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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. Chapter 323F, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 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  
10 shall include but not be limited to criminal history record  
11 checks in 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.

17           (b) Except as otherwise specified, any person who is  
18 employed or who seeks employment with Hawaii health systems



1 corporation, or is a current or prospective contractor,  
2 provider, or volunteer in any of the corporation's health  
3 facilities may be required to provide to the corporation:

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

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

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

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

19       (c) Any Hawaii health systems corporation employee,  
20 applicant for employment, or current or prospective contractor,  
21 provider, or volunteer, who has been convicted of a criminal  
22 offense for which incarceration is a sentencing option, may be



1 terminated, not hired, released, or not be utilized. This  
2 action will be based on the corporation's analysis of whether  
3 the nature and circumstances of the crime may pose a risk to the  
4 health, safety, or well-being of patients and residents in its  
5 health facilities.

6 (d) For the purposes of this section:

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

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

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

21 (e) Notwithstanding any other law to the contrary, for  
22 purposes of this section, the Hawaii health systems corporation



1 shall be exempt from section 831-3.1 and need not conduct  
2 investigations, notifications, or hearing under this section in  
3 accordance with chapter 91."

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

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

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

18 (2) The department of education pursuant to section  
19 302A-601.5;

20 (3) The department of health with respect to employees,  
21 providers, or subcontractors in positions that place  
22 them in direct contact with clients when providing



- 1 non-witnessed direct mental health services pursuant  
2 to section 321-171.5;
- 3 (4) The judiciary pursuant to section 571-34;
- 4 (5) The counties pursuant to section 846-2.7;
- 5 (6) Armed security services pursuant to section 261-17(b);
- 6 (7) Providers of a developmental disabilities domiciliary  
7 home pursuant to section 333F-22;
- 8 (8) Private schools pursuant to section 378-3(8) and  
9 section 302C-1;
- 10 (9) Financial institutions in which deposits are insured  
11 by a federal agency having jurisdiction over the  
12 financial institution pursuant to section 378-3(9);
- 13 (10) Detective agencies and security guard agencies  
14 pursuant to sections 463-6(b) and 463-8(b);
- 15 (11) Employers in the business of insurance pursuant to  
16 section 431:2-201.3;
- 17 (12) Employers of individuals or supervisors of individuals  
18 responsible for screening passengers or property under  
19 49 U.S.C. §44901 or individuals with unescorted access  
20 to an aircraft of an air carrier or foreign carrier or  
21 in a secured area of an airport in the United States  
22 pursuant to 49 U.S.C. §44936(a);



- 1 (13) The department of human services pursuant to sections  
2 346-97 and 352-5.5;
- 3 (14) The public library system pursuant to section  
4 302A-601.5;
- 5 (15) The department of public safety pursuant to section  
6 353C-5;
- 7 (16) The board of directors of a cooperative housing  
8 corporation or the manager of a cooperative housing  
9 project pursuant to section 421I-12;
- 10 (17) The board of directors of an association of apartment  
11 owners, or the manager of a condominium project  
12 pursuant to section 514B-133; ~~and~~
- 13 (18) The department of health pursuant to section 321-  
14 15.2[-]; and
- 15 (19) The Hawaii health systems corporation with respect to  
16 employees, applicants, and current or prospective  
17 contractors, providers, or volunteers, pursuant to  
18 section 323F."

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

21 "(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 by 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 302A-  
21           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, senior companion program, and respite  
20          companion program participants as provided by section  
21          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) The Hawaii health systems corporation on employees,  
8 applicants seeking employment, or current and  
9 prospective volunteers, providers, or contractors in  
10 any of the corporation's health facilities as provided  
11 by section 323F; and

12 [~~24~~] (25) Any other organization, entity, or the State,  
13 its branches, political subdivisions, or agencies as  
14 may be authorized by state law."

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

20 SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22 SECTION 6. This Act shall take effect on July 1, 2050.



**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. Effective 7/1/2050. (SD1)

