to section 261-17(b);

(7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;

(8) Private schools pursuant to section 378-3(8) and section 302C-1;

(9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);

(10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);

(11) Employers in the business of insurance pursuant to section 431:2-201.3;

(12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);

(13) The department of human services pursuant to sections 346-97 and 352-5.5;

(14) The public library system pursuant to section 302A-601.5;

(15) The department of public safety pursuant to section 353C-5;

(16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;

(17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514B-133; [~~and~~]

(18) The department of health pursuant to section 321-15.2[~~.~~]; and

(19) The Hawaii health systems corporation with respect to employees, applicants, and current or prospective

contractors, providers, or volunteers, pursuant to section 323F."

SECTION 3. 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) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;

(2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;

(3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care homes, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program,

intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;

(4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;

(5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;

(6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;

(7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

(8) The department of human services on prospective adoptive parents as established under section 346-19.7;

(9) The department of human services on applicants to operate child care facilities, prospective employees of 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

1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
3 (14) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
5 (15) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
11 (16) The department of commerce and consumer affairs on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
14 (17) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to children;
17 provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 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, 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 Security Act (42 U.S.C. §1396n(c)), as provided by section 346-97; [~~and~~]

(24) The Hawaii health systems corporation on employees, applicants seeking employment, or current and prospective volunteers, providers, or contractors in any of the corporation's health facilities as provided by section 323F; and

[~~24~~] (25) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 4. There is appropriated out of the state criminal history record improvement revolving fund the sum of $20,000, or so much thereof as may be necessary for fiscal year 2008-2009, for purposes of this Act. The sum appropriated shall be expended by the department of the attorney general.

1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 6. This Act shall take effect upon its approval.
4
5 INTRODUCED BY: Calvin K.Y. Say
6 BY REQUEST

JAN 22 2008

H.B. NO. 3158

Report Title:
Hawaii Health Systems Corporation Background Checks

Description:
Authorize the Hawaii Health Systems Corporation to conduct FBI criminal history record checks through the Hawaii Criminal Justice Data Center on employees, applicants, current or prospective contractors, providers, or volunteers.

HB 3158

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HAWAII HEALTH SYSTEMS CORPORATION BACKGROUND CHECKS.

PURPOSE: Authorize the Hawaii health systems corporation (HHSC) to request criminal history checks through the Federal Bureau of Investigation and through the Hawaii Criminal Justice Data Center, on employees or applicants, as well as current or prospective contractors, providers, or volunteers, in order to comply with federal law and to ensure the safety of its patients.

MEANS: Add a new section to chapter 323F and amend sections 378-2.5(d) and 846-2.7(b), Hawaii Revised Statutes.

JUSTIFICATION: Currently, HHSC is authorized by 42 U.S.C. section 5119 et seq. to conduct FBI criminal history background checks on employees and applicants who will have direct contact with children, the elderly and disabled patients. HHSC is seeking to expand its authority to conduct background checks through the Federal Bureau of Investigation and through the Hawaii Criminal Justice Data Center, on all employees and applicants, including current and potential contractors, providers and volunteers who provide services to HHSC, regardless of whether they will be having direct contact with protected categories of patients. All patients should be afforded this protection.

Impact on the public: Conducting criminal background checks on HHSC employees and applicants will promote the safety of its patients and employees.

Impact on the department and other agencies: Same as above.

HB 3158

GENERAL FUND:	None.
OTHER FUNDS:	Special Fund: state criminal history record improvement revolving fund.
PPBS PROGRAM DESIGNATION:	ATG-231.
OTHER AFFECTED AGENCIES:	Hawaii Criminal Justice Data Center.
EFFECTIVE DATE:	Upon approval.