

A Bill for an Act Relating to Child Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 350, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§350- Any person may report. Any person, not otherwise required to report pursuant to section 350-1.1, who becomes aware of facts or circumstances which cause that person to have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, may immediately report the matter orally to the department or to the police department.”

SECTION 2. Chapter 350, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§350- Confidentiality. (a) All reports to the department concerning child abuse or neglect made pursuant to this chapter, as well as all records of such reports, are confidential. The director may adopt rules, pursuant to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records. Any person who intentionally makes an unauthorized disclosure of a report or record of a report made to the department shall be guilty of a misdemeanor.

(b) Every reasonable good faith effort shall be made by the department to maintain the confidentiality of the name of a reporter who requests that the reporter's name be confidential.”

SECTION 3. Section 350-1, Hawaii Revised Statutes, is amended to read as follows:

“§350-1 Definitions. For the purposes of this chapter, unless the context specifically indicates otherwise:

“Child abuse [and] or neglect” means [physical injury, psychological abuse and neglect, sexual abuse, negligent treatment, or maltreatment of a child under eighteen years of age by a parent, legal guardian, or person responsible for that child's care under circumstances which indicate that the minor's health or welfare has been or is harmed or threatened with harm.] the acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:

(1) When the child exhibits evidence of:

- (A) Substantial or multiple skin bruising or any other internal bleeding;
- (B) Any injury to skin causing substantial bleeding;
- (C) Malnutrition;
- (D) Failure to thrive;
- (E) Burn or burns;
- (F) Poisoning;
- (G) Fracture of any bone;
- (H) Subdural hematoma;
- (I) Soft tissue swelling;
- (J) Extreme pain;
- (K) Extreme mental distress;
- (L) Gross degradation;
- (M) Death; and

such injury is not justifiably explained, or when the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that

such condition or death may not be the product of an accidental occurrence; or

- (2) When the child has been the victim of sexual contact or conduct, including, but not limited to, rape, sodomy, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation; or
- (3) When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function; or
- (4) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; or
- (5) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this paragraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240.

"Department" means the department of social services and housing.

["Harm" or "threatened with harm" means harm or threatened harm as defined in chapter 587.

"Professional" means a person engaged in a specific occupation who examines, treats, attends, or otherwise provides specialized services to children.]

"Report" means the [oral or written disclosure, to the department of social services and housing, that a minor is believed to have been harmed or threatened with harm by a parent, legal guardian, or person responsible for that child's care.] initial oral statement and, if required by section 350-1.1(d), the subsequent written account concerning the facts and circumstances which cause a person to have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future."

SECTION 4. Section 350-1.1, Hawaii Revised Statutes, is amended to read as follows:

"§350-1.1 Reports. (a) [The] Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in [the performance of] their professional or official [duties, know or have reason to believe that a child has been abused or neglected or is threatened with abuse or neglect] capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall [promptly] immediately report the matter orally to the department [of social services and housing] or to the police department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services [to a minor], including, but not limited to, physicians,¹ including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private school;
- (3) Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance;

- (4) Employees or officers of any law enforcement agency, including, but not limited to, the courts, police departments, correctional institutions, and parole or probation offices;
- (5) [Providers of care, employees,] Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution; and
- (6) Medical examiners or coroners.

(b) Whenever a person designated in [this section] subsection (a) is a member of the staff of any public or private school, agency, or institution, that staff member shall immediately notify the person in charge, or a designated delegate, who shall [promptly] immediately report, or cause reports to be made, in accordance with this chapter. [Nothing in this section is intended to require more than one report from any school, agency, or institution.]

(c) This section does not prohibit any of the persons enumerated in subsection (a) from reporting incidents which such persons have reason to believe involve abuse or neglect which come to their attention in any private or nonprofessional capacity.

(d) Any other person who has reason to believe that a minor has been abused or neglected or is threatened with abuse or neglect may report the matter orally to the department of social services and housing or to the police department.]

[(e)] (c) The initial oral report shall be followed as soon thereafter as possible by a report in writing; provided that where a police department is the initiating agency a written report shall not be required to be filed with the department [of social services and housing] unless the police department has declined to take further action and the department [of social services and housing] informs the police department that it intends to pursue the matter of the orally reported incident of child abuse or neglect. All written reports shall contain the name and address of the [minor] child and the [minor's] child's parents or other persons responsible for the [minor's] child's care, if known, the [minor's] child's age, the nature and extent of the [minor's] child's injuries, and any other information that the reporter believes might be helpful [in establishing the cause of the injuries.] or relevant to the investigation of the child abuse or neglect.

(d) Any person subject to subsection (a) shall, upon demand of the department or any police department, provide all information related to the alleged incident of child abuse or neglect, including, but not limited to, medical records and medical reports, which was not included in the written report submitted pursuant to subsection (c).

[(f)] (e) The director [of social services] may adopt, amend, or repeal rules, subject to chapter 91, to further define or clarify the specific forms of child abuse [and] or neglect enumerated in section 350-1 for use in implementing this chapter; provided that rules adopted under this subsection shall be limited to such further or clarifying definitions."

SECTION 5. Section 350-1.2, Hawaii Revised Statutes, is amended to read as follows:

"[§350-1.2]¹ Additional information. Any person subject to section 350-1.1(a) shall, upon demand of the department of social services and housing or any police department, provide all information related to the alleged incident of child abuse, including but not limited to medical records and medical reports, which was not stated in the written report required by section 350-1.1(e).] Nonreporting; penalty. Any person subject to section 350-1.1(a) who knowingly prevents another person from reporting, or who

knowingly fails to provide information as required by section 350-1.1(c) or (d), shall be guilty of a petty misdemeanor."

SECTION 6. Section 350-2, Hawaii Revised Statutes, is amended to read as follows:

"§350-2 Action on reporting. [The department of social services and housing, upon receiving such report, shall immediately take necessary action toward preventing further abuses, safeguarding and enhancing the welfare of such minor, and preserving family life wherever possible. If the injury or abuse to the minor is so serious that criminal prosecution is indicated, the department shall, in addition to taking such action under this section as it deems necessary, report its findings to the police or the office of the prosecuting attorney.] (a) Upon receiving a report concerning child abuse or neglect, the department shall proceed pursuant to chapter 587 and the department's rules.

(b) The department shall inform the appropriate police department or office of the prosecuting attorney of the relevant information concerning a case of child abuse or neglect when such information is required by the police department or the office of the prosecuting attorney for the investigation or prosecution of that case; provided that the name of a reporter, who requested that the reporter's name be confidential, shall only be released to a police department or an office of the prosecuting attorney pursuant to court order.

(c) The department shall maintain a central registry of reported child abuse or neglect cases and may expunge such reports as it deems appropriate and may adopt such rules [and regulations] as may be necessary in carrying out this section."

SECTION 7. Section 350-3, Hawaii Revised Statutes, is amended to read as follows:

"§350-3 Immunity from liability. (a) Anyone participating in good faith in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed by or as a result of the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(b) Any individual who assumes a duty or responsibility pursuant to section 350-2 or chapter 587 shall have immunity from civil liability for acts or omissions performed within the scope of the individual's duty or responsibility. Nothing in this section shall limit the liability of the department [of social services and housing], any other state agency, or any private organization for the conduct of individuals provided immunity herein."

SECTION 8. Section 350-5, Hawaii Revised Statutes, is amended to read as follows:

"§350-5 Admissibility of evidence. Neither the [doctor-patient] physician-patient privilege, the psychologist-client privilege, nor the [husband-wife] spousal privilege shall be ground for excluding evidence [regarding a minor's injuries, or the cause thereof,] in any judicial proceeding resulting from a report of child abuse or neglect pursuant to this chapter."

SECTION 9. Section 350-6, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 350-7, Hawaii Revised Statutes, is repealed.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 12. This Act shall take effect upon its approval.

(Approved June 6, 1987.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.