
A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

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

1 SECTION 1. To protect the health and safety of the elderly
2 and disabled, the legislature recognizes the need to generate
3 timely and accurate background checks in the form of positive
4 fingerprint identification for persons providing care or having
5 access to residents of skilled nursing facilities, intermediate
6 care facilities, adult residential care homes, expanded adult
7 residential care homes, assisted living facilities, home health
8 agencies, hospices, adult day health centers, special treatment
9 facilities, therapeutic living programs, intermediate care
10 facilities for the mentally retarded, hospitals, rural health
11 centers, and rehabilitation agencies, including applicants for
12 licensure to any of these facilities, facility operators,
13 prospective facility employees and facility adult volunteers,
14 and, in the case of any facility operated in a private
15 residence, all adults living in the home other than the clients,
16 and service providers who have direct contact with individuals
17 receiving services who may be frail, elderly, or disabled.



1 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§321- Criminal history record checks.** (a) For the
5 purposes of this section:

6 "Adults" means individuals aged eighteen years or older.

7 "Applicant" means a person or entity seeking licensure to
8 operate a healthcare facility. If the applicant is an entity,
9 the term "applicant" shall also include its principals,
10 directors, partners, managers, agents, and representatives to
11 the extent that any of these individuals will have access to or
12 contact with clients, their finances, assets, personal property,
13 medical records, or individually identifiable information.

14 "Conviction for a relevant crime" means any federal or
15 state conviction for any relevant crime as defined in this
16 section.

17 "Criminal history record name inquiry" means a record check
18 by name for any federal or state conviction for any relevant
19 crime as defined in this section.

20 "Department" means the department of health.

21 "Direct patient access employee" means any individual,
22 including a volunteer, who has access to a patient or resident



1 of a healthcare facility, or any provider through employment or
2 through an agreement or contract with such a facility or
3 provider. Such individuals include, but are not limited to:
4 physicians, nurses, nursing assistants, home health aides,
5 therapists, activities personnel, and support staff (i.e.
6 housekeeping, dietary, etc.) who have direct access to patients
7 or patient belongings.

8 "Disqualifying information" means a conviction for a
9 relevant crime or a finding of patient or resident abuse.

10 "Finding of patient or resident abuse" means a
11 substantiated finding by a state agency under section
12 1819(g) (1) (C) or 1919(g) (1) (C) of the Social Security Act (42
13 U.S.C. §§1395i-3(g) (1) (C) and 1396r(g) (1) (C)) or a federal
14 agency that a direct patient access employee has committed an
15 act of patient or resident abuse or neglect or has
16 misappropriated patient or resident property.

17 "Healthcare facility" means a facility or setting where a
18 frail, elderly, or disabled adult receives care or is provided
19 living accommodations such as a skilled nursing facility,
20 intermediate care facility, adult residential care home,
21 expanded adult residential care home, assisted living facility,
22 home health agency, hospice, adult day health center, special



1 treatment facility, therapeutic living program, intermediate
2 care facility for the mentally retarded, hospital, rural health
3 center, and rehabilitation agency.

4 "Name inquiry" means a criminal history record check
5 conducted by utilizing the name and other identifying
6 information of the individual, in lieu of a fingerprint check.

7 "Operator" means an individual or entity that is licensed
8 or is seeking licensure to operate a healthcare facility and,
9 therefore, is responsible for the management and overall
10 operations of that healthcare facility.

11 "Relevant crime" means:

12 (1) Any offense described in 42 United States Code
13 §1320a-7 (section 1128(a) of the Social Security Act);

14 or

15 (2) A crime of such a serious nature or circumstance that
16 the department finds its perpetrator to pose a risk to
17 the health, safety, or well-being of a patient or
18 resident. This includes but is not limited to,
19 murder, manslaughter, assault, sex offenses, domestic
20 violence, theft or forgery, arson, kidnapping, or
21 possession, use, sale, manufacture, or distribution of
22 dangerous drugs or controlled substances.



1 (b) The department shall adopt rules pursuant to chapter
2 91 to ensure the reputable and responsible character of all
3 prospective applicants, operators, direct patient access
4 employees, and adult volunteers of a healthcare facility, and,
5 in the case of any healthcare facility operated in a private
6 residence, all adults living in the home other than the clients.
7 These rules, among other things, shall specify how the
8 department may conduct criminal history record checks in
9 accordance with section 846-2.7.

10 (c) All applicants and prospective operators shall:
11 (1) Be subject to criminal history record checks in
12 accordance with section 846-2.7;
13 (2) Authorize the disclosure to the department of criminal
14 history record information;
15 (3) Sign a waiver form stating that the department shall
16 not be liable to the applicant or prospective
17 operator; and
18 (4) Consent to be fingerprinted for the purpose of
19 requesting criminal history record information from
20 the Federal Bureau of Investigation and the Hawaii
21 criminal justice data center.



1 (d) All prospective direct patient access employees and
2 adult volunteers of healthcare facilities and, in the case of
3 any healthcare facility operated in a private residence, all
4 adults living in the home other than the clients shall consent
5 to be fingerprinted, shall provide all necessary information for
6 the purpose of enabling the department to conduct the criminal
7 history record checks, and shall sign a waiver form stating that
8 the department shall not be liable to the employee or volunteer.

9 (e) The department may request criminal history record
10 information through the Federal Bureau of Investigation and the
11 Hawaii criminal justice data center on all prospective
12 applicants, operators, direct patient access employees and adult
13 volunteers of healthcare facilities. In addition, in the case
14 of any healthcare facility to be operated in a private
15 residence, the department of health may request criminal history
16 record information through the Federal Bureau of Investigation
17 and the Hawaii criminal justice data center for all adults
18 residing in the home who are not clients.

19 (f) The department shall make a name inquiry into the
20 criminal history records or conduct criminal history record
21 checks of all prospective applicants, operators, direct patient
22 access employees, and adult volunteers at the healthcare



1 facility, and, in the case of any healthcare facility operated
2 in a private residence, all adults living in the home other than
3 the clients.

4 (g) The department may revoke or suspend a current
5 license, impose penalties or fines, or deny an application for a
6 license under rules adopted pursuant to chapter 91 if the
7 applicant, operator, employee, or adult volunteer at the
8 healthcare facility or, in the case of any healthcare facility
9 operated in a private residence, any adult living in the home
10 other than the client, refuses to authorize the department to
11 conduct a criminal history record check, obtain criminal history
12 record information for verification, or consent to be
13 fingerprinted. In addition, the department may revoke or
14 suspend a current license, impose penalties or fines, or deny an
15 application for a license if the applicant, operator, direct
16 patient access employee or adult volunteer at the healthcare
17 facility, or, in the case of a healthcare facility operated in a
18 private residence, any adult living in the home other than the
19 client, has any disqualifying information. The department may
20 also revoke or suspend a current license, impose penalties or
21 fines, or deny an application for a license if the department
22 determines, based upon consideration of the criminal history



1 information, that the applicant, operator, direct patient access
2 employee, or adult volunteer at the healthcare facility, or, in
3 the case of a healthcare facility operated in a private
4 residence, any adult living in the home other than the client,
5 is unsuitable to work or live in close proximity to the
6 residents of the healthcare facility such that the health,
7 safety, and welfare of the residents of the healthcare facility
8 could be at risk.

9 (h) Notwithstanding any other law to the contrary, for
10 purposes of this section, the department shall be exempt from
11 section 831-3.1 and need not conduct investigations,
12 notifications, or hearings under this section in accordance with
13 chapter 91.

14 (i) The fee charged by the Federal Bureau of Investigation
15 and the Hawaii criminal justice data center to perform criminal
16 history record checks may be passed on to all applicants,
17 operators, direct patient access employees, and adult volunteers
18 at the healthcare facility and, in the case of a facility
19 operated in a private residence, all adults living in the home
20 other than the clients.

21 (j) The department, in obtaining and relying upon the
22 criminal history record checks, is presumed to be acting in good



1 faith and shall be immune from civil liability for taking or
2 recommending action based upon the criminal history record
3 information. The good faith presumption may be rebutted upon a
4 showing by the person or entity of a lack of good faith, and
5 proof by a preponderance of the evidence, that the department
6 relied upon information or opinion that it knew was false or
7 misleading.

8 (k) Any applicant or operator who receives information
9 from the department relating to a criminal history record check
10 of a direct patient access employee or adult volunteer or, in
11 the case of a healthcare facility operated in a private
12 residence, an adult living in the home other than the clients,
13 is presumed to be acting in good faith and shall be immune from
14 civil liability for taking or recommending action based upon the
15 department's recommendation or direction. Nothing in this
16 section shall affect rights, obligations, remedies, liabilities,
17 or standards of proof under chapters 368 and 378.

18 Criminal history record information shall be used
19 exclusively by the department for the sole purpose of
20 determining whether an applicant, operator, direct patient
21 access employee, or adult volunteer at a healthcare facility,
22 or, in the case of a facility operated in a private residence,



1 any adult living in the home other than the clients is suitable
2 for working or living in close proximity to residents of a
3 healthcare facility such that the health, safety, and welfare of
4 the residents would not be at risk."

5 SECTION 3. Chapter 346, Hawaii Revised Statutes, is
6 amended by adding to part IV a new section to be appropriately
7 designated and to read as follows:

8 **"§346- Criminal history record checks. (a) For the**
9 **purposes of this section:**

10 "Conviction for a relevant crime" means any federal or
11 state conviction for any relevant crime as defined in this
12 section.

13 "Criminal history record name inquiry" means a search by
14 name, and other identifying information, using the state
15 computerized criminal history record information system.

16 "Department" means the department of human services.

17 "Name inquiry" means a criminal history record check
18 conducted by utilizing the name and other identifying
19 information of the individual, in lieu of a fingerprint check.

20 "Relevant crime" means:



1 (1) Any offense described in 42 United States Code
2 §1320a-7 (section 1128(a) of the Social Security Act);
3 or

4 (2) A crime of such a serious nature or circumstance that
5 the department finds its perpetrator to pose a risk to
6 the health, safety, or well-being of a patient or
7 resident. This includes but is not limited to,
8 murder, manslaughter, assault, sex offenses, domestic
9 violence, theft or forgery, arson, kidnapping, or
10 possession, use, sale, manufacture, or distribution of
11 dangerous drugs or controlled substances.

12 (b) The department shall adopt rules pursuant to chapter
13 91 establishing standards regarding the reputable and
14 responsible character of service providers who have direct
15 contact with individuals receiving services under this part,
16 including:

17 (1) Licensed adult day care center operators, employees,
18 new employees, subcontracted service providers and
19 their employees, and adult volunteers;

20 (2) Purchase of service contracted and subcontracted
21 service providers and their employees serving clients
22 of the adult and community care services branch;



- 1 (3) Foster grandparent program, senior companion program,
2 and respite companion program participants; and
- 3 (4) Contracted and subcontracted service providers and
4 their employees and new employees who provide home and
5 community-based services under section 1915(c) of the
6 Social Security Act (42 U.S.C. §1396n(c)).
- 7 (c) Individuals identified in subsection (b) shall:
- 8 (1) Meet the standards regarding the reputable and
9 responsible character of service providers;
- 10 (2) Be subject to criminal history record checks in
11 accordance with section 846-2.7;
- 12 (3) Shall sign a waiver form stating that the department
13 shall not be liable to the individual; and
- 14 (4) Provide consent to the department to obtain criminal
15 history record information for verification.
- 16 New employees and adult volunteers shall consent to be
17 fingerprinted, shall supply the necessary information to enable
18 the criminal history record check prior to the start of
19 employment or volunteering, and shall sign a waiver form stating
20 that the department shall not be liable to the employee or
21 volunteer.



1 (d) The department shall obtain criminal history record
2 information through the Hawaii criminal justice data center on
3 individuals identified in subsection (b) for the first two years
4 that an individual identified in subsection (b) is required to
5 have such checks, and shall conduct a criminal history record
6 name inquiry into the state criminal history records annually or
7 biennially thereafter.

8 (e) The department may take appropriate action if it finds
9 that the criminal history of the individual identified under
10 subsection (a) may pose a risk to the health, welfare, and
11 safety of service recipients. Such action may include:

12 (1) Denying a certificate of approval to operate an adult
13 day care center; or

14 (2) Refusing to use an individual as a service provider.

15 (f) Notwithstanding any other law to the contrary, for
16 purposes of this section, the department shall be exempt from
17 section 831-3.1 and need not conduct investigations,
18 notifications, or hearings under this section in accordance with
19 chapter 91.

20 (g) The costs of processing fingerprints and the state
21 criminal history record checks may be borne by the employer or
22 by the employee or individual who is being screened.



1 (h) The department, in obtaining and relying upon the
2 results of the state criminal history record checks, is presumed
3 to be acting in good faith and shall be immune from civil
4 liability for taking or recommending action based upon the
5 criminal history record information. The good faith presumption
6 may be rebutted upon a showing by the person or entity alleging
7 a lack of good faith, and by a preponderance of the evidence,
8 that the department relied upon information or opinion that it
9 knew was false or misleading.

10 (i) Nothing in this section shall affect the rights,
11 obligations, remedies, liabilities, or standards of proof under
12 chapters 368 and 378.

13 (j) The criminal history record information obtained under
14 this section shall be used exclusively by the department for the
15 purpose of establishing the reputable and responsible character
16 of the individuals identified in subsection (b) such that the
17 health, welfare, and safety of service recipients will not be at
18 risk."

19 SECTION 4. Section 378-2.5, Hawaii Revised Statutes, is
20 amended by amending subsection (d) to read as follows:

21 "(d) Notwithstanding subsections (b) and (c), the
22 requirement that inquiry into and consideration of a prospective



1 employee's conviction record may take place only after the
2 individual has received a conditional job offer, and the
3 limitation to the most recent ten-year period, excluding the
4 period of incarceration, shall not apply to employers who are
5 expressly permitted to inquire into an individual's criminal
6 history for employment purposes pursuant to any federal or state
7 law other than subsection (a), including:

- 8 (1) The State or any of its branches, political
9 subdivisions, or agencies pursuant to section 831-3.1
10 and section 78-2.7;
- 11 (2) The department of education pursuant to section
12 302A-601.5;
- 13 (3) The department of health with respect to employees,
14 providers, or subcontractors in positions that place
15 them in direct contact with clients when providing
16 non-witnessed direct mental health services pursuant
17 to section 321-171.5;
- 18 (4) The judiciary pursuant to section 571-34;
- 19 (5) The counties pursuant to section 846-2.7;
- 20 (6) Armed security services pursuant to section 261-17(b);
- 21 (7) Providers of a developmental disabilities domiciliary
22 home pursuant to section 333F-22;



- 1 (8) Private schools pursuant to section 378-3(8) and
2 section 302C-1;
- 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 49 U.S.C. §44901 or individuals with unescorted access
13 to an aircraft of an air carrier or foreign carrier or
14 in a secured area of an airport in the United States
15 pursuant to 49 U.S.C. §44936(a);
- 16 (13) The department of human services pursuant to [~~section~~]
17 sections 346- and 352-5.5;
- 18 (14) The public library system pursuant to section
19 302A-601.5;
- 20 (15) The department of public safety pursuant to section
21 353C-5;



- 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; [~~and~~]
- 4 (17) The board of directors of an association of apartment
5 owners, or the manager of a condominium project
6 pursuant to section 514A-82.1[~~-~~]; and
- 7 (18) The department of health pursuant to section
8 321-____."

9 SECTION 5. 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 on operators of adult foster
13 homes or developmental disabilities domiciliary homes
14 and their employees, as provided by section 333F-22;
- 15 (2) The department of health on prospective employees,
16 persons seeking to serve as providers, or
17 subcontractors in positions that place them in direct
18 contact with clients when providing non-witnessed
19 direct mental health services as provided by section
20 321-171.5;
- 21 (3) The department of health on all applicants for
22 licensure for, operators for, and prospective



1 employees, and volunteers at one or more of the
2 following: skilled nursing facility, intermediate
3 care facility, adult residential care home, expanded
4 adult residential care homes, assisted living
5 facility, home health agency, hospice, adult day
6 health center, special treatment facility, therapeutic
7 living program, intermediate care facility for the
8 mentally retarded, hospital, rural health center and
9 rehabilitation agency, and, in the case of any of the
10 above-related facilities operating in a private
11 residence, on any adult living in the facility other
12 than the client as provided by section 321- ;

13 [~~3~~] (4) The department of education on employees,
14 prospective employees, and teacher trainees in any
15 public school in positions that necessitate close
16 proximity to children as provided by section
17 302A-601.5;

18 [~~4~~] (5) The counties on employees and prospective
19 employees who may be in positions that place them in
20 close proximity to children in recreation or child
21 care programs and services;



- 1 ~~[(+5)]~~ (6) The county liquor commissions on applicants for
2 liquor licenses as provided by section 281-53.5;
- 3 ~~[(+6)]~~ (7) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;
- 7 ~~[(+7)]~~ (8) The department of human services on prospective
8 adoptive parents as established under section
9 346-19.7;
- 10 ~~[(+8)]~~ (9) The department of human services on applicants to
11 operate child care facilities, prospective employees
12 of the applicant, and new employees of the provider
13 after registration or licensure as provided by section
14 346-154;
- 15 ~~[(+9)]~~ (10) The department of human services on persons
16 exempt pursuant to section 346-152 to be eligible to
17 provide child care and receive child care subsidies as
18 provided by section 346-152.5;
- 19 ~~[(+10)]~~ (11) The department of human services on operators
20 and employees of home and community-based case
21 management agencies and operators and other adults,



1 except for adults in care, residing in foster family
2 homes as provided by section 346-335;

3 ~~[(11)]~~ (12) The department of human services on staff
4 members of the Hawaii youth correctional facility as
5 provided by section 352-5.5;

6 ~~[(12)]~~ (13) The judiciary on employees and applicants at
7 detention and shelter facilities as provided by
8 section 571-34;

9 ~~[(13)]~~ (14) The department of public safety on employees and
10 prospective employees who are directly involved with
11 the treatment and care of persons committed to a
12 correctional facility or who possess police powers
13 including the power of arrest as provided by section
14 353C-5;

15 ~~[(14)]~~ (15) The department of commerce and consumer affairs
16 on applicants for private detective or private guard
17 licensure as provided by section 463-9;

18 ~~[(15)]~~ (16) Private schools and designated organizations on
19 employees and prospective employees who may be in
20 positions that necessitate close proximity to
21 children; provided that private schools and designated
22 organizations receive only indications of the states



1 from which the national criminal history record
2 information was provided as provided by section
3 302C-1;

4 [~~(16)~~] (17) The public library system on employees and
5 prospective employees whose positions place them in
6 close proximity to children as provided by section
7 302A-601.5;

8 [~~(17)~~] (18) The State or any of its branches, political
9 subdivisions, or agencies on applicants and employees
10 holding a position that has the same type of contact
11 with children, dependent adults, or persons committed
12 to a correctional facility as other public employees
13 who hold positions that are authorized by law to
14 require criminal history record checks as a condition
15 of employment as provided by section 78-2.7; [~~and~~]

16 (19) The department of human services on licensed adult day
17 care center operators, employees, new employees,
18 subcontracted service providers and their employees,
19 and adult volunteers as provided by section 346- ;

20 (20) The department of human services on purchase of
21 service contracted and subcontracted service providers
22 and their employees serving clients of the adult and



1 community care services branch, as provided by section
2 346- ;

3 (21) The department of human services on foster grandparent
4 program, senior companion program, and respite
5 companion program participants as provided by section
6 346- ;

7 (22) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under section 1915(c) of the Social
11 Security Act (42 U.S.C. §1396n(c)), as provided by
12 section 346- ; and

13 ~~[(18)]~~ (23) Any other organization, entity, or the State,
14 its branches, political subdivisions, or agencies as
15 may be authorized by state law."

16 SECTION 6. There shall be established a working committee
17 of five members with representatives from the department of
18 health, department of human services, provider organizations and
19 community, as appointed by the directors of the department of
20 health and department of human services to meet minimally on a
21 quarterly basis to review and evaluate the process undertaken by
22 the departments in effecting criminal history record checks and



1 provide recommendations to the directors of the departments as
2 relevant. Members shall serve a term of two years which may be
3 extended at the discretion of the directors of the departments
4 and will report to departmental administrators as designated by
5 the directors.

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

8 SECTION 8. This Act shall take effect upon its approval.
9



Report Title:

Criminal History Checks; Healthcare Providers

Description:

Requires criminal history record checks on persons providing care or having access to residents of healthcare facilities.
(HD1)

