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# A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

**PART I**

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

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

"Adults" means individuals aged eighteen years or older.

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

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



- 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.



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 to:  
13 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 [~~where~~  
20 ~~a frail, elderly, or disabled adult receives care~~], or agency  
21 licensed or certified by the department of health that provides



1 mental health or health care services or [~~is provided~~] living  
2 accommodations to individuals, such as a skilled nursing  
3 facility, intermediate care facility, adult residential care  
4 home, expanded adult residential care home, assisted living  
5 facility, home health agency, home care agency, hospice, adult  
6 day health center, special treatment facility, therapeutic  
7 living program, intermediate care facility for individuals with  
8 intellectual disabilities, hospital, rural health center,  
9 community care foster family home, home and community-based case  
10 management agency, adult day care center, developmental  
11 disabilities domiciliary home, adult foster home for individuals  
12 with developmental disabilities, community mental health center,  
13 and rehabilitation agency.

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

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

21 "Relevant crime" means:



1 (1) Any offense described in 42 United States Code  
2 §1320a-7 (section 1128(a) of the Social Security Act);  
3 or

4 (2) A crime of such a serious nature or circumstance that  
5 the department finds its perpetrator to pose a risk to  
6 the health, safety, or well-being of a patient or  
7 resident. This includes but is not limited to murder,  
8 manslaughter, assault, sex offenses, domestic  
9 violence, theft or forgery, arson, kidnapping, or  
10 possession, use, sale, manufacture, or distribution of  
11 dangerous drugs or controlled substances.

12 (b) The department shall adopt rules pursuant to chapter  
13 91 to ensure the reputable and responsible character of all  
14 prospective applicants, operators, direct patient access  
15 employees, and adult volunteers of a healthcare facility, and,  
16 in the case of any healthcare facility operated in a private  
17 residence, all adults living in the home other than the clients.  
18 These rules, among other things, shall specify how the  
19 department or ~~[the department's]~~ its designee may conduct  
20 ~~[criminal history record checks in accordance with section~~  
21 ~~846-2.7.]~~ background checks in accordance with this section.



- 1 (c) All applicants and prospective operators shall:
- 2 (1) Be subject to ~~[eriminal history record checks in~~  
3 ~~accordance with section 846-2.7;~~
- 4 ~~(2) Authorize the disclosure to the department or the~~  
5 ~~department's designee of criminal history record~~  
6 ~~information;~~
- 7 ~~(3) Sign a waiver form stating that the department or the~~  
8 ~~department's designee shall not be liable to the~~  
9 ~~applicant or prospective operator; and~~
- 10 ~~(4) Consent to be fingerprinted for the purpose of~~  
11 ~~requesting criminal history record information from~~  
12 ~~the Federal Bureau of Investigation and the Hawaii~~  
13 ~~criminal justice data center.] background checks; and~~
- 14 (2) Provide consent to the department or its designee to  
15 conduct background checks.

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

20 ~~[-(1) Consent to be fingerprinted;~~



1       ~~(2) Provide all necessary information for the purpose of~~  
2           ~~enabling the department or the department's designee~~  
3           ~~to conduct the criminal history record checks; and~~

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

7       (1) Be subject to background checks in accordance with  
8           this section; and

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

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



1 ~~clients.]~~ The department or its designee shall obtain background  
 2 check information in accordance with this section from an  
 3 applicant or operator, on the applicant or operator, and on any  
 4 prospective employees of the applicant or operator including any  
 5 new employee retained after the applicant is issued a license or  
 6 certificate under this part, which shall include an annual name  
 7 inquiry into state criminal history record files.

8 (f) ~~[The department or the department's designee shall~~  
 9 ~~make a name inquiry into the criminal history records or conduct~~  
 10 ~~criminal history record checks of all prospective applicants,~~  
 11 ~~operators, direct patient access employees, and adult volunteers~~  
 12 ~~at the healthcare facility, and, in the case of any healthcare~~  
 13 ~~facility operated in a private residence, all adults living in~~  
 14 ~~the home other than the clients.~~

15 (g)] The department may revoke or suspend a current  
 16 license~~]~~ or certificate, impose penalties or fines, or deny an  
 17 application for a license or certificate under rules adopted  
 18 pursuant to chapter 91 if the applicant, operator, employee, or  
 19 adult volunteer at the healthcare facility or, in the case of  
 20 any healthcare facility operated in a private residence, any  
 21 adult living in the home other than the client~~], refuses to~~



1 ~~authorize the department or the department's designee to conduct~~  
2 ~~a criminal history record check, obtain criminal history record~~  
3 ~~information for verification, or consent to be fingerprinted.~~  
4 ~~In addition, the department may revoke or suspend a current~~  
5 ~~license, impose penalties or fines, or deny an application for a~~  
6 ~~license if the applicant, operator, direct patient access~~  
7 ~~employee, or adult volunteer at the healthcare facility, or, in~~  
8 ~~the case of a healthcare facility operated in a private~~  
9 ~~residence, any adult living in the home other than the client,~~  
10 ~~has any disqualifying information. The department may also~~  
11 ~~revoke or suspend a current license, impose penalties or fines,~~  
12 ~~or deny an application for a license if the department~~  
13 ~~determines, based upon consideration of the criminal history~~  
14 ~~information, that the applicant, operator, direct patient access~~  
15 ~~employee, or adult volunteer at the healthcare facility, or, in~~  
16 ~~the case of a healthcare facility operated in a private~~  
17 ~~residence, any adult living in the home other than the client,~~  
18 ~~is unsuitable to work or live in close proximity to the~~  
19 ~~residents of the healthcare facility such that the health,~~  
20 ~~safety, and welfare of the residents of the healthcare facility~~  
21 ~~could be at risk.]:~~



- 1        (1) Refuses to authorize the department or its designee to  
2        conduct a background check, refuses to authorize the  
3        department or its designee to obtain background check  
4        record information for verification, or refuses  
5        consent to be fingerprinted;
- 6        (2) Refuses or fails to submit to the department or its  
7        designee information required to perform a background  
8        check;
- 9        (3) Has any disqualifying information; or
- 10       (4) Has any background check information that the  
11       department finds may pose a risk to the health,  
12       safety, or welfare of the residents or patients of the  
13       health care facility.
- 14       ~~[(h) Notwithstanding any other law to the contrary, for~~  
15       ~~purposes of this section, the department shall be exempt from~~  
16       ~~section 831 3.1 and need not conduct investigations,~~  
17       ~~notifications, or hearings under this section in accordance with~~  
18       ~~chapter 91.~~
- 19       ~~(i)]~~ (g) The fee charged by the Federal Bureau of  
20       Investigation and the Hawaii criminal justice data center to  
21       perform criminal history record checks may be passed on to all



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

5 ~~[(j) The department, or the department's designee, in  
6 obtaining and relying upon the criminal history record checks,  
7 is presumed to be acting in good faith and shall be immune from  
8 civil liability for taking or recommending action based upon the  
9 criminal history record information. The good faith presumption  
10 may be rebutted upon a showing by the person or entity of a lack  
11 of good faith, and proof by a preponderance of the evidence,  
12 that the department relied upon information or opinion that it  
13 knew was false or misleading.~~

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



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

12        [~~Criminal history~~] Background check record information  
13 shall be used exclusively by the department or [~~the~~  
14 ~~department's~~] its designee for the sole purpose of determining  
15 whether an applicant, operator, direct patient access employee,  
16 or adult volunteer at a healthcare facility, or, in the case of  
17 a facility operated in a private residence, any adult living in  
18 the home other than the clients is suitable for working or  
19 living in close proximity to residents of a healthcare facility  
20 such that the health, safety, and welfare of the residents would  
21 not be at risk."



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

3 **"§321-171.5 Employees of the department of health, its**  
4 **providers and subcontractors; [~~eriminal history~~] background**  
5 **checks.** (a) The department of health shall develop procedures  
6 for obtaining verifiable background check information regarding  
7 [~~the eriminal history of~~] persons who are seeking employment, or  
8 seeking to serve as providers or subcontractors, in positions  
9 that place them in direct contact with adult, child, or youth  
10 clients when providing non-witnessed direct mental health or  
11 health care services. These procedures shall include but not be  
12 limited to [~~eriminal history record checks in accordance with~~  
13 ~~section 846-2.7.~~] background checks as defined in section  
14 321-15.2.

15 (b) Except as otherwise specified, any person who seeks  
16 employment with the department of health, or who is employed or  
17 seeks employment with a provider or subcontractor in a position  
18 that necessitates non-witnessed direct contact with clients when  
19 providing non-witnessed direct mental health or health care  
20 services, shall:



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

4 (2) Authorize the disclosure to the department or its  
5 designee of background check information; and

6 [~~+2~~] (3) Provide to the department of health or [the  
7 department's] its designee written consent for the  
8 department or [~~the department's~~] its designee to  
9 obtain [~~eriminal history record~~] background check  
10 information for verification.

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

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



- 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 the]~~; or
- 8        (4) The department of health finds by reason of the nature  
9        and circumstances of the [~~crime~~] background check  
10       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 health care  
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~~



1 ~~history record]~~ background checks on persons who have been  
2 employed continuously on a salaried basis prior to July 1,  
3 [~~2000-~~] 2015.

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

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

15 [~~(f)~~] (g) For purposes of this section:

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

20 "Subcontractor" means any organization or individual that  
21 enters into a contract or agreement with a provider to provide





1 direct mental health or health care services to the department's  
2 eligible clients.

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

8 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

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

11 (1) The department of health or [~~the department's~~] its  
12 designee on operators of adult foster homes for  
13 individuals with developmental disabilities or  
14 developmental disabilities domiciliary homes and their  
15 employees, as provided by section [~~333F-22,~~] 321-15.2;

16 (2) The department of health or [~~the department's~~] its  
17 designee on prospective employees, persons seeking to  
18 serve as providers, or subcontractors in positions  
19 that place them in direct contact with clients when  
20 providing non-witnessed direct mental health or health  
21 care services as provided by section 321-171.5;



- 1           (3) The department of health or [~~the department's~~] its  
2           designee on all applicants for licensure or  
3           certification for, operators for, prospective  
4           employees, [~~and~~] adult volunteers, and all adults,  
5           except adults in care, at [~~one or more of the~~  
6           ~~following: skilled nursing facility, intermediate~~  
7           ~~care facility, adult residential care home, expanded~~  
8           ~~adult residential care home, assisted living facility,~~  
9           ~~home health agency, hospice, adult day health center,~~  
10          ~~special treatment facility, therapeutic living~~  
11          ~~program, intermediate care facility for individuals~~  
12          ~~with intellectual disabilities, hospital, rural health~~  
13          ~~center and rehabilitation agency, and, in the case of~~  
14          ~~any of the above facilities operating in a private~~  
15          ~~residence, on any adult living in the facility other~~  
16          ~~than the client as provided by section 321-15.2,]~~  
17          health care facilities as defined in section 321-15.2;  
18          (4) The department of education on employees, prospective  
19          employees, and teacher trainees in any public school  
20          in positions that necessitate close proximity to  
21          children as provided by section 302A-601.5;



- 1           (5) The counties on employees and prospective employees  
2           who may be in positions that place them in close  
3           proximity to children in recreation or child care  
4           programs and services;
- 5           (6) The county liquor commissions on applicants for liquor  
6           licenses as provided by section 281-53.5;
- 7           (7) The county liquor commissions on employees and  
8           prospective employees involved in liquor  
9           administration, law enforcement, and liquor control  
10          investigations;
- 11          (8) The department of human services on operators and  
12          employees of child caring institutions, child placing  
13          organizations, and foster boarding homes as provided  
14          by section 346-17;
- 15          (9) The department of human services on prospective  
16          adoptive parents as established under section  
17          346-19.7;
- 18          (10) The department of human services on applicants to  
19          operate child care facilities, prospective employees  
20          of the applicant, and new employees of the provider



- 1 after registration or licensure as provided by section  
2 346-154;
- 3 (11) The department of human services on persons exempt  
4 pursuant to section 346-152 to be eligible to provide  
5 child care and receive child care subsidies as  
6 provided by section 346-152.5;
- 7 (12) The department of health on operators and employees of  
8 home and community-based case management agencies and  
9 operators and other adults, except for adults in care,  
10 residing in community care foster family homes as  
11 provided by section [~~321-484,~~] 321-15.2;
- 12 (13) The department of human services on staff members of  
13 the Hawaii youth correctional facility as provided by  
14 section 352-5.5;
- 15 (14) The department of human services on employees,  
16 prospective employees, and volunteers of contracted  
17 providers and subcontractors in positions that place  
18 them in close proximity to youth when providing  
19 services on behalf of the office or the Hawaii youth  
20 correctional facility as provided by section 352D-4.3;



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



- 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,~~  
15 321-15.2;
- 16 (22) The department of human services on purchase of  
17 service contracted and subcontracted service providers  
18 and their employees serving clients of the [+]adult  
19 protective and community services branch[+], as  
20 provided by section 346-97;



1 (23) The department of human services on foster grandparent  
2 program, senior companion program, and respite  
3 companion program participants as provided by section  
4 346-97;

5 (24) The department of human services on contracted and  
6 subcontracted service providers and their current and  
7 prospective employees that provide home and community-  
8 based services under section 1915(c) of the Social  
9 Security Act, title 42 United States Code section  
10 1396n(c), or under any other applicable section or  
11 sections of the Social Security Act for the purposes  
12 of providing home and community-based services, as  
13 provided by section 346-97;

14 (25) The department of commerce and consumer affairs on  
15 proposed directors and executive officers of a bank,  
16 savings bank, savings and loan association, trust  
17 company, and depository financial services loan  
18 company as provided by section 412:3-201;

19 (26) The department of commerce and consumer affairs on  
20 proposed directors and executive officers of a



1 nondepository financial services loan company as  
2 provided by section 412:3-301;

3 (27) The department of commerce and consumer affairs on the  
4 original chartering applicants and proposed executive  
5 officers of a credit union as provided by section  
6 412:10-103;

7 (28) The department of commerce and consumer affairs on:

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

10 (B) The executive officers, key shareholders, and  
11 managers in charge of a money transmitter's  
12 activities of every corporate applicant for a  
13 money transmitter license,

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

15 (29) The department of commerce and consumer affairs on  
16 applicants for licensure and persons licensed under  
17 title 24;

18 (30) The Hawaii health systems corporation on:

19 (A) Employees;

20 (B) Applicants seeking employment;

21 (C) Current or prospective members of the corporation





- 1 board or regional system board; or
- 2 (D) Current or prospective volunteers, providers, or
- 3 contractors,
- 4 in any of the corporation's health facilities as
- 5 provided by section 323F-5.5;
- 6 (31) The department of commerce and consumer affairs on:
- 7 (A) An applicant for a mortgage loan originator
- 8 license; and
- 9 (B) Each control person, executive officer, director,
- 10 general partner, and manager of an applicant for
- 11 a mortgage loan originator company license,
- 12 as provided by chapter 454F;
- 13 (32) The state public charter school commission or public
- 14 charter schools on employees, teacher trainees,
- 15 prospective employees, and prospective teacher
- 16 trainees in any public charter school for any position
- 17 that places them in close proximity to children, as
- 18 provided in section 302D-33;
- 19 (33) The counties on prospective employees who work with
- 20 children, vulnerable adults, or senior citizens in
- 21 community-based programs;



- 1           (34) The counties on prospective employees for fire  
2           department positions which involve contact with  
3           children or vulnerable adults;
- 4           (35) The counties on prospective employees for emergency  
5           medical services positions which involve contact with  
6           children or vulnerable adults;
- 7           (36) The counties on prospective employees for emergency  
8           management positions and community volunteers whose  
9           responsibilities involve planning and executing  
10          homeland security measures including viewing,  
11          handling, and engaging in law enforcement or  
12          classified meetings and assisting vulnerable citizens  
13          during emergencies or crises;
- 14          (37) The State and counties on employees, prospective  
15          employees, volunteers, and contractors whose position  
16          responsibilities require unescorted access to secured  
17          areas and equipment related to a traffic management  
18          center;
- 19          (38) The State and counties on employees and prospective  
20          employees whose positions involve the handling or use  
21          of firearms for other than law enforcement purposes;





- 1 convicted of a crime other than a minor traffic  
2 violation involving a fine of \$50 or less;
- 3 (2) The department finds that the criminal history record  
4 of an operator, employee, or new employee poses a risk  
5 to the health, safety, or well-being of adults  
6 receiving care in community care foster family homes,  
7 expanded adult residential care homes, or assisted  
8 living facilities;
- 9 (3) An operator, employee, or new employee of the home and  
10 community-based case management agency is a  
11 perpetrator of abuse as defined in section 346-222; or
- 12 (4) The holder of or an applicant for a home and  
13 community-based case management agency license, or one  
14 of its employees, has a certificate of approval to  
15 operate a community care foster family home, or a  
16 license from the department to operate an adult  
17 residential care home, expanded adult residential care  
18 home, or assisted living facility."

19 SECTION 5. Section 321-483, Hawaii Revised Statutes, is  
20 amended by amending subsection (c) to read as follows:



1           "(c) As a condition for obtaining a certificate of  
2 approval, community care foster family homes shall comply with  
3 rules adopted under subsection (b) and satisfy the background  
4 check requirements under section [~~321-484.~~] 321-15.2. The  
5 department or its designee may deny a certificate of approval  
6 if:

- 7           (1) An operator or other adult residing in the community  
8 care foster family home, except for adults receiving  
9 care, has been convicted of a crime other than a minor  
10 traffic violation involving a fine of \$50 or less;
- 11           (2) The department or its designee finds that the criminal  
12 history record of an operator or other adult residing  
13 in the home, except for adults receiving care, poses a  
14 risk to the health, safety, or well-being of adults in  
15 care; or
- 16           (3) An operator or other adult residing in the community  
17 care foster family home, except for adults receiving  
18 care, is a perpetrator of abuse as defined in section  
19 346-222."



1 SECTION 6. Section 333F-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "existing provider" to  
3 read as follows:

4 "Existing provider" means every person licensed or  
5 certified as an adult foster or developmental disabilities  
6 domiciliary home provider before the effective date [+]May 6,  
7 1994[+] of section [~~333F-22.~~] 321-15.2."

8 SECTION 7. Section 378-2.5, Hawaii Revised Statutes, is  
9 amended by amending subsection (d) to read as follows:

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

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



- 1 (2) The department of education pursuant to section  
2 302A-601.5;
- 3 (3) The department of health with respect to employees,  
4 providers, or subcontractors in positions that place  
5 them in direct contact with clients when providing  
6 non-witnessed direct mental health services pursuant  
7 to section 321-171.5;
- 8 (4) The judiciary pursuant to section 571-34;
- 9 (5) The counties pursuant to section 846-2.7(b)(5), (33),  
10 (34), (35), (36), and (38);
- 11 (6) Armed security services pursuant to section 261-17(b);
- 12 (7) Providers of a developmental disabilities domiciliary  
13 home pursuant to section [~~333F-22,~~] 321-15.2;
- 14 (8) Private schools pursuant to sections 302C-1 and  
15 378-3(8);
- 16 (9) Financial institutions in which deposits are insured  
17 by a federal agency having jurisdiction over the  
18 financial institution pursuant to section 378-3(9);
- 19 (10) Detective agencies and security guard agencies  
20 pursuant to sections 463-6(b) and 463-8(b);



- 1 (11) Employers in the business of insurance pursuant to  
2 section 431:2-201.3;
- 3 (12) Employers of individuals or supervisors of individuals  
4 responsible for screening passengers or property under  
5 title 49 United States Code section 44901 or  
6 individuals with unescorted access to an aircraft of  
7 an air carrier or foreign carrier or in a secured area  
8 of an airport in the United States pursuant to title  
9 49 United States Code section 44936(a);
- 10 (13) The department of human services pursuant to sections  
11 346-97 and 352-5.5;
- 12 (14) The public library system pursuant to section  
13 302A-601.5;
- 14 (15) The department of public safety pursuant to section  
15 353C-5;
- 16 (16) The board of directors of a cooperative housing  
17 corporation or the manager of a cooperative housing  
18 project pursuant to section 421I-12;
- 19 (17) The board of directors of an association of owners  
20 under chapter 514A or 514B, or the manager of a





1 condominium project pursuant to section 514A-82.1 or  
 2 514B-133; and  
 3 (18) The department of health pursuant to section  
 4 321-15.2."

5 **PART III**

6 SECTION 8. Section 321-484, Hawaii Revised Statutes, is  
 7 repealed.

8 ~~["**§321-484** Background checks. (a) The department shall~~  
 9 ~~develop standards to ensure the reputable and responsible~~  
 10 ~~character of operators, employees, volunteers, and other adults~~  
 11 ~~regularly present, except for adults in care, of the programs~~  
 12 ~~identified in this part.~~

13 ~~(b) An applicant for the programs identified in this part~~  
 14 ~~shall:~~

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

17 ~~(2) Be subject to adult abuse perpetrator checks, if the~~  
 18 ~~individual has direct contact with a client. For the~~  
 19 ~~purposes of this section, "adult abuse perpetrator~~  
 20 ~~check" means a search to determine whether an~~  
 21 ~~individual is known to the department of human~~



1 ~~services as a perpetrator of abuse as defined in~~  
2 ~~section 346-222, by means of a search of the~~  
3 ~~individual's name and birth date in the department of~~  
4 ~~human services' adult protective service file, and~~  
5 ~~(3) Provide consent to the department or its designee to~~  
6 ~~conduct an adult abuse perpetrator check and to obtain~~  
7 ~~other criminal history record information for~~  
8 ~~verification.~~

9 ~~(c) New employees of the programs identified in this part~~  
10 ~~shall be fingerprinted within five working days of employment~~  
11 ~~for the purpose of complying with the criminal history record~~  
12 ~~check requirement.~~

13 ~~(d) The department or its designee shall obtain criminal~~  
14 ~~history record information through the Hawaii criminal justice~~  
15 ~~data center in accordance with section 846-2.7 on applicants for~~  
16 ~~programs identified in this part. The Hawaii criminal justice~~  
17 ~~data center may assess the applicants and operators, employees,~~  
18 ~~and new employees a reasonable fee for each criminal history~~  
19 ~~record check conducted. The information obtained shall be used~~  
20 ~~exclusively for the stated purposes for which it was obtained~~



1 ~~and shall be subject to federal laws and regulations as may be~~  
2 ~~now or hereafter adopted.~~

3 ~~(e) The department or its designee shall make a name~~  
4 ~~inquiry into the criminal history records and the adult~~  
5 ~~protective service file for the first two years a home and~~  
6 ~~community based case management agency is licensed and annually~~  
7 ~~or biennially thereafter depending on the licensure status of~~  
8 ~~the home and community based case management agency.~~

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

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

14 ~~(2) Be subject to adult abuse perpetrator checks, if the~~  
15 ~~individual has direct contact with a client. For the~~  
16 ~~purposes of this section, "adult abuse perpetrator~~  
17 ~~check" means a search to determine whether an~~  
18 ~~individual is known to the department of human~~  
19 ~~services as a perpetrator of abuse as defined in~~  
20 ~~section 346-222, by means of a search of the~~



1           ~~individual's name and birth date in the department of~~  
2           ~~human services' adult protective service file; and~~  
3       ~~(3) Provide consent to the department to conduct an adult~~  
4           ~~abuse perpetrator check and to obtain other criminal~~  
5           ~~history record information for verification.~~

6       ~~(g) The department or its designee shall obtain criminal~~  
7       ~~history record information through the Hawaii criminal justice~~  
8       ~~data center on applicants for certificates of approval as~~  
9       ~~community care foster family homes and operators and other~~  
10       ~~adults residing in community care foster family homes, except~~  
11       ~~for adults receiving care. The Hawaii criminal justice data~~  
12       ~~center may assess the applicants and operators and other adults~~  
13       ~~a reasonable fee for each criminal history record check~~  
14       ~~conducted. The information obtained shall be used exclusively~~  
15       ~~for the stated purpose for which it was obtained and shall be~~  
16       ~~subject to federal laws and regulations as may be now or~~  
17       ~~hereafter adopted.~~

18       ~~(h) The department or its designee shall make a name~~  
19       ~~inquiry into the criminal history records and the adult~~  
20       ~~protective service file for the first two years a community care~~  
21       ~~foster family home is certified and annually or biennially~~



1 ~~thereafter depending on the certification status of the~~  
2 ~~community care foster family home."}]~~

3 SECTION 9. Section 321-496, Hawaii Revised Statutes, is  
4 repealed.

5 ~~["**§321-496** **Criminal history record checks.** (a) For the~~  
6 ~~purposes of this section:~~

7 ~~"Conviction for a relevant crime" means any federal or~~  
8 ~~state conviction for any relevant crime as defined in this~~  
9 ~~section.~~

10 ~~"Criminal history record name inquiry" means a search by~~  
11 ~~name and other identifying information using the state~~  
12 ~~computerized criminal history record information system.~~

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

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

17 ~~"Relevant crime" means:~~

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



1       ~~(2) A crime of such a serious nature or circumstance that~~  
2       ~~the department finds its perpetrator to pose a risk to~~  
3       ~~the health, safety, or well being of a patient or~~  
4       ~~resident. This shall include but not be limited to~~  
5       ~~murder, manslaughter, assault, sex offenses, domestic~~  
6       ~~violence, and the use, sale, manufacture, or~~  
7       ~~distribution of dangerous drugs or controlled~~  
8       ~~substances.~~

9       ~~(b) The department shall adopt rules pursuant to chapter~~  
10      ~~91 to establish standards regarding the reputable and~~  
11      ~~responsible character of service providers who have direct~~  
12      ~~contact with individuals receiving services under this part,~~  
13      ~~including licensed adult day care center operators, employees,~~  
14      ~~subcontracted service providers and their employees, and adult~~  
15      ~~volunteers.~~

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

17      ~~(1) Meet the standards regarding the reputable and~~  
18      ~~responsible character of service providers;~~

19      ~~(2) Be subject to criminal history record checks in~~  
20      ~~accordance with section 846 2.7;~~



1       ~~(3) Sign a waiver stating that the department shall not be~~  
2           ~~liable to the individual; and~~

3       ~~(4) Provide consent to the department or its designee to~~  
4           ~~obtain criminal history record information for~~  
5           ~~verification.~~

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

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

18       ~~(e) The department may take appropriate action if it finds~~  
19       ~~that the criminal history of the individual identified under~~  
20       ~~subsection (b) may pose a risk to the health, welfare, and~~



1 ~~safety of service recipients. Such action may include denying a~~  
2 ~~certificate of approval to operate an adult day care center.~~

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

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

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





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

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

10       SECTION 10. Section 333F-22, Hawaii Revised Statutes, is  
11 repealed.

12       ~~["§333F-22 Criminal history record checks. (a) The~~  
13 ~~department shall adopt rules pursuant to chapter 91 to ensure~~  
14 ~~the reputable and responsible character of an applicant to~~  
15 ~~operate an adult foster home or developmental disabilities~~  
16 ~~domiciliary home, of existing providers and their employees, of~~  
17 ~~current and prospective employees of the applicant, and of new~~  
18 ~~employees of the provider after certification or licensure,~~  
19 ~~which shall provide for, but not be limited to, criminal history~~  
20 ~~record checks in accordance with section 846-2.7.~~



1       ~~(b) For the purposes of this section, "developmental~~  
2 ~~disabilities domiciliary homes" means any facility licensed~~  
3 ~~under section 321-15.9 that provides twenty four hour~~  
4 ~~supervision or care, excluding licensed nursing care, for a fee,~~  
5 ~~to not more than five adults with intellectual disabilities or~~  
6 ~~developmental disabilities as defined in this chapter; and~~  
7 ~~"adult foster homes" shall be as defined under section 321-11.2.~~

8       ~~(c) An applicant to operate an adult foster home or~~  
9 ~~developmental disabilities domiciliary home and all current and~~  
10 ~~prospective employees of the applicant shall be subject to~~  
11 ~~criminal history record checks in accordance with section 846-~~  
12 ~~2.7, and shall provide consent to the department or the~~  
13 ~~department's designee to obtain criminal history record~~  
14 ~~information for verification.~~

15       ~~(d) Each existing provider or provider and all employees~~  
16 ~~hired after the initial licensure or certification of the~~  
17 ~~existing provider or provider shall be subject to criminal~~  
18 ~~history record checks in accordance with section 846-2.7, and~~  
19 ~~shall provide consent to the department or the department's~~  
20 ~~designee to obtain criminal history record information for~~  
21 ~~verification.~~



1       ~~(c) The department or the department's designee is~~  
2       ~~authorized to obtain criminal history record information through~~  
3       ~~the Hawaii criminal justice data center on existing providers~~  
4       ~~and their employees upon their next licensure or certification~~  
5       ~~renewal date, and on any applicant and all current and~~  
6       ~~prospective employees of the applicant, including all new~~  
7       ~~employees after the applicant is issued a certification or~~  
8       ~~license under this chapter.~~

9       ~~(f) Once fingerprints are on file, yearly licensure or~~  
10       ~~certification renewals for providers and employees will require~~  
11       ~~only state criminal history record checks through the Hawaii~~  
12       ~~criminal justice data center.~~

13       ~~(g) The department may revoke a current license or~~  
14       ~~certification or deny an application for a license or~~  
15       ~~certification to operate an adult foster home or developmental~~  
16       ~~disabilities domiciliary home under rules adopted pursuant to~~  
17       ~~chapter 91 if the existing provider or employee of an existing~~  
18       ~~provider, applicant, current or prospective employee of the~~  
19       ~~applicant, provider, or new employee of the provider refuses to~~  
20       ~~submit to the department or the department's designee statements~~  
21       ~~indicating criminal convictions, refuses to provide consent to~~



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

**PART IV**

14 SECTION 11. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 12. This Act shall take effect on January 7, 2059;  
17 provided that the amendments made to the definition of  
18 "healthcare facility" under section 321-15.2(a), Hawaii Revised  
19 Statutes, by section 1 of this Act shall not be repealed when  
20 that definition is reenacted on June 30, 2019, pursuant to



1 section 8 of Act 21, Special Session Laws of Hawaii 2009, as  
2 amended by section 2 of Act 125, Session Laws of Hawaii 2014.



**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 checks, sex offender registry record checks, adult abuse perpetrator and child abuse and neglect 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 volunteers, applicants, and operators of healthcare facilities. Effective 01/07/2059. (SD2)

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

