
A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

1 SECTION 1. The purpose of this Act is to authorize the
2 department of human services to conduct comprehensive background
3 checks on current and prospective employees, volunteers, and
4 contractors and contractor's employees and volunteers in
5 positions that require these individuals to be in close
6 proximity to minors, young adults, or vulnerable adults who are
7 receiving child welfare services, social services, or other
8 benefits and services from the social services division of the
9 department of human services, including services intended to
10 prevent abuse or neglect or assist youth who are aging out of
11 foster care with obtaining and maintaining independent living
12 skills.

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

15 " [f] §346-2.5 [f] ~~Criminal history record~~ Background checks .

16 (a) The department shall develop procedures for obtaining
17 verifiable information regarding the criminal history of any
18 person who is employed or seeking employment, including a

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1 contractor and its employees [~~or agents~~] if prior authority to
2 access federal tax information has been provided by the United
3 States Department of the Treasury, if the person will require
4 access to federal tax information. The procedures shall include
5 criminal history record checks in accordance with section 846-
6 2.7. Information obtained pursuant to this subsection shall be
7 used exclusively by the department for the purpose of
8 determining whether a person is suitable for accessing federal
9 tax information in accordance with applicable federal laws.

10 (b) The department may terminate or deny employment to any
11 current or prospective employee [~~or applicant,~~] or terminate or
12 refuse to secure the services of a contractor and its employees
13 [~~or agents~~] authorized under subsection (a), if the department
14 finds by reason of the nature and circumstances of the
15 background investigation conducted under subsection (a) that the
16 current or prospective employee, [~~applicant,~~] contractor, or
17 contractor's employees [~~or agents~~] pose a risk to the security
18 of federal tax information. Termination or denial of employment
19 or refusal to secure services under this subsection shall only
20 occur after appropriate notification to the current or
21 prospective employee[, ~~applicant,~~] or contractor of the findings
22 of the background investigation, and after the current or

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1 prospective employee [~~applicant~~] or contractor is given an
2 opportunity to respond to the findings. Nothing in this
3 subsection shall abrogate any applicable appeal rights under
4 chapters 76 and 89, or administrative rules of the department.

5 (c) The department shall develop procedures for obtaining
6 verifiable information regarding the criminal history of any
7 current or prospective employee, volunteer, contractor, or a
8 contractor's employee or volunteer as a measure to ensure the
9 person is of reputable and responsible character; provided that
10 the person will be in close proximity to minors, young adults,
11 or vulnerable adults who are receiving child welfare services,
12 social services, or other benefits and services from the social
13 services division of the department, including services intended
14 to prevent abuse or neglect or assist youth aging out of foster
15 care with obtaining and maintaining independent living skills.

16 (d) Current or prospective employees, volunteers, and
17 contractors and contractors' employees and volunteers who are in
18 positions that place them in close proximity to minors, young
19 adults, or vulnerable adults who are receiving child welfare
20 services, social services, or other benefits or services from
21 the social services division of the department, including
22 services intended to prevent abuse or neglect or assist youth

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1 aging out of foster care with obtaining and maintaining
2 independent living skills, shall:

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

5 (2) Provide consent to the department to obtain other
6 criminal history record information for verification;
7 and

8 (3) Be subject to adult abuse registry and child abuse and
9 neglect registry checks.

10 A new employee or volunteer of the department shall be
11 fingerprinted prior to beginning employment or volunteering for
12 the purpose of complying with the criminal history record check.

13 The information obtained pursuant to this subsection and
14 subsection (e) shall be used exclusively by the department to
15 determine whether a person is suitable for working in close
16 proximity to minors, young adults, or vulnerable adults.

17 (e) The department may periodically obtain criminal
18 history record information through the Hawaii criminal justice
19 data center on all persons subject to this section.

20 (f) The department may terminate or deny employment to a
21 current or prospective employee or volunteer, or terminate or
22 refuse to secure the services of a contractor and its employee

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1 or volunteer, if the department finds by reason of the nature
2 and circumstances of the results of the background investigation
3 conducted under subsections (d) and (e) that the current or
4 prospective employee, volunteer, contractor, or contractor's
5 employee or volunteer may pose a risk to the health, safety,
6 security, or well-being of minors, young adults, or vulnerable
7 adults who are receiving child welfare services, social
8 services, or other benefits or services from the social services
9 division of the department, including services intended to
10 prevent abuse or neglect or assist youth aging out of foster
11 care with obtaining and maintaining independent living skills.
12 Termination or denial of employment or refusal to secure
13 services under this subsection shall only occur after
14 appropriate notification to the current or prospective employee
15 or contractor of the findings of the background investigation
16 and after the current or prospective employee or contractor is
17 given an opportunity to respond to the findings. Nothing in
18 this subsection shall abrogate any applicable appeal rights
19 under chapters 76 and 89 or administrative rules of the
20 department.

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

4 (h) For purposes of this section:

5 "Child welfare services" has the same meaning as in section
6 346-1.

7 "Social services" has the same meaning as in section 346-1.

8 "Vulnerable adult" has the same meaning as in section 346-
9 222.

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

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

18 "(d) Notwithstanding subsections (b) and (c), the
19 requirement that inquiry into and consideration of a prospective
20 employee's conviction record may take place only after the
21 individual has received a conditional job offer, and the
22 limitation to the most recent seven-year period for felony

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1 convictions and the most recent five-year period for misdemeanor
2 convictions, excluding the period of incarceration, shall not
3 apply to employers who are expressly permitted to inquire into
4 an individual's criminal history for employment purposes
5 pursuant to any federal or state law other than subsection (a),
6 including:

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

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- 1 (8) Private schools pursuant to sections 302C-1 and
2 378-3(8);
- 3 (9) Financial institutions in which deposits are insured
4 by a federal agency having jurisdiction over the
5 financial institution pursuant to section 378-3(9);
- 6 (10) Detective agencies and security guard agencies
7 pursuant to sections 463-6(b) and 463-8(b);
- 8 (11) Employers in the business of insurance pursuant to
9 section 431:2-201.3;
- 10 (12) Employers of individuals or supervisors of individuals
11 responsible for screening passengers or property under
12 title 49 United States Code section 44901 or
13 individuals with unescorted access to an aircraft of
14 an air carrier or foreign carrier or in a secured area
15 of an airport in the United States pursuant to title
16 49 United States Code section 44936(a);
- 17 (13) The department of human services pursuant to sections
18 346-2.5, 346-97, and 352-5.5;
- 19 (14) The public library system pursuant to section
20 302A-601.5;
- 21 (15) The department of public safety pursuant to section
22 353C-5;

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1 (16) The board of directors of a cooperative housing
2 corporation or the manager of a cooperative housing
3 project pursuant to section 421I-12;

4 (17) The board of directors of an association under chapter
5 514B, or the managing agent or resident manager of a
6 condominium pursuant to section 514B-133; and

7 (18) The department of health pursuant to section
8 321-15.2."

9 SECTION 4. Section 846-2.7, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

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

12 (1) The department of health or its designee on operators
13 of adult foster homes for individuals with
14 developmental disabilities or developmental
15 disabilities domiciliary homes and their employees, as
16 provided by section 321-15.2;

17 (2) The department of health or its designee on
18 prospective employees, persons seeking to serve as
19 providers, or subcontractors in positions that place
20 them in direct contact with clients when providing
21 non-witnessed direct mental health or health care
22 services as provided by section 321-171.5;

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- 1 (3) The department of health or its designee on all
2 applicants for licensure or certification for,
3 operators for, prospective employees, adult
4 volunteers, and all adults, except adults in care, at
5 healthcare facilities as defined in section 321-15.2;
- 6 (4) The department of education on employees, prospective
7 employees, and teacher trainees in any public school
8 in positions that necessitate close proximity to
9 children as provided by section 302A-601.5;
- 10 (5) The counties on employees and prospective employees
11 who may be in positions that place them in close
12 proximity to children in recreation or child care
13 programs and services;
- 14 (6) The county liquor commissions on applicants for liquor
15 licenses as provided by section 281-53.5;
- 16 (7) The county liquor commissions on employees and
17 prospective employees involved in liquor
18 administration, law enforcement, and liquor control
19 investigations;
- 20 (8) The department of human services on operators and
21 employees of child caring institutions, child placing

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1 organizations, and [~~foster boarding homes~~] resource
2 family homes as provided by section 346-17;

3 (9) The department of human services on prospective
4 adoptive parents as established under section 346-
5 19.7;

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

13 (11) The department of human services on persons exempt
14 pursuant to section 346-152 to be eligible to provide
15 child care and receive child care subsidies as
16 provided by section 346-152.5;

17 (12) The department of health on operators and employees of
18 home and community-based case management agencies and
19 operators and other adults, except for adults in care,
20 residing in community care foster family homes as
21 provided by section 321-15.2;

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- 1 (13) The department of human services on staff members of
2 the Hawaii youth correctional facility as provided by
3 section 352-5.5;
- 4 (14) The department of human services on employees,
5 prospective employees, and volunteers of contracted
6 providers and subcontractors in positions that place
7 them in close proximity to youth when providing
8 services on behalf of the office or the Hawaii youth
9 correctional facility as provided by section 352D-4.3;
- 10 (15) The judiciary on employees and applicants at detention
11 and shelter facilities as provided by section 571-34;
- 12 (16) The department of public safety on employees and
13 prospective employees who are directly involved with
14 the treatment and care of persons committed to a
15 correctional facility or who possess police powers
16 including the power of arrest as provided by section
17 353C-5;
- 18 (17) The board of private detectives and guards on
19 applicants for private detective or private guard
20 licensure as provided by section 463-9;
- 21 (18) Private schools and designated organizations on
22 employees and prospective employees who may be in

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1 positions that necessitate close proximity to
2 children; provided that private schools and designated
3 organizations receive only indications of the states
4 from which the national criminal history record
5 information was provided pursuant to section 302C-1;

6 (19) The public library system on employees and prospective
7 employees whose positions place them in close
8 proximity to children as provided by section 302A-
9 601.5;

10 (20) The State or any of its branches, political
11 subdivisions, or agencies on applicants and employees
12 holding a position that has the same type of contact
13 with children, vulnerable adults, or persons committed
14 to a correctional facility as other public employees
15 who hold positions that are authorized by law to
16 require criminal history record checks as a condition
17 of employment as provided by section 78-2.7;

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

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- 1 (22) The department of human services on purchase of
2 service contracted and subcontracted service
3 providers, and their employees [~~serving clients of the~~
4 ~~adult protective and community services branch,~~] and
5 volunteers, as provided by [~~section~~] sections 346-2.5
6 and 346-97;
- 7 (23) The department of human services on foster grandparent
8 program, senior companion program, and respite
9 companion program participants as provided by section
10 346-97;
- 11 (24) The department of human services on contracted and
12 subcontracted service providers and their current and
13 prospective employees that provide home and community-
14 based services under section 1915(c) of the Social
15 Security Act, title 42 United States Code section
16 1396n(c), or under any other applicable section or
17 sections of the Social Security Act for the purposes
18 of providing home and community-based services, as
19 provided by section 346-97;
- 20 (25) The department of commerce and consumer affairs on
21 proposed directors and executive officers of a bank,
22 savings bank, savings and loan association, trust

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1 company, and depository financial services loan
2 company as provided by section 412:3-201;

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

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

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

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

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

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

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

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

4 (30) The Hawaii health systems corporation on:

5 (A) Employees;

6 (B) Applicants seeking employment;

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

9 (D) Current or prospective volunteers, providers, or
10 contractors,

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

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

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

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

20 as provided by chapter 454F;

21 (32) The state public charter school commission or public
22 charter schools on employees, teacher trainees,

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

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

8 (34) The counties on prospective employees for fire
9 department positions that involve contact with
10 children or vulnerable adults;

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

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

21 (37) The State and counties on employees, prospective
22 employees, volunteers, and contractors whose position

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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;

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

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

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

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

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

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1 (B) Each of the controlling persons of an applicant
2 for proposed change in control of an escrow
3 depository licensee, and each of the officers,
4 directors, and principals who will be in charge
5 of the licensee's activities upon approval of the
6 application,

7 as provided by chapter 449;

8 (45) The department of taxation on current or prospective
9 employees or contractors who have access to federal
10 tax information in order to comply with requirements
11 of federal law, regulation, or procedure, as provided
12 by section 231-1.6;

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

18 (47) The department of human services on current or
19 prospective employees or contractors who have access
20 to federal tax information in order to comply with
21 requirements of federal law, regulation, or procedure,
22 and on current or prospective employees and volunteers

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1 who are in a position that requires close proximity to
2 minors, young adults, or vulnerable adults, as
3 provided by section 346-2.5;

4 (48) The child support enforcement agency on current or
5 prospective employees or contractors who have access
6 to federal tax information in order to comply with
7 federal law, regulation, or procedure, as provided by
8 section 576D-11.5;

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

15 (50) The department of commerce and consumer affairs on
16 each control person, executive officer, director,
17 general partner, and managing member of an installment
18 loan licensee, or an applicant for an installment loan
19 license, as provided in chapter 480J;

20 (51) The University of Hawaii on current and prospective
21 employees and contractors whose duties include

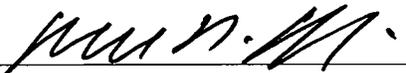
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1 ensuring the security of campus facilities and
2 persons; and
3 [+] (52) [+] Any other organization, entity, or the State, its
4 branches, political subdivisions, or agencies as may
5 be authorized by state law."

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval;
9 provided that the amendments made to section 378-2.5, Hawaii
10 Revised Statutes, by section 3 of this Act shall not be repealed
11 when section 27 of Act 278, Session Laws of Hawaii 2022, takes
12 effect; and provided further that the amendments made to section
13 846-2.7, Hawaii Revised Statutes by section 4 of this Act shall
14 not be repealed when section 28 of Act 278, Session Laws of
15 Hawaii 2022, takes effect.

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INTRODUCED BY: 

BY REQUEST

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Report Title: Department of Human Services; Criminal History Background Checks

Description:

Authorizes the Department of Human Services to conduct comprehensive background checks on current and prospective employees, volunteers, and contractors and contractor's employees and volunteers, in positions that require them to be in close proximity to minors and young adults receiving child welfare or child abuse prevention services, or vulnerable adults receiving adult protective services, social services, or certain other benefits and services from the department. Makes non-substantive conforming amendments to sections 345-2.5 and 846-2.7, Hawaii Revised Statutes. Effective upon approval.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services

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

PURPOSE: To provide authority to the Department of Human Services (DHS) to establish procedures to conduct comprehensive background checks on current and prospective employees, volunteers, contractors and contractors' employees and volunteers in positions that require these individuals to be in proximity to minors, young adults, or vulnerable adults who are receiving child welfare services, social services, or other benefits or services from DHS, including services intended to prevent abuse or neglect or assist youth aging out of foster care with obtaining and maintaining independent living skills. To make non-substantive changes to section 346-2.5, Hawaii Revised Statutes (HRS), for clarity and consistency, and to conform section 846-2.7, HRS, to amendments made to sections 346-16 and 346-17, HRS, by Act 133, Session Laws of Hawaii 2016 (Act 133). Deletes the term "agent" as it relates to "agents of contractors." The amendments are needed to align with the U.S. Federal Bureau of Investigation's (FBI) review of Hawaii law that the term is overly broad and undefined in chapter 846, HRS, as required to access the FBI's criminal record history information by Pub. L. No. 92-544.

MEANS: Amends sections 346-2.5, 378-2.5(d), and 846-2.7(b), HRS.

JUSTIFICATION: The department's current pre-employment background clearance process includes a State of Hawaii name-based criminal history record check and relies on prospective new hires to self-report any convictions outside of the State of Hawaii. This bill enables DHS to obtain comprehensive national and state finger-print based criminal history

record checks on current and prospective employees, volunteers, and contractors and contractor's employees, and volunteers in positions that require these individuals to be in close proximity to minors, young adults, or vulnerable adults who are receiving child welfare services, social services, or other benefits and services from DHS, including services intended to prevent abuse or neglect or assist youth aging out of foster care with obtaining and maintaining independent living skills.

This bill also amends section 846-2.7(b)(8), HRS, to conform to Act 133 by replacing "foster boarding homes" with "resource family homes."

Lastly, the bill deletes the term "agent" as it relates to contractor's agent or agents of contractors. The FBI recently informed the Department of the Attorney General that Hawaii's current 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.

Impact on the public: The public will benefit from DHS's ability to conduct comprehensive state and national background checks of certain current and prospective employees, volunteers, and contractors and contractors' employees and volunteers.

Impact on the department and other agencies: The proposed amendments will impact DHS's human resources and social services division staff. They will need to conduct additional state and national background checks and periodic rechecks of certain current and prospective employees, volunteers, and contractors, their employees, and volunteers. As a result, the background check process may cause a delay in hiring

prospective employees. In addition, the Hawaii Criminal Justice Data Center may experience an increased demand for services by individuals.

Additional national criminal history checks may impact potential employees, contracted providers, and those who volunteer with these organizations.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HMS 904, HMS 301.

OTHER AFFECTED
AGENCIES: The Department of the Attorney General.

EFFECTIVE DATE: Upon approval.