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JAN 28 2015

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## A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

1 SECTION 1. Section 321-15.2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§321-15.2 [~~Criminal history record checks.~~] Background  
4 checks. (a) For the purposes of this section:

5 "Adults" means individuals aged eighteen years or older.

6 "Applicant" means a person or entity seeking licensure to  
7 operate a healthcare facility. If the applicant is an entity,  
8 the term "applicant" shall also include its principals,  
9 directors, partners, managers, agents, and representatives to  
10 the extent that any of these individuals will have access to or  
11 contact with clients, their finances, assets, personal property,  
12 medical records, or individually identifiable information.

13 "Background check" means a review of records stored in  
14 state or national record repositories for history of abuse,  
15 neglect, threatened harm, or other maltreatment against children  
16 or adults, and for any criminal history, including:

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- 1        (1) Adult abuse perpetrator records by means of a search  
2                of the individual's name and birth date in the state  
3                adult protective services central registry of reported  
4                cases established in section 346-224;
- 5        (2) Child abuse and neglect records by means of:
  - 6                (A) An initial name inquiry in the state child  
7                        welfare record files;
  - 8                (B) A subsequent child abuse confirmation history  
9                        check for new hires and rehires; and
  - 10                (C) An annual name inquiry into state child welfare  
11                        record files;
- 12        (3) Criminal history records in accordance with section  
13                846-2.7;
- 14        (4) Sex offender registry records;
- 15        (5) Certified nurse aide registry for information or  
16                findings pursuant to section 457A-3; and
- 17        (6) Adult abuse perpetrator records, child abuse and  
18                neglect records, criminal history records, sex  
19                offender registry records, and certified nurse aide  
20                registry records of another state where a prospective  
21                employee or adult volunteer previously resided.

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1 "Conviction for a relevant crime" means any federal or  
2 state conviction for any relevant crime as defined in this  
3 section.

4 "Criminal history record name inquiry" means a record check  
5 by name for any federal or state conviction for any relevant  
6 crime as defined in this section.

7 "Department" means the department of health.

8 "Direct patient access employee" means any individual,  
9 including a volunteer, who has access to a patient or resident  
10 of a healthcare facility, or any provider through employment or  
11 through an agreement or contract with such a facility or  
12 provider. Such individuals include but are not limited  
13 to: physicians, nurses, nursing assistants, home health aides,  
14 therapists, activities personnel, and support staff (i.e.,  
15 housekeeping, dietary, etc.) who have direct access to patients  
16 or patient belongings.

17 "Disqualifying information" means a conviction for a  
18 relevant crime or a finding of patient or resident abuse.

19 "Healthcare facility" means a facility [or] setting,  
20 ~~[where a frail, elderly, or disabled adult receives care]~~ or  
21 agency licensed or certified by the department of health that  
22 provides mental health or healthcare services or ~~[is provided]~~  
23 living accommodations to individuals, such as skilled nursing

1 facility, intermediate care facility, adult residential care  
2 home, expanded adult residential care home, assisted living  
3 facility, home health agency, home care agency, hospice, adult  
4 day health center, special treatment facility, therapeutic  
5 living program, intermediate care facility for individuals with  
6 intellectual disabilities, hospital, rural health center,  
7 community care foster family home, home and community-based case  
8 management agency, adult day care center, developmental  
9 disabilities domiciliary home, adult foster home for individuals  
10 with developmental disabilities, community mental health center,  
11 and rehabilitation agency.

12 "Name inquiry" means a criminal history record check  
13 conducted by using the name and other identifying information of  
14 the individual, in lieu of a fingerprint check.

15 "Operator" means an individual or entity that is licensed  
16 or is seeking licensure to operate a healthcare facility and is  
17 responsible for the management and overall operations of that  
18 healthcare facility.

19 "Relevant crime" means:

- 20 (1) Any offense described in 42 United States Code §1320a-  
21 7 (section 1128(a) of the Social Security Act); or  
22 (2) A crime of such a serious nature or circumstance that  
23 the department finds its perpetrator to pose a risk to

1 the health, safety, or well-being of a patient or  
2 resident. This includes but is not limited to murder,  
3 manslaughter, assault, sex offenses, domestic  
4 violence, theft or forgery, arson, kidnapping, or  
5 possession, use, sale, manufacture, or distribution of  
6 dangerous drugs or controlled substances.

7 (b) The department shall adopt rules pursuant to chapter  
8 91 to ensure the reputable and responsible character of all  
9 prospective applicants, operators, direct patient access  
10 employees, and adult volunteers of a healthcare facility, and,  
11 in the case of any healthcare facility operated in a private  
12 residence, all adults living in the home other than the clients.  
13 These rules, among other things, shall specify how the  
14 department or ~~[the department's]~~ its designee may conduct  
15 ~~[criminal history record checks in accordance with section 846-~~  
16 ~~2.7.]~~ background checks in accordance with this section.

17 (c) All applicants and prospective operators shall:

18 (1) Be subject to ~~[criminal history record checks in~~  
19 ~~accordance with section 846 2.7;]~~ background checks;

20 and

21 (2) ~~[Authorize the disclosure to the department or the~~  
22 ~~department's designee of criminal history record~~

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1           ~~information,]~~ Provide consent to the department or its  
2           designee to conduct background checks.

3           ~~[(3) Sign a waiver form stating that the department or the~~  
4           ~~department's designee shall not be liable to the~~  
5           ~~applicant or prospective operator; and~~

6           ~~(4) Consent to be fingerprinted for the purpose of~~  
7           ~~requesting criminal history record information from~~  
8           ~~the Federal Bureau of Investigation and the Hawaii~~  
9           ~~criminal justice data center.]~~

10           (d) All prospective direct patient access employees and  
11           adult volunteers of healthcare facilities and, in the case of  
12           any healthcare facility operated in a private residence, all  
13           adults living in the home other than the clients shall:

14           ~~[(1) Consent to be fingerprinted;~~

15           ~~(2) Provide all necessary information for the purpose of~~  
16           ~~enabling the department or the department's designee~~  
17           ~~to conduct [the criminal history record] background~~  
18           ~~checks; and~~

19           ~~(3) Sign a waiver form stating that the department or the~~  
20           ~~department's designee shall not be liable to the~~  
21           ~~employee or volunteer.]~~

22           (1) Be subject to background checks in accordance with  
23           this section; and

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1        (2) Provide consent to the department or its designee to  
2                    conduct background checks.

3        [~~(e) The department or the department's designee may~~  
4        ~~request criminal history record information which includes~~  
5        ~~Federal Bureau of Investigation data through the Hawaii criminal~~  
6        ~~justice data center on all prospective applicants, operators,~~  
7        ~~direct patient access employees, and adult volunteers of~~  
8        ~~healthcare facilities. In addition, in the case of any~~  
9        ~~healthcare facility to be operated in a private residence, the~~  
10       ~~department of health or the department's designee may request~~  
11       ~~criminal history record information which includes Federal~~  
12       ~~Bureau of Investigation data through the Hawaii criminal justice~~  
13       ~~data center for all adults residing in the home who are not~~  
14       ~~clients.]~~

15       (e) The department or its designee shall obtain background  
16       check information in accordance with this section from an  
17       applicant or operator, on the applicant or operator, and on any  
18       prospective employees of the applicant or operator including any  
19       new employee retained after the applicant is issued a license or  
20       certificate under this part, which shall include an annual name  
21       inquiry into state criminal history record files.

22       (f) The department or [~~the department's~~] its designee  
23       shall make a name inquiry into the criminal history records or

1 conduct criminal history record checks of all prospective  
2 applicants, operators, direct patient access employees, and  
3 adult volunteers at the healthcare facility, and, in the case of  
4 any healthcare facility operated in a private residence, all  
5 adults living in the home other than the clients.

6 (g) The department may revoke or suspend a current  
7 license ~~[,]~~ or certificate, impose penalties or fines, or deny an  
8 application for a license or certificate under rules adopted  
9 pursuant to chapter 91 if the applicant, operator, employee, or  
10 adult volunteer at the healthcare facility or, in the case of  
11 any healthcare facility operated in a private residence, any  
12 adult living in the home other than the client ~~[, refuses to~~  
13 ~~authorize the department or the department's designee to conduct~~  
14 ~~a criminal history record check, obtain criminal history record~~  
15 ~~information for verification, or consent to be~~  
16 ~~fingerprinted. In addition, the department may revoke or~~  
17 ~~suspend a current license, impose penalties or fines, or deny an~~  
18 ~~application for a license if the applicant, operator, direct~~  
19 ~~patient access employee, or adult volunteer at the healthcare~~  
20 ~~facility, or, in the case of a healthcare facility operated in a~~  
21 ~~private residence, any adult living in the home other than the~~  
22 ~~client, has any disqualifying information. The department may~~  
23 ~~also revoke or suspend a current license, impose penalties or~~



1  ~~fines, or deny an application for a license if the department~~  
2  ~~determines, based upon consideration of the criminal history~~  
3  ~~information, that the applicant, operator, direct patient access~~  
4  ~~employee, or adult volunteer at the healthcare facility, or, in~~  
5  ~~the case of a healthcare facility operated in a private~~  
6  ~~residence, any adult living in the home other than the client,~~  
7  ~~is unsuitable to work or live in close proximity to the~~  
8  ~~residents of the healthcare facility such that the health,~~  
9  ~~safety, and welfare of the residents of the healthcare facility~~  
10  ~~could be at risk.]:~~

- 11       (1) Refuses to authorize the department or its designee to  
12           conduct a background check, refuses to authorize the  
13           department or its designee to obtain background check  
14           record information for verification, or refuses  
15           consent to be fingerprinted;
- 16       (2) Refuses or fails to submit to the department or its  
17           designee information required to perform a background  
18           check;
- 19       (3) Has any disqualifying information; or
- 20       (4) Has any background check information that the  
21           department finds may pose a risk to the health,  
22           safety, or welfare of the residents or patients of the  
23           healthcare facility.

1       ~~[(h) Notwithstanding any other law to the contrary, for~~  
2 ~~purposes of this section, the department shall be exempt from~~  
3 ~~section 831-3.1 and need not conduct investigations,~~  
4 ~~notifications, or hearings under this section in accordance with~~  
5 ~~chapter 91.]~~

6       ~~[(i)]~~ (h) The fee charged by the Federal Bureau of  
7 Investigation and the Hawaii criminal justice data center to  
8 perform criminal history record checks may be passed on to all  
9 applicants, operators, direct patient access employees, and  
10 adult volunteers at the healthcare facility and, in the case of  
11 a facility operated in a private residence, all adults living in  
12 the home other than the clients.

13       (i) The department or its designee, in obtaining and  
14 relying upon the background check information, is presumed to be  
15 acting in good faith and shall be immune from civil liability  
16 for taking or recommending action based upon the background  
17 check information. The presumption of good faith may be  
18 rebutted upon a showing of proof by a preponderance of the  
19 evidence that the department or its designee relied upon  
20 information or opinion that it knew was false or misleading.

21       ~~[(j) The department, or the department's designee, in~~  
22 ~~obtaining and relying upon the criminal history record checks,~~  
23 ~~is presumed to be acting in good faith and shall be immune from~~

1 ~~civil liability for taking or recommending action based upon the~~  
2 ~~criminal history record information. The good faith presumption~~  
3 ~~may be rebutted upon a showing by the person or entity of a lack~~  
4 ~~of good faith, and proof by a preponderance of the evidence,~~  
5 ~~that the department relied upon information or opinion that it~~  
6 ~~knew was false or misleading.]~~

7       ~~[(k)]~~ (j) Any applicant or operator who receives  
8 information from the department or ~~[the department's]~~ its  
9 designee relating to a ~~[criminal history record]~~ background  
10 check of a direct patient access employee or adult volunteer or,  
11 in the case of a healthcare facility operated in a private  
12 residence, an adult living in the home other than the clients,  
13 is presumed to be acting in good faith and shall be immune from  
14 civil liability for taking or recommending action based upon the  
15 department's recommendation or direction. Nothing in this  
16 section shall affect rights, obligations, remedies, liabilities,  
17 or standards of proof under chapters 368 and 378.

18       (k) ~~[Criminal history]~~ Background check record information  
19 shall be used exclusively by the department or ~~[the~~  
20 ~~department's]~~ its designee for the sole purpose of determining  
21 whether an applicant, operator, direct patient access employee,  
22 or adult volunteer at a healthcare facility, or, in the case of  
23 a facility operated in a private residence, any adult living in

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1 the home other than the clients is suitable for working or  
2 living in close proximity to residents of a healthcare facility  
3 such that the health, safety, and welfare of the residents would  
4 not be at risk."

5 SECTION 2. Section 321-171.5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§321-171.5 Employees of the department of health, its**  
8 **providers and subcontractors; ~~[criminal history]~~ background**  
9 **checks.** (a) The department of health shall develop procedures  
10 for obtaining verifiable background check information regarding  
11 ~~[the criminal history of]~~ persons who are seeking employment, or  
12 seeking to serve as providers or subcontractors, in positions  
13 that place them in direct contact with adult, child, or youth  
14 clients when providing non-witnessed direct mental health or  
15 healthcare services. These procedures shall include but not be  
16 limited to ~~[criminal history record checks in accordance with~~  
17 ~~section 846-2.7.] background checks as defined in section 321-~~  
18 15.2.

19 (b) Except as otherwise specified, any person who seeks  
20 employment with the department of health, or who is employed or  
21 seeks employment with a provider or subcontractor in a position  
22 that necessitates non-witnessed direct contact with clients when

1 providing non-witnessed direct mental health or healthcare  
2 services, shall:

3 (1) Be subject to [~~criminal history record~~] background  
4 checks in accordance with section [~~846-2.7; and~~] 321-  
5 15.2; and

6 (2) Authorize the disclosure to the department or its  
7 designee of background check information.

8 [~~+2~~] (3) Provide to the department of health or [~~the~~  
9 ~~department's~~] its designee written consent for the  
10 department or [~~the department's~~] its designee to  
11 obtain [~~criminal history record~~] background check  
12 information for verification.

13 Information obtained pursuant to subsection (a) and this  
14 subsection shall be used exclusively by the department of health  
15 for purposes of determining whether a person is suitable for  
16 working in a position that necessitates non-witnessed direct  
17 contact with clients when providing non-witnessed direct mental  
18 health or healthcare services. All such decisions shall be  
19 subject to federal laws and regulations currently or hereafter  
20 in effect.

21 (c) The department of health may refuse to employ or may  
22 terminate the employment of any employee or applicant for  
23 employment if [~~the~~]:

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1        (1) The person refuses to authorize the department or its  
2        designee to conduct a background check;

3        (2) The person refuses or fails to submit to the  
4        department or its designee information required to  
5        conduct a background check;

6        (3) The person has been convicted of an offense for which  
7        incarceration is a sentencing option[, and if]; or

8        (4) [the] The department of health finds by reason of the  
9        nature and circumstances of the [crime] background  
10       check information that the person poses a risk to the  
11       health, safety, or well-being of clients receiving  
12       non-witnessed direct mental health or healthcare  
13       services. Such refusal or termination may occur only  
14       after appropriate investigation, notification of  
15       results and planned action, and opportunity to meet  
16       and rebut the finding, all of which need not be  
17       conducted in accordance with chapter 91. Nothing in  
18       this subsection shall abrogate any applicable appeal  
19       rights under chapter 76 or 89.

20       (d) This section shall not be used by the department of  
21 health or [~~the department's~~] its designee to secure [~~criminal~~  
22 ~~history record~~] background checks on persons who have been

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1 employed continuously on a salaried basis since prior to July 1,  
2 ~~[2000-]~~ 2014.

3 (e) Nothing in this section shall prohibit ~~[criminal~~  
4 ~~history record]~~ background checks on employees of all providers  
5 and subcontractors.

6 (f) The department or its designee, in obtaining and  
7 relying upon the background check information shall be presumed  
8 to be acting in good faith and shall be immune from civil  
9 liability for taking or recommending action based upon the  
10 background check information. The presumption of good faith may  
11 be rebutted upon a showing of proof by a preponderance of the  
12 evidence that the department or its designee relied upon  
13 information or opinion that it knew was false or misleading.

14 (g) For purposes of this section:

15 "Provider" means any organization or individual that  
16 intends to enter into a contract with or is currently contracted  
17 by the department of health to provide direct mental health or  
18 healthcare services to the department's eligible clients.

19 "Subcontractor" means any organization or individual that  
20 enters into a contract or agreement with a provider to provide  
21 direct mental health or healthcare services to the department's  
22 eligible clients.

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1           [~~(g)~~] (h) Notwithstanding any other law to the contrary,  
2 the department of health shall be exempt from section 831-3.1  
3 for purposes of this section and need not conduct  
4 investigations, notifications, or hearings under this section in  
5 accordance with chapter 91."

6           SECTION 3. Section 333F-22, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "§333F-22 [~~Criminal history record~~] Background

9 **checks.** (a) The department shall adopt rules pursuant to  
10 chapter 91 to ensure the reputable and responsible character of  
11 an applicant to operate an adult foster home [~~or developmental~~  
12 ~~disabilities domiciliary home,~~] of existing providers and their  
13 employees, of current and prospective employees of the  
14 applicant, and of new employees of the provider after  
15 certification or licensure [~~, which shall provide for, but not be~~  
16 ~~limited to, criminal history record checks in accordance with~~  
17 ~~section 846-2.7]~~.

18           (b) For the purposes of this section [~~, "developmental~~  
19 ~~disabilities domiciliary homes"~~ means any facility licensed  
20 ~~under section 321-15.9 that provides twenty four hour~~  
21 ~~supervision or care, excluding licensed nursing care, for a fee,~~  
22 ~~to not more than five adults with intellectual disabilities or~~  
23 ~~developmental disabilities as defined in this chapter; and]~~:



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1           (1) "~~[adult]~~ Adult foster homes" shall be as defined under  
2                                section 321-11.2 ~~[.]~~; and

3           (2) "Background checks" shall be as defined under section  
4                                321-15.2.

5           (c) An applicant to operate an adult foster home and their  
6           substitute caregivers ~~[or developmental disabilities domiciliary~~  
7           ~~home and all current and prospective employees of the applicant]~~  
8           shall:

9           (1) ~~[be]~~ Be subject to ~~[criminal history record checks in~~  
10                               ~~accordance with section 846-2.7,~~ background checks;  
11                               and

12           (2) ~~[shall provide]~~ Provide consent to the department or  
13                               ~~[the department's]~~ its designee to ~~[obtain criminal~~  
14                               ~~history record information for verification.]~~ conduct  
15                               background checks.

16           (d) Each existing ~~[provider or provider]~~ adult foster home  
17           operator and their substitute caregivers and all ~~[employees]~~  
18           certified adult foster home operators and their substitute  
19           caregivers hired after the initial licensure or certification  
20           ~~[of the existing provider or provider]~~ shall:

21           (1) ~~[be]~~ Be subject to ~~[criminal history record checks in~~  
22                               ~~accordance with section 846-2.7,~~ background checks;  
23                               and

1           (2) ~~[shall provide]~~ Provide consent to the department or  
2           ~~[the department's]~~ its designee to ~~[obtain criminal~~  
3           ~~history record information for verification.]~~ conduct  
4           background checks.

5           (e) The department or ~~[the department's]~~ its designee is  
6           authorized to obtain ~~[criminal history record]~~ background check  
7           information ~~[through the Hawaii criminal justice data center]~~ on  
8           existing ~~[providers and their employees]~~ adult foster home  
9           operators and their substitute caregivers upon their next  
10          licensure or certification renewal date, and on any adult foster  
11          care home operator applicant and all current and prospective  
12          ~~[employees of the applicant]~~ substitute caregivers, including  
13          all new ~~[employees]~~ substitute caregivers after the adult foster  
14          home operator applicant is issued a certification or license  
15          under this chapter.

16          ~~[(f) Once fingerprints are on file, yearly licensure or~~  
17          ~~certification renewals for providers and employees will require~~  
18          ~~only state criminal history record checks through the Hawaii~~  
19          ~~criminal justice data center.]~~

20          ~~[(g)]~~ (f) The department may revoke a current license or  
21          certification or deny an application for a license or  
22          certification to operate an adult foster home ~~[or developmental~~  
23          ~~disabilities domiciliary home]~~ under rules adopted pursuant to

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1 chapter 91 if the existing provider or employee of an existing  
2 provider, applicant, current or prospective employee of the  
3 applicant, provider, or new employee of the provider refuses to  
4 submit to the department or [~~the department's~~] its designee  
5 statements indicating criminal convictions, refuses to provide  
6 consent to the department or [~~the department's~~] its designee to  
7 conduct a [~~criminal history record~~] background check or obtain  
8 [~~other criminal history record~~] background check information for  
9 verification, refuses to be fingerprinted, has been convicted of  
10 a crime other than a minor traffic violation involving a fine of  
11 \$50 or less; or if the department or [~~the department's~~] its  
12 designee finds that the [~~criminal history record~~] background  
13 check information of the existing provider or employee of an  
14 existing provider, applicant, current or prospective employee of  
15 the applicant, provider, or new employee of the provider  
16 indicates that the individual may pose a risk to the health,  
17 safety, or well-being of persons with developmental or  
18 intellectual disabilities living in the home."

19 SECTION 4. Section 846-22.7, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

- 21 "(b) Criminal history record checks may be conducted by:
- 22 (1) The department of health or [~~the department's~~] its  
23 designee on operators of adult foster homes for

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1 individuals with development disabilities or  
2 developmental disabilities domiciliary homes and their  
3 employees, as provided by section ~~[333F-22,]~~ 321-15.2;

4 (2) The department of health or ~~[the department's]~~ its  
5 designee on prospective employees, persons seeking to  
6 serve as providers, or subcontractors in positions  
7 that place them in direct contact with clients when  
8 providing non-witnessed direct mental health or  
9 healthcare services as provided by section 321-171.5;

10 (3) The department of health or ~~[the department's]~~ its  
11 designee on all applicants for licensure or  
12 certification for, operators for, prospective  
13 employees, ~~[and]~~ adult volunteers, and all adults,  
14 except adults in care, at ~~[one or more of the~~  
15 ~~following: skilled nursing facility, intermediate~~  
16 ~~care facility, adult residential care home, expanded~~  
17 ~~adult residential care home, assisted living facility,~~  
18 ~~home health agency, hospice, adult day health center,~~  
19 ~~special treatment facility, therapeutic living~~  
20 ~~program, intermediate care facility for individuals~~  
21 ~~with intellectual disabilities, hospital, rural health~~  
22 ~~center and rehabilitation agency, and, in the case of~~  
23 ~~any of the above facilities operating in a private~~

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1       ~~residence, on any adult living in the facility other~~  
2       ~~than the client as provided by section 321-15.2;]~~  
3       healthcare facilities as defined in section 321-15.2;

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

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

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

14      (7) The county liquor commissions on employees and  
15      prospective employees involved in liquor  
16      administration, law enforcement, and liquor control  
17      investigations;

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

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- 1           (9) The department of human services on prospective  
2           adoptive parents as established under section  
3           346-19.7;
- 4           (10) The department of human services on applicants to  
5           operate child care facilities, prospective employees  
6           of the applicant, and new employees of the provider  
7           after registration or licensure as provided by section  
8           346-154;
- 9           (11) The department of human services on persons exempt  
10          pursuant to section 346-152 to be eligible to provide  
11          child care and receive child care subsidies as  
12          provided by section 346-152.5;
- 13          (12) The department of health on operators and employees of  
14          home and community-based case management agencies and  
15          operators and other adults, except for adults in care,  
16          residing in community care foster family homes as  
17          provided by section [~~321-484;~~] 321-15.2;
- 18          (13) The department of human services on staff members of  
19          the Hawaii youth correctional facility as provided by  
20          section 352-5.5;
- 21          (14) The department of human services on employees,  
22          prospective employees, and volunteers of contracted  
23          providers and subcontractors in positions that place

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- 1           them in close proximity to youth when providing  
2           services on behalf of the office or the Hawaii youth  
3           correctional facility as provided by section 352D-4.3;
- 4       (15) The judiciary on employees and applicants at detention  
5           and shelter facilities as provided by section 571-34;
- 6       (16) The department of public safety on employees and  
7           prospective employees who are directly involved with  
8           the treatment and care of persons committed to a  
9           correctional facility or who possess police powers  
10          including the power of arrest as provided by section  
11          353C-5;
- 12       (17) The board of private detectives and guards on  
13          applicants for private detective or private guard  
14          licensure as provided by section 463-9;
- 15       (18) Private schools and designated organizations on  
16          employees and prospective employees who may be in  
17          positions that necessitate close proximity to  
18          children; provided that private schools and designated  
19          organizations receive only indications of the states  
20          from which the national criminal history record  
21          information was provided pursuant to section 302C-1;
- 22       (19) The public library system on employees and prospective  
23          employees whose positions place them in close

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1 proximity to children as provided by section

2 302A-601.5;

3 (20) The State or any of its branches, political  
4 subdivisions, or agencies on applicants and employees  
5 holding a position that has the same type of contact  
6 with children, vulnerable adults, or persons committed  
7 to a correctional facility as other public employees  
8 who hold positions that are authorized by law to  
9 require criminal history record checks as a condition  
10 of employment as provided by section 78-2.7;

11 (21) The department of health on licensed adult day care  
12 center operators, employees, new employees,  
13 subcontracted service providers and their employees,  
14 and adult volunteers as provided by section 321-496;

15 (22) The department of human services on purchase of  
16 service contracted and subcontracted service providers  
17 and their employees serving clients of the [†]adult  
18 protective and community care services branch[†], as  
19 provided by section 346-97;

20 (23) The department of human services on foster grandparent  
21 program, senior companion program, and respite  
22 companion program participants as provided by section  
23 346-97;



- 1           (24) The department of human services on contracted and  
2                   subcontracted service providers and their current and  
3                   prospective employees that provide home and community-  
4                   based services under section 1915(c) of the Social  
5                   Security Act, title 42 United States Code section  
6                   1396n(c), or under any other applicable section or  
7                   sections of the Social Security Act for the purposes  
8                   of providing home and community-based services, as  
9                   provided by section 346-97;
- 10          (25) The department of commerce and consumer affairs on  
11                   proposed directors and executive officers of a bank,  
12                   savings bank, savings and loan association, trust  
13                   company, and depository financial services loan  
14                   company as provided by section 412:3-201;
- 15          (26) The department of commerce and consumer affairs on  
16                   proposed directors and executive officers of a  
17                   nondepository financial services loan company as  
18                   provided by section 412:3-301;
- 19          (27) The department of commerce and consumer affairs on the  
20                   original chartering applicants and proposed executive  
21                   officers of a credit union as provided by section  
22                   412:10-103;
- 23          (28) The department of commerce and consumer affairs on:

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1 (A) Each principal of every non-corporate applicant  
2 for a money transmitter license; and

3 (B) The executive officers, key shareholders, and  
4 managers in charge of a money transmitter's  
5 activities of every corporate applicant for a  
6 money transmitter license,

7 as provided by sections 489D-9 and 489D-15;

8 (29) The department of commerce and consumer affairs on  
9 applicants for licensure and persons licensed under  
10 title 24;

11 (30) The Hawaii health systems corporation on:

12 (A) Employees;

13 (B) Applicants seeking employment;

14 (C) Current or prospective members of the corporation  
15 board or regional system board; or

16 (D) Current or prospective volunteers, providers, or  
17 contractors,

18 in any of the corporation's health facilities as  
19 provided by section 323F-5.5;

20 (31) The department of commerce and consumer affairs on:

21 (A) An applicant for a mortgage loan originator  
22 license; and

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1 (B) Each control person, executive officer, director,  
2 general partner, and manager of an applicant for  
3 a mortgage loan originator company license, as  
4 provided by chapter 454F;

5 (32) The state public charter school commission or public  
6 charter schools on employees, teacher trainees,  
7 prospective employees, and prospective teacher  
8 trainees in any public charter school for any position  
9 that places them in close proximity to children, as  
10 provided in section 302D-33;

11 (33) The counties on prospective employees who work with  
12 vulnerable adults or senior citizens in community-  
13 based programs;

14 (34) The counties on prospective employees for fire  
15 department positions which involve contact with  
16 children or dependent adults;

17 (35) The counties on prospective employees for emergency  
18 medical services positions which involve contact with  
19 children or dependent adults;

20 (36) The counties on prospective employees for emergency  
21 management positions and community volunteers whose  
22 responsibilities involve planning and executing  
23 homeland security measures including viewing,

1 handling, and engaging in law enforcement or  
2 classified meetings and assisting vulnerable and  
3 disabled citizens during emergencies or crises; [and]

4 (37) The State and counties on employees, prospective  
5 employees, volunteers, and contractors whose position  
6 responsibilities require unescorted access to secured  
7 areas and equipment related to a traffic management  
8 center;

9 (38) The State and counties on employees and prospective  
10 employees whose positions involve the handling or use  
11 of fire arms for other than law enforcement purposes;

12 (39) The State and counties on current and prospective  
13 systems analysts and others involved in an agency's  
14 information technology operation whose position  
15 responsibilities provide them with access to  
16 proprietary, confidential, or sensitive information;

17 [+] (40) [+] The department of commerce and consumer affairs  
18 on applicants for real estate appraiser licensure or  
19 certification as provided by chapter 446K; and

20 [+] (41) [+] Any other organization, entity, or the State,  
21 its branches, political subdivisions, or agencies as  
22 may be authorized by state law."  
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PART II

SECTION 5. Section 321-484, Hawaii Revised Statutes, is repealed.

~~["§321-484] Background checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators, employees, volunteers, and other adults regularly present, except for adults in care, of the programs identified in this part.~~

~~(b) An applicant for the programs identified in this part 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 of human services 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 of human services' adult protective service file; and~~

~~(3) Provide consent to the department or its designee to conduct an adult abuse perpetrator check and to obtain~~

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1           ~~other criminal history record information for~~  
2           ~~verification.~~

3           ~~(c) New employees of the programs identified in this part~~  
4           ~~shall be fingerprinted within five working days of employment~~  
5           ~~for the purpose of complying with the criminal history record~~  
6           ~~check requirement.~~

7           ~~(d) The department or its designee shall obtain criminal~~  
8           ~~history record information through the Hawaii criminal justice~~  
9           ~~data center in accordance with section 846 2.7 on applicants for~~  
10          ~~programs identified in this part. The Hawaii criminal justice~~  
11          ~~data center may assess the applicants and operators, employees,~~  
12          ~~and new employees a reasonable fee for each criminal history~~  
13          ~~record check conducted. The information obtained shall be used~~  
14          ~~exclusively for the stated purposes for which it was obtained~~  
15          ~~and shall be subject to federal laws and regulations as may be~~  
16          ~~now or hereafter adopted.~~

17          ~~(e) The department or its designee shall make a name~~  
18          ~~inquiry into the criminal history records and the adult~~  
19          ~~protective service file for the first two years a home and~~  
20          ~~community based case management agency is licensed and annually~~  
21          ~~or biennially thereafter depending on the licensure status of~~  
22          ~~the home and community based case management agency.~~

1       ~~(f) An applicant for a certificate of approval as a~~  
2 ~~community care foster family home, operators, and other adults~~  
3 ~~residing in a community care foster family home shall:~~

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

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

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

18       ~~(g) The department or its designee shall obtain criminal~~  
19 ~~history record information through the Hawaii criminal justice~~  
20 ~~data center on applicants for certificates of approval as~~  
21 ~~community care foster family homes and operators and other~~  
22 ~~adults residing in community care foster family homes, except~~  
23 ~~for adults receiving care. The Hawaii criminal justice data~~

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1 ~~center may assess the applicants and operators and other adults~~  
2 ~~a reasonable fee for each criminal history record check~~  
3 ~~conducted. The information obtained shall be used exclusively~~  
4 ~~for the stated purpose for which it was obtained and shall be~~  
5 ~~subject to federal laws and regulations as may be now or~~  
6 ~~hereafter adopted.~~

7 ~~(h) The department or its designee shall make a name~~  
8 ~~inquiry into the criminal history records and the adult~~  
9 ~~protective service file for the first two years a community care~~  
10 ~~foster family home is certified and annually or biennially~~  
11 ~~thereafter depending on the certification status of the~~  
12 ~~community care foster family home." ]~~

13 SECTION 6. Section 321-496, Hawaii Revised Statutes, is  
14 repealed.

15 ~~[ "§321-496 Criminal history record checks. (a) For the~~  
16 ~~purposes of this section:~~

17 ~~"Conviction for a relevant crime" means any federal or~~  
18 ~~state conviction for any relevant crime as defined in this~~  
19 ~~section.~~

20 ~~"Criminal history record name inquiry" means a search by~~  
21 ~~name and other identifying information using the state~~  
22 ~~computerized criminal history record information system.~~

23 ~~"Department" means the department of health.~~



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1 ~~"Name inquiry" means a criminal history record check~~  
2 ~~conducted using the name and other identifying information of~~  
3 ~~the individual in lieu of a fingerprint check.~~

4 ~~"Relevant crime" means:~~

5 ~~(1) Any offense described in title 42 United States Code~~  
6 ~~section 1320a-7 (section 1128(a) of the Social~~  
7 ~~Security Act); or~~

8 ~~(2) A crime of such a serious nature or circumstance that~~  
9 ~~the department finds its perpetrator to pose a risk to~~  
10 ~~the health, safety, or well-being of a patient or~~  
11 ~~resident. This shall include but not be limited to~~  
12 ~~murder, manslaughter, assault, sex offenses, domestic~~  
13 ~~violence, and the use, sale, manufacture, or~~  
14 ~~distribution of dangerous drugs or controlled~~  
15 ~~substances.~~

16 ~~(b) The department shall adopt rules pursuant to chapter~~  
17 ~~91 to establish standards regarding the reputable and~~  
18 ~~responsible character of service providers who have direct~~  
19 ~~contact with individuals receiving services under this part,~~  
20 ~~including licensed adult day care center operators, employees,~~  
21 ~~subcontracted service providers and their employees, and adult~~  
22 ~~volunteers.~~

23 ~~(c) Individuals identified under subsection (b) shall:~~

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- 1       ~~(1) Meet the standards regarding the reputable and~~
- 2               ~~responsible character of service providers;~~
- 3       ~~(2) Be subject to criminal history record checks in~~
- 4               ~~accordance with section 846-2.7;~~
- 5       ~~(3) Sign a waiver stating that the department shall not be~~
- 6               ~~liable to the individual; and~~
- 7       ~~(4) Provide consent to the department or its designee to~~
- 8               ~~obtain criminal history record information for~~
- 9               ~~verification.~~

10       ~~New employees and adult volunteers shall consent to be~~  
11 ~~fingerprinted, shall supply the necessary information to enable~~  
12 ~~the criminal history record check prior to the start of~~  
13 ~~employment or volunteering, and shall sign a waiver stating that~~  
14 ~~the department shall not be liable to the employee or volunteer.~~

15       ~~(d) The department or its designee shall obtain criminal~~  
16 ~~history record information through the Hawaii criminal justice~~  
17 ~~data center on individuals identified in subsection (b) for the~~  
18 ~~first two years that an individual identified in subsection (b)~~  
19 ~~is required to have such checks, and shall conduct a criminal~~  
20 ~~history record name inquiry into the state criminal history~~  
21 ~~records annually or biennially thereafter.~~

22       ~~(e) The department may take appropriate action if it finds~~  
23 ~~that the criminal history of the individual identified under~~

1 ~~subsection (b) may pose a risk to the health, welfare, and~~  
2 ~~safety of service recipients. Such action may include denying a~~  
3 ~~certificate of approval to operate an adult day care center.~~

4 ~~(f) Notwithstanding any other law to the contrary, for~~  
5 ~~purposes of this section, the department shall be exempt from~~  
6 ~~section 831-3.1 and shall not be required to conduct~~  
7 ~~investigations, notifications, or hearings under this section in~~  
8 ~~accordance with chapter 91.~~

9 ~~(g) The employer or the employee or the individual who is~~  
10 ~~being screened may bear the costs of processing fingerprints and~~  
11 ~~the state criminal history record check.~~

12 ~~(h) The department, in obtaining and relying upon the~~  
13 ~~results of the state criminal history record check, shall be~~  
14 ~~presumed to be acting in good faith and shall be immune from~~  
15 ~~civil liability for taking or recommending action based upon the~~  
16 ~~criminal history record information. The presumption of good~~  
17 ~~faith may be rebutted upon a showing by the person or entity~~  
18 ~~acknowledging a lack of good faith by a preponderance of the~~  
19 ~~evidence that the department relied upon information or opinion~~  
20 ~~that it knew was false or misleading.~~

21 ~~(i) Nothing in this section shall affect the rights,~~  
22 ~~obligations, remedies, liabilities, or standards of proof under~~  
23 ~~chapters 368 and 378.~~


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1       ~~(j) The criminal history record information obtained under~~  
2       ~~this section shall be used exclusively by the department for the~~  
3       ~~purpose of establishing the reputable and responsible character~~  
4       ~~of the individuals identified in subsection (b) to ensure that~~  
5       ~~the health, welfare, and safety of service recipients will not~~  
6       ~~be at risk.] "~~

7   PART III

8             SECTION 7. Statutory material to be repealed is bracketed  
9       and stricken. New statutory material is underscored.

10            SECTION 8. This Act shall take effect upon its approval.

11  
12   INTRODUCED BY: 

13   BY REQUEST

14

**Report Title:**

Background Checks; Employees, Prospective Employees, Applicants, or Operators of Healthcare Facilities and the State Department of Health

**Description:**

Expand the authority of the Department of Health to conduct background checks to include criminal history record check, adult abuse perpetrator and child abuse record checks, and certified nurse aide registry record checks for persons seeking employment with the State or its contractors where the work involves direct client care, and applicants and operators of healthcare facilities.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Health.

TITLE: A BILL FOR AN ACT RELATING TO BACKGROUND CHECKS.

PURPOSE: Expand the authority of the Department of Health to conduct background checks to include criminal history record checks, adult abuse perpetrator and child abuse record checks, and certified nurse aide registry record checks on any person who:

1. Seeks employment or is employed with the Department of Health in a position that provides non-witnessed direct mental health or healthcare to DOH clients, or
2. Applies for a license or certificate to operate a health care facility, or
3. Holds a license or certificate to operate a health care facility, or
4. Is employed or seeks employment with a health care facility in a position that necessitates non-witnessed direct contact with patients, or
5. Is a contractor or subcontractor with the department or with a private or public licensed health care facility in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct care to clients.

MEANS: Amend sections 321-15.2, 321-171.5, 333F-22, and 846.2-7(b), Hawaii Revised Statutes (HRS), and repeal sections 321-484 and 321-496, HRS.

JUSTIFICATION: This measure is intended to ensure the reputable and responsible character of owners, operators, direct caregivers and persons with direct access to patients or residents in state licensed health care

facilities and of department employees, contractors, and subcontractors who have direct access to the department's patients or clients such as in public health or behavioral health settings.

Impact on the public: Provide greater protection of client populations. No negative impact on the public.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HTH 760.

OTHER AFFECTED  
AGENCIES: Department of Human Services.

EFFECTIVE DATE: Upon approval.