
A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

PART I

SECTION 1. The purpose of this part is to authorize 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 minors, young adults, or vulnerable adults who are receiving child welfare services, social services, or other benefits and services from the department of human services intended to prevent abuse or neglect or assist youth aging out of foster care with obtaining and maintaining independent living skills.

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

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

(a) The department shall develop procedures for obtaining verifiable information regarding the criminal history of any



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

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



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

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

19 (d) Current or prospective employees, volunteers, and
20 contractors, and a contractors' employees, agents, and
21 volunteers, who are in positions that place them in close



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



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

PART II

SECTION 5. The purpose of this part is to replace the term "foster boarding home" in sections 321-11.2(d) and 571-32.1, Hawaii Revised Statutes, with "resource family homes", to conform to Act 133, Session Laws of Hawaii 2016.

SECTION 6. Section 321-11.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The rules of the department of human services adopted under authority of section 346-17, which prescribe the standards of conditions and competence of operation of child ~~[foster boarding homes]~~ resource family homes shall apply to adult foster homes. Notwithstanding chapter 91, to the contrary, the rules shall be considered adopted by the department of health on July 1, 1986, for the purpose of regulating adult foster care



1 homes and shall be valid until the department of health adopts
2 rules pursuant to chapter 91. The department of health shall
3 adopt rules pursuant to chapter 91 necessary for the purposes of
4 this section."

5 SECTION 7. Section 571-32.1, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§571-32.1 Contract and fee-for-service accommodations.

8 To provide for children under section 571-32, the family court
9 may provide, on a contractual or on fee-for-service basis,
10 accommodations in child caring institutions or [~~foster boarding~~
11 ~~homes~~] resource family homes which meet the intent of section
12 346-17."

13 PART III

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on December 31,
17 2050.



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 a contractor's employees, agents, or volunteers, in positions that require them 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 the Department of Human Services intended to prevent abuse or neglect or assist youth aging out of foster care with obtaining and maintaining independent living skills. Replaces the term "foster boarding home" in sections 321-11.2(d), 571-32.1, and 846 2.7(b)(8), Hawaii Revised Statutes, with "resource family homes", to conform to Act 133, Session Laws of Hawaii 2016. Effective 12/31/2050. (SD1)

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

