

A Bill for an Act Relating to Child Abuse Reporting.

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

SECTION 1. The legislature finds that in 2017, the child welfare services branch of the State's department of human services received 3,702 reports of child abuse. More than half of these reports were made by mandated reporters working in fields such as medicine, law enforcement, and social services. Unfortunately, despite the extent of reporting that does occur, many other instances of child abuse go unreported.

The legislature further finds that Hawaii is one of only a handful of states that do not include members of the clergy as mandatory reporters of child abuse and neglect. Additionally, the legislature finds that sexual exploitation of children often occurs online, making it easier for some predators to avoid detection and arrest. By requiring commercial computer technicians and commercial film and photographic print or image processors to report computer files containing child pornography to law enforcement, the State can protect more children from exploitation and abuse.

The purpose of this Act is to update Hawaii's child abuse and neglect mandated reporting law by adding members of the clergy, commercial computer technicians, commercial film and photographic print or image processors, and administrators and employees of any public or private organization whose duties require direct contact with or supervision of children, to the categories of persons who are required to report, consistent with California's Child Abuse and Neglect Reporting Act.

SECTION 2. Section 350-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Electronic medium” means any recording, synthetic media, magnetic disc memory, magnetic tape memory, compact disk, digital video disk, thumb drive, or any other data recording hardware or media used with a computer.”

SECTION 3. Section 350-1.1, Hawaii Revised Statutes, is amended to read as follows:

“§350-1.1 Reports. (a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official 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 immediately report the matter orally to the department or to the police department:

- (1) Any licensed or registered professional of the healing arts or any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including but not limited to physicians, 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, department of public safety, correctional institutions, and parole or probation offices;
- (5) Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution;
- (6) Medical examiners or coroners; ~~and~~
- (7) Employees of any public or private agency providing recreational or sports activities[-];
- (8) Commercial film and photographic print or image processors;
- (9) Commercial computer technicians; and
- (10) Members of the clergy or custodians of records therefor; provided that a member of the clergy shall not be required to report information gained solely during a penitential communication. When a clergy member receives reportable information from any other source, the clergy member shall comply with the reporting requirements of this section, regardless of whether the clergy member received the same information during a penitential communication. For purposes of this paragraph, "penitential communication" means a communication, including a sacramental confession, that is intended to be kept confidential and is made to a member of the clergy who, in the course of the discipline or practice of the applicable religious organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of the applicable religious organization, has a duty to keep those communications secret.

(b) Whenever a person designated in subsection (a) is a member of the staff of any public or private school, agency, or institution, that staff member shall immediately report the known or suspected child abuse or neglect directly to the department or to the police department and also shall immediately notify the person in charge or a designated delegate of the report made in accordance with this chapter.

(c) The initial oral report shall be followed as soon as possible by a report in writing to the department[-]; provided that:

- (1) If a police department or the department of public safety is the initiating agency, a written report shall be filed with the department for cases that the police or the department of public safety takes further action on or for active cases in the department under this chapter[-];
- (2) All written reports shall contain the name and address of the child and the child's parents or other persons responsible for the child's care, if known, the child's age, the nature and extent of the child's injuries, and any other information that the reporter believes might be helpful or relevant to the investigation of the child abuse or neglect[-]; and
- (3) This subsection shall not be construed to serve as a cause of action against the department, the police, or the department of public safety.

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

(e) The director may adopt, amend, or repeal rules, subject to chapter 91, to further define or clarify the specific forms of child abuse 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 4. Before March 1, 2021, a member of the clergy or a custodian of records thereof, may report to the department of human services or a county police department that the clergy member or custodian of records, in the person’s professional capacity or within the scope of the person’s employment, has acquired knowledge or has a reasonable suspicion that a child was a victim of abuse or neglect and that the clergy member or custodian of records did not previously report the abuse or neglect; provided that a member of the clergy shall not report information gained solely during a penitential communication. A report may be made regardless of whether the victim of the known or suspected abuse or neglect has reached the age of eighteen at the time the report is made. A person who makes a report pursuant to this section shall not be subject to the penalty for nonreporting under section 350-1.2, Hawaii Revised Statutes.

For purposes of this section, “penitential communication” means a communication, including a sacramental confession, that is intended to be kept confidential and is made to a member of the clergy who, in the course of the discipline or practice of the applicable religious organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of the applicable religious organization, has a duty to keep those communications secret.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect upon its approval.

(Approved September 15, 2020.)