

JAN 25 2012

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**A BILL FOR AN ACT**

RELATING TO BACKGROUND CHECKS.

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

1           SECTION 1. The purpose of this Act is to allow the  
2 department of health to designate an entity to perform services  
3 on its behalf relating to background checks for employment,  
4 volunteer, contracting, licensure, or certification purposes.

5           SECTION 2. Section 321-15.2, Hawaii Revised Statutes, is  
6 amended by amending subsections (b), (c), (d), (e), (f), and (g)  
7 to read as follows:

8           "(b) The department shall adopt rules pursuant to chapter  
9 91 to ensure the reputable and responsible character of all  
10 prospective applicants, operators, direct patient access  
11 employees, and adult volunteers of a healthcare facility, and,  
12 in the case of any healthcare facility operated in a private  
13 residence, all adults living in the home other than the clients.  
14 These rules, among other things, shall specify how the  
15 department or designee may conduct criminal history record  
16 checks in accordance with section 846-2.7.

17           (c) All applicants and prospective operators shall:

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

3 (2) Authorize the disclosure to the department or designee  
4 of criminal history record information;

5 (3) Sign a waiver form stating that the department or  
6 designee shall not be liable to the applicant or  
7 prospective operator; and

8 (4) Consent to be fingerprinted for the purpose of  
9 requesting criminal history record information from the  
10 Federal Bureau of Investigation and the Hawaii criminal  
11 justice data center.

12 (d) All prospective direct patient access employees and  
13 adult volunteers of healthcare facilities and, in the case  
14 of any healthcare facility operated in a private residence,  
15 all adults living in the home other than the clients shall:

16 (1) Consent to be fingerprinted;

17 (2) Provide all necessary information for the purpose of  
18 enabling the department or designee to conduct the criminal  
19 history record checks; and

20 (3) Sign a waiver form stating that the department or  
21 designee shall not be liable to the employee or volunteer.

1           (e) The department or designee may request criminal  
2 history record information which includes Federal Bureau of  
3 Investigation data through the Hawaii criminal justice data  
4 center on all prospective applicants, operators, direct patient  
5 access employees, and adult volunteers of healthcare  
6 facilities. In addition, in the case of any healthcare facility  
7 to be operated in a private residence, the department of health  
8 or designee may request criminal history record information  
9 which includes Federal Bureau of Investigation data through the  
10 Hawaii criminal justice data center for all adults residing in  
11 the home who are not clients.

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

19           (g) The department may revoke or suspend a current  
20 license, impose penalties or fines, or deny an application for a  
21 license under rules adopted pursuant to chapter 91 if the  
22 applicant, operator, employee, or adult volunteer at the

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

1 safety, and welfare of the residents of the healthcare facility  
2 could be at risk."

3 SECTION 3. Section 321-15.2, Hawaii Revised Statutes, is  
4 amended by amending subsections (j) and (k) to read as follows:

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

14 (k) Any applicant or operator who receives information  
15 from the department or designee relating to a criminal history  
16 record check of a direct patient access employee or adult  
17 volunteer or, in the case of a healthcare facility operated in a  
18 private residence, an adult living in the home other than the  
19 clients, is presumed to be acting in good faith and shall be  
20 immune from civil liability for taking or recommending action  
21 based upon the department's recommendation or direction.  
22 Nothing in this section shall affect rights, obligations,

1 remedies, liabilities, or standards of proof under chapters 368  
2 and 378.

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

12 SECTION 4. Section 321-171.5, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) Except as otherwise specified, any person who seeks  
15 employment with the department of health, or who is employed or  
16 seeks employment with a provider or subcontractor in a position  
17 that necessitates non-witnessed direct contact with clients when  
18 providing non-witnessed direct mental health services, shall:

19 (1) Be subject to criminal history record checks in  
20 accordance with section 846-2.7; and

1           (2) Provide to the department of health or designee  
2           written consent for the department or designee to obtain  
3           criminal history record information for verification.

4           Information obtained pursuant to subsection (a) and this  
5           subsection shall be used exclusively by the department of health  
6           for purposes of determining whether a person is suitable for  
7           working in a position that necessitates non-witnessed direct  
8           contact with clients when providing non-witnessed direct mental  
9           health services. All such decisions shall be subject to federal  
10          laws and regulations currently or hereafter in effect."

11          SECTION 5. Section 321-171.5, Hawaii Revised Statutes, is  
12          amended by amending subsection (d) to read as follows:

13          "(d) This section shall not be used by the department of  
14          health or designee to secure criminal history record checks on  
15          persons who have been employed continuously on a salaried basis  
16          prior to July 1, 2000."

17          SECTION 6. Section 333F-22, Hawaii Revised Statutes, is  
18          amended by amending subsections (c), (d), and (e) to read as  
19          follows:

20          "(c) An applicant to operate an adult foster home or  
21          developmental disabilities domiciliary home and all current and  
22          prospective employees of the applicant shall be subject to

1 criminal history record checks in accordance with section 846-  
2 2.7, and shall provide consent to the department or designee to  
3 obtain criminal history record information for verification.

4 (d) Each existing provider or provider and all employees  
5 hired after the initial licensure or certification of the  
6 existing provider or provider shall be subject to criminal  
7 history record checks in accordance with section 846-2.7, and  
8 shall provide consent to the department or designee to obtain  
9 criminal history record information for verification.

10 (e) The department or designee is authorized to obtain  
11 criminal history record information through the Hawaii criminal  
12 justice data center on existing providers and their employees  
13 upon their next licensure or certification renewal date, and on  
14 any applicant and all current and prospective employees of the  
15 applicant, including all new employees after the applicant is  
16 issued a certification or license under this chapter."

17 SECTION 7. Section 333F-22, Hawaii Revised Statutes, is  
18 amended by amending subsection (g) to read as follows:

19 "(g) The department may revoke a current license or  
20 certification or deny an application for a license or  
21 certification to operate an adult foster home or developmental  
22 disabilities domiciliary home under rules adopted pursuant to



1 chapter 91 if the existing provider or employee of an existing  
2 provider, applicant, current or prospective employee of the  
3 applicant, provider, or new employee of the provider refuses to  
4 submit to the department or designee statements indicating  
5 criminal convictions, refuses to provide consent to the  
6 department or designee to conduct a criminal history record  
7 check or obtain other criminal history record information for  
8 verification, refuses to be fingerprinted, has been convicted of  
9 a crime other than a minor traffic violation involving a fine of  
10 \$50 or less; or if the department or designee finds that the  
11 criminal history record of the existing provider or employee of  
12 an existing provider, applicant, current or prospective employee  
13 of the applicant, provider, or new employee of the provider  
14 indicates that the individual may pose a risk to the health,  
15 safety, or well-being of persons with developmental disabilities  
16 or mental retardation living in the home."

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

19 "(b) Criminal history record checks may be conducted by:  
20 (1) The department of health or designee on operators of  
21 adult foster homes or developmental disabilities

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1 domiciliary homes and their employees, as provided by  
2 section 333F-22;

3 (2) The department of health or designee on prospective  
4 employees, persons seeking to serve as providers, or  
5 subcontractors in positions that place them in direct  
6 contact with clients when providing non-witnessed direct  
7 mental health services as provided by section 321-171.5;

8 (3) The department of health or designee on all applicants  
9 for licensure for, operators for, prospective employees,  
10 and volunteers at one or more of the following: skilled  
11 nursing facility, intermediate care facility, adult  
12 residential care home, expanded adult residential care  
13 home, assisted living facility, home health agency,  
14 hospice, adult day health center, adult day care center,  
15 special treatment facility, therapeutic living program,  
16 intermediate care facility for individuals with  
17 intellectual disabilities, hospital, rural health center  
18 and rehabilitation agency, and, in the case of any of the  
19 above facilities operating in a private residence, on any  
20 adult living in the facility other than the client as  
21 provided by section 321-15.2."

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

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

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

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

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

17 (9) The department of human services on applicants to  
18 operate child care facilities, prospective employees of the  
19 applicant, and new employees of the provider after  
20 registration or licensure as provided by section 346-154;

21 (10) The department of human services on persons exempt  
22 pursuant to section 346-152 to be eligible to provide child

1 care and receive child care subsidies as provided by  
2 section 346-152.5;

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

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

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

17 (14) The judiciary on employees and applicants at  
18 detention and shelter facilities as provided by section  
19 571-34;

20 (15) The department of public safety on employees and  
21 prospective employees who are directly involved with the  
22 treatment and care of persons committed to a correctional

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1 facility or who possess police powers including the power  
2 of arrest as provided by section 353C-5;

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

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

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

16 (19) The State or any of its branches, political  
17 subdivisions, or agencies on applicants and employees  
18 holding a position that has the same type of contact with  
19 children, vulnerable adults, or persons committed to a  
20 correctional facility as other public employees who hold  
21 positions that are authorized by law to require criminal

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1 history record checks as a condition of employment as  
2 provided by section 78-2.7;

3 (20) The department of human services on licensed adult  
4 day care center operators, employees, new employees,  
5 subcontracted service providers and their employees, and  
6 adult volunteers as provided by section 346-97;

7 (21) The department of human services on purchase of  
8 service contracted and subcontracted service providers and  
9 their employees serving clients of the adult and community  
10 care services branch, as provided by section 346-97;

11 (22) The department of human services on foster  
12 grandparent program, retired and senior volunteer program,  
13 senior companion program, and respite companion program  
14 participants as provided by section 346-97;

15 (23) The department of human services on contracted and  
16 subcontracted service providers and their current and  
17 prospective employees that provide home and community-based  
18 services under Section 1915(c) of the Social Security Act,  
19 Title 42 United States Code Section 1396n(c), or under any  
20 other applicable section or sections of the Social Security  
21 Act for the purposes of providing home and community-based  
22 services, as provided by section 346-97;

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1 (24) The department of commerce and consumer affairs on  
2 proposed directors and executive officers of a bank,  
3 savings bank, savings and loan association, trust company,  
4 and depository financial services loan company as provided  
5 by section 412:3-201;

6 (25) The department of commerce and consumer affairs on  
7 proposed directors and executive officers of a  
8 nondepository financial services loan company as provided  
9 by section 412:3-301;

10 (26) The department of commerce and consumer affairs on  
11 the original chartering applicants and proposed executive  
12 officers of a credit union as provided by section 412:10-  
13 103;

14 (27) The department of commerce and consumer affairs on:

15 (A) Each principal of every non-corporate applicant  
16 for a money transmitter license; and

17 (B) The executive officers, key shareholders, and  
18 managers in charge of a money transmitter's activities of  
19 every corporate applicant for a money transmitter license,  
20 as provided by section 489D-9;

1 (28) The department of commerce and consumer affairs on  
2 applicants for licensure and persons licensed under title  
3 24;

4 (29) The Hawaii health systems corporation on:

5 (A) Employees;

6 (B) Applicants seeking employment;

7 (C) Current or prospective members of the corporation  
8 board or regional system board; or

9 (D) Current or prospective volunteers, providers, or  
10 contractors, in any of the corporation's health  
11 facilities as provided by section 323F-5.5;

12 (30) The department of commerce and consumer affairs on:

13 (A) An applicant for a mortgage loan originator  
14 license; and

15 (B) Each control person, executive officer, director,  
16 general partner, and manager of an applicant for a mortgage loan  
17 originator company license, as provided by chapter 454F; and

18 (31) Any other organization, entity, or the State, its  
19 branches, political subdivisions, or agencies as may be  
20 authorized by state law.

21 (c) The applicant or employee subject to a criminal  
22 history record check shall provide to the requesting agency:



1           (1) Consent to obtain the applicant's or employee's  
2 fingerprints and conduct the criminal history record check;

3           (2) Identifying information required by the Federal Bureau  
4 of Investigation which shall include but not be limited to name,  
5 date of birth, height, weight, eye color, hair color, gender,  
6 race, and place of birth; and

7           (3) A statement indicating whether the applicant or  
8 employee has ever been convicted of a crime.

9           (d) Fingerprints and information and records relating to  
10 the fingerprints acquired by the Hawaii criminal justice data  
11 center under this section shall be retained and maintained in an  
12 appropriate form and in an appropriate office in the custody and  
13 control of the Hawaii criminal justice data center, and shall at  
14 all times be kept separate from any similar records relating to  
15 the identification of criminals. The information shall be  
16 available only to authorized entities and agencies as described  
17 in subsection (b) and such other persons or agencies as the  
18 attorney general shall authorize, subject to any restriction  
19 that the attorney general shall prescribe. The Hawaii criminal  
20 justice data center may dispose of any record of fingerprints  
21 and information and records relating to the fingerprints without  
22 regard to chapter 94, whenever, in the attorney general's

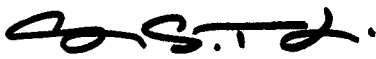
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1 discretion, retention of the record is no longer required or  
2 practicable. No officer or employee of the Hawaii criminal  
3 justice data center shall disclose any records of fingerprints  
4 or information and records relating to the fingerprints acquired  
5 in the performance of any of the officer's or employee's duties  
6 under this section to any person not authorized to receive the  
7 same pursuant to this section or pursuant to the orders of the  
8 attorney general. No person acquiring from the records of  
9 fingerprints or information and records relating to the  
10 fingerprints any information concerning any individual shall  
11 disclose the information to any person not so authorized to  
12 receive the same.

13 SECTION 9. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

# S.B. NO. 2830

**Report Title:**

RELATING TO BACKGROUND CHECKS

**Description:**

Permits the department of health to identify a designee to perform background checks on its behalf as may be required by law and relating to employment, contracting, licensure, certification, or volunteer status.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Department of Health

TITLE: A BILL FOR AN ACT RELATING TO BACKGROUND CHECKS.

PURPOSE: The purpose of this Act is to allow the Department of Health to designate an entity to perform services on its behalf relating to background checks for employment, volunteer, contracting, licensure, or certification purposes.

MEANS: Amend chapters 321-15, 321-171, 333F-22, and 846-2 Hawaii Revised Statutes.

JUSTIFICATION: Criminal history record background checks are required by statute for various department and private sector services including licensure of facilities and for public and private employment of staff with direct patient contact.

This measure makes explicit the option for DOH to identify a surrogate to perform background checks on its behalf to determine the applicant's suitability to be contracted with or licensed or certified or to be employed to provide direct patient care or contact, or as a volunteer, or in the case of a healthcare facility within a residence for non-care giving adults to reside at the residence. The benefits are (1) improved responsiveness and efficiencies through shared resources, (2) increased transparency and consistency, (3) lower cost to the State, and (4) better compliance to statutory requirements.

Impact on the public: Improved customer service at a lower cost to the taxpayer and trust in government.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.