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# A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**"§346-A Background checks; criminal history; scope; adults having responsibilities relating to or in close proximity to minors and vulnerable adults. (a) Notwithstanding any law to the contrary, but subject to the limitations in subsection (b), the scope of background checks specified in each of the sections listed below shall include all relevant actions of the subject individual during the individual's age of majority; provided that criminal history record checks shall only include criminal actions for which the subject was convicted:**

**(1) Section 346-17;**

**(2) Section 346-17.6;**

**(3) Section 346-19.7;**

**(4) Section 346-B;**

**(5) Section 346-97;**



(6) Section 346-152.5;

(7) Section 346-154;

(8) Section 352-5.5; and

(9) Section 352D-4.3.

(b) Background checks described in subsection (a) shall not be conducted:

(1) With respect to individuals who fall under the scope of a contract, unless the contract:

(A) Is a new contract that takes effect after June 30, 2022;

(B) Is a renewed contract and the renewal is effective after June 30, 2022; or

(C) Already includes the background check requirements described in subsection (a); or

(2) With respect to an employee or a prospective employee, unless the:

(A) Employee's or prospective employee's first day of work or prospective first day of work occurs or would occur after June 30, 2022;

(B) Employee is under consideration for a promotion or new position, and the date of promotion or



1           transfer to the new position occurs or would  
2           occur after June 30, 2022; or

3           (C) Employee is already working under terms that  
4           include the background check requirements  
5           described in subsection (a)."

6           SECTION 2. Chapter 346, Hawaii Revised Statutes, is  
7 amended by adding a new section to part II to be appropriately  
8 designated and to read as follows:

9           "**§346-B Background checks; child welfare services.** (a)  
10 The department shall develop procedures for obtaining verifiable  
11 information regarding the criminal history of any person who is  
12 employed or seeking employment with the department, or is a  
13 principal or employee of a contractor or subcontractor, if the  
14 person will bear responsibilities for or be in close proximity  
15 to children in need of child welfare services. The procedures  
16 shall include criminal history record checks in accordance with  
17 section 846-2.7 and other background checks deemed necessary by  
18 the department. Information obtained pursuant to this  
19 subsection shall be used exclusively by the department for the  
20 purpose of determining whether a person is suited to bear



1 responsibilities relating to minors or work in close proximity  
2 to minors.

3       (b) The department may terminate or deny employment to any  
4 employee or applicant, or terminate or refuse to secure the  
5 services of a contractor or subcontractor, its principals, or  
6 employees, if the department finds by reason of the nature and  
7 circumstances of the background investigation conducted under  
8 subsection (a) that the employee, applicant, contractor or  
9 subcontractor, or contractor's or subcontractor's principals or  
10 employees are not suited to bear responsibilities relating to or  
11 work in close proximity to children in need of child welfare  
12 services. Termination or denial of employment under this  
13 subsection shall only occur after appropriate notification to  
14 the employee, applicant, principal, or contractor of the  
15 findings of the background investigation, and after the  
16 employee, applicant, principal, or contractor is given an  
17 opportunity to respond to the findings. Nothing in this  
18 subsection shall abrogate any applicable appeal rights under  
19 chapters 76 and 89, or administrative rules of the department.



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

4        SECTION 3. Section 346-1, Hawaii Revised Statutes, is  
5        amended by adding two new definitions to be appropriately  
6        inserted and to read as follows:

7        "Background check" means any criminal history record  
8        check, child abuse and neglect registry check, sex offender  
9        registry check, adult abuse perpetrator check, or other  
10       background check that analyzes relevant information regarding  
11       the suitability of a subject individual to bear responsibilities  
12       relating to or work in close proximity to minors or vulnerable  
13       adults, as applicable.

14       "Principal" means an individual owner, individual manager,  
15       or other individual in control of an entity that is not a  
16       natural person."

17       SECTION 4. Section 346-17, Hawaii Revised Statutes, is  
18       amended as follows:

19       1. By amending subsection (f) to read:

20       "(f) As a condition for a certificate of approval, any  
21       organization, institution, or resource family home~~[including]~~;



1 the principals, operators, employees, and new employees of any  
2 organization, institution, or resource family home; and all  
3 adults residing in [~~the~~] a respective resource family home,  
4 shall:

5 (1) Meet all standards and requirements established by the  
6 department;

7 (2) Be subject to criminal history record checks in  
8 accordance with section 846-2.7, [~~and~~] child abuse and  
9 neglect registry checks, and other background checks  
10 deemed necessary by the department, in accordance with  
11 departmental procedures; and

12 (3) Provide consent to the department or its designee to  
13 obtain criminal history record [~~and~~] information,  
14 child abuse and neglect registry information[~~+~~], and  
15 other relevant background information.

16 New employees of the organization, institution, or home shall be  
17 fingerprinted within five working days of employment."

18 2. By amending subsections (j) and (k) to read:

19 "(j) The department or its designee shall request:

20 (1) A criminal history record check through the Hawaii  
21 criminal justice data center on all principals,



1 operators, employees, and new employees of child care  
2 institutions, child placing organizations, and  
3 resource family homes, including all adults residing  
4 in the resource family homes, subject to checks  
5 pursuant to section 846-2.7; ~~and~~

6 (2) A child abuse and neglect registry check on all  
7 principals, operators, employees, and new employees of  
8 child care institutions, child placing organizations,  
9 and adults residing in a resource family home subject  
10 to licensure in accordance with departmental  
11 procedures~~[-]~~; and

12 (3) Any other background check deemed necessary by the  
13 department on the individuals referenced in paragraphs  
14 (1) and (2).

15 (k) The department may deny a certificate of approval if a  
16 principal, an operator, an employee, or a new employee of a  
17 child care institution or child placing organization's facility,  
18 or any adult residing in a resource family home, was convicted  
19 of a crime other than a minor traffic violation involving a fine  
20 of \$50 or less and if the department finds that the criminal  
21 history record ~~[or]~~, child abuse registry history, or other



1 background history of [a] the convicted person shows that the  
2 convicted person:

3 (1) Is not suited to bear responsibilities relating to or  
4 poses a risk to the health, safety, or well-being of  
5 the children in care, if the convicted person is an  
6 operator, employee, new employee[7]; or

7 (2) Poses a risk to the health, safety, or well-being of  
8 the children in care, if the convicted person is an  
9 adult residing in [a] the resource family home [poses  
10 a risk to the health, safety, or well-being of the  
11 children in care]."

12 SECTION 5. Section 346-17.6, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) [A] If the principals, employees, and volunteers of a  
15 provider have been cleared by criminal history record checks,  
16 and other background checks deemed necessary by the department,  
17 the provider may provide no cost emergency shelter and related  
18 services to a consenting minor if the provider reasonably  
19 believes that:





(1) The minor understands the significant benefits, responsibilities, risks, and limits of the shelter and services and can communicate an informed consent;

(2) The minor understands the requirements and rules of the shelter and services; and

(3) The shelter and services are necessary to ensure the minor's safety and well-being;

and the provider has conducted an assessment and determined that the minor does not pose a danger to the minor's self or to other persons at the same location. If the provider determines that admitting the minor poses a danger, the provider shall report the matter to an appropriate agency."

SECTION 6. Section 346-19.7, Hawaii Revised Statutes, is amended by amending subsections (b) to (e) to read as follows:

"(b) The department shall develop procedures for obtaining verifiable information regarding the criminal history ~~[and]~~ information, child abuse and neglect registry information, and other relevant background information of persons who are seeking to become adoptive parents. The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section



1 846-2.7, [~~and~~] child abuse record information from the  
2 department, and other relevant background information from  
3 relevant sources in accordance with departmental procedures.

4 (c) Except as otherwise specified, any person who seeks to  
5 become an adoptive parent, including all adults residing in the  
6 prospective adoptive home, shall:

7 (1) Meet all standards and requirements established by the  
8 department;

9 (2) Be subject to criminal history record checks in  
10 accordance with section 846-2.7, [~~and~~] child abuse and  
11 neglect registry checks, and other background checks  
12 deemed necessary by the department, in accordance with  
13 departmental procedures; [~~and~~]

14 (3) Provide consent to the department to obtain criminal  
15 history record [~~and~~], information, child abuse and  
16 neglect registry information[~~-~~] and other background  
17 information deemed necessary by the department; and

18 Information obtained pursuant to subsection (b) and this  
19 subsection shall be used by the department for the purpose of  
20 determining whether or not a person is suitable to be an



1 adoptive parent. All decisions shall be subject to federal laws  
2 and regulations.

3 (d) The department may deny a person's application to  
4 adopt a child if either of the prospective adoptive parents or  
5 any adult residing in the prospective adoptive home was  
6 convicted of an offense for which incarceration is a sentencing  
7 option, and if the department finds by reason of the nature and  
8 circumstances of the crime or other background information that  
9 either of the prospective adoptive parents, or any adult  
10 residing in the prospective adoptive home, poses a risk to the  
11 health, safety, or well-being of the child. A denial shall  
12 occur only after appropriate investigation, notification of  
13 results and planned action, and opportunity to meet and rebut  
14 the finding, all of which need not be conducted in accordance  
15 with chapter 91.

16 (e) The department may deny a person's application to  
17 adopt a child if either of the prospective adoptive parents or  
18 any adult residing in the prospective adoptive home has a  
19 history of confirmed child abuse or neglect, or both, revealed  
20 by the child abuse and neglect registry check, and if the  
21 department finds by reason of the nature and circumstances of



1 the abuse or neglect, or both, or other background information,  
2 that either of the prospective adoptive parents or any adult  
3 residing in the prospective adoptive home poses a risk to the  
4 health, safety, or well-being of the child. A denial shall  
5 occur only after an appropriate investigation, notification of  
6 results and planned action, and an opportunity to meet and rebut  
7 the finding, all of which need not be conducted in accordance  
8 with chapter 91."

9 SECTION 7. Section 346-97, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By amending its title to read:

12 "**§346-97 [Criminal history record] Background checks.**"

13 2. By amending subsections (b) and (c) to read:

14 "(b) The department shall adopt rules pursuant to chapter  
15 91 establishing standards regarding the reputable and  
16 responsible character of department employees and service  
17 providers who have responsibilities relating to or direct  
18 contact with individuals receiving services under this part[  
19 including:]. The service providers subject to this section  
20 include:



(1) Purchase of service contracted and subcontracted service providers and their principals and employees serving clients of the adult protective and community services branch;

(2) The foster grandparent program, senior companion program, and respite companion program participants[+], including their principals and employees; and

(3) Contracted and subcontracted service providers and their principals, employees, and new employees who provide home and community-based services under section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services.

(c) Individuals identified in subsection (b) shall:

(1) Meet the standards regarding the reputable and responsible character of department employees or service providers[+], as applicable



(2) Be subject to criminal history record checks in accordance with section 846-2.7[+], and other background checks deemed necessary by the department;

(3) Shall sign a waiver form stating that the department shall not be liable to the individual; and

(4) Provide consent to the department or its designee to obtain criminal history record information and other relevant background information for verification.

New employees and adult volunteers shall consent to be fingerprinted, shall supply the necessary information to enable the criminal history record check and any other background check prior to the start of employment or volunteering, and shall sign a waiver form stating that the department shall not be liable to the employee or volunteer."

3. By amending subsection (e) to read:

"(e) The department may take appropriate action if it finds that the criminal history or other background history of the individual identified under subsection (b) may pose a risk to the health, welfare, and safety of service recipients. An action may include refusing to use an individual as a service provider."



1           4. By amending subsections (g) and (h) to read:

2           "(g) The costs of processing fingerprints and the state  
3 criminal history record checks and other background checks may  
4 be borne by the department if the person who is being screened  
5 is a department employee or potential department employee.  
6 Otherwise, the costs may be borne by the [employer] service  
7 provider or by the employee or other individual who is being  
8 screened.

9           (h) The department, in obtaining and relying upon the  
10 results of the state criminal history record checks~~[7]~~ and other  
11 background checks, is presumed to be acting in good faith and  
12 shall be immune from civil liability for taking or recommending  
13 action based upon the criminal history record information. The  
14 good faith presumption may be rebutted upon a showing by the  
15 person or entity alleging a lack of good faith, and by a  
16 preponderance of the evidence, that the department relied upon  
17 information or opinion that it knew was false or misleading."

18           5. By amending subsection (j) to read:

19           "(j) The criminal history record information and other  
20 information obtained under this section shall be used  
21 exclusively by the department for the purpose of establishing



1 the reputable and responsible character of the individuals  
2 identified in subsection (b) such that the health, welfare, and  
3 safety of service recipients will not be at risk."

4 SECTION 8. Section 346-152.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) In order to provide child care for a child whose  
7 family receives a child care subsidy from the department,  
8 persons exempt pursuant to section 346-152, and any principals  
9 and employees of those persons, shall be required to agree to:

- 10 (1) A criminal history record check, a sex offender  
11 registry check, a child abuse record check, ~~[and]~~ an  
12 adult abuse perpetrator check, and any other  
13 background checks deemed necessary by the department,  
14 in the same manner as a prospective applicant or  
15 licensed provider in accordance with section 346-154;
- 16 (2) Completion of a pre-service or orientation training  
17 and ongoing training in health and safety topics; and
- 18 (3) Any monitoring inspection visits by the department or  
19 its designee to determine compliance with minimum  
20 health and safety standards at the location where  
21 child care is being provided for a child whose family





1 receives a child care subsidy from the department,  
2 including investigations by the department when the  
3 department has received a report of health and safety  
4 concerns."

5 SECTION 9. Section 346-154, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§346-154 Background checks.** (a) The department shall  
8 develop standards to ensure the reputable and responsible  
9 character of an applicant to operate a child care facility,  
10 prospective employees of the applicant, principals of the  
11 applicant, household members, and new employees or household  
12 members of the provider after registration or licensure, which  
13 shall include criminal history record checks in accordance with  
14 section 846-2.7, sex offender registry checks, child abuse  
15 record checks, [~~and~~] adult abuse perpetrator checks[~~-~~], and  
16 other background checks deemed necessary by the department.

17 For the purposes of this section, "adult abuse perpetrator  
18 check" means a search to determine whether an individual is  
19 known to the department as a perpetrator of abuse as defined in  
20 section 346-222, by means of a search of the individual's name



1 and birth date in the department's adult protective services  
2 file.

3 (b) An applicant to operate a child care facility shall:

4 (1) Be subject to criminal history record checks in  
5 accordance with section 846-2.7[~~7~~], and other  
6 background checks deemed necessary by the department;

7 (2) Submit to the department or its designee, under  
8 penalty of law, statements signed by the applicant,  
9 each principal of the applicant, prospective employees  
10 of the applicant, and household members of the  
11 applicant indicating whether the applicant, any of the  
12 prospective employees, or any of the household members  
13 has ever been confirmed to have abused or neglected a  
14 child or vulnerable adult, including threatened harm;  
15 and

16 (3) Provide consent to the department or its designee to  
17 conduct a criminal history record check in accordance  
18 with section 846-2.7, a sex offender registry check, a  
19 child abuse record check, [~~and~~] an adult abuse  
20 perpetrator check, and other background checks deemed  
21 necessary by the department, and to obtain criminal



1 history information, sex offender registry  
2 information, child abuse record information, ~~[and]~~  
3 adult abuse perpetrator information, and other  
4 relevant information for verification.

5 (c) A provider shall:

6 (1) Be subject to criminal history record checks in  
7 accordance with section 846-2.7 ~~[and]~~, sex offender  
8 registry checks~~[+]~~, and other background checks deemed  
9 necessary by the department;

10 (2) Submit to the department or its designee a statement  
11 signed by ~~[any]~~ each principal, each household member,  
12 ~~[or any]~~ and each employee ~~[hired after the initial~~  
13 ~~licensure or registration that requires the household~~  
14 ~~member or employee]~~ who was not previously subjected  
15 to the requirements of subsection (b)(2) to indicate,  
16 under penalty of law, whether the principal, household  
17 member, or employee has ever been confirmed to have  
18 abused or neglected a child or vulnerable adult,  
19 including threatened harm; and

20 (3) Provide consent to the department or its designee to  
21 conduct a criminal history record check in accordance



1 with section 846-2.7, a sex offender registry check, a  
2 child abuse record check, [~~and~~] an adult abuse  
3 perpetrator check, and other background checks deemed  
4 necessary by the department, and to obtain criminal  
5 history information, sex offender registry  
6 information, child abuse record information, [~~and~~]  
7 adult abuse perpetrator check information, and other  
8 relevant information for verification.

9 (d) The department or its designee shall obtain  
10 information on the applicant, any principal of the applicant,  
11 any household member, and any prospective employee of the  
12 applicant, including any household member or new employee  
13 retained after the applicant is issued a registration or license  
14 under this part, from the following sources:

15 (1) Criminal history record information through the Hawaii  
16 criminal justice data center in accordance with  
17 section 846-2.7;

18 (2) National and state sex offender registries; [~~and~~]

19 (3) Child abuse record information and adult abuse  
20 perpetrator check information from the department in  
21 accordance with departmental procedures[~~-~~]; and



1       (4) Other relevant sources.

2       (e) The department may deny an application for or revoke a  
3 license or registration to operate a child care facility if:

4       (1) The applicant, a principal of the applicant, a  
5 household member, or any prospective employee has been  
6 convicted of a crime other than a minor traffic  
7 violation involving a fine of \$50 or less, or ever  
8 been confirmed to have abused or neglected a child or  
9 vulnerable adult; or

10       (2) The department finds that ~~[the]~~ a criminal history,  
11 history of registration as a sex offender, ~~[or]~~ child  
12 abuse record or adult abuse perpetrator check record  
13 ~~[of that]~~, or other relevant record indicates that:

14       (A) The applicant, [household member,] principal, or  
15 prospective employee ~~[indicates that the~~  
16 ~~applicant, household member, or prospective~~  
17 ~~employee]~~ is not suited to bear responsibilities  
18 relating to or may pose a risk to the health,  
19 safety, or well-being of children~~[-]~~; or

20       (B) A household member may pose a risk to the health,  
21 safety, or well-being of children.



1 (f) The department may request the provider to terminate  
2 its association with a new principal, terminate the employment  
3 of a new employee, or terminate the residency of a [~~new employee~~  
4 ~~or~~] household member or may suspend or revoke the license or  
5 registration of the provider who continues its association with  
6 a new principal, employs a new employee, or who allows continued  
7 residency of a household member if:

8 (1) The principal, employee, or household member has been  
9 convicted of a crime other than a minor traffic  
10 violation involving a fine of \$50 or less, or ever  
11 been confirmed to have abused or neglected a child or  
12 vulnerable adult; or

13 (2) The department finds that [~~the~~] a criminal history,  
14 history of registration as a sex offender, [~~or~~] child  
15 abuse record or adult abuse perpetrator check record  
16 [~~of the new employee or household member~~], or other  
17 relevant record indicates that [~~the~~]:

18 (A) The new principal or new employee [~~or household~~  
19 member] is not suited to bear responsibilities  
20 relating to or may pose a risk to the health,  
21 safety, or well-being of children[-]; or



1           (B) A household member may pose a risk to the health,  
2           safety, or well-being of children.

3           (g) The department shall deny an application for a license  
4 or registration, shall request the provider to terminate an  
5 association with a principal or terminate the employment or  
6 residency of a new employee or household member, or shall  
7 suspend or revoke the license or registration of the provider  
8 who associates with a new principal, who employs a new employee,  
9 or who allows continued residency of a household member if the  
10 applicant, principal, employee, or household member:

11           (1) Refuses to consent to [~~the~~] background checks;

12           (2) Knowingly makes a materially false statement in  
13 connection with the background checks; or

14           (3) Is registered, or required to be registered, on the  
15 national sex offender registry or any state sex  
16 offender registry.

17           (h) The department or its designee, in obtaining and  
18 relying upon the background check information, is presumed to be  
19 acting in good faith and shall be immune from civil liability  
20 for taking or recommending action based upon the background  
21 check information. The presumption of good faith may be



1 rebutted upon a showing of proof by a preponderance of the  
2 evidence that the department or its designee relied upon  
3 information or opinion that it knew was false or misleading or  
4 that such reliance was not reasonable."

5 SECTION 10. Section 352-5.5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§352-5.5 [~~Criminal history record~~] Background checks.

8 (a) The department shall develop standards to ensure the  
9 reputable and responsible characters of staff members of the  
10 Hawaii youth correctional facility [~~which~~], and the principals  
11 and employees of any contractor or subcontractor of the  
12 facility. The foregoing individuals shall [~~include~~] undergo  
13 criminal history record checks in accordance with  
14 section 846-2.7[~~-~~], and any other background checks deemed  
15 necessary by the department.

16 (b) Staff members, as defined in section 352-5, including  
17 any new staff members, and the principals and employees of any  
18 contractor or subcontractor of the facility, shall:

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





1           background checks deemed necessary by the department;

2           and

3           (2)   Provide consent to the department to obtain other  
4           criminal history record information and other relevant  
5           information for verification.

6   New staff members of the facility, a contractor, or  
7   subcontractor shall be fingerprinted within five working days of  
8   beginning employment for the purpose of complying with the  
9   criminal history record check.

10          (c)   The department shall obtain criminal history record  
11   information through the Hawaii criminal justice data center on  
12   all staff members and new staff members of the Hawaii youth  
13   correctional facility~~[-]~~, and the principals and employees of  
14   any contractor or subcontractor of the facility.   The department  
15   shall conduct an annual name inquiry into the state criminal  
16   history record files.

17          (d)   The department may deny employment to a staff member  
18   or new staff member ~~[who]~~, or refuse to use the services of a  
19   contractor if a principal or employee of the contractor or a  
20   subcontractor, if a criminal history record check shows that the  
21   person was convicted of a crime other than a minor traffic



1 violation involving \$50 or less, and if the department finds  
2 that because of the criminal history record of the [~~staff member~~  
3 ~~or new staff member~~] person or any other relevant background  
4 information, the [~~staff member~~] person is not suitable to bear  
5 responsibilities relating to, or poses a risk to the health,  
6 safety, security, or well-being of, youths under supervision and  
7 confinement.

8 (e) For the purposes of this section, "background check"  
9 and "principal" shall have the same meaning as in  
10 section 346-1."

11 SECTION 11. Section 352D-4.3, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§352D-4.3 [~~Criminal history record~~] Background checks.**

14 (a) Employees, prospective employees, and volunteers of the  
15 office, and principals, employees, and volunteers of contracted  
16 providers [e~~x~~] and subcontractors in positions that require  
17 those persons to bear responsibilities relating to or place them  
18 in close proximity to youth when providing services by or on  
19 behalf of the office shall be required to agree to criminal  
20 history record checks conducted by the office or its designee in  
21 accordance with section 846-2.7[~~-~~], and other background checks



1 deemed necessary by the department. The office shall develop  
2 procedures for obtaining verifiable information regarding the  
3 criminal history records and other relevant information of  
4 individuals seeking to serve as principals, employees, or  
5 volunteers [~~of contracted providers or subcontractors~~] in  
6 positions that include responsibilities relating to youth or  
7 place them in close proximity to youth when providing services  
8 by or on behalf of the office.

9 (b) Except as otherwise specified, [any] if an individual  
10 [~~who is employed, seeks employment, or volunteers with a~~] is a  
11 principal, an employee, a prospective employee, a volunteer, or  
12 prospective volunteer of the office, a contracted provider, or a  
13 subcontractor, and the person works or will work in a position  
14 that includes responsibilities relating to youth or necessitates  
15 close proximity to youth when providing services by or on behalf  
16 of the office, the person shall:

- 17 (1) Submit to the office a sworn statement indicating  
18 whether the individual has ever been convicted of an  
19 offense for which incarceration is a sentencing  
20 option;



1           (2) Be subject to criminal history record checks through  
2           the Hawaii criminal justice data center in accordance  
3           with section 846-2.7[-] and other background checks  
4           deemed necessary by the department. An annual name  
5           inquiry shall be conducted in the state criminal  
6           history record files; and

7           (3) Provide to the office written consent for the office  
8           or its designee to obtain criminal history record  
9           information and other relevant background information  
10          for verification.

11 Information obtained pursuant to this section shall be used  
12 exclusively by the office for purposes of determining whether a  
13 person is suitable for working or volunteering in a position  
14 that includes responsibilities relating to youth or necessitates  
15 close proximity to youth when providing contracted services by  
16 or on behalf of the office, or in conjunction with services  
17 provided for youth at the Hawaii youth correctional facility,  
18 while in custody, on furlough, or on parole. All such decisions  
19 shall be subject to any applicable federal laws and regulations.

20           (c) The office may [~~require the contracted provider or~~  
21 ~~subcontractor to~~] refuse employment to an applicant for



1 employment~~[7]~~ with the office, terminate the employment of an  
2 employee~~[7]~~ of the office, or terminate the services of a  
3 volunteer with the office if:

4 (1) The employee, prospective employee, or volunteer ~~[of~~  
5 ~~the contracted provider or subcontractor]~~ has been  
6 convicted of an offense for which incarceration is a  
7 sentencing option; and

8 (2) The office finds that the criminal history record or  
9 other background information of the employee,  
10 prospective employee, or volunteer ~~[of the contracted~~  
11 ~~provider or subcontractor]~~ indicates that the  
12 employee, prospective employee, or volunteer may pose  
13 a risk to the health, safety, or well-being of youth  
14 receiving direct services by that employee,  
15 prospective employee, or volunteer.

16 (d) The office may require the contacted provider or  
17 subcontractor to refuse employment to an applicant for  
18 employment, terminate the employment of an employee, or  
19 terminate the services of a volunteer for the reasons specified  
20 in subsection (c).

21 ~~[(d)]~~ (e) For the purposes of this section:



1        "Background check" and "principal" shall have the same  
2 meaning as in section 346-1.

3        "Prospective employee" means any applicant for a position  
4 ~~[with a contracted provider or subcontractor]~~ that provides  
5 direct services to youth by or on behalf of the office.

6        "Provider" means any organization that or individual who  
7 enters into, or intends to enter into, a contract with or is  
8 currently contracted by the office to provide direct services to  
9 youth. The term includes all individuals who are authorized to  
10 provide direct services to youth under the contract with the  
11 organization or individual.

12        "Subcontractor" means any organization that or individual  
13 who enters into, or intends to enter into, a contract or  
14 agreement with a contracted provider to provide direct services  
15 to youth. The term includes all persons who may provide direct  
16 services to youth under the contract with the organization or  
17 individual.

18        "Volunteer" means any individual who provides, or intends  
19 to provide, direct services to youth on a non-compensatory  
20 basis.



1           (e) Notwithstanding any other law to the contrary, the  
2 office shall be exempt from section 831-3.1 for purposes of this  
3 section and need not conduct its investigations, notifications,  
4 or hearings in accordance with chapter 91."

5           SECTION 12. Section 378-2.5, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

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

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



- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7(b)(5), [~~(33),~~  
~~(34), (35), (36), and (38);~~] (32), (33), (34), (35),  
and (37);
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 321-15.2;
- (8) Private schools pursuant to sections 302C-1 and 378-3(8);
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);





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



1 manager of a condominium pursuant to section 514B-133;

2 and

3 (18) The department of health pursuant to section

4 321-15.2."

5 SECTION 13. Section 846-2.7, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

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

8 (1) The department of health or its designee on operators

9 of adult foster homes for individuals with

10 developmental disabilities or developmental

11 disabilities domiciliary homes and their employees, as

12 provided by section 321-15.2;

13 (2) The department of health or its designee on

14 prospective employees, persons seeking to serve as

15 providers, or subcontractors in positions that place

16 them in direct contact with clients when providing

17 non-witnessed direct mental health or health care

18 services as provided by section 321-171.5;

19 (3) The department of health or its designee on all

20 applicants for licensure or certification for,

21 operators for, prospective employees, adult



1 volunteers, and all adults, except adults in care, at  
2 healthcare facilities as defined in 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 county liquor commissions on employees and  
14 prospective employees involved in liquor  
15 administration, law enforcement, and liquor control  
16 investigations;

17 (8) The department of human services on principals,  
18 operators [~~and~~], employees, and new employees of child  
19 caring institutions, child placing organizations, and  
20 [~~foster boarding homes~~] resource family homes as  
21 provided by [~~section~~] sections 346-A and 346-17; and



1           principals, employees, and volunteers of providers  
2           described in section 346-17.6 and as provided in  
3           section 346-A;

4           (9) The department of human services on prospective  
5           adoptive parents and other individuals as established  
6           under ~~[section]~~ sections 346-A and 346-19.7;

7           (10) The department of human services or its designee on  
8           child care facility applicants ~~[to operate child care~~  
9           ~~facilities],~~ principals, household members ~~[of the~~  
10           ~~applicant],~~ employees, and prospective employees ~~[of~~  
11           ~~the applicant, and new employees and household members~~  
12           ~~of the provider after registration or licensure]~~ as  
13           provided by ~~[section]~~ sections 346-A and 346-154, and  
14           persons subject to section 346-152.5;

15           (11) The department of human services on individuals,  
16           principals, and employees of persons exempt pursuant  
17           to section 346-152 to be eligible to provide child  
18           care and receive child care subsidies as provided by  
19           ~~[section]~~ sections 346-A and 346-152.5;

20           (12) The department of health on operators and employees of  
21           home and community-based case management agencies and



1 operators and other adults, except for adults in care,  
2 residing in community care foster family homes as  
3 provided by section 321-15.2;

4 (13) The department of human services on staff members of  
5 the Hawaii youth correctional facility and the  
6 principals and employees of contractors and  
7 subcontractors as provided by [~~section~~] sections 346-A  
8 and 352-5.5;

9 (14) The department of human services on employees,  
10 prospective employees, and volunteers of the office of  
11 youth services, and principals, employees, and  
12 volunteers of contracted providers and subcontractors  
13 in positions that require them to bear  
14 responsibilities relating to or place them in close  
15 proximity to youth when providing services by or on  
16 behalf of the office or the Hawaii youth correctional  
17 facility as provided by [~~section~~] sections 346-A and  
18 352D-4.3;

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



1       (16)   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       (17)   The board of private detectives and guards on  
8           applicants for private detective or private guard  
9           licensure as provided by section 463-9;

10      (18)   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 pursuant to section 302C-1;

17      (19)   The public library system on employees and prospective  
18          employees whose positions place them in close  
19          proximity to children as provided by section  
20          302A-601.5;



1       (20) 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, vulnerable 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       (21) The department of health on licensed adult day care  
10          center operators, employees, new employees,  
11          subcontracted service providers and their employees,  
12          and adult volunteers as provided by section 321-15.2;

13       (22) The department of human services on [~~purchase of~~  
14          ~~service contracted and subcontracted service providers~~  
15          ~~and their employees serving clients of the adult~~  
16          ~~protective and community services branch,~~] employees  
17          and potential employees of the department, and  
18          principals and employees of a contractor or  
19          subcontractor, as provided by section [346-97,] 346-B;

20       (23) The department of human services on [~~foster~~  
21          ~~grandparent program, senior companion program, and~~



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

3       ~~(24)~~   ~~The department of human services on contracted and~~  
4           ~~subcontracted service providers and their current and~~  
5           ~~prospective employees that provide home and~~  
6           ~~community-based services under section 1915(c) of the~~  
7           ~~Social Security Act, title 42 United States Code~~  
8           ~~section 1396n(c), or under any other applicable~~  
9           ~~section or sections of the Social Security Act for the~~  
10          ~~purposes of providing home and community-based~~  
11          ~~services,]~~   department employees and principals,  
12          employees, and new employees of service providers, as  
13          provided by section 346-97;

14       ~~[(25)]~~   (24)   The department of commerce and consumer affairs  
15           on proposed directors and executive officers of a  
16           bank, savings bank, savings and loan association,  
17           trust company, and depository financial services loan  
18           company as provided by section 412:3-201;

19       ~~[(26)]~~   (25)   The department of commerce and consumer affairs  
20           on proposed directors and executive officers of a





1           nondepository financial services loan company as  
2           provided by section 412:3-301;

3       ~~[(+27)]~~ (26)   The department of commerce and consumer affairs  
4           on the original chartering applicants and proposed  
5           executive officers of a credit union as provided by  
6           section 412:10-103;

7       ~~[(+28)]~~ (27)   The department of commerce and consumer affairs  
8           on:

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

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

14          (C)   Each person who upon approval of an application  
15           requesting approval of a proposed change in  
16           control of licensee will be a principal of the  
17           licensee,

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

19       ~~[(+29)]~~ (28)   The department of commerce and consumer affairs  
20           on applicants for licensure and persons licensed under  
21           title 24;



- 1        [~~(30)~~] (29)    The Hawaii health systems corporation on:
- 2                (A)    Employees;
- 3                (B)    Applicants seeking employment;
- 4                (C)    Current or prospective members of the corporation
- 5                        board or regional system board; or
- 6                (D)    Current or prospective volunteers, providers, or
- 7                        contractors,
- 8                        in any of the corporation's health facilities as
- 9                        provided by section 323F-5.5;
- 10        [~~(31)~~] (30)    The department of commerce and consumer affairs
- 11                on:
- 12                (A)    An applicant for a mortgage loan originator
- 13                        license, or license renewal; and
- 14                (B)    Each control person, executive officer, director,
- 15                        general partner, and managing member of an
- 16                        applicant for a mortgage loan originator company
- 17                        license or license renewal,
- 18                        as provided by chapter 454F;
- 19        [~~(32)~~] (31)    The state public charter school commission or
- 20                        public charter schools on employees, teacher trainees,
- 21                        prospective employees, and prospective teacher



1 trainees in any public charter school for any position  
2 that places them in close proximity to children, as  
3 provided in section 302D-33;

4 ~~[(33)]~~ (32) The counties on prospective employees who work  
5 with children, vulnerable adults, or senior citizens  
6 in community-based programs;

7 ~~[(34)]~~ (33) The counties on prospective employees for fire  
8 department positions that involve contact with  
9 children or vulnerable adults;

10 ~~[(35)]~~ (34) The counties on prospective employees for  
11 emergency medical services positions that involve  
12 contact with children or vulnerable adults;

13 ~~[(36)]~~ (35) The counties on prospective employees for  
14 emergency management positions and community  
15 volunteers whose responsibilities involve planning and  
16 executing homeland security measures including  
17 viewing, handling, and engaging in law enforcement or  
18 classified meetings and assisting vulnerable citizens  
19 during emergencies or crises;

20 ~~[(37)]~~ (36) The State and counties on employees, prospective  
21 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)]~~ (37) The State and counties on employees and  
5 prospective employees whose positions involve the  
6 handling or use of firearms for other than law  
7 enforcement purposes;

8 ~~[(39)]~~ (38) The State and counties on current and  
9 prospective systems analysts and others involved in an  
10 agency's information technology operation whose  
11 position responsibilities provide them with access to  
12 proprietary, confidential, or sensitive information;

13 ~~[(40)]~~ (39) The department of commerce and consumer affairs  
14 on:

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

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



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

4 ~~[(41)]~~ (40) The department of health or its designee on all  
5 license applicants, licensees, employees, contractors,  
6 and prospective employees of medical cannabis  
7 dispensaries, and individuals permitted to enter and  
8 remain in medical cannabis dispensary facilities as  
9 provided under sections 329D-15(a)(4) and  
10 329D-16(a)(3);

11 ~~[(42)]~~ (41) The department of commerce and consumer affairs  
12 on applicants for nurse licensure or license renewal,  
13 reactivation, or restoration as provided by sections  
14 457-7, 457-8, 457-8.5, and 457-9;

15 ~~[(43)]~~ (42) The county police departments on applicants for  
16 permits to acquire firearms pursuant to section 134-2  
17 and on individuals registering their firearms pursuant  
18 to section 134-3;

19 ~~[(44)]~~ (43) The department of commerce and consumer affairs  
20 on:



1 (A) Each of the controlling persons of the applicant  
2 for licensure as an escrow depository, and each  
3 of the officers, directors, and principals who  
4 will be in charge of the escrow depository's  
5 activities upon licensure; and

6 (B) Each of the controlling persons of an applicant  
7 for proposed change in control of an escrow  
8 depository licensee, and each of the officers,  
9 directors, and principals who will be in charge  
10 of the licensee's activities upon approval of the  
11 application,

12 as provided by chapter 449;

13 [~~45~~] (44) The department of taxation on current or  
14 prospective employees or contractors who have access  
15 to federal tax information in order to comply with  
16 requirements of federal law, regulation, or procedure,  
17 as provided by section 231-1.6;

18 [~~46~~] (45) The department of labor and industrial relations  
19 on current or prospective employees or contractors who  
20 have access to federal tax information in order to



1           comply with requirements of federal law, regulation,  
2           or procedure, as provided by section 383-110;

3       ~~[(47)]~~ (46)   The department of human services on current or  
4           prospective employees or contractors who have access  
5           to federal tax information in order to comply with  
6           requirements of federal law, regulation, or procedure,  
7           as provided by section 346-2.5;

8       ~~[(48)]~~ (47)   The child support enforcement agency on current  
9           or prospective employees or contractors who have  
10          access to federal tax information in order to comply  
11          with federal law, regulation, or procedure, as  
12          provided by section 576D-11.5;

13       ~~[(49)]~~ (48)   The department of the attorney general on  
14          current or prospective employees or employees or  
15          agents of contractors who have access to federal tax  
16          information to comply with requirements of federal  
17          law, regulation, or procedure, as provided by section  
18          28-17;

19       ~~[(50)]~~ (49)   The department of commerce and consumer affairs  
20          on each control person, executive officer, director,  
21          general partner, and managing member of an installment



1 loan licensee, or an applicant for an installment loan  
2 license, as provided in chapter 480J;

3 ~~[(51)]~~ (50) The University of Hawaii on current and  
4 prospective employees and contractors whose duties  
5 include ensuring the security of campus facilities and  
6 persons; and

7 ~~[(52)]~~ (51) Any other organization, entity, or the State, its  
8 branches, political subdivisions, or agencies as may  
9 be authorized by state law."

10 SECTION 14. This Act does not affect rights and duties  
11 that matured, penalties that were incurred, and proceedings that  
12 were begun before its effective date.

13 SECTION 15. In codifying the new sections added by  
14 sections 1 and 2 of this Act, the revisor of statutes shall  
15 substitute appropriate section numbers for the letters used in  
16 designating the new sections in this Act.

17 SECTION 16. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

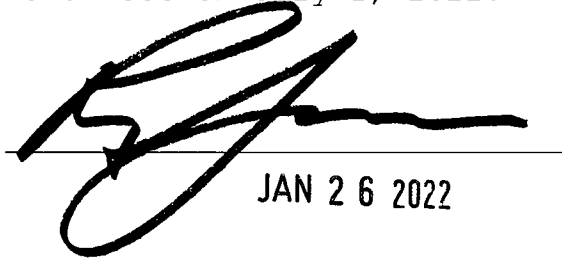




1 SECTION 17. This Act shall take effect on July 1, 2022.

2

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line.

JAN 26 2022



# H.B. NO. 2393

**Report Title:**

Department of Human Services; Background Checks; Convictions;  
Adults; Minors

**Description:**

Requires the scope of the background checks for certain individuals to include acts that the individuals committed during the age of majority. Applies to certain individuals under the scope of contractual or employment obligations relating to minors and vulnerable adults.

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

