

## A Bill for an Act Relating to Reports of Child Abuse.

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

SECTION 1. The legislature finds that the mandatory reporting of child abuse by certain reporters should be expanded to include reports on known or suspected child victims of sex trafficking to bring the State in compliance with the Justice for Victims of Trafficking Act of 2015, Public Law 114-22. The legislature also finds that to comply with the Child Abuse Prevention and Treatment Act of 2010, Public Law 111-320, it is necessary to ensure that reports of child abuse and neglect, which are expunged from the State's central registry of reported child abuse and neglect cases, may be retained by the department of human services for future risk and safety assessment purposes.

The purpose of this Act is to:

- (1) Amend the definition of "child abuse or neglect" to ensure that mandated reporters of child abuse and neglect report to the department of human services known or suspected child victims of sex trafficking or severe forms of trafficking in persons;
- (2) Ensure that records and information contained in child abuse and neglect reports that are expunged may be retained by the department of human services solely for future risk and safety assessment purposes; and
- (3) Replace references to unsubstantiated reports with "not confirmed" reports.

SECTION 2. Section 350-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

"Child" means a person who is born alive and is less than eighteen years of age.

"Severe forms of trafficking in persons" has the same meaning as provided in title 22 United States Code Annotated section 7102(9).

"Sex trafficking" has the same meaning as provided in title 22 United States Code Annotated section 7102(10)."

2. By amending the definition of "child abuse or neglect" to read:

"Child abuse or neglect" means ~~the~~:

- (1) 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:
  - ~~(A)~~ (A) When the child exhibits evidence of:
    - ~~(i)~~ (i) Substantial or multiple skin bruising or any other internal bleeding;
    - ~~(ii)~~ (ii) Any injury to skin causing substantial bleeding;
    - ~~(iii)~~ (iii) Malnutrition;
    - ~~(iv)~~ (iv) Failure to thrive;
    - ~~(v)~~ (v) Burn or burns;

- ~~[(F)]~~ (vi) Poisoning;
- ~~[(G)]~~ (vii) Fracture of any bone;
- ~~[(H)]~~ (viii) Subdural hematoma;
- ~~[(I)]~~ (ix) Soft tissue swelling;
- ~~[(J)]~~ (x) Extreme pain;
- ~~[(K)]~~ (xi) Extreme mental distress;
- ~~[(L)]~~ (xii) Gross degradation; or
- ~~[(M)]~~ (xiii) 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;

- ~~[(2)]~~ (B) When the child has been the victim of sexual contact or conduct, including[;] but not limited to[;] sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b);
  - ~~[(3)]~~ (C) 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;
  - ~~[(4)]~~ (D) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
  - ~~[(5)]~~ (E) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this ~~[paragraph]~~ subparagraph 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; or
  - ~~[(6)]~~ (F) When the child has been the victim of labor trafficking under chapter 707[;]; or
- (2) The acts or omissions of any person that have resulted in sex trafficking or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 or section 712-1202."

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

"(d) The department shall maintain a central registry of reported child abuse or neglect cases and shall promptly expunge the reports in cases if:

- (1) The [department has found the reports to be unsubstantiated;] report is determined not confirmed by the department, an administrative hearing officer, or a Hawaii state court on appeal; or
- (2) The petition arising from the report has been dismissed by order of the family court after an adjudicatory hearing on the merits pursuant to chapter 587A.

~~[For purposes of expungement under paragraph (1), a report is unsubstantiated only when the department has found the allegations to be frivolous or to have been made in bad faith.~~

## ACT 16

However, the department may retain records and information of alleged child abuse and neglect with respect to the child who is the subject of the alleged abuse.]

Records and information contained in a report that is expunged may be retained by the department solely for future risk and safety assessment purposes.

The department shall adopt rules as may be necessary in carrying out this section.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on May 29, 2017.

(Approved May 18, 2017.)