
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 relevant crime as defined in this
16 section.

17 "Criminal history record name inquiry" means any federal or
18 state conviction for any relative crime as defined in this
19 section.

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:

12 (1) Any offense described in 42 United States Code
13 §1320a-7 (section 1128(a) of the Social Security Act);

14 or

15 (2) A crime of such a serious nature or circumstance that
16 the department finds its perpetrator to pose a risk to
17 the health, safety, or well-being of a patient or
18 resident. This includes but is not limited to,
19 murder, manslaughter, assault, sex offenses, domestic
20 violence, theft or forgery, arson, kidnapping, or
21 possession, use, sale, manufacture, or distribution of
22 dangerous drugs or controlled substances.



1 (b) The department shall adopt rules pursuant to chapter
2 91 to ensure the reputable and responsible character of all
3 prospective applicants, operators, direct patient access
4 employees, and adult volunteers of a healthcare facility, and,
5 in the case of any healthcare facility operated in a private
6 residence, all adults living in the home other than the clients.
7 These rules, among other things, shall specify how the
8 department may conduct criminal history record checks in
9 accordance with section 846-2.7.

10 (c) All applicants and prospective operators shall:

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

13 (2) Authorize the disclosure to the department of criminal
14 history record information;

15 (3) Sign a waiver form stating that the department shall
16 not be liable to the applicant or prospective
17 operator; and

18 (4) Consent to be fingerprinted for the purpose of
19 obtaining criminal history record information from the
20 Hawaii criminal justice data center.

21 (d) All prospective direct patient access employees and
22 adult volunteers of healthcare facilities and, in the case of



1 any healthcare facility operated in a private residence, all
2 adults living in the home other than the clients shall consent
3 to be fingerprinted, shall provide all necessary information for
4 the purpose of enabling the department to conduct the criminal
5 history record checks, and shall sign a waiver form stating that
6 the department shall not be liable to the employee or volunteer.

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

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

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



1 residence, any adult living in the home other than the client,
2 is unsuitable to work or live in close proximity to the
3 residents of the healthcare facility such that the health,
4 safety, and welfare of the residents of the healthcare facility
5 could be at risk.

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

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

17 (j) The department, in obtaining and relying upon the
18 state criminal history record checks, is presumed to be acting
19 in good faith and shall be immune from civil liability for
20 taking or recommending action based upon the criminal history
21 record information. The good faith presumption may be rebutted
22 upon a showing by the person or entity of a lack of good faith,

1 and proof by a preponderance of the evidence, that the
2 department relied upon information or opinion that it knew was
3 false or misleading.

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

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



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

4 "§346- Criminal history record checks. (a) For the
5 purposes of this section:

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

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

12 "Department" means the department of human services.

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

16 "Relevant crime" means:

17 (1) Any offense described in 42 United States Code
18 §1320a-7 (section 1128(a) of the Social Security Act);

19 or

20 (2) A crime of such a serious nature or circumstance that
21 the department finds its perpetrator to pose a risk to
22 the health, safety, or well-being of a patient or



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

6 (b) The department shall adopt rules pursuant to chapter
7 91 establishing standards regarding the reputable and
8 responsible character of service providers who have direct
9 contact with individuals receiving services under this part,
10 including:

- 11 (1) Licensed adult day care center operators, employees,
12 new employees, subcontracted service providers and
13 their employees, and adult volunteers;
- 14 (2) Purchase of service contracted and subcontracted
15 service providers and their employees serving clients
16 of the adult and community care services branch;
- 17 (3) Foster grandparent program, senior companion program,
18 and respite companion program participants; and
- 19 (4) Contracted and subcontracted service providers and
20 their employees and new employees who provide home and
21 community-based services under section 1915(c) of the
22 Social Security Act (42 U.S.C. §1396n(c)).



- 1 (c) Individuals identified in subsection (b) shall:
2 (1) Meet the standards regarding the reputable and
3 responsible character of service providers;
4 (2) Be subject to criminal history record checks in
5 accordance with section 846-2.7;
6 (3) Shall sign a waiver form stating that the department
7 shall not be liable to the individual; and
8 (4) Provide consent to the department to obtain criminal
9 history record information for verification.

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

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



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

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

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

8 (f) Notwithstanding any other law to the contrary, for
9 purposes of this section, the department shall be exempt from
10 section 831-3.1 and need not conduct investigations,
11 notifications, or hearings under this section in accordance with
12 chapter 91.

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

16 (h) The department, in obtaining and relying upon the
17 results of the state criminal history record checks, is presumed
18 to be acting in good faith and shall be immune from civil
19 liability for taking or recommending action based upon the
20 criminal history record information. The good faith presumption
21 may be rebutted upon a showing by the person or entity alleging
22 a lack of good faith, and by a preponderance of the evidence,



1 that the department relied upon information or opinion that it
2 knew was false or misleading.

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

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

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

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



- 1 (1) The State or any of its branches, political
2 subdivisions, or agencies pursuant to section 831-3.1
3 and section 78-2.7;
- 4 (2) The department of education pursuant to section
5 302A-601.5;
- 6 (3) The department of health with respect to employees,
7 providers, or subcontractors in positions that place
8 them in direct contact with clients when providing
9 non-witnessed direct mental health services pursuant
10 to section 321-171.5;
- 11 (4) The judiciary pursuant to section 571-34;
- 12 (5) The counties pursuant to section 846-2.7;
- 13 (6) Armed security services pursuant to section 261-17(b);
- 14 (7) Providers of a developmental disabilities domiciliary
15 home pursuant to section 333F-22;
- 16 (8) Private schools pursuant to section 378-3(8) and
17 section 302C-1;
- 18 (9) Financial institutions in which deposits are insured
19 by a federal agency having jurisdiction over the
20 financial institution pursuant to section 378-3(9);
- 21 (10) Detective agencies and security guard agencies
22 pursuant to sections 463-6(b) and 463-8(b);



- 1 (11) Employers in the business of insurance pursuant to
- 2 section 431:2-201.3;
- 3 (12) Employers of individuals or supervisors of individuals
- 4 responsible for screening passengers or property under
- 5 49 U.S.C. §44901 or individuals with unescorted access
- 6 to an aircraft of an air carrier or foreign carrier or
- 7 in a secured area of an airport in the United States
- 8 pursuant to 49 U.S.C. §44936(a);
- 9 (13) The department of human services pursuant to [~~section~~]
- 10 sections 346- and 352-5.5;
- 11 (14) The public library system pursuant to section
- 12 302A-601.5;
- 13 (15) The department of public safety pursuant to section
- 14 353C-5;
- 15 (16) The board of directors of a cooperative housing
- 16 corporation or the manager of a cooperative housing
- 17 project pursuant to section 421I-12; [~~and~~]
- 18 (17) The board of directors of an association of apartment
- 19 owners, or the manager of a condominium project
- 20 pursuant to section 514A-82.1[~~-~~]; and
- 21 (18) The department of health pursuant to section
- 22 321- ."



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

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

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

7 (2) The department of health on prospective employees,
8 persons seeking to serve as providers, or
9 subcontractors in positions that place them in direct
10 contact with clients when providing non-witnessed
11 direct mental health services as provided by section
12 321-171.5;

13 (3) The department of health on all applicants for
14 licensure for, operators for, and prospective
15 employees, and volunteers at one or more of the
16 following: skilled nursing facility, intermediate
17 care facility, adult residential care home, expanded
18 adult residential care homes, assisted living
19 facility, home health agency, hospice, adult day
20 health center, special treatment facility, therapeutic
21 living program, intermediate care facility for the
22 mentally retarded, hospital, rural health center and



1 rehabilitation agency, and, in the case of any of the
2 above-related facilities operating in a private
3 residence, on any adult living in the facility other
4 than the client as provided by section 321- ;

5 ~~[(3)]~~ (4) The department of education on employees,
6 prospective employees, and teacher trainees in any
7 public school in positions that necessitate close
8 proximity to children as provided by section
9 302A-601.5;

10 ~~[(4)]~~ (5) The counties on employees and prospective
11 employees who may be in positions that place them in
12 close proximity to children in recreation or child
13 care programs and services;

14 ~~[(5)]~~ (6) The county liquor commissions on applicants for
15 liquor licenses as provided by section 281-53.5;

16 ~~[(6)]~~ (7) The department of human services on operators and
17 employees of child caring institutions, child placing
18 organizations, and foster boarding homes as provided
19 by section 346-17;

20 ~~[(7)]~~ (8) The department of human services on prospective
21 adoptive parents as established under section
22 346-19.7;



1 ~~(8)~~ (9) The department of human services on applicants to
2 operate child care facilities, prospective employees
3 of the applicant, and new employees of the provider
4 after registration or licensure as provided by section
5 346-154;

6 ~~(9)~~ (10) The department of human services on persons
7 exempt pursuant to section 346-152 to be eligible to
8 provide child care and receive child care subsidies as
9 provided by section 346-152.5;

10 ~~(10)~~ (11) The department of human services on operators
11 and employees of home and community-based case
12 management agencies and operators and other adults,
13 except for adults in care, residing in foster family
14 homes as provided by section 346-335;

15 ~~(11)~~ (12) The department of human services on staff
16 members of the Hawaii youth correctional facility as
17 provided by section 352-5.5;

18 ~~(12)~~ (13) The judiciary on employees and applicants at
19 detention and shelter facilities as provided by
20 section 571-34;

21 ~~(13)~~ (14) The department of public safety on employees and
22 prospective employees who are directly involved with



1 the treatment and care of persons committed to a
2 correctional facility or who possess police powers
3 including the power of arrest as provided by section
4 353C-5;

5 [~~14~~] (15) The department of commerce and consumer affairs
6 on applicants for private detective or private guard
7 licensure as provided by section 463-9;

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

16 [~~16~~] (17) The public library system on employees and
17 prospective employees whose positions place them in
18 close proximity to children as provided by section
19 302A-601.5;

20 [~~17~~] (18) The State or any of its branches, political
21 subdivisions, or agencies on applicants and employees
22 holding a position that has the same type of contact



1 with children, dependent adults, or persons committed
2 to a correctional facility as other public employees
3 who hold positions that are authorized by law to
4 require criminal history record checks as a condition
5 of employment as provided by section 78-2.7; [~~and~~]

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

10 (20) The department of human services on purchase of
11 service contracted and subcontracted service providers
12 and their employees serving clients of the adult and
13 community care services branch, as provided by section
14 346- ;

15 (21) The department of human services on foster grandparent
16 program, senior companion program, and respite
17 companion program participants as provided by section
18 346- ;

19 (22) The department of human services on contracted and
20 subcontracted service providers and their current and
21 prospective employees that provide home and community-
22 based services under section 1915(c) of the Social

1 Security Act (42 U.S.C. §1396n(c)), as provided by
2 section 346- ; and

3 ~~(18)~~ (23) Any other organization, entity, or the State,
4 its branches, political subdivisions, or agencies as
5 may be authorized by state law."

6 SECTION 6. There shall be established a working committee
7 of five members with representatives from the department of
8 health, department of human services, provider organizations and
9 community, as appointed by the directors of the department of
10 health and department of human services to meet minimally on a
11 quarterly basis to review and evaluate the process undertaken by
12 the departments in effecting criminal history record checks and
13 provide recommendations to the directors of the departments as
14 relevant. Members shall serve a term of two years which may be
15 extended at the discretion of the directors of the departments
16 and will report to departmental administrators as designated by
17 the directors.

18 SECTION 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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



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.
(SD2)

