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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. The purposes of this Act are to authorize the  
2       department of human services to conduct comprehensive background  
3       checks on current or prospective employees, volunteers, and  
4       contractors and their employees, agents, or volunteers, for  
5       those individuals in positions that require close proximity to  
6       minors, young adults, or vulnerable adults, who are receiving  
7       child welfare services, social services, or other benefits and  
8       services intended to prevent abuse or neglect, or to assist  
9       youth aging out of foster care with obtaining and maintaining  
10      independent living skills, from the department of human  
11      services, and to make technical non-substantive changes for  
12      consistency and to conform to provisions of Act 133, Session  
13      Laws of Hawaii 2016.

14      SECTION 2. Section 346-2.5, Hawaii Revised Statutes, is  
15      amended to read as follows:

16      " ~~[+] §346-2.5 [1]~~ ~~[Criminal history record]~~ Background

17      checks. (a) The department shall develop procedures for

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1 obtaining verifiable information regarding the criminal history  
2 of any person who is employed or seeking employment, including a  
3 contractor and its employees or agents if prior authority to  
4 access federal tax information has been provided by the United  
5 States Department of the Treasury, if the person will require  
6 access to federal tax information. The procedures shall include  
7 criminal history record checks in accordance with section 846-  
8 2.7. Information obtained pursuant to this subsection shall be  
9 used exclusively by the department for the purpose of  
10 determining whether a person is suitable for accessing federal  
11 tax information in accordance with applicable federal laws.

12 (b) The department may terminate or deny employment to any  
13 current or prospective employee [~~or applicant,~~] or terminate or  
14 refuse to secure the services of a contractor and its employees  
15 or agents authorized under subsection (a), if the department  
16 finds by reason of the nature and circumstances of the  
17 background investigation conducted under subsection (a) that the  
18 current or prospective employee [~~, applicant,~~] or contractor, or  
19 contractor's employees or agents pose a risk to the security of  
20 federal tax information. Termination or denial of employment or  
21 refusal to secure services under this subsection shall only  
22 occur after appropriate notification to the current or

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1 prospective employee[, ~~applicant~~,] or contractor of the findings  
2 of the background investigation, and after the current or  
3 prospective employee[, ~~applicant~~,] or contractor is given an  
4 opportunity to respond to the findings. Nothing in this  
5 subsection shall abrogate any applicable appeal rights under  
6 chapters 76 and 89, or administrative rules of the department.

7 (c) The department shall develop procedures for obtaining  
8 verifiable information regarding the criminal history of any  
9 current or prospective employee, volunteer, contractor, or a  
10 contractor's employees, agents, or volunteers, who is employed  
11 or seeking employment, as a measure to ensure the person is of  
12 reputable and responsible character if the person will be in  
13 close proximity to minors, young adults, or vulnerable adults,  
14 who are receiving child welfare services, social services, or  
15 other benefits and services, intended to prevent abuse or  
16 neglect or assist youth aging out of foster care with obtaining  
17 and maintaining independent living skills, from the department.

18 (d) For purposes of this section:

19 "Child welfare services" has the same meaning as in section  
20 346-1.

21 "Social services" has the same meaning as in section 346-1.

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1 "Vulnerable adult" has the same meaning as in section 346-  
2 222.

3 "Young adult" means a person between the ages of eighteen  
4 and twenty-one or a person authorized by the Foster Care  
5 Independence Act of 1999 (Pub. L. 106-169), or other applicable  
6 law, regardless of age, to receive benefits and services aimed  
7 to assist youth aging out of foster care in the United States in  
8 obtaining and maintaining independent living skills.

9 (e) Current or prospective employees, volunteers, and  
10 contractors and contractors' employees, agents, and volunteers,  
11 who are in positions that place them in close proximity to  
12 minors, young adults, or vulnerable adults, who are receiving  
13 child welfare services, social services, or other benefits or  
14 services, intended to prevent abuse or neglect or assist youth  
15 aging out of foster care with obtaining and maintaining  
16 independent living skills, from the department, shall:

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

19 (2) Provide consent to the department to obtain other  
20 criminal history record information for verification;  
21 and

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1       (3) Be subject to adult abuse registry and child abuse and  
2           neglect registry checks.

3   A new employee or volunteer of the department shall be  
4   fingerprinted prior to beginning employment or volunteering, for  
5   the purpose of complying with the criminal history record check.

6   The information obtained pursuant to this subsection and  
7   subsection (f) shall be used exclusively by the department to  
8   determine whether a person is suitable for working in close  
9   proximity to minors, young adults, or vulnerable adults.

10       (f) The department may periodically obtain criminal  
11   history record information through the Hawaii criminal justice  
12   data center on all persons who are subject to this section.

13       (g) The department may terminate or deny employment to a  
14   current or prospective employee, or volunteer, or terminate or  
15   refuse to secure the services of a contractor and its employee  
16   or agent, if the department finds by reason of the nature and  
17   circumstances of the results of the background investigation  
18   conducted under subsections (e) and (f) that the current or  
19   prospective employee, volunteer, contractor, or contractor's  
20   employee, agent, or volunteer may pose a risk to the health,  
21   safety, security, or well-being of minors, young adults, or  
22   vulnerable adults, who are receiving child welfare services,

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1 social services, or other benefits or services, intended to  
2 prevent abuse or neglect or assist youth aging out of foster  
3 care with obtaining and maintaining independent living skills,  
4 from the department. Termination or denial of employment or  
5 refusal to secure services under this subsection shall only  
6 occur after appropriate notification to the current or  
7 prospective employee or contractor of the findings of the  
8 background investigation, and after the current or prospective  
9 employee or contractor is given an opportunity to respond to the  
10 findings. Nothing in this subsection shall abrogate any  
11 applicable appeal rights under chapters 76 and 89, or  
12 administrative rules of the department.

13       ~~[(e)]~~ (h) The department shall be exempt from section 831-  
14 3.1 and need not conduct investigations, notifications, or  
15 hearings under this section in accordance with chapter 91."

16       SECTION 3. Section 378-2.5, Hawaii Revised Statutes, is  
17 amended by amending subsection (d) to read as follows:

18       "(d) Notwithstanding subsections (b) and (c), the  
19 requirement that inquiry into and consideration of a prospective  
20 employee's conviction record may take place only after the  
21 individual has received a conditional job offer, and the  
22 limitation to the most recent seven-year period for felony

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1 convictions and the most recent five-year period for misdemeanor  
2 convictions, excluding the period of incarceration, shall not  
3 apply to employers who are expressly permitted to inquire into  
4 an individual's criminal history for employment purposes  
5 pursuant to any federal or state law other than subsection (a),  
6 including:

- 7 (1) The State or any of its branches, political  
8 subdivisions, or agencies pursuant to sections 78-2.7  
9 and 831-3.1;
- 10 (2) The department of education pursuant to section  
11 302A-601.5;
- 12 (3) The department of health with respect to employees,  
13 providers, or subcontractors in positions that place  
14 them in direct contact with clients when providing  
15 non-witnessed direct mental health services pursuant  
16 to section 321-171.5;
- 17 (4) The judiciary pursuant to section 571-34;
- 18 (5) The counties pursuant to section 846-2.7(b)(5), (33),  
19 (34), (35), (36), and (38);
- 20 (6) Armed security services pursuant to section 261-17(b);
- 21 (7) Providers of a developmental disabilities domiciliary  
22 home pursuant to section 321-15.2;

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- 1 (8) Private schools pursuant to sections 302C-1 and  
2 378-3(8);
- 3 (9) Financial institutions in which deposits are insured  
4 by a federal agency having jurisdiction over the  
5 financial institution pursuant to section 378-3(9);
- 6 (10) Detective agencies and security guard agencies  
7 pursuant to sections 463-6(b) and 463-8(b);
- 8 (11) Employers in the business of insurance pursuant to  
9 section 431:2-201.3;
- 10 (12) Employers of individuals or supervisors of individuals  
11 responsible for screening passengers or property under  
12 title 49 United States Code section 44901 or  
13 individuals with unescorted access to an aircraft of  
14 an air carrier or foreign carrier or in a secured area  
15 of an airport in the United States pursuant to title  
16 49 United States Code section 44936(a);
- 17 (13) The department of human services pursuant to sections  
18 346-2.5, 346-97, and 352-5.5;
- 19 (14) The public library system pursuant to section  
20 302A-601.5;
- 21 (15) The department of public safety pursuant to section  
22 353C-5;



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

(17) The board of directors of an association under chapter 514B, or the managing agent or resident manager of a condominium pursuant to section 514B-133; and

(18) The department of health pursuant to section 321-15.2."

SECTION 4. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

(1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;

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

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- 1       (3) The department of health or its designee on all  
2       applicants for licensure or certification for,  
3       operators for, prospective employees, adult  
4       volunteers, and all adults, except adults in care, at  
5       healthcare facilities as defined in section 321-15.2;
- 6       (4) The department of education on employees, prospective  
7       employees, and teacher trainees in any public school  
8       in positions that necessitate close proximity to  
9       children as provided by section 302A-601.5;
- 10      (5) The counties on employees and prospective employees  
11      who may be in positions that place them in close  
12      proximity to children in recreation or child care  
13      programs and services;
- 14      (6) The county liquor commissions on applicants for liquor  
15      licenses as provided by section 281-53.5;
- 16      (7) The county liquor commissions on employees and  
17      prospective employees involved in liquor  
18      administration, law enforcement, and liquor control  
19      investigations;
- 20      (8) The department of human services on operators and  
21      employees of child caring institutions, child placing

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1 organizations, and [~~foster boarding homes~~] resource  
2 family homes as provided by section 346-17;

3 (9) The department of human services on prospective  
4 adoptive parents as established under section 346-  
5 19.7;

6 (10) The department of human services or its designee on  
7 applicants to operate child care facilities, household  
8 members of the applicant, prospective employees of the  
9 applicant, and new employees and household members of  
10 the provider after registration or licensure as  
11 provided by section 346-154, and persons subject to  
12 section 346-152.5;

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

17 (12) The department of health on operators and employees of  
18 home and community-based case management agencies and  
19 operators and other adults, except for adults in care,  
20 residing in community care foster family homes as  
21 provided by section 321-15.2;

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- 1       (13) The department of human services on staff members of  
2           the Hawaii youth correctional facility as provided by  
3           section 352-5.5;
- 4       (14) The department of human services on employees,  
5           prospective employees, and volunteers of contracted  
6           providers and subcontractors in positions that place  
7           them in close proximity to youth when providing  
8           services on behalf of the office or the Hawaii youth  
9           correctional facility as provided by section 352D-4.3;
- 10      (15) The judiciary on employees and applicants at detention  
11           and shelter facilities as provided by section 571-34;
- 12      (16) The department of public safety on employees and  
13           prospective employees who are directly involved with  
14           the treatment and care of persons committed to a  
15           correctional facility or who possess police powers  
16           including the power of arrest as provided by section  
17           353C-5;
- 18      (17) The board of private detectives and guards on  
19           applicants for private detective or private guard  
20           licensure as provided by section 463-9;
- 21      (18) Private schools and designated organizations on  
22           employees and prospective employees who may be in

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positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;

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

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

(21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;

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1       (22) The department of human services on purchase of  
2           service contracted and subcontracted service  
3           providers, and their employees [~~serving clients of the~~  
4           ~~adult protective and community services branch~~],  
5           agents, and volunteers, as provided by [~~section~~]  
6           sections 346-2.5 and 346-97;

7       (23) The department of human services on foster grandparent  
8           program, senior companion program, and respite  
9           companion program participants as provided by section  
10          346-97;

11      (24) The department of human services on contracted and  
12          subcontracted service providers and their current and  
13          prospective employees that provide home and community-  
14          based services under section 1915(c) of the Social  
15          Security Act, title 42 United States Code section  
16          1396n(c), or under any other applicable section or  
17          sections of the Social Security Act for the purposes  
18          of providing home and community-based services, as  
19          provided by section 346-97;

20      (25) The department of commerce and consumer affairs on  
21          proposed directors and executive officers of a bank,  
22          savings bank, savings and loan association, trust

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company, and depository financial services loan  
company as provided by section 412:3-201;

(26) The department of commerce and consumer affairs on  
proposed directors and executive officers of a  
nondepository financial services loan company as  
provided by section 412:3-301;

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

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

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

(B) Each person who upon approval of an application  
by a corporate applicant for a money transmitter  
license will be a principal of the licensee; and

(C) Each person who upon approval of an application  
requesting approval of a proposed change in  
control of licensee will be a principal of the  
licensee,

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

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1 (29) The department of commerce and consumer affairs on  
2 applicants for licensure and persons licensed under  
3 title 24;

4 (30) The Hawaii health systems corporation on:

5 (A) Employees;

6 (B) Applicants seeking employment;

7 (C) Current or prospective members of the corporation  
8 board or regional system board; or

9 (D) Current or prospective volunteers, providers, or  
10 contractors,

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

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

14 (A) An applicant for a mortgage loan originator  
15 license, or license renewal; and

16 (B) Each control person, executive officer, director,  
17 general partner, and managing member of an  
18 applicant for a mortgage loan originator company  
19 license or license renewal,

20 as provided by chapter 454F;

21 (32) The state public charter school commission or public  
22 charter schools on employees, teacher trainees,



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prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;

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

(34) The counties on prospective employees for fire department positions that involve contact with children or vulnerable adults;

(35) The counties on prospective employees for emergency medical services positions that involve contact with children or vulnerable adults;

(36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;

(37) The State and counties on employees, prospective employees, volunteers, and contractors whose position

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responsibilities require unescorted access to secured areas and equipment related to a traffic management center;

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

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

(40) The department of commerce and consumer affairs on:

(A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;

(B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an appraisal management company, as provided by section 466L-7; and

(C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section 466L-7;

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1       (41) The department of health or its designee on all  
2           license applicants, licensees, employees, contractors,  
3           and prospective employees of medical cannabis  
4           dispensaries, and individuals permitted to enter and  
5           remain in medical cannabis dispensary facilities as  
6           provided under sections 329D-15(a)(4) and 329D-  
7           16(a)(3);

8       (42) The department of commerce and consumer affairs on  
9           applicants for nurse licensure or license renewal,  
10          reactivation, or restoration as provided by sections  
11          457-7, 457-8, 457-8.5, and 457-9;

12      (43) The county police departments on applicants for  
13          permits to acquire firearms pursuant to section 134-2  
14          and on individuals registering their firearms pursuant  
15          to section 134-3;

16      (44) The department of commerce and consumer affairs on:  
17          (A) Each of the controlling persons of the applicant  
18              for licensure as an escrow depository, and each  
19              of the officers, directors, and principals who  
20              will be in charge of the escrow depository's  
21              activities upon licensure; and

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(B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of the application,

as provided by chapter 449;

(45) The department of taxation on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 231-1.6;

(46) The department of labor and industrial relations on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 383-110;

(47) The department of human services on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, and on current or prospective employees, and

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volunteers, who are in a position that requires close  
proximity to minors, young adults, or vulnerable  
adults, as provided by section 346-2.5;

(48) The child support enforcement agency on current or  
prospective employees or contractors who have access  
to federal tax information in order to comply with  
federal law, regulation, or procedure, as provided by  
section 576D-11.5;

(49) The department of the attorney general on current or  
prospective employees or employees or agents of  
contractors who have access to federal tax information  
to comply with requirements of federal law,  
regulation, or procedure, as provided by section  
28-17;

[+] (50) [+] The department of commerce and consumer affairs  
on each control person, executive officer, director,  
general partner, and managing member of an installment  
loan licensee, or an applicant for an installment loan  
license, as provided in chapter 480J;

[+] (51) [+] The University of Hawaii on current and  
prospective employees and contractors whose duties

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1 include ensuring the security of campus facilities and  
2 persons; and

3 ~~[+]~~ (52) ~~[+]~~ Any other organization, entity, or the State,  
4 its branches, political subdivisions, or agencies as  
5 may be authorized by state law."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.

9

10

INTRODUCED BY: 

11

BY REQUEST

JAN 24 2022

**Report Title:** Department of Human Services; Criminal History Background Checks

**Description:**

Authorizes state and national criminal history checks for current and prospective employees, volunteers, and contractors and their employees, agents, and volunteers who are in positions that require close proximity to children, young adults, or vulnerable adults receiving child welfare services, social services, or certain other benefits and services from the department. Makes non-substantial conforming amendments to sections 345-2.5 and 846-2.7, Hawaii Revised Statutes. Effective upon approval.

*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:** Human Services

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

**PURPOSE:** To provide authority to the Department of Human Services (DHS) to establish procedures to conduct comprehensive background checks on current and prospective employees, volunteers, contractors, and contractors' employees, agents, and volunteers, for those individuals in positions that require proximity to minors, young adults, or vulnerable adults who are receiving child welfare services, social services, or other benefits or services, intended to prevent abuse or neglect or assist youth aging out of foster care with obtaining and maintaining independent living skills, from DHS. To make non-substantive changes to section 346.2.5, Hawaii Revised Statutes (HRS), for clarity and consistency, and to conform section 846-2.7, HRS, to amendments made to sections 346-16 and 346-17, HRS, by Act 133, Session Laws of Hawaii 2016 (Act 133).

**MEANS:** Amends sections 346-2.5, 378-2.5 and 846-2.7, HRS.

**JUSTIFICATION:** The bill will authorize DHS to establish procedures in its hiring and contracting processes to ensure the reputable and responsible characters of current and prospective employees, volunteers, and contractors, contractors' employees, agents, and volunteers, who will be in direct contact with minors, young adults, or vulnerable adults, who are receiving child welfare services, social services, or other benefits and services, intended to prevent abuse or neglect or assist youth aging out of foster care with obtaining and maintaining independent living skills, from DHS. The bill will require certain



individuals to provide signed consent to DHS to obtain criminal history record information from national and state records, and the State's adult abuse registry and the State's child abuse and neglect registry.

The proposed amendments to section 846-2.7, HRS, will provide DHS the authority to conduct criminal history record checks that include the submission of fingerprints to the Federal Bureau of Investigation and the Hawaii Criminal Justice Data Center for national and state criminal history record checks. Also, section 846-2.7(b)(8), HRS, will be revised to conform to Act 133 by replacing "foster boarding homes" with "resource family homes."

The current pre-employment background clearance process includes a State of Hawaii name-based criminal history record check and relies on prospective new hires to self-report any convictions that occurred outside of the State of Hawaii. Having the statutory authority to conduct comprehensive national and state finger-print based criminal history record checks and periodic rechecks will allow DHS to obtain information directly from the Federal Bureau of Investigations and the Hawaii Criminal Justice Data Center.

Impact on the public: The public will benefit from DHS's ability to conduct state and national background checks of current and prospective employees, resource family homes, volunteers, and contractors, their employees, agents, and volunteers, as an added measure to ensure the health, safety, and well-being of minors, young adults, and vulnerable adults receiving child welfare, child protective, or social services, and adult protective or community services from DHS, and they are being served by individuals with reputable and responsible characters. Non-substantive changes will provide more clarity to the applicable laws.

Impact on the department and other agencies:

The proposed amendments will impact DHS's human resources and social services division staff who will need to conduct additional state and national background checks and periodic rechecks of the current and prospective employees, volunteers, and contractors and their employees, agents, and volunteers. This may cause delay in hiring prospective employees. The Hawaii Criminal Justice Data Center may experience an increased demand for services by individuals.

Potential employees, contracted providers and those who volunteer with these organizations may be impacted by additional national criminal history checks.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HMS 904, HMS 301.
OTHER AFFECTED AGENCIES:	The Department of the Attorney General.
EFFECTIVE DATE:	Upon approval.