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# 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 42 United States  
16 Code §1320a-7 (section 1128(a) of the Social Security Act).

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  
14 agency that a direct patient access employee has committed an  
15 act of patient or resident abuse or neglect or has  
16 misappropriated 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,  
2 in 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, among other things, shall 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:

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

10 (2) Authorize the disclosure to the department of criminal  
11 history record information; and

12 (3) Consent to be fingerprinted for the purpose of  
13 obtaining criminal history record information from the  
14 Federal Bureau of Investigation and the Hawaii  
15 criminal justice data center.

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 consent  
20 to be fingerprinted and shall provide all necessary information  
21 for the purpose of enabling the department to conduct the  
22 criminal history record checks.



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

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

18       (g) The department may revoke or suspend a current  
19 license, impose penalties or fines, or deny an application for a  
20 license under rules adopted pursuant to chapter 91 if the  
21 applicant, operator, employee, or adult volunteer at the  
22 healthcare facility or, in the case of any healthcare facility



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



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

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

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

21        (k) Any applicant or operator who receives information  
22 from the department relating to a criminal history record check





1 of a direct patient access employee or adult volunteer or, in  
2 the case of a healthcare facility operated in a private  
3 residence, an adult living in the home other than the clients,  
4 is presumed to be acting in good faith and shall be immune from  
5 civil liability for taking or recommending action based upon the  
6 department's recommendation or direction. Nothing in this  
7 section shall affect rights, obligations, remedies, liabilities,  
8 or standards of proof under chapters 368 and 378.

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

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

21 "§346- Criminal history record checks. (a) For the  
22 purposes of this section:



1       "Conviction for a relevant crime" means any federal or  
2 state conviction for any offense.

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

6       "Department" means the department of human services.

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

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

19       (b) The department shall adopt rules pursuant to chapter  
20 91 establishing standards regarding the reputable and  
21 responsible character of service providers who have direct



1 contact with individuals receiving services under this part,  
2 including:

3 (1) Licensed adult day care center operators, employees,  
4 new employees, subcontracted service providers and  
5 their employees, and adult volunteers;

6 (2) Purchase of service contracted and subcontracted  
7 service providers and their employees serving clients  
8 of the adult and community care services branch;

9 (3) Foster grandparent program, senior companion program,  
10 and respite companion program participants; and

11 (4) Contracted and subcontracted service providers and  
12 their employees and new employees who provide home and  
13 community-based services under section 1915(c) of the  
14 Social Security Act (42 U.S.C. §1396n(c)).

15 (c) Individuals identified in subsection (b) shall:

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

18 (2) Be subject to criminal history record checks in  
19 accordance with section 846-2.7; and

20 (3) Provide consent to the department to obtain criminal  
21 history record information for verification.



1 New employees and adult volunteers shall consent to be  
2 fingerprinted and shall supply the necessary information to  
3 enable the criminal history record check prior to the start of  
4 employment or volunteering.

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

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

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

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

19 (f) Notwithstanding any other law to the contrary, for  
20 purposes of this section, the department shall be exempt from  
21 section 831-3.1 and need not conduct investigations,



1 notifications, or hearings under this section in accordance with  
2 chapter 91.

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

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

16 (i) Nothing in this section shall affect the rights,  
17 obligations, remedies, liabilities, or standards of proof under  
18 chapters 368 and 378.

19 (j) The criminal history record information obtained under  
20 this section shall be used exclusively by the department for the  
21 purpose of establishing the reputable and responsible character  
22 of the individuals identified in subsection (b) such that the



1 health, welfare, and safety of service recipients will not be at  
2 risk."

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

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

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

17 (2) The department of education pursuant to section  
18 302A-601.5;

19 (3) The department of health with respect to employees,  
20 providers, or subcontractors in positions that place  
21 them in direct contact with clients when providing



- 1 non-witnessed direct mental health services pursuant  
2 to section 321-171.5;
- 3 (4) The judiciary pursuant to section 571-34;
- 4 (5) The counties pursuant to section 846-2.7;
- 5 (6) Armed security services pursuant to section 261-17(b);
- 6 (7) Providers of a developmental disabilities domiciliary  
7 home pursuant to section 333F-22;
- 8 (8) Private schools pursuant to section 378-3(8) and  
9 section 302C-1;
- 10 (9) Financial institutions in which deposits are insured  
11 by a federal agency having jurisdiction over the  
12 financial institution pursuant to section 378-3(9);
- 13 (10) Detective agencies and security guard agencies  
14 pursuant to sections 463-6(b) and 463-8(b);
- 15 (11) Employers in the business of insurance pursuant to  
16 section 431:2-201.3;
- 17 (12) Employers of individuals or supervisors of individuals  
18 responsible for screening passengers or property under  
19 49 U.S.C. §44901 or individuals with unescorted access  
20 to an aircraft of an air carrier or foreign carrier or  
21 in a secured area of an airport in the United States  
22 pursuant to 49 U.S.C. §44936(a);



1 (13) The department of human services pursuant to [~~section~~]  
2 sections 346- and 352-5.5;

3 (14) The public library system pursuant to section  
4 302A-601.5;

5 (15) The department of public safety pursuant to section  
6 353C-5;

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

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

13 (18) The department of health pursuant to section  
14 321- ."

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

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

18 (1) The department of health on operators of adult foster  
19 homes or developmental disabilities domiciliary homes  
20 and their employees, as provided by section 333F-22;

21 (2) The department of health on prospective employees,  
22 persons seeking to serve as providers, or



1 subcontractors in positions that place them in direct  
2 contact with clients when providing non-witnessed  
3 direct mental health services as provided by section  
4 321-171.5;

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

19 ~~(3)~~ (4) The department of education on employees,  
20 prospective employees, and teacher trainees in any  
21 public school in positions that necessitate close



1 proximity to children as provided by section 302A-  
2 601.5;

3 [~~(4)~~] (5) The counties on employees and prospective  
4 employees who may be in positions that place them in  
5 close proximity to children in recreation or child  
6 care programs and services;

7 [~~(5)~~] (6) The county liquor commissions on applicants for  
8 liquor licenses as provided by section 281-53.5;

9 [~~(6)~~] (7) The department of human services on operators and  
10 employees of child caring institutions, child placing  
11 organizations, and foster boarding homes as provided  
12 by section 346-17;

13 [~~(7)~~] (8) The department of human services on prospective  
14 adoptive parents as established under section  
15 346-19.7;

16 [~~(8)~~] (9) The department of human services on applicants to  
17 operate child care facilities, prospective employees  
18 of the applicant, and new employees of the provider  
19 after registration or licensure as provided by section  
20 346-154;

21 [~~(9)~~] (10) The department of human services on persons  
22 exempt pursuant to section 346-152 to be eligible to



1 provide child care and receive child care subsidies as  
2 provided by section 346-152.5;

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

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

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

14 ~~[(13)]~~ (14) The department of public safety on employees and  
15 prospective employees who are directly involved with  
16 the treatment and care of persons committed to a  
17 correctional facility or who possess police powers  
18 including the power of arrest as provided by section  
19 353C-5;

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



1       ~~[(15)]~~ (16) Private schools and designated organizations on  
2                   employees and prospective employees who may be in  
3                   positions that necessitate close proximity to  
4                   children; provided that private schools and designated  
5                   organizations receive only indications of the states  
6                   from which the national criminal history record  
7                   information was provided as provided by section  
8                   302C-1;

9       ~~[(16)]~~ (17) The public library system on employees and  
10                   prospective employees whose positions place them in  
11                   close proximity to children as provided by section  
12                   302A-601.5;

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

21       (19) The department of human services on licensed adult day  
22       care center operators, employees, new employees,



1           subcontracted service providers and their employees,  
2           and adult volunteers as provided by section 346- ;

3       (20) The department of human services on purchase of  
4           service contracted and subcontracted service providers  
5           and their employees serving clients of the adult and  
6           community care services branch, as provided by section  
7           346- ;

8       (21) The department of human services on foster grandparent  
9           program, senior companion program, and respite  
10          companion program participants as provided by section  
11          346- ;

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

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

21           SECTION 6. Section 378-2.5, Hawaii Revised Statutes, is  
22   amended by amending subsection (d) to read as follows:



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

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



- 1 (7) Providers of a developmental disabilities domiciliary  
2 home pursuant to section 333F-22;
- 3 (8) Private schools pursuant to section 378-3(8) and  
4 section 302C-1;
- 5 (9) Financial institutions in which deposits are insured  
6 by a federal agency having jurisdiction over the  
7 financial institution pursuant to section 378-3(9);
- 8 (10) Detective agencies and security guard agencies  
9 pursuant to sections 463-6(b) and 463-8(b);
- 10 (11) Employers in the business of insurance pursuant to  
11 section 431:2-201.3;
- 12 (12) Employers of individuals or supervisors of individuals  
13 responsible for screening passengers or property under  
14 49 U.S.C. §44901 or individuals with unescorted access  
15 to an aircraft of an air carrier or foreign carrier or  
16 in a secured area of an airport in the United States  
17 pursuant to 49 U.S.C. §44936(a);
- 18 (13) The department of human services pursuant to ~~[section]~~  
19 sections 346- and 352-5.5;
- 20 (14) The public library system pursuant to section  
21 302A-601.5;



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

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





1           SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 9. This Act shall take effect upon its approval;  
4 provided that section 6 shall take effect on July 1, 2006.



**Report Title:**

Criminal History Checks; Healthcare Providers

**Description:**

Requires criminal history record checks on persons providing care or having access to residents of healthcare facilities.  
(SD1)

