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

March 19, 2023

TO: The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Health and Human Services

The Honorable Senator Sharon Y. Moriwaki, Chair
Senate Committee on Labor and Technology

FROM: Cathy Betts, Director

SUBJECT: [HB 777 HD2](#) – RELATING TO BACKGROUND CHECKS.

Hearing: March 20, 2023, 3:00 PM
Conference Room 224 & Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill to the extent it is consistent with HD 777, including requested amendments deleting the relevant term "agent" to comply with the requirements of Pub. L. No. 92-544, and providing that these amendments will not be repealed with January 1, 2024, amendments required by Act 278, Session Laws of Hawaii 2022.

However, while we appreciate the HD2 amendments to "clean up" the sections, DHS has serious concerns that the HD2's "technical amendments" dramatically reorganized and renumbered sections 378-2.5(d), and 846.27(b), Hawaii Revised Statutes (Section 3 and Section 4 of the bill, respectively), which may have substantive unintended impacts on the numerous departments that have administrative rules or other policies and procedures that are based upon the current numbering of paragraphs. Therefore, DHS respectfully requests that the

sections be reordered and renumbered as they currently appear while maintaining DHS amendments made by the House Committee on Judiciary and Hawaiian Affairs in the HD2.

DHS further defers to the Department of Attorney General or the Revisor if either has suggested amendments to rectify the sections as they previously existed with additional amendments requested by DHS.¹

DHS respectfully requests that the measure be further amended by effectuating the effective date upon approval or on January 1, 2024, to align with Act 278, SLH 2022.

PURPOSE: The purpose of the measure authorizes the Department of Human Services to conduct background checks for current and prospective employees, volunteers, contractors, contractors' employees and volunteers, subcontractors, and subcontractors' employees and volunteers who are in positions that require close proximity to certain minors, young adults, or vulnerable adults. Effective 6/30/3000. (HD2)

The HD1 defected the effective date and made technical amendments. The HD2 amended the measure by

- (1) Requiring background checks on subcontractors and subcontractors' employees and volunteers instead of contractors' agents; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

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.

¹ For DHS amendments, see attached Proposed HD2, attached to DHS testimony to the House Committee on Judiciary and Hawaiian Affairs.

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.

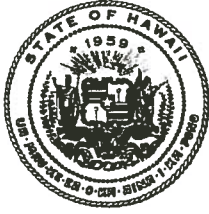
The proposed measure will impact the Department's Human Resources and Social Services Division staff to conduct additional State and national background checks and periodic rechecks of the current and prospective employees, volunteers, contractors, and their employees, agents, and volunteers.

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 discussed above, HD2's technical amendments renumbered paragraphs of sections 378-2.5(d), and 846-2.7(b), HRS. Unfortunately, this may have numerous unintended consequences impacting agencies with administrative rules, policies, and procedures that refer to existing numbering. Therefore, we respectfully suggest that the sections are returned to their current order.

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



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • TTY (808) 586-8162 • Fax (808) 586-8129

March 20, 2023

TESTIMONY TO THE SENATE COMMITTEES ON HEALTH AND HUMAN SERVICES AND LABOR AND TECHNOLOGY

House Bill 777 HD2 – Relating to Background Checks

The Disability and Communication Access Board (DCAB) supports the intent of House Bill 777 HD2 – Relating to Background Checks. This bill would authorize the Department of Human Services to conduct background checks for current and prospective employees, volunteers, contractors, contractors' employees and volunteers, subcontractors, and subcontractors' employees and volunteers who are in positions that require close proximity to certain minors, young adults, or vulnerable adults.

It is vital that safety measures are implemented to ensure employees and volunteers provide safe and effective services to vulnerable adults including people with developmental or physical disabilities who are unable to communicate or make responsible decisions to manage their own care or resources, carry out or arrange for essential activities of daily living, or protect themselves from abuse.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

KIRBY L. SHAW
Executive Director



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

Monday, March 20, 2023 at 3:00 p.m.
Rm. 224 and Videoconference

To: The Honorable Senator Sharon Y. Moriwaki, Chair
The Honorable Senator Chris Lee, Vice Chair
Members of the Senate Committee on Labor and Technology

The Honorable Senator Joy A. San Buenaventura, Chair
The Honorable Senator Henry J.C. Aquino, Vice Chair
Members of the Senate Committee on Health and Human Services

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

Re: H.B. No. 777, H.D.2

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.2, 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.

The HCRC does not oppose this narrowly drawn statutory exception. While HCRC has concerns about creation of overly broad exceptions and the creation of a “slippery slope” where exceptions would render the rule meaningless, we understand the need for exceptions when employees, contractors, and volunteers work with vulnerable

persons such as patients, youth, clients, or students. The HCRC also cautions against allowing consideration of records of arrest without conviction, as such arrests are without substantial legal meaning.

The HCRC offers no opposition to the narrowly drawn exceptions to HRS § 378-2.5 regarding arrest and court records proposed in H.B. No. 777, H.D.2.

HB-777-HD-2

Submitted on: 3/17/2023 10:54:18 AM

Testimony for HHS on 3/20/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cards Pintor	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support this bill.

Mahalo nui,

Cards Pintor

HB-777-HD-2

Submitted on: 3/17/2023 11:36:42 AM

Testimony for HHS on 3/20/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jasmine Ramos	Individual	Support	Written Testimony Only

Comments:

I support HB777, HD2

This measure will authorize the Department of Human Services (DHS) to conduct national background checks for state employees and volunteers working with vulnerable populations.

Many positions within DHS has the responsibility to serve and protect vulnerable populations throughout our state. It is crucial that DHS 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 national background checks to ensure the state is employing trusted individuals to work with the people of Hawai'i.

Thank you for the opportunity to provide testimony in support of this bill.

HB-777-HD-2

Submitted on: 3/18/2023 1:31:35 PM

Testimony for HHS on 3/20/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Ching	Individual	Support	Written Testimony Only

Comments:

I support HB777, HD2

This bill would help to ensure the health, safety, and well-being of vulnerable populations in the State by expanding the scope of background checks performed by the Department of Human Services on individuals working with or in close proximity to individuals receiving services from the Department who may be at risk.

HB-777-HD-2

Submitted on: 3/18/2023 4:42:08 PM

Testimony for HHS on 3/20/2023 3:00:00 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-2

Submitted on: 3/17/2023 11:39:56 AM

Testimony for HHS on 3/20/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tiffany Sims	Individual	Support	Written Testimony Only

Comments:

I support HB777, HD2, 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.

HB-777-HD-2

Submitted on: 3/18/2023 4:32:50 PM

Testimony for HHS on 3/20/2023 3:00:00 PM

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

Comments:

I support HB777, HD2

This bill will provide the Department of Human Services the statutory authority to conduct comprehensive national and State fingerprint-based criminal history record checks and periodic rechecks will allow the Department 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.