
A BILL FOR AN ACT

RELATING TO MINORS.

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

1 SECTION 1. The legislature finds that children are
2 vulnerable members of society who must be protected from abuse
3 and neglect. The legislature further finds that certain laws
4 have the effect of protecting, rather than holding accountable,
5 perpetrators of child abuse and neglect. Accordingly, the
6 legislature believes that these laws should be re-evaluated.

7 Hawaii law already requires that certain persons, such as
8 doctors, hospital employees, school employees, and child care
9 providers, immediately report child abuse or neglect to the
10 department of human services or to the police. However, members
11 of the clergy, despite their important role in the communities
12 they serve, are not included in the State's mandatory reporting
13 law.

14 In contrast, the laws of states such as Indiana, Oklahoma,
15 Rhode Island, and Tennessee broadly require reporting by any
16 person who has reason to believe that a child is being abused or
17 neglected. Moreover, the laws of New Hampshire, Texas, West



1 Virginia, and Wisconsin explicitly require members of the clergy
2 to report suspected child abuse and neglect to designated
3 government authorities. Further, the Texas law specifies that
4 the reporting requirement applies, without exception, to
5 individuals whose personal communications may otherwise be
6 privileged, including attorneys, members of the clergy, and
7 other professionals. Additionally, a Wisconsin law exempts a
8 member of the clergy from the reporting requirement if the
9 information pertaining to child abuse was received solely
10 through confidential communications made privately or in a
11 confessional setting, and if certain other circumstances exist,
12 but that state is considering a 2019 legislative proposal that
13 would repeal the exemption.

14 Accordingly, the purpose of this Act is to more effectively
15 protect children from abuse and neglect by:

- 16 (1) Requiring members of the clergy to report child abuse
17 and neglect to the department of human services or to
18 the police; and
- 19 (2) Specifying that the general rule of privilege under
20 the Hawaii Rules of Evidence for confidential
21 communications made to a member of the clergy does not



1 apply to communications relating to child abuse or
2 neglect.

3 SECTION 2. Section 350-1.1, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Notwithstanding any other state law concerning
6 confidentiality to the contrary, the following persons who, in
7 their professional or official capacity, have reason to believe
8 that child abuse or neglect has occurred or that there exists a
9 substantial risk that child abuse or neglect may occur in the
10 reasonably foreseeable future, shall immediately report the
11 matter orally to the department or to the police department:

12 (1) Any licensed or registered professional of the healing
13 arts or any health-related occupation who examines,
14 attends, treats, or provides other professional or
15 specialized services, including but not limited to
16 physicians, including physicians in training,
17 psychologists, dentists, nurses, osteopathic
18 physicians and surgeons, optometrists, chiropractors,
19 podiatrists, pharmacists, and other health-related
20 professionals;

21 (2) Employees or officers of any public or private school;



- 1 (3) Employees or officers of any public or private agency
- 2 or institution, or other individuals, providing
- 3 social, medical, hospital, or mental health services,
- 4 including financial assistance;
- 5 (4) Employees or officers of any law enforcement agency,
- 6 including but not limited to the courts, police
- 7 departments, department of public safety, correctional
- 8 institutions, and parole or probation offices;
- 9 (5) Individual providers of child care, or employees or
- 10 officers of any licensed or registered child care
- 11 facility, foster home, or similar institution;
- 12 (6) Medical examiners or coroners; [~~and~~]
- 13 (7) Employees of any public or private agency providing
- 14 recreational or sports activities[~~-~~]; and
- 15 (8) Members of the clergy.

16 As used in this subsection, a "member of the clergy" is a
17 minister, pastor, priest, rabbi, Christian Science practitioner,
18 or other similar functionary of any religious organization."

19 SECTION 3. Section 626-1, Hawaii Revised Statutes, is
20 amended by amending rule 506, subsection (b), to read as
21 follows:



1 "(b) General rule of privilege. A person has a privilege
2 to refuse to disclose and to prevent another from disclosing a
3 confidential communication by the person to a member of the
4 clergy in the latter's professional character as spiritual
5 advisor[-]; provided that a confidential communication relating
6 to the known or suspected abuse or neglect of a person under the
7 age of eighteen shall not be privileged under this rule."

8 SECTION 4. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

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

13 SECTION 6. This Act shall take effect upon its approval.

14

INTRODUCED BY: *Guthrie Thelen*
Claw

JAN 15 2020



H.B. NO. 1692

Report Title:

Minors; Abuse; Neglect; Mandatory Reporting; Clergy; Rules of Evidence; Privileged Communications

Description:

Requires members of the clergy to report child abuse and neglect to the Department of Human Services or to the police. Specifies that the general rule of privilege under the Hawaii Rules of Evidence for confidential communications made to a member of the clergy does not apply to communications relating to child abuse or neglect.

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