

# S.B. NO. 3080

JAN 22 2008

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## A BILL FOR AN ACT

RELATING TO HAWAII HEALTH SYSTEMS CORPORATION BACKGROUND CHECKS.

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

1           SECTION 1.   SECTION 1.   Chapter 323F, Hawaii Revised  
2 Statutes, is amended by adding a new section to be appropriately  
3 designated and to read as follows:

4           "§323F-    Criminal history record checks.   (a)   The Hawaii  
5 health systems corporation shall develop procedures for  
6 obtaining verifiable information regarding the criminal history  
7 of persons who are employed or seeking employment, or are  
8 current or prospective contractors, providers or volunteers in  
9 any of the corporation's health facilities.   The procedures shall  
10 include but not be limited to criminal history record checks in  
11 accordance with section 846-2.7.

12           The Hawaii criminal justice data center may assess  
13 providers and contractors a reasonable fee for criminal history  
14 record checks performed.   Providers and contractors shall be  
15 responsible for payment to the Hawaii criminal justice data  
16 center of the fee for the criminal history records checks.

1        (b) Except as otherwise specified, any person who is  
2 employed or who seeks employment with Hawaii health systems  
3 corporation, or is a current or prospective contractor,  
4 provider, or volunteer in any of the corporation's health  
5 facilities may be required to provide to the corporation:

6        (1) A sworn statement indicating whether or not the  
7 person has ever been convicted of an offense for  
8 which incarceration was a sentencing option, and  
9 the details thereof;

10       (2) Written consent for the corporation to obtain criminal  
11 history record check information for verification; and

12       (3) Written consent to be fingerprinted for the purpose  
13 of a criminal history record check.

14 Information obtained pursuant to subsection (a) and this  
15 subsection shall be used exclusively by the Hawaii health  
16 systems corporation for the purposes of determining whether a  
17 person is suitable for working or providing services in any of  
18 the corporation's health facilities. All such decisions shall be  
19 subject to federal laws and regulations currently or hereafter  
20 in effect.

21       (c) Any Hawaii health systems corporation employee,  
22 applicant for employment, or current or prospective contractor,

1 provider, or volunteer, who has been convicted of a criminal  
2 offense for which incarceration is a sentencing option, may be  
3 terminated, not hired, released, or not be utilized. This  
4 action will be based on the corporation's analysis of whether  
5 the nature and circumstances of the crime may pose a risk to the  
6 health, safety, or well-being of patients and residents in its  
7 health facilities.

8 (d) For the purposes of this section:

9 "Contractor" means any organization or individual that  
10 enters into a contract or agreement to provide services to the  
11 patients or residents in any of the Hawaii health systems  
12 corporation's health facilities.

13 "Criminal history record check" means an examination of an  
14 individual's criminal history records by means including, but  
15 not limited to, fingerprint analysis and name inquiry into state  
16 and national criminal history record files.

17 "Provider" means any organization or individual that  
18 currently provides or intends to enter into a contract or  
19 agreement to provide services to the patients or residents in  
20 any of the Hawaii health systems corporation's health facilities,

1 or is a student in any program at any of Hawaii health systems  
2 corporation's health facilities.

3 (e) Notwithstanding any other law to the contrary, for  
4 purposes of this section, the Hawaii health systems corporation  
5 shall be exempt from section 831-3.1 and need not conduct  
6 investigations, notifications, or hearing under this section in  
7 accordance with chapter 91."

8 SECTION 2. Section 378-2.5, Hawaii Revised Statutes, is  
9 amended by amending subsection (d) to read as follows:

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

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

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- 1           (2) The department of education pursuant to section
- 2                   302A-601.5;
- 3           (3) The department of health with respect to employees,
- 4                   providers, or subcontractors in positions that place
- 5                   them in direct contact with clients when providing non-
- 6                   witnessed direct mental health services pursuant to
- 7                   section 321-171.5;
- 8           (4) The judiciary pursuant to section 571-34;
- 9           (5) The counties pursuant to section 846-2.7;
- 10          (6) Armed security services pursuant to section 261-17(b);
- 11          (7) Providers of a developmental disabilities domiciliary
- 12                   home pursuant to section 333F-22;
- 13          (8) Private schools pursuant to section 378-3(8) and
- 14                   section 302C-1;
- 15          (9) Financial institutions in which deposits are insured by
- 16                   a federal agency having jurisdiction over the financial
- 17                   institution pursuant to section 378-3(9);
- 18          (10) Detective agencies and security guard agencies pursuant
- 19                   to sections 463-6(b) and 463-8(b);
- 20          (11) Employers in the business of insurance pursuant to
- 21                   section 431:2-201.3;

- 1       (12) Employers of individuals or supervisors of individuals  
2             responsible for screening passengers or property under  
3             49 U.S.C. §44901 or individuals with unescorted access  
4             to an aircraft of an air carrier or foreign carrier or  
5             in a secured area of an airport in the United States  
6             pursuant to 49 U.S.C. §44936(a);
  
- 7       (13) The department of human services pursuant to sections  
8             346-97 and 352-5.5;
  
- 9       (14) The public library system pursuant to section  
10            302A-601.5;
  
- 11       (15) The department of public safety pursuant to section  
12            353C-5;
  
- 13       (16) The board of directors of a cooperative housing  
14            corporation or the manager of a cooperative housing  
15            project pursuant to section 421I-12;
  
- 16       (17) The board of directors of an association of apartment  
17            owners, or the manager of a condominium project  
18            pursuant to section 514B-133; [~~and~~]
  
- 19       (18) The department of health pursuant to section 321-  
20            15.2[-]; and
  
- 21       (19) The Hawaii health systems corporation with respect to  
22            employees, applicants, and current or prospective

1           contractors, providers, or volunteers, pursuant to  
2           section 323F."

3           SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

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

9           (2) The department of health on prospective employees,  
10           persons seeking to serve as providers, or  
11           subcontractors in positions that place them in direct  
12           contact with clients when providing non-witnessed  
13           direct mental health services as provided by section  
14           321-171.5;

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

1 intermediate care facility for the mentally retarded,  
2 hospital, rural health center and rehabilitation  
3 agency, and, in the case of any of the above-related  
4 facilities operating in a private residence, on any  
5 adult living in the facility other than the client as  
6 provided by section 321-15.2;

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

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

15 (6) The county liquor commissions on applicants for liquor  
16 licenses as provided by section 281-53.5;

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

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



- 1           (9) The department of human services on applicants to  
2           operate child care facilities, prospective employees of  
3           the applicant, and new employees of the provider after  
4           registration or licensure as provided by section 346-  
5           154;
- 6           (10) The department of human services on persons exempt  
7           pursuant to section 346-152 to be eligible to provide  
8           child care and receive child care subsidies as provided  
9           by section 346-152.5;
- 10          (11) The department of human services on operators and  
11          employees of home and community-based case management  
12          agencies and operators and other adults, except for  
13          adults in care, residing in foster family homes as  
14          provided by section 346-335;
- 15          (12) The department of human services on staff members of  
16          the Hawaii youth correctional facility as provided by  
17          section 352-5.5;
- 18          (13) The department of human services on employees,  
19          prospective employees, and volunteers of contracted  
20          providers and subcontractors in positions that place  
21          them in close proximity to youth when providing

- 1 services on behalf of the office or the Hawaii youth  
2 correctional facility as provided by section 352D-4.3;
- 3 (14) The judiciary on employees and applicants at detention  
4 and shelter facilities as provided by section 571-34;
- 5 (15) The department of public safety on employees and  
6 prospective employees who are directly involved with  
7 the treatment and care of persons committed to a  
8 correctional facility or who possess police powers  
9 including the power of arrest as provided by section  
10 353C-5;
- 11 (16) The department of commerce and consumer affairs on  
12 applicants for private detective or private guard  
13 licensure as provided by section 463-9;
- 14 (17) Private schools and designated organizations on  
15 employees and prospective employees who may be in  
16 positions that necessitate close proximity to children;  
17 provided that private schools and designated  
18 organizations receive only indications of the states  
19 from which the national criminal history record  
20 information was provided as provided by section 302C-1;

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- 1           (18) The public library system on employees and prospective  
2                   employees whose positions place them in close proximity  
3                   to children as provided by section 302A-601.5;
- 4           (19) The State or any of its branches, political  
5                   subdivisions, or agencies on applicants and employees  
6                   holding a position that has the same type of contact  
7                   with children, dependent adults, or persons committed  
8                   to a correctional facility as other public employees  
9                   who hold positions that are authorized by law to  
10                  require criminal history record checks as a condition  
11                  of employment as provided by section 78-2.7;
- 12          (20) The department of human services on licensed adult day  
13                  care center operators, employees, new employees,  
14                  subcontracted service providers and their employees,  
15                  and adult volunteers as provided by section 346-97;
- 16          (21) The department of human services on purchase of service  
17                  contracted and subcontracted service providers and  
18                  their employees serving clients of the adult and  
19                  community care services branch, as provided by section  
20                  346-97;
- 21          (22) The department of human services on foster grandparent  
22                  program, senior companion program, and respite

1 companion program participants as provided by section  
2 346-97;

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

9 (24) The Hawaii health systems corporation on employees,  
10 applicants seeking employment, or current and  
11 prospective volunteers, providers, or contractors in  
12 any of the corporation's health facilities as provided  
13 by section 323F; and

14 [~~24~~] (25) Any other organization, entity, or the State, its  
15 branches, political subdivisions, or agencies as may be  
16 authorized by state law."

17 SECTION 4. There is appropriated out of the state criminal  
18 history record improvement revolving fund the sum of \$20,000, or  
19 so much thereof as may be necessary for fiscal year 2008-2009,  
20 for purposes of this Act. The sum appropriated shall be  
21 expended by the department of the attorney general.

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1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:



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BY REQUEST

**Report Title:**

Hawaii Health Systems Corporation Background Checks

**Description:**

Authorize the Hawaii Health Systems Corporation to conduct FBI criminal history record checks through the Hawaii Criminal Justice Data Center on employees, applicants, current or prospective contractors, providers, or volunteers.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HAWAII HEALTH SYSTEMS CORPORATION BACKGROUND CHECKS.

PURPOSE: Authorize the Hawaii health systems corporation (HHSC) to request criminal history checks through the Federal Bureau of Investigation and through the Hawaii Criminal Justice Data Center, on employees or applicants, as well as current or prospective contractors, providers, or volunteers, in order to comply with federal law and to ensure the safety of its patients.

MEANS: Add a new section to chapter 323F and amend sections 378-2.5(d) and 846-2.7(b), Hawaii Revised Statutes.

JUSTIFICATION: Currently, HHSC is authorized by 42 U.S.C. section 5119 et seq. to conduct FBI criminal history background checks on employees and applicants who will have direct contact with children, the elderly and disabled patients. HHSC is seeking to expand its authority to conduct background checks through the Federal Bureau of Investigation and through the Hawaii Criminal Justice Data Center, on all employees and applicants, including current and potential contractors, providers and volunteers who provide services to HHSC, regardless of whether they will be having direct contact with protected categories of patients. All patients should be afforded this protection.

Impact on the public: Conducting criminal background checks on HHSC employees and applicants will promote the safety of its patients and employees.

Impact on the department and other agencies: Same as above.

GENERAL FUND: None.

OTHER FUNDS: Special Fund: state criminal history record  
improvement revolving fund.

PPBS PROGRAM: ATG-231.  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: Hawaii Criminal Justice Data Center.

EFFECTIVE DATE: Upon approval.