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# A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS FOR SOCIAL  
SERVICES PROGRAMS.

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

1           SECTION 1. Section 346-19.7, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3           "(b) The department shall develop procedures for obtaining  
4 verifiable information regarding the criminal history and child  
5 abuse and neglect registry information of persons who are  
6 seeking to become adoptive parents. [~~These procedures~~] The  
7 department shall [~~include~~] obtain criminal history record  
8 [~~checks~~] information through the Hawaii criminal justice data  
9 center in accordance with section 846-2.7[~~-~~] and child abuse  
10 record information from the department in accordance with  
11 departmental procedures."

12           SECTION 2. Section 346-97, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14           "(b) The department shall adopt rules pursuant to chapter  
15 91 establishing standards regarding the reputable and  
16 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, retired and senior  
10 volunteer program, senior companion program, and  
11 respite companion program participants; and
- 12 (4) Contracted and subcontracted service providers and  
13 their employees and new employees who provide home and  
14 community-based services under Section 1915(c) of the  
15 Social Security Act (42 U.S.C. §1396n(c)) [-] or under  
16 any other applicable section or sections of the Social  
17 Security Act for the purposes of providing home and  
18 community-based services."

19 SECTION 3. Section 346-154, Hawaii Revised Statutes, is  
20 amended by amending subsections (c) and (d) to read as follows:

21 "(c) A provider shall:



- 1 (1) Be subject to criminal history record checks in  
2 accordance with section 846-2.7;
- 3 (2) Submit to the department a statement signed by any  
4 employee hired after the initial licensure or  
5 registration that requires the employee to indicate  
6 under penalty of law, whether the employee has ever  
7 been confirmed to have abused or neglected a child,  
8 including threatened harm; and
- 9 (3) Provide consent to the department to conduct a  
10 criminal history record check in accordance with  
11 section 846-2.7 and a child abuse record check, and to  
12 obtain criminal history and child abuse record  
13 information for verification.
- 14 (d) The department shall obtain criminal history record  
15 information through the Hawaii criminal justice data center in  
16 accordance with section 846-2.7, and child abuse record  
17 information from the department in accordance with departmental  
18 procedures on the applicant and any prospective employee of the  
19 applicant, including any new employee retained after the  
20 applicant is issued a registration or license under this part,  
21 which shall include an annual name inquiry into the state  
22 criminal history record files."



1 SECTION 4. Section 346-335, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[+] §346-335 [±]~~ **Background checks.** (a) The department  
4 shall develop standards to ensure the reputable and responsible  
5 character of operators ~~[and],~~ employees, volunteers, and other  
6 adults regularly present, except for adults in care, of the  
7 ~~[home and community based case management agencies and operators~~  
8 ~~and other adults, except for adults in care, residing in~~  
9 ~~community care foster family homes as defined in this chapter.]~~  
10 programs identified in section 346-97.

11 (b) An applicant for ~~[a home and community based case~~  
12 ~~management agency license and operators, employees, and new~~  
13 ~~employees of a home and community based case management agency]~~  
14 the programs identified in section 346-97 shall:

- 15 (1) Be subject to criminal history record checks in  
16 accordance with section 846-2.7;
- 17 (2) Be subject to adult abuse perpetrator checks, if the  
18 individual has direct contact with a client. For the  
19 purposes of this section, "adult abuse perpetrator  
20 check" means a search to determine whether an  
21 individual is known to the department as a perpetrator  
22 of abuse as defined in section 346-222, by means of a



1 search of the individual's name and birth date in the  
2 department's adult protective service file; and

3 (3) Provide consent to the department to conduct an adult  
4 abuse perpetrator check and to obtain other criminal  
5 history record information for verification.

6 (c) New employees of the [~~home and community based case~~  
7 ~~management agency~~] programs identified in section 346-97 shall  
8 be fingerprinted within five working days of employment, for the  
9 purpose of complying with the criminal history record check  
10 requirement.

11 (d) The department [~~or its designee~~] shall obtain criminal  
12 history record information through the Hawaii criminal justice  
13 data center in accordance with section 846-2.7 on applicants for  
14 [~~home and community based case management agency licenses, and~~  
15 ~~operators, employees, and new employees of home and community~~  
16 ~~based case management agencies.~~] programs identified in section  
17 346-97. The Hawaii criminal justice data center may assess the  
18 applicants and operators, employees, and new employees a  
19 reasonable fee for each criminal history record check conducted.  
20 The information obtained shall be used exclusively for the  
21 stated [~~purpose~~] purposes for which it was obtained and shall be



1 subject to federal laws and regulations as may be now or  
2 hereafter adopted.

3 (e) The department shall make a name inquiry into the  
4 criminal history records and the adult protective service file  
5 for the first two years a home and community-based case  
6 management agency is licensed and annually or biennially  
7 thereafter depending on the licensure status of the home and  
8 community-based case management agency.

9 (f) An applicant for a certificate of approval as a  
10 community care foster family home and operators and other adults  
11 residing in a community care foster family home shall:

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

14 (2) Be subject to adult abuse perpetrator checks, if the  
15 individual has direct contact with a client. For the  
16 purposes of this section, "adult abuse perpetrator  
17 check" means a search to determine whether an  
18 individual is known to the department as a perpetrator  
19 of abuse as defined in section 346-222, by means of a  
20 search of the individual's name and birth date in the  
21 department's adult protective service file; and



1           (3) Provide consent to the department to conduct an adult  
2           abuse perpetrator check and to obtain other criminal  
3           history record information for verification.

4           (g) The department or its designee shall obtain criminal  
5 history record information through the Hawaii criminal justice  
6 data center on applicants for certificates of approval as  
7 community care foster family homes and operators and other  
8 adults residing in community care foster family homes, except  
9 for adults receiving care. The Hawaii criminal justice data  
10 center may assess the applicants and operators and other adults  
11 a reasonable fee for each criminal history record check  
12 conducted. The information obtained shall be used exclusively  
13 for the stated purpose for which it was obtained and shall be  
14 subject to federal laws and regulations as may be now or  
15 hereafter adopted.

16           (h) The department or its designee shall make a name  
17 inquiry into the criminal history records and the adult  
18 protective service file for the first two years a community care  
19 foster family home is certified and annually or biennially  
20 thereafter depending on the certification status of the  
21 community care foster family home."



1 SECTION 5. Section 352D-4.3, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) Employees, prospective employees, and volunteers of  
4 contracted providers or subcontractors in positions that place  
5 them in close proximity to youth when providing services on  
6 behalf of the office shall be required to agree to criminal  
7 history record checks[-] conducted by the office in accordance  
8 with section 846-2.7. The office shall develop procedures for  
9 obtaining verifiable information regarding the criminal history  
10 records of individuals seeking to serve as employees or  
11 volunteers of contracted providers or subcontractors in  
12 positions that place them in close proximity to youth when  
13 providing services on behalf of the office.

14 (b) Except as otherwise specified, any individual who is  
15 employed, seeks employment, or volunteers with a contracted  
16 provider or subcontractor in a position that necessitates close  
17 proximity to youth when providing services on behalf of the  
18 office shall:

- 19 (1) Submit to the office a sworn statement indicating  
20 whether the individual has ever been convicted of an  
21 offense for which incarceration is a sentencing  
22 option;



- 1           (2) Be subject to criminal history record checks through  
2           the Hawaii criminal justice data center in accordance  
3           with section 846-2.7. An annual name inquiry shall be  
4           conducted in the state criminal history record files;  
5           and
- 6           (3) Provide to the office written consent for the office  
7           to obtain criminal history record information for  
8           verification.

9 Information obtained pursuant to this section shall be used  
10 exclusively by the office for purposes of determining whether a  
11 person is suitable for working or volunteering in a position  
12 that necessitates close proximity to youth when providing  
13 contracted services on behalf of the office or in conjunction  
14 with services provided for youth at the Hawaii youth  
15 correctional facility, while in custody, on furlough or on  
16 parole. All such decisions shall be subject to any applicable  
17 federal laws and regulations."

18           SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

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



- 1           (1) The department of health on operators of adult foster  
2           homes or developmental disabilities domiciliary homes  
3           and their employees, as provided by section 333F-22;
- 4           (2) The department of health on prospective employees,  
5           persons seeking to serve as providers, or  
6           subcontractors in positions that place them in direct  
7           contact with clients when providing non-witnessed  
8           direct mental health services as provided by section  
9           321-171.5;
- 10          (3) The department of health on all applicants for  
11          licensure for, operators for, and prospective  
12          employees, and volunteers at one or more of the  
13          following: skilled nursing facility, intermediate  
14          care facility, adult residential care home, expanded  
15          adult residential care homes, assisted living  
16          facility, home health agency, hospice, adult day  
17          health center, special treatment facility, therapeutic  
18          living program, intermediate care facility for the  
19          mentally retarded, hospital, rural health center and  
20          rehabilitation agency, and, in the case of any of the  
21          above-related facilities operating in a private



- 1 residence, on any adult living in the facility other  
2 than the client as provided by section 321-15.2;
- 3 (4) The department of education on employees, prospective  
4 employees, and teacher trainees in any public school  
5 in positions that necessitate close proximity to  
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees  
8 who may be in positions that place them in close  
9 proximity to children in recreation or child care  
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor  
12 licenses as provided by section 281-53.5;
- 13 (7) The department of human services on operators and  
14 employees of child caring institutions, child placing  
15 organizations, and foster boarding homes as provided  
16 by section 346-17;
- 17 (8) The department of human services on prospective  
18 adoptive parents as established under section  
19 346-19.7;
- 20 (9) The department of human services on applicants to  
21 operate child care facilities, prospective employees  
22 of the applicant, and new employees of the provider



1 after registration or licensure as provided by section  
2 346-154;

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

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

12 (12) The department of human services on staff members of  
13 the Hawaii youth correctional facility as provided by  
14 section 352-5.5;

15 (13) The department of human services on employees,  
16 prospective employees, and volunteers of contracted  
17 providers and subcontractors in positions that place  
18 them in close proximity to youth when providing  
19 services on behalf of the office or the Hawaii youth  
20 correctional facility as provided in section 352D-4.3;

21 (14) The judiciary on employees and applicants at detention  
22 and shelter facilities as provided by section 571-34;



1 (15) The department of public safety on employees and  
2 prospective employees who are directly involved with  
3 the treatment and care of persons committed to a  
4 correctional facility or who possess police powers  
5 including the power of arrest as provided by section  
6 353C-5;

7 (16) The department of commerce and consumer affairs on  
8 applicants for private detective or private guard  
9 licensure as provided by section 463-9;

10 (17) Private schools and designated organizations on  
11 employees and prospective employees who may be in  
12 positions that necessitate close proximity to  
13 children; provided that private schools and designated  
14 organizations receive only indications of the states  
15 from which the national criminal history record  
16 information was provided as provided by section  
17 302C-1;

18 (18) The public library system on employees and prospective  
19 employees whose positions place them in close  
20 proximity to children as provided by section  
21 302A-601.5;



- 1           (19) The State or any of its branches, political  
2                   subdivisions, or agencies on applicants and employees  
3                   holding a position that has the same type of contact  
4                   with children, dependent adults, or persons committed  
5                   to a correctional facility as other public employees  
6                   who hold positions that are authorized by law to  
7                   require criminal history record checks as a condition  
8                   of employment as provided by section 78-2.7;
- 9           (20) The department of human services on licensed adult day  
10                   care center operators, employees, new employees,  
11                   subcontracted service providers and their employees,  
12                   and adult volunteers as provided by section 346-97;
- 13           (21) The department of human services on purchase of  
14                   service contracted and subcontracted service providers  
15                   and their employees serving clients of the adult and  
16                   community care services branch, as provided by section  
17                   346-97;
- 18           (22) The department of human services on foster grandparent  
19                   program, retired and senior volunteer program, senior  
20                   companion program, and respite companion program  
21                   participants as provided by section 346-97;



1       (23) The department of human services on contracted and  
2           subcontracted service providers and their current and  
3           prospective employees that provide home and community-  
4           based services under section 1915(c) of the Social  
5           Security Act (42 U.S.C. §1396n(c)), as provided by  
6           section 346-97; and

7       (24) Any other organization, entity, or the State, its  
8           branches, political subdivisions, or agencies as may  
9           be authorized by state law."

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

12       SECTION 8. This Act shall take effect on July 1, 2050.



**Report Title:**

Criminal History Background Checks; Social Services Programs

**Description:**

Authorizes the department of human services to conduct criminal history record checks on persons providing services to vulnerable adults and children. Eff. 7/1/2050. (SD2)

