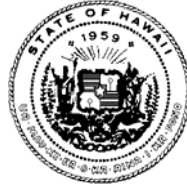


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 27, 2023

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **HB 777 HD1 – RELATING TO BACKGROUND CHECKS.**

Hearing: Tuesday, February 28, 2023, 2:00 PM
Conference Room 325 & Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill. This measure is similar to administration measures HB1064 and SB1362.

DHS respectfully requests amendments to delete the term "agent" as we are informed that Hawaii's current law does not meet the requirements of Pub. L. No. 92-544 to access the FBI's criminal record history information because of the FBI's determination that "agent of contractors" is not clearly defined in chapter 846, HRS, and is overly broad. We have attached a proposed HD2 with **highlighted amendments** that delete the relevant references to "agent" and replace them with "subcontractor," "subcontractor's employees," and "volunteers." DHS also respectfully requests that the bill reflect the changes to section 846-2.7, Hawaii Revised Statutes, as amended by Act 278, Session Laws of Hawaii 2022. Also, the term "**managing agent**" on page 9, line 9, should remain unamended. DHS further defers to the Department of Attorney General if it has additional amendments.

PURPOSE: The purpose of the measure authorizes the Department of Human Services to conduct national criminal background checks for current and prospective employees;

volunteers; contractors; and contractors' employees, agents, and volunteers who are in positions that require close proximity to certain minors, young adults, or vulnerable adults. Effective 6/30/3000. (HD1) The HD1 defected the effective date and made technical amendments.

Having the statutory authority to conduct comprehensive national and State fingerprint-based criminal history record checks and periodic rechecks will allow DHS to obtain information directly from the Federal Bureau of Investigations and the Hawaii Criminal Justice Data Center. The public will benefit from the Department's ability to conduct State and national background checks as an added measure to ensure the health, safety, and well-being of minors, young adults, and vulnerable adults receiving child welfare, child protective, extended foster care and higher education supports, social services, and adult protective or community services from DHS.

The current pre-employment background clearance process includes the State of Hawaii name-based criminal history record check. It relies on prospective new hires to self-report any convictions outside of the State of Hawaii.

The proposed amendments will impact the Department's Human Resources and Social Services Division staff to conduct additional State and national background checks and periodic rechecks of the current and prospective employees, volunteers, contractors, and their employees, agents, and volunteers.

The Department's budget request includes adding one permanent full-time position to conduct background checks and the necessary funds to support the position.

The additional procedures proposed by this bill may cause a delay in hiring prospective employees. Also, the Hawaii Criminal Justice Data Center may experience an increased demand for services by individuals.

As noted above, DHS respectfully requests the proposed amendments highlighted in the attached Proposed HD2 to comply with federal law to access the FBI's criminal record history information.

Thank you for the opportunity to provide comments on this measure.

A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

1 SECTION 1. The legislature finds that the department of
2 human services assists vulnerable persons, including minors,
3 young adults, and vulnerable adults. It is therefore necessary
4 for the department to exercise caution when employing or
5 retaining workers, including volunteers, contractors, and
6 others, whose positions place them in close proximity with
7 persons who may be at risk.

8 Accordingly, the purpose of this Act is to help ensure the
9 safety of vulnerable persons by authorizing the department of
10 human services to conduct comprehensive background checks on
11 current or prospective employees; volunteers; contractors; ~~and~~
12 contractors' employees, ~~agents,~~ and volunteers; ~~subcontractors;~~
13 ~~and subcontractors' employees and volunteers;~~ whose position
14 places or would place them in close proximity to certain minors,
15 young adults, or vulnerable adults.

1 SECTION 2. Section 346-2.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§]346-2.5[§]—Criminal history~~

4 ~~record]~~ **Background checks**. (a) The department shall develop
5 procedures for obtaining verifiable information regarding the
6 criminal history of any person who is employed or seeking
7 employment, including a contractor and its employees or **[agents]**
8 **subcontractors and its employees** if prior authority to access
9 federal tax information has been provided by the United States
10 Department of the Treasury, if the person will require access to
11 federal tax information. The procedures shall include criminal
12 history record checks in accordance with section
13 846-2.7. Information obtained pursuant to this subsection shall
14 be used exclusively by the department for the purpose of
15 determining whether a person is suitable for accessing federal
16 tax information in accordance with applicable federal laws.

17 (b) The department may terminate or deny employment to
18 any current or prospective employee [~~or applicant,~~] or terminate
19 or refuse to secure the services of a contractor and its
20 employees or **[agents]** **subcontractors and its employees**
21 authorized under subsection (a), if the department finds by
22 reason of the nature and circumstances of the background
23 investigation conducted under subsection (a) that the current or
24 prospective employee [~~or applicant,~~] or contractor, or

1 contractor's employees or ~~[agents]~~ subcontractor, or
2 subcontractor's employees pose a risk to the security of federal
3 tax information. Termination or denial of employment or refusal
4 to secure services under this subsection shall only occur after
5 appropriate notification to the current or prospective employee,
6 ~~[applicant, or]~~ contractor, ~~or subcontractor~~ of the findings of
7 the background investigation, and after the current or
8 prospective employee~~[, applicant,]~~ contractor, ~~or subcontractor~~
9 is given an opportunity to respond to the findings. Nothing in
10 this subsection shall abrogate any applicable appeal rights
11 under chapters 76 and 89, or administrative rules of the
12 department.

13 (c) The department shall develop procedures for obtaining
14 verifiable information regarding the criminal history, and
15 information confirming the reputable and responsible character,
16 of any current or prospective employee; volunteer; contractor;
17 or contractor's employee, ~~agent,~~ or volunteer, ~~or subcontractor~~
18 or subcontractor's employee or volunteer who will be in close
19 proximity to minors, young adults, or vulnerable adults who are
20 receiving from the department:

- 21 (1) Child welfare services;
- 22 (2) Social services;
- 23 (3) Services intended to prevent abuse or neglect; or

1 (4) Services intended to assist youth aging out of foster
2 care with obtaining and maintaining independent living
3 skills.

4 (d) Any current or prospective employee; volunteer;
5 contractor; or contractor's employee, ~~agent,~~ or volunteer, or
6 subcontractor; or subcontractor's employee or volunteer; whose
7 position places or would place them in close proximity to
8 minors, young adults, or vulnerable adults as described in
9 subsection (c), shall,:

10 (1) Be fingerprinted for purposes of a criminal record
11 check;

12 (2) Submit to a criminal history record check in
13 accordance with section 846-2.7;

14 (3) Consent to the department obtaining other criminal
15 history records for verification; and

16 (4) Consent to the department conducting searches of the
17 adult abuse registry and child abuse and neglect
18 registry;

19 provided that a new department employee or volunteer shall be
20 fingerprinted prior to beginning employment or volunteer work;
21 provided further that the information obtained pursuant to this
22 subsection and subsection (e) shall be used exclusively by the
23 department to determine whether it is appropriate for the person

1 to work in close proximity to minors, young adults, or
2 vulnerable adults.

3 (e) The department may periodically obtain criminal
4 history information on all persons who are subject to this
5 section through the Hawaii criminal justice data center.

6 (f) The department may terminate or deny employment to a
7 current or prospective employee or volunteer, or terminate or
8 refuse to secure the services of a contractor or the
9 contractor's employees, ~~agents,~~ or volunteers ~~or a subcontractor~~
10 ~~or the subcontractor's employees or volunteers~~ if the department
11 finds, based on the results of the background investigation
12 conducted pursuant to subsections (d) and (e), that the current
13 or prospective employee; volunteer; contractor; or contractor's
14 employee, ~~agent,~~ or volunteer; ~~subcontractor; or subcontractor's~~
15 ~~employees or volunteers;~~ may pose a risk to the health, safety,
16 security, or well-being of minors, young adults, or vulnerable
17 adults as described in subsection (c). Termination or denial of
18 employment or refusal to secure services under this subsection
19 shall occur only after the department notifies the current or
20 prospective employee or contractor ~~or subcontractor~~ of the
21 findings of the background investigation, and after the current
22 or prospective employee or contractor ~~or subcontractor~~ is given
23 an opportunity to respond to the findings. Nothing in this
24 subsection shall abrogate any applicable rights to appeal under

1 chapters 76 and 89 or the administrative rules of the
2 department.

3 [~~e~~] (g) The department shall be exempt from section
4 831-3.1 and need not conduct investigations, notifications, or
5 hearings under this section in accordance with chapter 91.

6 (h) For purposes of this section:

7 "Vulnerable adult" has the same meaning as defined in
8 section 346-222.

9 "Young adult" means a person between the ages of eighteen
10 and twenty-one or a person authorized by the Foster Care
11 Independence Act of 1999 (Pub. L. 106-169), or other applicable
12 law, regardless of age, to receive benefits and services aimed
13 at assisting youth aging out of foster care in the United States
14 in obtaining and maintaining independent living skills."

15 SECTION 3. Section 378-2.5, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) Notwithstanding subsections (b) and (c), the
18 requirement that inquiry into and consideration of a prospective
19 employee's conviction record may take place only after the
20 individual has received a conditional job offer, and the
21 limitation to the most recent seven-year period for felony
22 convictions and the most recent five-year period for misdemeanor
23 convictions, excluding the period of incarceration, shall not
24 apply to employers who are expressly permitted to inquire into

1 an individual's criminal history for employment purposes
2 pursuant to any federal or state law other than subsection (a),
3 including:

- 4 (1) The State or any of its branches, political
5 subdivisions, or agencies pursuant to sections 78-2.7
6 and 831-3.1;
- 7 (2) The department of education pursuant to section
8 302A-601.5;
- 9 (3) The department of health with respect to employees,
10 providers, or subcontractors in positions that place
11 them in direct contact with clients when providing
12 non-witnessed direct mental health services pursuant
13 to section 321-171.5;
- 14 (4) The judiciary pursuant to section 571-34;
- 15 (5) The counties pursuant to section 846-2.7(b)(5), (33),
16 (34), (35), (36), and (38);
- 17 (6) Armed security services pursuant to section 261-17(b);
- 18 (7) Providers of a developmental disabilities domiciliary
19 home pursuant to section 321-15.2;
- 20 (8) Private schools pursuant to sections 302C-1 and
21 378-3(8);
- 22 (9) Financial institutions in which deposits are insured
23 by a federal agency having jurisdiction over the
24 financial institution pursuant to section 378-3(9);

- 1 (10) Detective agencies and security guard agencies
2 pursuant to sections 463-6(b) and 463-8(b);
- 3 (11) Employers in the business of insurance pursuant to
4 section 431:2-201.3;
- 5 (12) Employers of individuals or supervisors of individuals
6 responsible for screening passengers or property under
7 title 49 United States Code section 44901 or
8 individuals with unescorted access to an aircraft of
9 an air carrier or foreign carrier or in a secured area
10 of an airport in the United States pursuant to title
11 49 United States Code section 44936(a);
- 12 (13) The department of human services pursuant to
13 sections 346-2.5, 346-97, and 352-5.5;
- 14 (14) The public library system pursuant to section
15 302A-601.5;
- 16 (15) The department of public safety pursuant to section
17 353C-5;
- 18 (16) The board of directors of a cooperative housing
19 corporation or the manager of a cooperative housing
20 project pursuant to section 421I-12;
- 21 (17) The board of directors of an association under chapter
22 514B, or the **managing agent** or resident manager of a
23 condominium pursuant to section 514B-133; and

1 (18) The department of health pursuant to section
2 321-15.2."

3 SECTION 4. 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 or its designee on operators
7 of adult foster homes for individuals with
8 developmental disabilities or developmental
9 disabilities domiciliary homes and their employees, as
10 provided by section 321-15.2;

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

17 (3) The department of health or its designee on all
18 applicants for licensure or certification for,
19 operators for, prospective employees, adult
20 volunteers, and all adults, except adults in care, at
21 healthcare facilities as defined in section 321-15.2;

22 (4) The department of education on employees, prospective
23 employees, and teacher trainees in any public school

1 in positions that necessitate close proximity to
2 children as provided by section 302A-601.5;

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

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

9 (7) The county liquor commissions on employees and
10 prospective employees involved in liquor
11 administration, law enforcement, and liquor control
12 investigations;

13 (8) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and [~~foster boarding~~] resource
16 family homes as provided by section 346-17;

17 (9) The department of human services on prospective
18 adoptive parents as established under section
19 346-19.7;

20 (10) The department of human services or its designee on
21 applicants to operate child care facilities, household
22 members of the applicant, prospective employees of the
23 applicant, and new employees and household members of
24 the provider after registration or licensure as

1 provided by section 346-154, and persons subject to
2 section 346-152.5;

3 (11) 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 (12) The department of health on operators and employees of
8 home and community-based case management agencies and
9 operators and other adults, except for adults in care,
10 residing in community care foster family homes as
11 provided by section 321-15.2;

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

15 (14) 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 (15) The judiciary on employees and applicants at detention
22 and shelter facilities as provided by section 571-34;

23 (16) The department of public safety on employees and
24 prospective employees who are directly involved with

1 the treatment and care of persons committed to a
2 correctional facility or who possess police powers
3 including the power of arrest as provided by section
4 353C-5;

5 (17) The board of private detectives and guards on
6 applicants for private detective or private guard
7 licensure as provided by section 463-9;

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

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

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

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

3 (21) The department of health on licensed adult day care
4 center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 321-15.2;

7 (22) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees [~~serving clients of the adult~~
10 ~~protective and community services branch~~], **agents,** and
11 volunteers, as provided by [~~section~~] sections 346-2.5
12 and 346-97;

13 (23) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by section
16 346-97;

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

1 of providing home and community-based services, as
2 provided by section 346-97;

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

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

12 (27) The department of commerce and consumer affairs on the
13 original chartering applicants and proposed executive
14 officers of a credit union as provided by section
15 412:10-103;

16 (28) The department of commerce and consumer affairs on:

17 (A) Each principal of every non-corporate applicant
18 for a money transmitter license;

19 (B) Each person who upon approval of an application
20 by a corporate applicant for a money transmitter
21 license will be a principal of the licensee; and

22 (C) Each person who upon approval of an application
23 requesting approval of a proposed change in

1 control of licensee will be a principal of the
2 licensee,

3 as provided by sections 489D-9 and 489D-15;

4 (29) The department of commerce and consumer affairs on
5 applicants for licensure and persons licensed under
6 title 24;

7 (30) The Hawaii health systems corporation on:

8 (A) Employees;

9 (B) Applicants seeking employment;

10 (C) Current or prospective members of the corporation
11 board or regional system board; or

12 (D) Current or prospective volunteers, providers, or
13 contractors,

14 in any of the corporation's health facilities as
15 provided by section 323F-5.5;

16 (31) The department of commerce and consumer affairs on:

17 (A) An applicant for a mortgage loan originator
18 license, or license renewal; and

19 (B) Each control person, executive officer, director,
20 general partner, and managing member of an
21 applicant for a mortgage loan originator company
22 license or license renewal,

23 as provided by chapter 454F;

- 1 (32) The state public charter school commission or public
2 charter schools on employees, teacher trainees,
3 prospective employees, and prospective teacher
4 trainees in any public charter school for any position
5 that places them in close proximity to children, as
6 provided in section 302D-33;
- 7 (33) The counties on prospective employees who work with
8 children, vulnerable adults, or senior citizens in
9 community-based programs;
- 10 (34) The counties on prospective employees for fire
11 department positions that involve contact with
12 children or vulnerable adults;
- 13 (35) The counties on prospective employees for emergency
14 medical services positions that involve contact with
15 children or vulnerable adults;
- 16 (36) The counties on prospective employees for emergency
17 management positions and community volunteers whose
18 responsibilities involve planning and executing
19 homeland security measures including viewing,
20 handling, and engaging in law enforcement or
21 classified meetings and assisting vulnerable citizens
22 during emergencies or crises;
- 23 (37) The State and counties on employees, prospective
24 employees, volunteers, and contractors whose position

1 responsibilities require unescorted access to secured
2 areas and equipment related to a traffic management
3 center;

4 (38) The State and counties on employees and prospective
5 employees whose positions involve the handling or use
6 of firearms for other than law enforcement purposes;

7 (39) The State and counties on current and prospective
8 systems analysts and others involved in an agency's
9 information technology operation whose position
10 responsibilities provide them with access to
11 proprietary, confidential, or sensitive information;

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

13 (A) Applicants for real estate appraiser licensure or
14 certification as provided by chapter 466K;

15 (B) Each person who owns more than ten per cent of an
16 appraisal management company who is applying for
17 registration as an appraisal management company,
18 as provided by section 466L-7; and

19 (C) Each of the controlling persons of an applicant
20 for registration as an appraisal management
21 company, as provided by section 466L-7;

22 (41) The department of health or its designee on all
23 license applicants, licensees, employees, contractors,
24 and prospective employees of medical cannabis

1 dispensaries, and individuals permitted to enter and
2 remain in medical cannabis dispensary facilities as
3 provided under sections 329D-15(a)(4) and
4 329D-16(a)(3);

5 (42) The department of commerce and consumer affairs on
6 applicants for nurse licensure or license renewal,
7 reactivation, or restoration as provided by sections
8 457-7, 457-8, 457-8.5, and 457-9;

9 (43) The county police departments on applicants for
10 permits to acquire firearms pursuant to section 134-2
11 and on individuals registering their firearms pursuant
12 to section 134-3;

13 (44) The department of commerce and consumer affairs on:

14 (A) Each of the controlling persons of the applicant
15 for licensure as an escrow depository, and each
16 of the officers, directors, and principals who
17 will be in charge of the escrow depository's
18 activities upon licensure; and

19 (B) Each of the controlling persons of an applicant for
20 proposed change in control of an escrow depository
21 licensee, and each of the officers, directors, and
22 principals who will be in charge of the licensee's
23 activities upon approval of the application,
24 as provided by chapter 449;

1 (45) The department of taxation on current or prospective
2 employees or contractors who have access to federal
3 tax information in order to comply with requirements
4 of federal law, regulation, or procedure, as provided
5 by section 231-1.6;

6 (46) The department of labor and industrial relations on
7 current or prospective employees or contractors who
8 have access to federal tax information in order to
9 comply with requirements of federal law, regulation,
10 or procedure, as provided by section 383-110;

11 (47) The department of human services on current or
12 prospective employees or contractors who have access
13 to federal tax information in order to comply with
14 requirements of federal law, regulation, or
15 procedure, and on current or prospective employees;
16 volunteers; contractors; or contractors' employees,
17 agents, or volunteers; subcontractors; or
18 subcontractors' employees or volunteers; who are in a
19 position that requires close proximity to minors,
20 young adults, or vulnerable adults, as provided by
21 section 346-2.5;

22 (48) The child support enforcement agency on current or
23 prospective employees or contractors who have access
24 to federal tax information in order to comply with

1 federal law, regulation, or procedure, as provided by
2 section 576D-11.5;

3 (49) The department of the attorney general on current or
4 prospective employees or employees or agents of
5 contractors who have access to federal tax information
6 to comply with requirements of federal law,
7 regulation, or procedure, as provided by section
8 28-17;

9 [+](50)[+] The department of commerce and consumer affairs on
10 each control person, executive officer, director,
11 general partner, and managing member of an installment
12 loan licensee, or an applicant for an installment loan
13 license, as provided in chapter 480J;

14 [+](51)[+] The University of Hawaii on current and prospective
15 employees and contractors whose duties include
16 ensuring the security of campus facilities and
17 persons; and

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

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

23 SECTION 6. This Act shall take effect on June 30, 3000;
24 provided that the amendments made to section 378-2.5, Hawaii

1 Revised Statutes, by section 3 of this Act shall not be repealed
2 when that section is amended on January 1, 2024, pursuant to
3 section 62 of Act 278, Session Laws of Hawaii 2022.

4

Report Title:

DHS; Criminal History Background Checks; Minors; Young Adults; Vulnerable Adults

Description:

Authorizes the department of human services to conduct national criminal background checks for current and prospective employees; volunteers; contractors; and contractors' employees, agents, and volunteers, who are in positions that require close proximity to certain minors, young adults, or vulnerable adults. Effective 6/30/3000. (HD1)

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



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KĪWILA O HAWAI‘I

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

Tuesday, February 28
Rm. 325, 2:00 p.m.

To: The Honorable David A. Tarnas Chair
The Honorable Gregg Takayama, Vice Chair
Members of the House Committee on Judiciary and Hawaiian Affairs

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 777, H.D. 1

Hawai‘i Civil Rights Commission (HCRC) staff submits these comments, and informs the Committee that **the HCRC Commissioners have not yet taken a position on H.B. No. 777, H.D.1.** HCRC positions on legislation are taken by its Commissioners and bill testimonies in support or opposition are prepared and presented by staff to implement and reflect those Commission policy positions. At its next meeting the Commission will review and discuss positions on this and several other bills that it has yet to take positions on to date.

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 777, H.D.1, would authorize the Department of Human Services to conduct national criminal background checks for current and prospective employees; volunteers; contractors; and contractors' employees, agents, and volunteers, who are in positions that require proximity to certain minors, young adults, or vulnerable adults, and amend § 378-2.5(d)(13) to incorporate the new DHS exception by adding § 346-2.5 to the list of exceptions to the § 378-2.5 (b) and (c) limitations on pre-offer inquiries and look-back periods for felony and misdemeanor convictions.

While the HCRC has not yet taken a position on this particular measure, in the past it has consistently not opposed similar narrowly drawn statutory exceptions sought for positions that involve unsupervised contact with vulnerable persons as patients, clients, customers, or students, while opposing creation of overly broad exceptions and the creation of a “slippery slope” where exceptions would render the rule meaningless. The HCRC also cautions against allowing consideration of records of arrest without conviction, as such arrests are without substantial legal meaning.

The HCRC has not opposed narrowly drawn exceptions to HRS § 378-2.5 arrest and court records like the one proposed in H.B. No. 777, H.D.1.



CATHOLIC CHARITIES HAWAII

**TESTIMONY IN SUPPORT OF HB 777 HD1:
RELATING TO BACKGROUND CHECKS**

TO: House Committee on Judiciary & Hawaiian Affairs

FROM: Rob Van Tassell, President and CEO, Catholic Charities Hawaii

Hearing: Tuesday, 2/28/2023 at 2:00 PM; CR 325 & via videoconference

Chair Tarnas, Vice Chair Takayama and Members of the Committee on Judiciary & Hawaiian Affairs

Thank you for the opportunity to provide testimony **in Support of HB 771 HD 1**, which will would authorize DHS to conduct national background checks for state employees and volunteers working with vulnerable populations. I am Rob Van Tassell, with Catholic Charities Hawaii.

Catholic Charities Hawaii (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawaii for 75 years. CCH has programs serving children, families, homeless, elders, and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawaii.

Many positions within various state departments have the responsibility to serve and protect vulnerable populations throughout our state. It is crucial that the state provide all necessary safety measures to ensure staff and volunteers provide safe and effective services. This bill would provide an additional safeguard in regards to background checks to ensure the state is employing trusted individuals to work with the people of Hawaii.

We urge your support in passing this bill to protect the vulnerable populations in our state.

Please contact our Director of Advocacy and Community Relations, Shellie Niles at (808) 527-4813 or shellie.niles@catholiccharitieshawaii.org if you have any questions.



Aloha House Committee on Judiciary & Hawaiian Affairs Chair David A. Tarnas & Vice Chair Gregg Takayama, and Members -

My name is Dale Arthur Head and I am testifying in STRONG support of HB777.

While I believe many of us may be aware of people in care homes, licensed or not, being subjected to mistreatment, bullying, and other sordid acts, the best way to prevent that is screening applicants for both paying and volunteer positions. It is really a 'no-brainer'. Best way to weed out criminals is not hire them in the first place, but, only by conducting a criminal background check is this possible. I must share with you here a bizarre but true story of what can happen when bad people, schemers, are given positions of trust:

While this situation was not a Care Home, but rather a Home Owners Association (HOA), they actually hired a guy as Resident Manager who had no experience in such a position. A local private detective agency was paid a mere \$40 bucks to see if he had a record here in Hawaii, but, they neglected to check his mainland background as he was a relatively new resident. Clean record in Hawaii, but, as they didn't bother to do even an Internet search, they missed that he had been arrested several times for shoplifting, and, Driving Under the Influence in Salt Lake City, Utah. They also missed that he had been arrested in Ocean Point, Washington, for assault in a bar and spent the night in jail. No problem, right? Wrong!

*After multiple instances of bullying staff, contractors, tenants, and owner-occupants at our large **454 condominium complex**, I organized a Home Owners revolt to get control of the Board to fire him. It almost worked. I got onto the Board, then he walked off the complex, abandoning his job. Next stop was to find a friendly doctor who accepted his position of 'PTSD' by having to work for a "Bad Board". With that medical 'diagnosis', he filed a claim for **Temporary Disability Insurance**, and got paid for not working. His next move was to find a free '**Extortion Attorney**'. Once the mischief Tort was filed, it took up two years of my time. Oddly, the state Judge, at a mandatory pre-hearing conference, advised, "**The way this works is you throw a lot of money up on the table, and hope the other side accepts it and goes away.**" Oh, so that is how legal extortion works. The fellow walked off with **\$15,000** from our insurance company, and, another **\$25,000** to release four homeowners from his Tort. He was fired by the next two HOA he got hired by, as their Resident Manager. At his next HOA target, he was surprised when Las Vegas Police Detectives arrive to get a DNA sample from him. They got a match to a 1997 murder he*

*committed up in their jurisdiction. And, after a trial and conviction, he only served 6 1/2 years in prison. Meaning, he spent much time in what I think of as 'Crime University'. He was released on parole Christmas Eve of 2021. My guess is the HOA paid out **\$100,000** in legal fees from this caper.*

All of the drama and turmoil this criminal unleashed in a Home Owners Association could have been avoided had they done a competent background check on him. But no, instead they 'saved' money by spending a lousy \$40 to see if he had a record in Hawaii.

There is more to the above one paragraph saga, but, con-artists, embezzlers, and other swindlers make a good living in Hawaii. You can put a stop to some of it by passing HB777

Respectfully, Dale Arthur Head [dale.head@aol.com]

HB-777-HD-1

Submitted on: 2/24/2023 4:31:59 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support

HB-777-HD-1

Submitted on: 2/27/2023 5:09:29 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alan Garcia	Individual	Support	Written Testimony Only

Comments:

I support HB777, HD1 because it would provide national background checks for licensed or certified community based care homes, care centers, early learning centers and staff who care for our minors as well as elderly and the disabled being under the purview by either the Department of Human Services or Department of Health.

HB 777, HD1 would require the state Department of Human Services to conduct much broader background checks including obtaining fingerprints, searching through criminal histories and looking into past employers for their applicants.

As an example of how the system works now, the DHS has oversight of the state's early education services, community-based services, and some nonprofit services including those providing guidance to kids. But it also has been legally limited in its background checks of applicants to state-only databases, relying on job applicants to self-disclose any other convictions.

This bill will provide for a national background check which will provide enhanced protection for Hawaii's minors, elderly, and disabled.

HB-777-HD-1

Submitted on: 2/27/2023 6:49:27 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elmer Kaai	Individual	Support	Written Testimony Only

Comments:

This is an important requirement in the protection of our minors, young adults and vulnerable adults.

HB-777-HD-1

Submitted on: 2/27/2023 6:55:35 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lisa Smith	Individual	Support	Written Testimony Only

Comments:

I support HB777, HD1, as this will allow the Department of Human Services to use national criminal background checks for their employees and all staff under the purview of the department who are in positions that require them to be near minors or vulnerable adults.

This will provide stronger protections for our minors, especially for the early learning centers and other important day care centers in our state.

February 27, 2023

TO:

To: Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

RE: HB777 HD1 Relating to Background Checks

Hearing Date: March 1, 2023
Conference Room 325 – 2:00 PM (via videoconference)

Most Honorable Chair Tarnas; Vice-Chair Takayama; and Committee Members:

I support HB777 HD 1.

It is reasonable for employers to do a thorough background check on all prospective candidates...and more so for the State of Hawaii Department of Human Services to conduct a national criminal background check with fingerprint discovery for current and prospective employees – for volunteers – and for contractors who are in a position of work that requires close proximity to minors, young adults and/or a vulnerable class of people.

Also, without a proper and thorough background check, the state could face legal action if a situation arises when an injured party (the minor, young adult, or vulnerable person) conducts a lawsuit against the state on the basis that the background check for the new hire was not done. This is a liability that could result in a costly legal bill – and a devastating chapter in the lives of the injured vulnerable persons – a chapter that cannot be undone.

Please vote to support HB777 HD1.

Thank you for the opportunity to testify on this measure.

Respectfully submitted,
Christine Olah
Honolulu Resident