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# 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 a contractor's employees, agents, or  
5 volunteers, in positions that require these individuals to be in  
6 close proximity to minors, young adults, or vulnerable adults  
7 who are receiving child welfare services, social services, or  
8 other benefits and services from the department of human  
9 services, including services intended to prevent abuse or  
10 neglect or assist youth aging out of foster care with obtaining  
11 and maintaining independent living skills.

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

14       "~~[§]346-2.5[§]—Criminal history record]~~ Background checks.

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



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  
6 846-2.7. Information obtained pursuant to this subsection shall  
7 be 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 of  
18 federal tax information. Termination or denial of employment or  
19 refusal to secure services under this subsection shall only  
20 occur after appropriate notification to the current or  
21 prospective employee [~~or applicant,~~] or contractor of the findings



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

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

18 (d) Current or prospective employees, volunteers, and  
19 contractors, and a contractor's employees, agents, and  
20 volunteers, who are in positions that place them in close  
21 proximity to minors, young adults, or vulnerable adults who are



1 receiving child welfare services, social services, or other  
2 benefits or services from the department, including services  
3 intended to prevent abuse or neglect or assist youth aging out  
4 of foster care with obtaining and maintaining independent living  
5 skills shall:

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

8 (2) Provide consent to the department to obtain other  
9 criminal history record information for verification;  
10 and

11 (3) Be subject to adult abuse registry and child abuse and  
12 neglect registry checks.

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

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



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

4       (f) The department may terminate or deny employment to a  
5 current or prospective employee or volunteer, or terminate or  
6 refuse to secure the services of a contractor or its employee,  
7 agent, or volunteer, if the department finds by reason of the  
8 nature and circumstances of the results of the background  
9 investigation conducted under subsections (d) and (e) that the  
10 current or prospective employee, volunteer, contractor, or  
11 contractor's employee, agent, or volunteer may pose a risk to  
12 the health, safety, security, or well-being of minors, young  
13 adults, or vulnerable adults who are receiving child welfare  
14 services, social services, or other benefits or services from  
15 the department, including services intended to prevent abuse or  
16 neglect or assist youth aging out of foster care with obtaining  
17 and maintaining independent living skills. Termination or  
18 denial of employment or refusal to secure services under this  
19 subsection shall only occur after appropriate notification to  
20 the current or prospective employee or contractor of the  
21 findings of the background investigation, and after the current



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

5 ~~[(e)]~~ (g) The department shall be exempt from section  
6 831-3.1 and need not conduct investigations, notifications, or  
7 hearings under this section in accordance with chapter 91.

8 (h) For purposes of this section:

9 "Child welfare services" has the same meaning as in section  
10 346-1.

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

12 "Vulnerable adult" has the same meaning as in section  
13 346-222.

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

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



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

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

15       (2) The department of education pursuant to section  
16 302A-601.5;

17       (3) The department of health with respect to employees,  
18 providers, or subcontractors in positions that place  
19 them in direct contact with clients when providing  
20 non-witnessed direct mental health services pursuant  
21 to section 321-171.5;



- 1 (4) The judiciary pursuant to section 571-34;
- 2 (5) The counties pursuant to section 846-2.7(b)(5), (33),
- 3 (34), (35), (36), and (38);
- 4 (6) Armed security services pursuant to section 261-17(b);
- 5 (7) Providers of a developmental disabilities domiciliary
- 6 home pursuant to section 321-15.2;
- 7 (8) Private schools pursuant to sections 302C-1 and
- 8 378-3(8);
- 9 (9) Financial institutions in which deposits are insured
- 10 by a federal agency having jurisdiction over the
- 11 financial institution pursuant to section 378-3(9);
- 12 (10) Detective agencies and security guard agencies
- 13 pursuant to sections 463-6(b) and 463-8(b);
- 14 (11) Employers in the business of insurance pursuant to
- 15 section 431:2-201.3;
- 16 (12) Employers of individuals or supervisors of individuals
- 17 responsible for screening passengers or property under
- 18 title 49 United States Code section 44901 or
- 19 individuals with unescorted access to an aircraft of
- 20 an air carrier or foreign carrier or in a secured area





- 1 of an airport in the United States pursuant to title  
2 49 United States Code section 44936(a);
- 3 (13) The department of human services pursuant to sections  
4 346-2.5, 346-97, and 352-5.5;
- 5 (14) The public library system pursuant to section  
6 302A-601.5;
- 7 (15) The department of public safety pursuant to section  
8 353C-5;
- 9 (16) The board of directors of a cooperative housing  
10 corporation or the manager of a cooperative housing  
11 project pursuant to section 421I-12;
- 12 (17) The board of directors of an association under chapter  
13 514B, or the managing agent or resident manager of a  
14 condominium pursuant to section 514B-133; and
- 15 (18) The department of health pursuant to section  
16 321-15.2."

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

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

- 20 (1) The department of health or its designee on operators  
21 of adult foster homes for individuals with



1 developmental disabilities or developmental  
2 disabilities domiciliary homes and their employees, as  
3 provided by section 321-15.2;

4 (2) The department of health or its designee on  
5 prospective employees, persons seeking to serve as  
6 providers, or subcontractors in positions that place  
7 them in direct contact with clients when providing  
8 non-witnessed direct mental health or health care  
9 services as provided by section 321-171.5;

10 (3) The department of health or its designee on all  
11 applicants for licensure or certification for,  
12 operators for, prospective employees, adult  
13 volunteers, and all adults, except adults in care, at  
14 healthcare facilities as defined in section 321-15.2;

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

19 (5) The counties on employees and prospective employees  
20 who may be in positions that place them in close



1 proximity to children in recreation or child care  
2 programs and services;

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

5 (7) The county liquor commissions on employees and  
6 prospective employees involved in liquor  
7 administration, law enforcement, and liquor control  
8 investigations;

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

13 (9) The department of human services on prospective  
14 adoptive parents as established under section  
15 346-19.7;

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



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

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

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

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

(14) The department of human services on employees,  
prospective employees, and volunteers of contracted  
providers and subcontractors in positions that place  
them in close proximity to youth when providing  
services on behalf of the office or the Hawaii youth  
correctional facility as provided by section 352D-4.3;



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

3 (16) The department of public safety on employees and  
4 prospective employees who are directly involved with  
5 the treatment and care of persons committed to a  
6 correctional facility or who possess police powers  
7 including the power of arrest as provided by section  
8 353C-5;

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

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

19 (19) The public library system on employees and prospective  
20 employees whose positions place them in close



1 proximity to children as provided by section  
2 302A-601.5;

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

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

15 (22) The department of human services on purchase of  
16 service contracted and subcontracted service  
17 providers, and their employees [~~serving clients of the~~  
18 ~~adult protective and community services branch~~],  
19 agents, and volunteers, as provided by [section]  
20 sections 346-2.5 and 346-97;



1 (23) The department of human services on foster grandparent  
2 program, senior companion program, and respite  
3 companion program participants as provided by section  
4 346-97;

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

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

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



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

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

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

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

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

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

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

18 (29) The department of commerce and consumer affairs on  
19 applicants for licensure and persons licensed under  
20 title 24;

21 (30) The Hawaii health systems corporation on:





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



1           that places them in close proximity to children, as  
2           provided in section 302D-33;

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

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

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

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

19       (37)   The State and counties on employees, prospective  
20          employees, volunteers, and contractors whose position  
21          responsibilities require unescorted access to secured



1 areas and equipment related to a traffic management  
2 center;

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

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

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

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

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

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



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  
7 329D-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



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,



1           and on current or prospective employees, and  
2           volunteers, who are in a position that requires close  
3           proximity to minors, young adults, or vulnerable  
4           adults, as provided by section 346-2.5;

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

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

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



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

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

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

SECTION 6. This Act shall take effect on July 1, 2060.



S.B. NO. 3112  
S.D. 1  
H.D. 1

**Report Title:**

Department of Human Services; Criminal History Background  
Checks; Employees; Contractors; Minors; Young Adults; Vulnerable  
Adults

**Description:**

Authorizes the department of human services to conduct  
comprehensive background checks on current and prospective  
employees, volunteers, and contractors, and a contractor's  
employees, agents, or volunteers, in positions that require them  
to be in close proximity to certain minors, young adults, or  
vulnerable adults who are receiving services or benefits from  
the department of human services. Effective 7/1/2060. (HD1)

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

