

JAN 25 2006

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

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

1 SECTION 1. To protect the health and safety of the elderly
2 and disabled, the legislature recognizes the need to generate
3 timely and accurate background checks in the form of positive
4 fingerprint identification for persons providing care or having
5 access to residents of skilled nursing facilities, intermediate
6 care facilities, adult residential care homes, expanded adult
7 residential care homes, assisted living facilities, home health
8 agencies, hospices, adult day health centers, special treatment
9 facilities, therapeutic living programs, intermediate care
10 facilities for the mentally retarded, hospitals, rural health
11 centers, and rehabilitation agencies, including applicants for
12 licensure to any of these facilities, facility operators,
13 prospective facility employees and facility adult volunteers,
14 and, in the case of any facility operated in a private
15 residence, all adults living in the home other than the clients,
16 and service providers who have direct contact with individuals
17 receiving services who may be frail, elderly, or disabled.

1 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§321- Criminal history record checks. (a) For the
5 purposes of this section:

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

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

14 "Conviction for a relevant crime" means any federal or
15 state conviction for any offense described in section 1128(a) of
16 the Social Security Act (42 U.S.C. §1320a-7).

17 "Criminal history record name inquiry" means a search by
18 name, and other identifying information, using the state
19 computerized criminal history record information system.

20 "Department" means the department of health.

21 "Direct patient access employee" means any individual,
22 including a volunteer, who has access to a patient or resident

1 of a healthcare facility, or any provider through employment or
2 through an agreement or contract with such a facility or
3 provider. Such individuals include, but are not limited to:
4 physicians, nurses, nursing assistants, home health aides,
5 therapists, activities personnel, and support staff (i.e.
6 housekeeping, dietary, etc.) who have direct access to patients
7 or patient belongings.

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

10 "Finding of patient or resident abuse" means a
11 substantiated finding by a state agency under section
12 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42
13 U.S.C. §§1395i-3(g)(1)(C) and 1396r(g)(1)(C)) or a federal agency
14 that a direct patient access employee has committed an act of
15 patient or resident abuse or neglect or has misappropriated
16 patient or resident property.

17 "Healthcare facility" means a facility or setting where a
18 frail, elderly, or disabled adult receives care or is provided
19 living accommodations such as a skilled nursing facility,
20 intermediate care facility, adult residential care home,
21 expanded adult residential care home, assisted living facility,
22 home health agency, hospice, adult day health center, special

1 treatment facility, therapeutic living program, intermediate
2 care facility for the mentally retarded, hospital, rural health
3 center, and rehabilitation agency.

4 "Name inquiry" means a criminal history record check
5 conducted by utilizing the name and other identifying
6 information of the individual, in lieu of a fingerprint check.

7 "Operator" means an individual or entity that is licensed
8 or is seeking licensure to operate a healthcare facility and,
9 therefore, is responsible for the management and overall
10 operations of that healthcare facility.

11 "Relevant crime" means a crime the commission of which the
12 department finds, by reason of its nature and circumstances,
13 that the person who committed it poses a risk to the health,
14 safety, or well-being of a patient or resident. This includes,
15 but is not limited to, murder, manslaughter, assault, sex
16 offenses, domestic violence, theft or forgery, arson,
17 kidnapping, or possession, use, sale, manufacture, or
18 distribution of dangerous drugs or controlled substances and the
19 abuse, neglect, or exploitation of a dependent individual.

20 (b) The department shall adopt rules pursuant to chapter
21 91 to ensure the reputable and responsible character of all
22 prospective applicants, operators, direct patient access

1 employees and adult volunteers of a healthcare facility, and, in
2 the case of any healthcare facility operated in a private
3 residence, all adults living in the home other than the clients.
4 These rules shall, among other things, specify how the
5 department may conduct criminal history record checks in
6 accordance with section 846-2.7.

7 (c) All applicants and prospective operators shall: (i)
8 be subject to criminal history record checks in accordance with
9 section 846-2.7; (ii) shall authorize the disclosure to the
10 department of criminal history record information; and (iii)
11 shall consent to be fingerprinted for the purpose of obtaining
12 criminal history record information from the Federal Bureau of
13 Investigation and the Hawaii criminal justice data center.

14 (d) All prospective direct patient access employees and
15 adult volunteers of healthcare facilities and, in the case of
16 any healthcare facility operated in a private residence, all
17 adults living in the home other than the clients shall consent
18 to be fingerprinted and shall provide all necessary information
19 for the purpose of enabling the department to conduct the
20 criminal history record checks.

21 (e) The department may obtain criminal history record
22 information through the Federal Bureau of Investigation and the

1 Hawaii criminal justice data center on all prospective
2 applicants, operators, direct patient access employees and adult
3 volunteers of healthcare facilities. In addition, in the case
4 of any healthcare facility to be operated in a private
5 residence, the department of health may obtain criminal history
6 record information through the Federal Bureau of Investigation
7 and the Hawaii criminal justice data center for all adults
8 residing in the home who are not clients.

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

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

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

21 (h) Notwithstanding any other law to the contrary, for
22 purposes of this section, the department shall be exempt from

1 section 831-3.1 and need not conduct investigations,
2 notifications, or hearings under this section in accordance with
3 chapter 91.

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

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

19 (k) Any applicant or operator who receives information
20 from the department relating to a criminal history record check
21 of a direct patient access employee or adult volunteer or, in
22 the case of a healthcare facility operated in a private

1 residence, an adult living in the home other than the clients,
2 is presumed to be acting in good faith and shall be immune from
3 civil liability for taking or recommending action based upon the
4 department's recommendation or direction. Nothing in this
5 section shall affect rights, obligations, remedies, liabilities,
6 or standards of proof under chapters 89, 92F, 368, and 378.

7 Criminal history record information shall be used
8 exclusively by the department for the sole purpose of
9 determining whether an applicant, operator, direct patient
10 access employee or adult volunteer at a healthcare facility, or,
11 in the case of a facility operated in a private residence, any
12 adult living in the home other than the clients is suitable for
13 working or living in close proximity to residents of a
14 healthcare facility such that the health, safety, and welfare of
15 the residents would not be at risk."

16 SECTION 3. Chapter 346, Hawaii Revised Statutes, is
17 amended by adding to part IV a new section to be appropriately
18 designated and to read as follows:

19 "§346- Criminal history record checks. (a) For the
20 purposes of this section:

21 "Conviction for a relevant crime" means any federal or
22 state conviction for any offense.

1 "Criminal history record name inquiry" means a search by
2 name, and other identifying information, using the state
3 computerized criminal history record information system.

4 "Department" means the department of human services.

5 "Name inquiry" means a criminal history record check
6 conducted by utilizing the name and other identifying
7 information of the individual, in lieu of a fingerprint check.

8 "Relevant crime" means a crime the commission of which the
9 department finds, by reason of its nature and circumstances,
10 means that the person who committed it poses a risk to the
11 health, safety, or well-being of a patient or resident. This
12 includes, but is not limited to, murder, manslaughter, assault,
13 sex offenses, domestic violence, theft or forgery, arson,
14 kidnapping, or possession, use, sale, manufacture, or
15 distribution of dangerous drugs or controlled substances, and
16 the abuse, neglect, or exploitation of a dependent individual.

17 (b) The department shall adopt rules pursuant to chapter
18 91 establishing standards regarding the reputable and
19 responsible character of service providers who have direct
20 contact with individuals receiving services under this part,
21 including:

- 1 (1) Licensed adult day care center operators, employees,
2 new employees, subcontracted service providers and
3 their employees, and adult volunteers;
- 4 (2) Purchase of service contracted and subcontracted
5 service providers and their employees serving clients
6 of the adult and community care services branch;
- 7 (3) Foster grandparent program, senior companion program,
8 and respite companion program participants; and
- 9 (4) Contracted and subcontracted service providers and
10 their employees and new employees who provide home and
11 community-based services under section 1915(c) of the
12 Social Security Act (42 U.S.C. §1396n(c)).
- 13 (c) Individuals identified in subsection (b) shall:
- 14 (1) Meet the standards regarding the reputable and
15 responsible character of service providers;
- 16 (2) Be subject to criminal history record checks in
17 accordance with section 846-2.7; and
- 18 (3) Provide consent to the department to obtain criminal
19 history record information for verification.
- 20 New employees and adult volunteers shall consent to be
21 fingerprinted and shall supply the necessary information to

1 enable the criminal history record check prior to the start of
2 employment or volunteering.

3 (d) The department shall obtain criminal history record
4 information through the Hawaii criminal justice data center on
5 individuals identified in subsection (b) for the first two years
6 that an individual identified in subsection (b) is required to
7 have such checks, and a criminal history record name inquiry
8 into the state criminal history records annually or biennially
9 thereafter.

10 (e) The department may take appropriate action if it finds
11 that the criminal history of the individual identified under
12 subsection (a) may pose a risk to the health, welfare, and
13 safety of service recipients. Such action may include:

14 (1) Denying a certificate of approval to operate an adult
15 day care center; or

16 (2) Refusing to use an individual as a service provider.

17 (f) Notwithstanding any other law to the contrary, for
18 purposes of this section, the department shall be exempt from
19 section 831-3.1 and need not conduct investigations,
20 notifications, or hearings under this section in accordance with
21 chapter 91.

1 (g) The costs of processing fingerprints and the state
2 criminal history record checks may be borne by the employer or
3 by the employee or individual who is being screened.

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

14 (i) Nothing in this section shall affect the rights,
15 obligations, remedies, liabilities, or standards of proof under
16 chapters 89, 92F, 368, and 378.

17 (j) The criminal history record information obtained under
18 this section shall be used exclusively by the department for the
19 purpose of establishing the reputable and responsible character
20 of the individuals identified in subsection (b) such that the
21 health, welfare, and safety of service recipients would not be
22 at risk."

1 SECTION 4. Section 378-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

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

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

15 (2) The department of education pursuant to section 302A-
16 601.5;

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

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

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- 1 (5) The counties pursuant to section 846-2.7;
- 2 (6) Armed security services pursuant to section 261-17(b);
- 3 (7) Providers of a developmental disabilities domiciliary
- 4 home pursuant to section 333F-22;
- 5 (8) Private schools pursuant to section 378-3(8) and
- 6 section 302C-1;
- 7 (9) Financial institutions in which deposits are insured
- 8 by a federal agency having jurisdiction over the
- 9 financial institution pursuant to section 378-3(9);
- 10 (10) Detective agencies and security guard agencies pursuant
- 11 to sections 463-6(b) and 463-8(b);
- 12 (11) Employers in the business of insurance pursuant to
- 13 section 431:2-201.3;
- 14 (12) Employers of individuals or supervisors of individuals
- 15 responsible for screening passengers or property under
- 16 49 U.S.C. §44901 or individuals with unescorted access
- 17 to an aircraft of an air carrier or foreign carrier or
- 18 in a secured area of an airport in the United States
- 19 pursuant to 49 U.S.C. §44936(a);
- 20 (13) The department of human services pursuant to ~~[section]~~
- 21 sections 346- and 352-5.5;

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- 1 (14) The public library system pursuant to section 302A-
- 2 601.5;
- 3 (15) The department of public safety pursuant to section
- 4 353C-5;
- 5 (16) The board of directors of a cooperative housing
- 6 corporation or the manager of a cooperative housing
- 7 project pursuant to section 421I-12; ~~and~~
- 8 (17) The board of directors of an association of apartment
- 9 owners, or the manager of a condominium project
- 10 pursuant to section 514A-82.1~~[~~-~~]~~; and
- 11 (18) The department of health pursuant to section
- 12 321- ."

13 SECTION 5. Section 846-2.7, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

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

- 16 (1) The department of health on operators of adult foster
- 17 homes or developmental disabilities domiciliary homes
- 18 and their employees, as provided by section 333F-22;
- 19 (2) The department of health on prospective employees,
- 20 persons seeking to serve as providers, or
- 21 subcontractors in positions that place them in direct
- 22 contact with clients when providing non-witnessed

1 direct mental health services as provided by section
2 321-171.5;

3 (3) The department of health on all applicants for
4 licensure for, operators for, and prospective
5 employees and volunteers at one or more of the
6 following: skilled nursing facility, intermediate
7 care facility, adult residential care home, expanded
8 adult residential care homes, assisted living
9 facility, home health agency, hospice, adult day
10 health center, special treatment facility, therapeutic
11 living program, intermediate care facility for the
12 mentally retarded, hospital, rural health center and
13 rehabilitation agency, and, in the case of any of the
14 above-related facilities operating in a private
15 residence, on any adult living in the facility other
16 than the client as provided by section 321- .

17 [~~3~~] (4) The department of education on employees,
18 prospective employees, and teacher trainees in any
19 public school in positions that necessitate close
20 proximity to children as provided by section 302A-
21 601.5;

- 1 [~~(4)~~] (5) The counties on employees and prospective
2 employees who may be in positions that place them in
3 close proximity to children in recreation or child
4 care programs and services;
- 5 [~~(5)~~] (6) The county liquor commissions on applicants for
6 liquor licenses as provided by section 281-53.5;
- 7 [~~(6)~~] (7) The department of human services on operators and
8 employees of child caring institutions, child placing
9 organizations, and foster boarding homes as provided
10 by section 346-17;
- 11 [~~(7)~~] (8) The department of human services on prospective
12 adoptive parents as established under section 346-
13 19.7;
- 14 [~~(8)~~] (9) The department of human services on applicants to
15 operate child care facilities, prospective employees
16 of the applicant, and new employees of the provider
17 after registration or licensure as provided by section
18 346-154;
- 19 [~~(9)~~] (10) The department of human services on persons
20 exempt pursuant to section 346-152 to be eligible to
21 provide child care and receive child care subsidies as
22 provided by section 346-152.5;

1 ~~[(10)]~~ (11) The department of human services on operators
2 and employees of home and community-based case
3 management agencies and operators and other adults,
4 except for adults in care, residing in foster family
5 homes as provided by section 346-335;

6 ~~[(11)]~~ (12) The department of human services on staff
7 members of the Hawaii youth correctional facility as
8 provided by section 352-5.5;

9 ~~[(12)]~~ (13) The judiciary on employees and applicants at
10 detention and shelter facilities as provided by
11 section 571-34;

12 ~~[(13)]~~ (14) 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 ~~[(14)]~~ (15) The department of commerce and consumer affairs
19 on applicants for private detective or private guard
20 licensure as provided by section 463-9;

21 ~~[(15)]~~ (16) Private schools and designated organizations on
22 employees and prospective employees who may be in

1 positions that necessitate close proximity to
2 children; provided that private schools and designated
3 organizations receive only indications of the states
4 from which the national criminal history record
5 information was provided as provided by section 302C-
6 1;

7 [~~(16)~~] (17) The public library system on employees and
8 prospective employees whose positions place them in
9 close proximity to children as provided by section
10 302A-601.5;

11 [~~(17)~~] (18) The State or any of its branches, political
12 subdivisions, or agencies on applicants and employees
13 holding a position that has the same type of contact
14 with children, dependent adults, or persons committed
15 to a correctional facility as other public employees
16 who hold positions that are authorized by law to
17 require criminal history record checks as a condition
18 of employment as provided by section 78-2.7; [~~and~~]

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

1 (20) The department of human services on purchase of service
2 contracted and subcontracted service providers and
3 their employees serving clients of the adult and
4 community care services branch, as provided by section
5 346- ;

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

10 (22) The department of human services on contracted and
11 subcontracted service providers and their current and
12 prospective employees that provide home and community-
13 based services under section 1915(c) of the Social
14 Security Act (42 U.S.C. §1396n(c)), as provided by
15 section 346- ; and

16 ~~[(18)]~~ (23) Any other organization, entity, or the State, its
17 branches, political subdivisions, or agencies as may
18 be authorized by state law."

19 SECTION 6. Act 164, Session Laws of Hawaii 2004, as
20 amended by Act 93, Session Laws of Hawaii 2005, is amended by
21 amending section 10 to read as follows:

1 "SECTION 10. Sections 378-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read follows:

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

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

15 (2) The department of education pursuant to section 302A-
16 601.5;

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

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

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- 1 (5) The counties pursuant to section 846-2.7;
- 2 (6) Armed security services pursuant to section 261-17(b);
- 3 (7) Providers of a developmental disabilities domiciliary
- 4 home pursuant to section 333F-22;
- 5 (8) Private schools pursuant to section 378-3(8) and
- 6 section 302C-1;
- 7 (9) Financial institutions in which deposits are insured
- 8 by a federal agency having jurisdiction over the
- 9 financial institution pursuant to section 378-3(9);
- 10 (10) Detective agencies and security guard agencies pursuant
- 11 to sections 463-6(b) and 463-8(b);
- 12 (11) Employers in the business of insurance pursuant to
- 13 section 431:2-201.3;
- 14 (12) Employers of individuals or supervisors of individuals
- 15 responsible for screening passengers or property under
- 16 49 U.S.C. §44901 or individuals with unescorted access
- 17 to an aircraft of an air carrier or foreign carrier or
- 18 in a secured area of an airport in the United States
- 19 pursuant to 49 U.S.C. §44936(a);
- 20 (13) The department of human services pursuant to ~~[section]~~
- 21 sections 346- and 352-5.5;

1 (14) The public library system pursuant to section 302A-
2 601.5;

3 (15) The department of public safety pursuant to section
4 353C-5;

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

8 (17) The board of directors of an association of apartment
9 owners, or the manager of a condominium project
10 pursuant to section 514A-82.1~~[+]~~; and

11 (18) The department of health pursuant to section
12 321- ."

13 SECTION 7. There shall be established a working committee
14 of five (5) members with representatives from the department of
15 health, department of human services, provider organizations and
16 community, as appointed by the directors of the department of
17 health and department of human services to meet minimally on a
18 quarterly basis to review and evaluate the process undertaken by
19 the departments in effecting criminal history record checks and
20 provide recommendations to the directors of the departments as
21 relevant. Members shall serve a term of two years which may be
22 extended at the discretion of the directors of the departments

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1 and will report to departmental administrators as designated by
2 the directors.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

JUSTIFICATION SHEET **SB. NO. 2343**

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS.

PURPOSE: To require timely and accurate criminal history record checks on persons providing care or having access to residents of skilled nursing facilities, intermediate care facilities, adult residential care homes, expanded adult residential care homes, assisted living facility, home health agencies, hospices, adult day health centers, special treatment facilities, therapeutic living programs, intermediate care facilities for the mentally retarded, hospitals, rural health centers and rehabilitation agencies, including applicants for licensure to any of these facilities, facility operators, prospective facility employees and facility adult volunteers, and, in the case of any facility operated in a private residence, all adults living in the home other than the clients.

Also to require criminal history record checks for service providers who contract with the Department of Human Services (DHS).

To provide immunity to the departments of health and human services for taking action or making recommendations based on the criminal history information received. Also provides immunity to providers who take employment action based on recommendations of the departments.

MEANS: Add a new section to chapter 321, Hawaii Revised Statutes (HRS); add a

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new section to Part IV of chapter 346, HRS; amended sections 378-2.5, and 846-2.7, HRS, and section 10 of Act 164, Session Laws of Hawaii 2004.

JUSTIFICATION:

There have been reported cases of abuse and neglect of residents in various care settings, by licensees, operators, employees, or family members in the case of a healthcare facility operated in a private residence. Criminal history record checks will provide the Department of Health and the Department of Human Services with current and timely information to make informed decisions and recommendations regarding licensure, issuance of contracts and hiring of individuals who do not have criminal convictions relevant to the type of care and services that the frail elderly or disabled will require.

Impact on the public: To enhance the health and safety of the elderly and disabled receiving care and services in any health care setting in the State, there is a need to perform criminal background checks for all licensees, operators, prospective employees and volunteers, and in the case of a healthcare facility operated in a private residence, all adults living in the home other than the clients. Criminal history record checks will provide information that will aid in determining employment suitability for the care of dependent individuals.

Impact on the department and other agencies: There is a cost of \$50 per person for the State and FBI checks. The proposed legislation will require that applicants pay for their own criminal background checks. The department has entered into an agreement with DHS and Hawaii Criminal Justice Center (HCJDC) to utilize

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existing resources, and possibly decrease the fee for the background checks.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: DHS, DHRD, HHSC, HCJDC, and private provider groups.

EFFECTIVE DATE: Upon approval.