

# 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 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 any offense described in 42 United  
12 States Code §1320a-7 (section 1128(a) of the Social Security  
13 Act).

14 (b) The department shall adopt rules pursuant to chapter  
15 91 to ensure the reputable and responsible character of all  
16 prospective applicants, operators, direct patient access  
17 employees, and adult volunteers of a healthcare facility, and,  
18 in the case of any healthcare facility operated in a private  
19 residence, all adults living in the home other than the clients.  
20 These rules, among other things, shall specify how the  
21 department may conduct criminal history record checks in  
22 accordance with section 846-2.7.



- 1        (c) All applicants and prospective operators shall:
- 2        (1) Be subject to criminal history record checks in
- 3        accordance with section 846-2.7;
- 4        (2) Authorize the disclosure to the department of criminal
- 5        history record information;
- 6        (3) Sign a waiver form stating that the department shall
- 7        not be liable to the applicant or prospective
- 8        operator; and
- 9        (4) Consent to be fingerprinted for the purpose of
- 10       obtaining criminal history record information from the
- 11       Hawaii criminal justice data center.
- 12       (d) All prospective direct patient access employees and
- 13       adult volunteers of healthcare facilities and, in the case of
- 14       any healthcare facility operated in a private residence, all
- 15       adults living in the home other than the clients shall consent
- 16       to be fingerprinted, shall provide all necessary information for
- 17       the purpose of enabling the department to conduct the criminal
- 18       history record checks, and shall sign a waiver form stating that
- 19       the department shall not be liable to the employee or volunteer.
- 20       (e) The department may obtain criminal history record
- 21       information through the Hawaii criminal justice data center on
- 22       all prospective applicants, operators, direct patient access



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

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

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



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

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

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

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





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

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

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

18 "§346- Criminal history record checks. (a) For the  
19 purposes of this section:

20 "Conviction for a relevant crime" means any offense  
21 described in 42 United States Code §1320a-7 (section 1128(a) of  
22 the Social Security Act).



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 any offense described in 42 United  
9 States Code §1320a-7 (section 1128(a) of the Social Security  
10 Act).

11       (b) The department shall adopt rules pursuant to chapter  
12 91 establishing standards regarding the reputable and  
13 responsible character of service providers who have direct  
14 contact with individuals receiving services under this part,  
15 including:

16       (1) Licensed adult day care center operators, employees,  
17 new employees, subcontracted service providers and  
18 their employees, and adult volunteers;

19       (2) Purchase of service contracted and subcontracted  
20 service providers and their employees serving clients  
21 of the adult and community care services branch;



- 1       (3) Foster grandparent program, senior companion program,  
2       and respite companion program participants; and
- 3       (4) Contracted and subcontracted service providers and  
4       their employees and new employees who provide home and  
5       community-based services under section 1915(c) of the  
6       Social Security Act (42 U.S.C. §1396n(c)).
- 7       (c) Individuals identified in subsection (b) shall:
- 8       (1) Meet the standards regarding the reputable and  
9       responsible character of service providers;
- 10       (2) Be subject to criminal history record checks in  
11       accordance with section 846-2.7;
- 12       (3) Shall sign a waiver form a waiver form stating that  
13       the department shall not be liable to the individual;  
14       and
- 15       (4) Provide consent to the department to obtain criminal  
16       history record information for verification.
- 17       New employees and adult volunteers shall consent to be  
18       fingerprinted, shall supply the necessary information to enable  
19       the criminal history record check prior to the start of  
20       employment or volunteering, and shall sign a waiver form stating  
21       that the department shall not be liable to the employee or  
22       volunteer.



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

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

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

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

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

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



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

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

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

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

21       "(d) Notwithstanding subsections (b) and (c), the  
22 requirement that inquiry into and consideration of a prospective



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

- 8 (1) The State or any of its branches, political  
9 subdivisions, or agencies pursuant to section 831-3.1  
10 and section 78-2.7;
- 11 (2) The department of education pursuant to section  
12 302A-601.5;
- 13 (3) The department of health with respect to employees,  
14 providers, or subcontractors in positions that place  
15 them in direct contact with clients when providing  
16 non-witnessed direct mental health services pursuant  
17 to section 321-171.5;
- 18 (4) The judiciary pursuant to section 571-34;
- 19 (5) The counties pursuant to section 846-2.7;
- 20 (6) Armed security services pursuant to section 261-17(b);
- 21 (7) Providers of a developmental disabilities domiciliary  
22 home pursuant to section 333F-22;



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



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

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

7 (18) The department of health pursuant to section  
8 321-\_\_\_\_\_."

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

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

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

15 (2) The department of health on prospective employees,  
16 persons seeking to serve as providers, or  
17 subcontractors in positions that place them in direct  
18 contact with clients when providing non-witnessed  
19 direct mental health services as provided by section  
20 321-171.5;

21 (3) The department of health on all applicants for  
22 licensure for, operators for, and prospective





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

13 [~~3~~] (4) The department of education on employees,  
14 prospective employees, and teacher trainees in any  
15 public school in positions that necessitate close  
16 proximity to children as provided by section 302A-  
17 601.5;

18 [~~4~~] (5) The counties on employees and prospective  
19 employees who may be in positions that place them in  
20 close proximity to children in recreation or child  
21 care programs and services;



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



1           except for adults in care, residing in foster family  
2           homes as provided by section 346-335;

3       ~~[(11)]~~ (12)   The department of human services on staff  
4           members of the Hawaii youth correctional facility as  
5           provided by section 352-5.5;

6       ~~[(12)]~~ (13)   The judiciary on employees and applicants at  
7           detention and shelter facilities as provided by  
8           section 571-34;

9       ~~[(13)]~~ (14)   The department of public safety on employees and  
10          prospective employees who are directly involved with  
11          the treatment and care of persons committed to a  
12          correctional facility or who possess police powers  
13          including the power of arrest as provided by section  
14          353C-5;

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

18       ~~[(15)]~~ (16)   Private schools and designated organizations on  
19          employees and prospective employees who may be in  
20          positions that necessitate close proximity to  
21          children; provided that private schools and designated  
22          organizations receive only indications of the states

1 from which the national criminal history record  
2 information was provided as provided by section  
3 302C-1;

4 ~~[(16)]~~ (17) The public library system on employees and  
5 prospective employees whose positions place them in  
6 close proximity to children as provided by section  
7 302A-601.5;

8 ~~[(17)]~~ (18) The State or any of its branches, political  
9 subdivisions, or agencies on applicants and employees  
10 holding a position that has the same type of contact  
11 with children, dependent adults, or persons committed  
12 to a correctional facility as other public employees  
13 who hold positions that are authorized by law to  
14 require criminal history record checks as a condition  
15 of employment as provided by section 78-2.7; ~~[and]~~

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

20 (20) The department of human services on purchase of  
21 service contracted and subcontracted service providers  
22 and their employees serving clients of the adult and

1 community care services branch, as provided by section  
2 346- ;

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

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

13 [~~18~~] (23) Any other organization, entity, or the State,  
14 its branches, political subdivisions, or agencies as  
15 may be authorized by state law."

16 SECTION 6. There shall be established a working committee  
17 of five members with representatives from the department of  
18 health, department of human services, provider organizations and  
19 community, as appointed by the directors of the department of  
20 health and department of human services to meet minimally on a  
21 quarterly basis to review and evaluate the process undertaken by  
22 the departments in effecting criminal history record checks and

1 provide recommendations to the directors of the departments as  
2 relevant. Members shall serve a term of two years which may be  
3 extended at the discretion of the directors of the departments  
4 and will report to departmental administrators as designated by  
5 the directors.

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

8 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)

