

# PROPOSED

THE SENATE  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

S.B. NO. 2343  
S.D. 2

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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 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.



# PROPOSED

**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)

