
A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

- 1 SECTION 1. Chapter 346, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:
- 4 "§346-A Background checks; criminal history; scope; adults
5 having responsibilities relating to or in close proximity to
6 minors and vulnerable adults. (a) Notwithstanding any law to
7 the contrary, but subject to the limitations in subsection (b),
8 the scope of background checks specified in each of the sections
9 listed below shall include all relevant actions of the subject
10 individual during the individual's age of majority; provided
11 that criminal history record checks shall only include criminal
12 actions for which the subject was convicted:
- 13 (1) Section 346-17;
14 (2) Section 346-17.6;
15 (3) Section 346-19.7;
16 (4) Section 346-B;
17 (5) Section 346-97;



1 (6) Section 346-152.5;

2 (7) Section 346-154;

3 (8) Section 352-5.5; and

4 (9) Section 352D-4.3.

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

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

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

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

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

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

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

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



1 transfer to the new position occurs or would
 2 occur after June 30, 2022; or
 3 (C) Employee is already working under terms that
 4 include the background check requirements
 5 described in subsection (a)."

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

9 "**§346-B Background checks; child welfare services.** (a)
 10 The department shall develop procedures for obtaining verifiable
 11 information regarding the criminal history of any person who is
 12 a current or prospective employee, volunteer, principal, or
 13 contractor, or is a principal, employee, agent, or volunteer of
 14 a contractor or subcontractor who is employed or seeking
 15 employment with the department if the person will bear
 16 responsibilities for or be in close proximity to minors, young
 17 adults, or vulnerable adults who are in need of child welfare
 18 services, social services, or other benefits and services,
 19 including services intended to prevent abuse or neglect or
 20 assist youth aging out of foster care with obtaining and
 21 maintaining independent living skills, from the department. The



1 procedures shall include criminal history record checks in
2 accordance with section 846-2.7 and other background checks
3 deemed necessary by the department. Information obtained
4 pursuant to this subsection shall be used exclusively by the
5 department for the purpose of determining whether a person is
6 suited to bear responsibilities relating to minors or work in
7 close proximity to minors.

8 (b) The department may terminate or deny the employment or
9 services of to any employee, applicant, or volunteer or
10 terminate or refuse to secure the services of a contractor or
11 subcontractor, its principals, employees, or volunteers if the
12 department finds by reason of the nature and circumstances of
13 the background investigation conducted under subsection (a) that
14 the employee, applicant, volunteer, contractor or subcontractor,
15 or contractor's or subcontractor's principals, employees, or
16 volunteers are not suited to bear responsibilities relating to
17 or work in close proximity to minors, young adults, or
18 vulnerable adults in need of child welfare services, social
19 services, or other benefits and services, including services
20 intended to prevent abuse or neglect or assist youth aging out
21 of foster care with obtaining and maintaining independent living



1 skills from the department. Termination or denial of employment
2 under this subsection shall only occur after appropriate
3 notification to the employee, applicant, volunteer, principal,
4 or contractor of the findings of the background investigation,
5 and after the employee, applicant, volunteer, principal, or
6 contractor is given an opportunity to respond to the findings.
7 Nothing in this subsection shall abrogate any applicable appeal
8 rights under chapters 76 and 89, or administrative rules of the
9 department.

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

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

16 "Background check" means any criminal history record
17 check, child abuse and neglect registry check, sex offender
18 registry check, adult abuse perpetrator check, or other
19 background check that analyzes relevant information regarding
20 the suitability of a subject individual to bear responsibilities



1 relating to or work in close proximity to minors, young adults,
2 or vulnerable adults, as applicable.

3 "Principal" means an individual owner, individual manager,
4 or other individual in control of an entity that is not a
5 natural person."

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

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

9 "(f) As a condition for a certificate of approval, any
10 organization, institution, or resource family home~~[, including];~~
11 the principals, operators, employees, and new employees of any
12 organization, institution, or resource family home; and all
13 adults residing in ~~[the]~~ a respective resource family home,
14 shall:

15 (1) Meet all standards and requirements established by the
16 department;

17 (2) Be subject to criminal history record checks in
18 accordance with section 846-2.7, ~~[and]~~ child abuse and
19 neglect registry checks, and any other background
20 checks deemed necessary by the department, in
21 accordance with departmental procedures; and



1 (3) Provide consent to the department or its designee to
2 obtain criminal history record [~~and~~] information,
3 child abuse and neglect registry information[~~;~~], and
4 any other relevant background information.

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

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

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

9 (1) A criminal history record check through the Hawaii
10 criminal justice data center on all principals,
11 operators, employees, and new employees of child care
12 institutions, child placing organizations, and
13 resource family homes, including all adults residing
14 in the resource family homes, subject to checks
15 pursuant to section 846-2.7; [~~and~~]
16 (2) A child abuse and neglect registry check on all
17 principals, operators, employees, and new employees of
18 child care institutions, child placing organizations,
19 and adults residing in a resource family home subject
20 to licensure in accordance with departmental
21 procedures[~~;~~]; and



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

4 (k) The department may deny a certificate of approval if a
5 principal, an operator, an employee, or a new employee of a
6 child care institution or child placing organization's facility,
7 or any adult residing in a resource family home, was convicted
8 of a crime other than a minor traffic violation involving a fine
9 of \$50 or less and if the department finds that the criminal
10 history record [~~or~~], child abuse registry history, or any other
11 background check of [~~an~~] the convicted person shows that the
12 convicted person:

13 (1) Is not suited to bear responsibilities relating to or
14 poses a risk to the health, safety, or well-being of
15 the children in care, if the convicted person is an
16 operator, employee, new employee[~~r~~]; or

17 (2) Poses a risk to the health, safety, or well-being of
18 the children in care, if the convicted person is an
19 adult residing in [a] the resource family home [~~poses~~
20 ~~a risk to the health, safety, or well-being of the~~
21 ~~children in care]."~~



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

3 "(a) [A] If the principals, employees, and volunteers of a
4 provider have been cleared by criminal history record checks,
5 and any other background checks deemed necessary by the
6 department, the provider may provide no cost emergency shelter
7 and related services to a consenting minor if the provider
8 reasonably believes that:

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

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

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

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



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

3 "(b) The department shall develop procedures for obtaining
4 verifiable information regarding the criminal history [~~and~~]
5 information, child abuse and neglect registry information, and
6 any other relevant background information of persons who are
7 seeking to become adoptive parents. The department or its
8 designee shall obtain criminal history record information
9 through the Hawaii criminal justice data center in accordance
10 with section 846-2.7, [~~and~~] child abuse record information from
11 the department, and any other relevant background information
12 from relevant sources in accordance with departmental
13 procedures.

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

17 (1) Meet all standards and requirements established by the
18 department;

19 (2) Be subject to criminal history record checks in
20 accordance with section 846-2.7, [~~and~~] child abuse and
21 neglect registry checks, and any other background



1 checks deemed necessary by the department, in
2 accordance with departmental procedures; and
3 (3) Provide consent to the department to obtain criminal
4 history record [~~and~~], information, child abuse and
5 neglect registry information[~~-~~] and any other
6 background information deemed necessary by the
7 department.

8 Information obtained pursuant to subsection (b) and this
9 subsection shall be used by the department for the purpose of
10 determining whether or not a person is suitable to be an
11 adoptive parent. All decisions shall be subject to federal laws
12 and regulations.

13 (d) The department may deny a person's application to
14 adopt a child if either of the prospective adoptive parents or
15 any adult residing in the prospective adoptive home was
16 convicted of an offense for which incarceration is a sentencing
17 option, and if the department finds by reason of the nature and
18 circumstances of the crime or other background information that
19 either of the prospective adoptive parents, or any adult
20 residing in the prospective adoptive home, poses a risk to the
21 health, safety, or well-being of the child. A denial shall



1 occur only after appropriate investigation, notification of
2 results and planned action, and opportunity to meet and rebut
3 the finding, all of which need not be conducted in accordance
4 with chapter 91.

5 (e) The department may deny a person's application to
6 adopt a child if either of the prospective adoptive parents or
7 any adult residing in the prospective adoptive home has a
8 history of confirmed child abuse or neglect, or both, revealed
9 by the child abuse and neglect registry check, and if the
10 department finds by reason of the nature and circumstances of
11 the abuse or neglect, or both, or other background information,
12 that either of the prospective adoptive parents or any adult
13 residing in the prospective adoptive home poses a risk to the
14 health, safety, or well-being of the child. A denial shall
15 occur only after an appropriate investigation, notification of
16 results and planned action, and an opportunity to meet and rebut
17 the finding, all of which need not be conducted in accordance
18 with chapter 91."

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

21 1. By amending its title to read:



1 "~~§346-97 [Criminal history record]~~ Background checks."

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

3 "(b) The department shall adopt rules pursuant to chapter
4 91 establishing standards regarding the reputable and
5 responsible character of department employees and service
6 providers who have responsibilities relating to or direct
7 contact with individuals receiving services under this part[~~r~~
8 including~~;~~]. The service providers subject to this section
9 shall include:

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

14 (2) The foster grandparent program, senior companion
15 program, and respite companion program
16 participants~~;~~, including their principals and
17 employees; and

18 (3) Contracted and subcontracted service providers and
19 their principals, employees, and new employees who
20 provide home and community-based services under
21 section 1915(c) of the Social Security Act (42 U.S.C.



1 §1396n(c)), or under any other applicable section or
2 sections of the Social Security Act for the purposes
3 of providing home and community-based services.

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

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

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

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

13 (4) Provide consent to the department or its designee to
14 obtain criminal history record information and other
15 relevant background 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 and any other background check
19 prior to the start of employment or volunteering, and shall sign
20 a waiver form stating that the department shall not be liable to
21 the employee or volunteer."



1 3. By amending subsection (e) to read:

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

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

9 "(g) The costs of processing fingerprints and the state
10 criminal history record checks and other background checks may
11 be borne by the department if the person who is being screened
12 is a department employee or potential department employee.
13 Otherwise, the costs may be borne by the [employer] service
14 provider or by the employee or other individual who is being
15 screened.

16 (h) The department, in obtaining and relying upon the
17 results of the state criminal history record checks[~~r~~] and other
18 background checks, is presumed to be acting in good faith and
19 shall be immune from civil liability for taking or recommending
20 action based upon the criminal history record information. The
21 good faith presumption may be rebutted upon a showing by the



1 person or entity alleging a lack of good faith, and by a
2 preponderance of the evidence, that the department relied upon
3 information or opinion that it knew was false or misleading."

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

5 "(j) The criminal history record information and other
6 information obtained under this section shall be used
7 exclusively by the department for the purpose of establishing
8 the reputable and responsible character of the individuals
9 identified in subsection (b) such that the health, welfare, and
10 safety of service recipients will not be at risk."

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

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

17 (1) A criminal history record check, a sex offender
18 registry check, a child abuse record check, [~~and~~] an
19 adult abuse perpetrator check, and any other
20 background checks deemed necessary by the department,



1 in the same manner as a prospective applicant or
2 licensed provider in accordance with section 346-154;
3 (2) Completion of a pre-service or orientation training
4 and ongoing training in health and safety topics; and
5 (3) Any monitoring inspection visits by the department or
6 its designee to determine compliance with minimum
7 health and safety standards at the location where
8 child care is being provided for a child whose family
9 receives a child care subsidy from the department,
10 including investigations by the department when the
11 department has received a report of health and safety
12 concerns."

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

15 "**§346-154 Background checks.** (a) The department shall
16 develop standards to ensure the reputable and responsible
17 character of an applicant to operate a child care facility,
18 prospective employees of the applicant, principals of the
19 applicant, household members, and new employees or household
20 members of the provider after registration or licensure, which
21 shall include criminal history record checks in accordance with



1 section 846-2.7, sex offender registry checks, child abuse
2 record checks, [~~and~~] adult abuse perpetrator checks[~~-~~], and any
3 other background checks deemed necessary by the department.

4 For the purposes of this section, "adult abuse perpetrator
5 check" means a search to determine whether an individual is
6 known to the department as a perpetrator of abuse as defined in
7 section 346-222, by means of a search of the individual's name
8 and birth date in the department's adult protective services
9 file.

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

11 (1) Be subject to criminal history record checks in
12 accordance with section 846-2.7[~~-~~], and any other
13 background checks deemed necessary by the department;

14 (2) Submit to the department or its designee, under
15 penalty of law, statements signed by the applicant,
16 each principal of the applicant, prospective employees
17 of the applicant, and household members of the
18 applicant indicating whether the applicant, any of the
19 prospective employees, or any of the household members
20 has ever been confirmed to have abused or neglected a



- 1 child or vulnerable adult, including threatened harm;
2 and
- 3 (3) Provide consent to the department or its designee to
4 conduct a criminal history record check in accordance
5 with section 846-2.7, a sex offender registry check, a
6 child abuse record check, ~~[and]~~ an adult abuse
7 perpetrator check, and any other background checks
8 deemed necessary by the department, and to obtain
9 criminal history information, sex offender registry
10 information, child abuse record information, ~~[and]~~
11 adult abuse perpetrator information, and any other
12 relevant information for verification.
- 13 (c) A provider shall:
- 14 (1) Be subject to criminal history record checks in
15 accordance with section 846-2.7 ~~[and]~~, sex offender
16 registry checks~~[+]~~, and any other background checks
17 deemed necessary by the department;
- 18 (2) Submit to the department or its designee a statement
19 signed by ~~[any]~~ each principal, each household member,
20 ~~[or any]~~ and each employee ~~[hired after the initial~~
21 ~~licensure or registration that requires the household~~



1 ~~member or employee]~~ who was not previously subjected
2 to the requirements of subsection (b)(2) to indicate,
3 under penalty of law, whether the principal, household
4 member, or employee has ever been confirmed to have
5 abused or neglected a child or vulnerable adult,
6 including threatened harm; and

7 (3) Provide consent to the department or its designee to
8 conduct a criminal history record check in accordance
9 with section 846-2.7, a sex offender registry check, a
10 child abuse record check, [~~and~~] an adult abuse
11 perpetrator check, and any other background checks
12 deemed necessary by the department, and to obtain
13 criminal history information, sex offender registry
14 information, child abuse record information, [~~and~~]
15 adult abuse perpetrator check information, and any
16 other relevant information for verification.

17 (d) The department or its designee shall obtain
18 information on the applicant, any principal of the applicant,
19 any household member, and any prospective employee of the
20 applicant, including any household member or new employee



1 retained after the applicant is issued a registration or license
2 under this part, from the following sources:

3 (1) Criminal history record information through the Hawaii
4 criminal justice data center in accordance with
5 section 846-2.7;

6 (2) National and state sex offender registries; ~~and~~

7 (3) Child abuse record information and adult abuse
8 perpetrator check information from the department in
9 accordance with departmental procedures~~[]~~; and

10 (4) Other relevant sources.

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

13 (1) The applicant, a principal of the applicant, a
14 household member, or any prospective employee has been
15 convicted of a crime other than a minor traffic
16 violation involving a fine of \$50 or less, or ever
17 been confirmed to have abused or neglected a child or
18 vulnerable adult; or

19 (2) The department finds that ~~the~~ a criminal history,
20 history of registration as a sex offender, ~~[e]~~ child



1 abuse record or adult abuse perpetrator check record
2 ~~[of that]~~, or other relevant record indicates that:

3 (A) The applicant, [~~household member,~~] principal, or
4 prospective employee [~~indicates that the~~
5 applicant, ~~household member, or prospective~~
6 employee] is not suited to bear responsibilities
7 relating to or may pose a risk to the health,
8 safety, or well-being of children[-]; or

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

11 (f) The department may request the provider to terminate
12 its association with a new principal, terminate the employment
13 of a new employee, or terminate the residency of a [~~new employee~~
14 ~~or~~] household member or may suspend or revoke the license or
15 registration of the provider who continues its association with
16 a new principal, employs a new employee, or who allows continued
17 residency of a household member if:

18 (1) The principal, employee, or household member has been
19 convicted of a crime other than a minor traffic
20 violation involving a fine of \$50 or less, or ever



1 been confirmed to have abused or neglected a child or
2 vulnerable adult; or

3 (2) The department finds that [~~the~~] a criminal history,
4 history of registration as a sex offender, [~~or~~] child
5 abuse record or adult abuse perpetrator check record
6 ~~[of the new employee or household member]~~, or other
7 relevant record indicates that [~~the~~]:

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

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

14 (g) The department shall deny an application for a license
15 or registration, shall request the provider to terminate an
16 association with a principal or terminate the employment or
17 residency of a new employee or household member, or shall
18 suspend or revoke the license or registration of the provider
19 who associates with a new principal, who employs a new employee,
20 or who allows continued residency of a household member if the
21 applicant, principal, employee, or household member:



- 1 (1) Refuses to consent to [~~the~~] background checks;
2 (2) Knowingly makes a materially false statement in
3 connection with the background checks; or
4 (3) Is registered, or required to be registered, on the
5 national sex offender registry or any state sex
6 offender registry.

7 (h) The department or its designee, in obtaining and
8 relying upon the background check information, is presumed to be
9 acting in good faith and shall be immune from civil liability
10 for taking or recommending action based upon the background
11 check information. The presumption of good faith may be
12 rebutted upon a showing of proof by a preponderance of the
13 evidence that the department or its designee relied upon
14 information or opinion that it knew was false or misleading or
15 that such reliance was not reasonable."

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

18 "**§352-5.5 [Criminal history record] Background checks.**

19 (a) The department shall develop standards to ensure the
20 reputable and responsible characters of staff members of the
21 Hawaii youth correctional facility [~~which~~], and the principals



1 and employees of any contractor or subcontractor of the
2 facility. The foregoing individuals shall [~~include~~] undergo
3 criminal history record checks in accordance with section
4 846-2.7[~~-~~], and any other background checks deemed necessary by
5 the department.

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

9 (1) Be subject to criminal history record checks in
10 accordance with section 846-2.7[+] and any other
11 background checks deemed necessary by the department;
12 and

13 (2) Provide consent to the department to obtain other
14 criminal history record information and other relevant
15 information for verification.

16 New staff members of the facility, a contractor, or
17 subcontractor shall be fingerprinted within five working days of
18 beginning employment for the purpose of complying with the
19 criminal history record check.

20 (c) The department shall obtain criminal history record
21 information through the Hawaii criminal justice data center on



1 all staff members and new staff members of the Hawaii youth
2 correctional facility~~[]~~, and the principals and employees of
3 any contractor or subcontractor of the facility. The department
4 shall conduct an annual name inquiry into the state criminal
5 history record files.

6 (d) The department may deny employment to a staff member
7 or new staff member ~~[who]~~, or refuse to use the services of a
8 contractor if a principal or employee of the contractor or a
9 subcontractor, if a criminal history record check shows that the
10 person was convicted of a crime other than a minor traffic
11 violation involving \$50 or less, and if the department finds
12 that because of the criminal history record of the [~~staff member~~
13 or ~~new staff member~~] person or any other relevant background
14 information, the [~~staff member~~] person is not suitable to bear
15 responsibilities relating to, or poses a risk to the health,
16 safety, security, or well-being of, youths under supervision and
17 confinement.

18 (e) For the purposes of this section:

19 "Background check" shall have the same meaning as in
20 section 356-1.



1 "Principal" shall have the same meaning as in section
2 346-1."

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

5 "~~§352D-4.3 [Criminal history record]~~ Background checks.

6 (a) Employees, prospective employees, and volunteers of the
7 office, and principals, employees, and volunteers of contracted
8 providers [~~or~~] and subcontractors in positions that require
9 those persons to bear responsibilities relating to or place them
10 in close proximity to youth when providing services by or on
11 behalf of the office shall be required to agree to criminal
12 history record checks conducted by the office or its designee in
13 accordance with section 846-2.7[~~-~~], and any other background
14 checks deemed necessary by the department. The office shall
15 develop procedures for obtaining verifiable information
16 regarding the criminal history records and other relevant
17 information of individuals seeking to serve as principals,
18 employees, or volunteers [~~of contracted providers or~~
19 subcontractors] in positions that include responsibilities
20 relating to youth or place them in close proximity to youth when
21 providing services by or on behalf of the office.



1 (b) Except as otherwise specified, [any] if an individual
2 [who is employed, seeks employment, or volunteers with a] is a
3 principal, an employee, a prospective employee, a volunteer, or
4 prospective volunteer of the office, a contracted provider, or a
5 subcontractor, and the person works or will work in a position
6 that includes responsibilities relating to youth or necessitates
7 close proximity to youth when providing services by or on behalf
8 of the office, the person shall:

9 (1) Submit to the office a sworn statement indicating
10 whether the individual has ever been convicted of an
11 offense for which incarceration is a sentencing
12 option;

13 (2) Be subject to criminal history record checks through
14 the Hawaii criminal justice data center in accordance
15 with section 846-2.7[-] and any other background
16 checks deemed necessary by the department. An annual
17 name inquiry shall be conducted in the state criminal
18 history record files; and

19 (3) Provide to the office written consent for the office
20 or its designee to obtain criminal history record



1 information and other relevant background information
2 for verification.
3 Information obtained pursuant to this section shall be used
4 exclusively by the office for purposes of determining whether a
5 person is suitable for working or volunteering in a position
6 that includes responsibilities relating to youth or necessitates
7 close proximity to youth when providing contracted services by
8 or on behalf of the office, or in conjunction with services
9 provided for youth at the Hawaii youth correctional facility,
10 while in custody, on furlough, or on parole. All such decisions
11 shall be subject to any applicable federal laws and regulations.

12 (c) The office may [~~require the contracted provider or~~
13 ~~subcontractor to~~] refuse employment to an applicant for
14 employment[~~7~~] with the office, terminate the employment of an
15 employee[~~7~~] of the office, or terminate the services of a
16 volunteer with the office if:

17 (1) The employee, prospective employee, or volunteer [~~of~~
18 ~~the contracted provider or subcontractor~~] has been
19 convicted of an offense for which incarceration is a
20 sentencing option; and



1 (2) The office finds that the criminal history record or
2 other background information of the employee,
3 prospective employee, or volunteer [~~of the contracted~~
4 ~~provider or subcontractor~~] indicates that the
5 employee, prospective employee, or volunteer may pose
6 a risk to the health, safety, or well-being of youth
7 receiving direct services by that employee,
8 prospective employee, or volunteer.

9 (d) The office may require the contacted provider or
10 subcontractor to refuse employment to an applicant for
11 employment, terminate the employment of an employee, or
12 terminate the services of a volunteer for the reasons specified
13 in subsection (c).

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

15 "Background check" shall have the same meaning as in
16 section 346-1.

17 "Principal" shall have the same meaning as in section 346-
18 1.

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



1 "Provider" means any organization that or individual who
2 enters into, or intends to enter into, a contract with or is
3 currently contracted by the office to provide direct services to
4 youth. The term includes all individuals who are authorized to
5 provide direct services to youth under the contract with the
6 organization or individual.

7 "Subcontractor" means any organization that or individual
8 who enters into, or intends to enter into, a contract or
9 agreement with a contracted provider to provide direct services
10 to youth. The term includes all persons who may provide direct
11 services to youth under the contract with the organization or
12 individual.

13 "Volunteer" means any individual who provides, or intends
14 to provide, direct services to youth on a non-compensatory
15 basis.

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

20 SECTION 12. 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);~~] (32), (33), (34), (35),
4 and (37);
- 5 (6) Armed security services pursuant to section 261-17(b);
- 6 (7) Providers of a developmental disabilities domiciliary
7 home pursuant to section 321-15.2;
- 8 (8) Private schools pursuant to sections 302C-1 and
9 378-3(8);
- 10 (9) Financial institutions in which deposits are insured
11 by a federal agency having jurisdiction over the
12 financial institution pursuant to section 378-3(9);
- 13 (10) Detective agencies and security guard agencies
14 pursuant to sections 463-6(b) and 463-8(b);
- 15 (11) Employers in the business of insurance pursuant to
16 section 431:2-201.3;
- 17 (12) Employers of individuals or supervisors of individuals
18 responsible for screening passengers or property under
19 title 49 United States Code section 44901 or
20 individuals with unescorted access to an aircraft of
21 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-A, 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 13. 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 principals,
- 10 operators [~~and~~], employees, and new employees of child
- 11 caring institutions, child placing organizations, and
- 12 ~~[foster boarding homes]~~ resource family homes as
- 13 provided by [~~section~~] sections 346-A and 346-17[+],
- 14 and principals, employees, and volunteers of providers
- 15 described in section 346-17.6 and as provided in
- 16 section 346-A;
- 17 (9) The department of human services on prospective
- 18 adoptive parents and other individuals as established
- 19 under [~~section~~] sections 346-A and 346-19.7;
- 20 (10) The department of human services or its designee on
- 21 child care facility applicants [~~to operate child care~~



1 ~~facilities~~], principals, household members [~~of the~~
2 ~~applicant~~], employees, and prospective employees [~~of~~
3 ~~the applicant, and new employees and household members~~
4 ~~of the provider after registration or licensure~~] as
5 provided by [~~section~~] sections 346-A and 346-154, and
6 persons subject to section 346-152.5;

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

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

17 (13) The department of human services on staff members and
18 the principals and employees of contractors and
19 subcontractors of the Hawaii youth correctional
20 facility as provided by [~~section~~] sections 346-A and
21 352-5.5;



- 1 (14) The department of human services on employees,
2 prospective employees, and volunteers of the office of
3 youth services, and principals, employees, and
4 volunteers of contracted providers and subcontractors
5 in positions that require them to bear
6 responsibilities relating to or place them in close
7 proximity to youth when providing services by or on
8 behalf of the office or the Hawaii youth correctional
9 facility as provided by [~~section~~] sections 346-A and
10 352D-4.3;
- 11 (15) The judiciary on employees and applicants at detention
12 and shelter facilities as provided by section 571-34;
- 13 (16) The department of public safety on employees and
14 prospective employees who are directly involved with
15 the treatment and care of persons committed to a
16 correctional facility or who possess police powers
17 including the power of arrest as provided by section
18 353C-5;
- 19 (17) The board of private detectives and guards on
20 applicants for private detective or private guard
21 licensure as provided by section 463-9;



- 1 (18) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided pursuant to section 302C-1;
- 8 (19) The public library system on employees and prospective
9 employees whose positions place them in close
10 proximity to children as provided by section
11 302A-601.5;
- 12 (20) The State or any of its branches, political
13 subdivisions, or agencies on applicants and employees
14 holding a position that has the same type of contact
15 with children, vulnerable adults, or persons committed
16 to a correctional facility as other public employees
17 who hold positions that are authorized by law to
18 require criminal history record checks as a condition
19 of employment as provided by section 78-2.7;
- 20 (21) The department of health on licensed adult day care
21 center operators, employees, new employees,



- 1 subcontracted service providers and their employees,
 2 and adult volunteers as provided by section 321-15.2;
- 3 (22) The department of human services on [~~purchase of~~
 4 ~~service contracted and subcontracted service providers~~
 5 ~~and their employees serving clients of the adult~~
 6 ~~protective and community services branch,~~] employees
 7 and potential employees of the department, and
 8 principals, volunteers, and employees of a contractor
 9 or subcontractor, as provided by section [~~346-97,~~]
 10 346-B;
- 11 (23) The department of human services on [~~foster~~
 12 ~~grandparent program, senior companion program, and~~
 13 ~~respite companion program participants as provided by~~
 14 ~~section 346-97,~~
- 15 ~~(24) The department of human services on contracted and~~
 16 ~~subcontracted service providers and their current and~~
 17 ~~prospective employees that provide home and~~
 18 ~~community-based services under section 1915(c) of the~~
 19 ~~Social Security Act, title 42 United States Code~~
 20 ~~section 1396n(c), or under any other applicable~~
 21 ~~section or sections of the Social Security Act for the~~

1 ~~purposes of providing home and community-based~~
2 ~~services,] department employees and principals,~~
3 ~~employees, and new employees of service providers, as~~
4 provided by section 346-97;

5 [+25+] (24) The department of commerce and consumer affairs
6 on proposed directors and executive officers of a
7 bank, savings bank, savings and loan association,
8 trust company, and depository financial services loan
9 company as provided by section 412:3-201;

10 [+26+] (25) The department of commerce and consumer affairs
11 on proposed directors and executive officers of a
12 nondepository financial services loan company as
13 provided by section 412:3-301;

14 [+27+] (26) The department of commerce and consumer affairs
15 on the original chartering applicants and proposed
16 executive officers of a credit union as provided by
17 section 412:10-103;

18 [+28+] (27) The department of commerce and consumer affairs
19 on:

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



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

4 (C) Each person who upon approval of an application
5 requesting approval of a proposed change in
6 control of licensee will be a principal of the
7 licensee,

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

9 ~~[(29)]~~ (28) The department of commerce and consumer affairs
10 on applicants for licensure and persons licensed under
11 title 24;

12 ~~[(30)]~~ (29) The Hawaii health systems corporation on:

13 (A) Employees;

14 (B) Applicants seeking employment;

15 (C) Current or prospective members of the corporation
16 board or regional system board; or

17 (D) Current or prospective volunteers, providers, or
18 contractors,

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



1 ~~[(31)]~~ (30) The department of commerce and consumer affairs
2 on:

- 3 (A) An applicant for a mortgage loan originator
4 license, or license renewal; and
5 (B) Each control person, executive officer, director,
6 general partner, and managing member of an
7 applicant for a mortgage loan originator company
8 license or license renewal,
9 as provided by chapter 454F;

10 ~~[(32)]~~ (31) The state public charter school commission or
11 public charter schools on employees, teacher trainees,
12 prospective employees, and prospective teacher
13 trainees in any public charter school for any position
14 that places them in close proximity to children, as
15 provided in section 302D-33;

16 ~~[(33)]~~ (32) The counties on prospective employees who work
17 with children, vulnerable adults, or senior citizens
18 in community-based programs;

19 ~~[(34)]~~ (33) The counties on prospective employees for fire
20 department positions that involve contact with
21 children or vulnerable adults;

1 ~~[(35)]~~ (34) The counties on prospective employees for
2 emergency medical services positions that involve
3 contact with children or vulnerable adults;
4 ~~[(36)]~~ (35) The counties on prospective employees for
5 emergency management positions and community
6 volunteers whose responsibilities involve planning and
7 executing homeland security measures including
8 viewing, handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable citizens
10 during emergencies or crises;
11 ~~[(37)]~~ (36) The State and counties on employees, prospective
12 employees, volunteers, and contractors whose position
13 responsibilities require unescorted access to secured
14 areas and equipment related to a traffic management
15 center;
16 ~~[(38)]~~ (37) The State and counties on employees and
17 prospective employees whose positions involve the
18 handling or use of firearms for other than law
19 enforcement purposes;
20 ~~[(39)]~~ (38) The State and counties on current and
21 prospective systems analysts and others involved in an



1 agency's information technology operation whose
2 position responsibilities provide them with access to
3 proprietary, confidential, or sensitive information;

4 ~~[(40)]~~ (39) The department of commerce and consumer affairs
5 on:

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

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

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

15 ~~[(41)]~~ (40) The department of health or its designee on all
16 license applicants, licensees, employees, contractors,
17 and prospective employees of medical cannabis
18 dispensaries, and individuals permitted to enter and
19 remain in medical cannabis dispensary facilities as
20 provided under sections 329D-15(a)(4) and
21 329D-16(a)(3);



1 ~~[(42)]~~ (41) The department of commerce and consumer affairs
2 on applicants for nurse licensure or license renewal,
3 reactivation, or restoration as provided by sections
4 457-7, 457-8, 457-8.5, and 457-9;

5 ~~[(43)]~~ (42) The county police departments on applicants for
6 permits to acquire firearms pursuant to section 134-2
7 and on individuals registering their firearms pursuant
8 to section 134-3;

9 ~~[(44)]~~ (43) The department of commerce and consumer affairs
10 on:

11 (A) Each of the controlling persons of the applicant
12 for licensure as an escrow depository, and each
13 of the officers, directors, and principals who
14 will be in charge of the escrow depository's
15 activities upon licensure; and

16 (B) Each of the controlling persons of an applicant
17 for proposed change in control of an escrow
18 depository licensee, and each of the officers,
19 directors, and principals who will be in charge
20 of the licensee's activities upon approval of the
21 application,



1 as provided by chapter 449;

2 ~~[(45)]~~ (44) The department of taxation on current or
3 prospective employees or contractors who have access
4 to federal tax information in order to comply with
5 requirements of federal law, regulation, or procedure,
6 as provided by section 231-1.6;

7 ~~[(46)]~~ (45) The department of labor and industrial relations
8 on current or prospective employees or contractors who
9 have access to federal tax information in order to
10 comply with requirements of federal law, regulation,
11 or procedure, as provided by section 383-110;

12 ~~[(47)]~~ (46) The department of human services on current or
13 prospective employees or contractors who have access
14 to federal tax information in order to comply with
15 requirements of federal law, regulation, or procedure,
16 as provided by section 346-2.5;

17 ~~[(48)]~~ (47) The child support enforcement agency on current
18 or prospective employees or contractors who have
19 access to federal tax information in order to comply
20 with federal law, regulation, or procedure, as
21 provided by section 576D-11.5;



1 ~~[(49)]~~ (48) The department of the attorney general on
2 current or prospective employees or employees or
3 agents of contractors who have access to federal tax
4 information to comply with requirements of federal
5 law, regulation, or procedure, as provided by section
6 28-17;

7 ~~[(50)]~~ (49) The department of commerce and consumer affairs
8 on each control person, executive officer, director,
9 general partner, and managing member of an installment
10 loan licensee, or an applicant for an installment loan
11 license, as provided in chapter 480J;

12 ~~[(51)]~~ (50) The University of Hawaii on current and
13 prospective employees and contractors whose duties
14 include ensuring the security of campus facilities and
15 persons; and

16 ~~[(52)]~~ (51) Any other organization, entity, or the State, its
17 branches, political subdivisions, or agencies as may
18 be authorized by state law."

19 SECTION 14. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.



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

5 SECTION 16. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 17. This Act shall take effect on July 1, 2060.

8



Report Title:

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

Description:

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

