

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO REPORTS OF CHILD ABUSE.

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

1           SECTION 1. The legislature finds that the reporting of  
2 child abuse by mandated reporters should be expanded to include  
3 reports on known or suspected child victims of sex trafficking,  
4 in order to bring the State in compliance with the Justice for  
5 Victims of Trafficking Act of 2015, P.L. 114-22. The  
6 legislature also finds that in order to comply with the Child  
7 Abuse Prevention and Treatment Act of 2010, P.L. 111-320, it is  
8 necessary to ensure that reports of child abuse and neglect,  
9 which are expunged from the State's central registry of reported  
10 child abuse and neglect cases, may be retained by the department  
11 for future risk and safety assessment purposes.

12           The purpose of this Act is to revise section 350-1, Hawaii  
13 Revised Statutes, by amending the definition of child abuse and  
14 neglect to ensure that mandated reporters of child abuse and  
15 neglect report to the department known or suspected child  
16 victims of sex trafficking, and by amending section 350-2 to  
17 ensure that child abuse and neglect reports that are expunged  
18 may be retained by the department for future risk and safety

1 assessment purposes. Section 350-2 is also revised to replace  
2 references to unsubstantiated reports with not confirmed  
3 reports. Section 350-2 is further revised to clarify that  
4 depending on the circumstances, child abuse reports may proceed  
5 either through the administrative procedure act or the family  
6 court.

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

9 "§350-1 Definitions. For the purposes of this chapter,  
10 unless the context specifically indicates otherwise:

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

13 "Child abuse or neglect" means [~~the~~]

14 (1) The acts or omissions of any person who, or legal  
15 entity which, is in any manner or degree related to  
16 the child, is residing with the child, or is otherwise  
17 responsible for the child's care, that have resulted  
18 in the physical or psychological health or welfare of  
19 the child, who is under the age of eighteen, to be  
20 harmed, or to be subject to any reasonably  
21 foreseeable, substantial risk of being harmed. The  
22 acts or omissions are indicated for the purposes of  
23 reports by circumstances that include but are not

1 limited to:

2 (A) When the child exhibits evidence of:

3 (i) Substantial or multiple skin bruising or any  
4 other internal bleeding;

5 (ii) Any injury to skin causing substantial  
6 bleeding;

7 (iii) Malnutrition;

8 (iv) Failure to thrive;

9 (v) Burn or burns;

10 (vi) Poisoning;

11 (vii) Fracture of any bone;

12 (viii) Subdural hematoma;

13 (ix) Soft tissue swelling;

14 (x) Extreme pain;

15 (xi) Extreme mental distress;

16 (xii) Gross degradation;

17 (xiii) Death; and

18 such injury is not justifiably explained, or when

19 the history given concerning such condition or

20 death is at variance with the degree or type of

21 such condition or death, or circumstances

22 indicate that such condition or death may not be

23 the product of an accidental occurrence; or

- 1 (B) When the child has been the victim of sexual  
2 contact or conduct, including, but not limited  
3 to, sexual assault as defined in the Penal Code,  
4 molestation, sexual fondling, incest, or  
5 prostitution; obscene or pornographic  
6 photographing, filming, or depiction; or other  
7 similar forms of sexual exploitation including  
8 but not limited to acts that constitute an  
9 offense pursuant to section 712-1202(1)(b); or
- 10 (C) When there exists injury to the psychological  
11 capacity of a child as is evidenced by an  
12 observable and substantial impairment in the  
13 child's ability to function; or
- 14 (D) When the child is not provided in a timely manner  
15 with adequate food, clothing, shelter,  
16 psychological care, physical care, medical care,  
17 or supervision;
- 18 (E) When the child is provided with dangerous,  
19 harmful, or detrimental drugs as defined by  
20 section 712-1240; provided that this paragraph  
21 shall not apply when such drugs are provided to  
22 the child pursuant to the direction or  
23 prescription of a practitioner, as defined in

1 section 712-1240; [e~~r~~]  
2 (F) When the child has been the victim of labor  
3 trafficking under chapter 707[-]; or  
4 (2) The acts or omissions of any person that have resulted  
5 in a child who is subjected to sex trafficking or  
6 severe forms of trafficking in persons.

7 "Department" means the department of human services.

8 "Report" means the initial oral statement and, if required  
9 by section 350-1.1(c), the subsequent written account concerning  
10 the facts and circumstances which cause a person to have reason  
11 to believe that child abuse or neglect has occurred or that  
12 there exists a substantial risk that child abuse or neglect may  
13 occur in the reasonably foreseeable future.

14 "Severe forms of trafficking in persons" means sex  
15 trafficking in which a commercial sex act is induced by force,  
16 fraud, or coercion, or in which the person induced to perform  
17 such act has not attained eighteen years of age.

18 "Sex trafficking" means the recruitment, harboring,  
19 transportation, provision, obtaining, patronizing, or soliciting  
20 of a person for the purpose of a commercial sex act."

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

23 "(d) The department shall maintain a central registry of

1 reported child abuse or neglect cases and shall promptly expunge  
2 the reports in cases if:

3 (1) The ~~[department has found the reports to be~~  
4 ~~unsubstantiated;]~~ report is determined not confirmed  
5 by the department, an administrative hearing officer,  
6 or a Hawaii state court on appeal; or

7 (2) The petition arising from the report has been  
8 dismissed by order of the family court after an  
9 adjudicatory hearing on the merits pursuant to chapter  
10 587A.

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

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

17 A report that is expunged may be retained by the department for  
18 future risk and safety assessment purposes.

19 The department shall adopt rules as may be necessary in  
20 carrying out this section."

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

23 SECTION 5. This Act, upon its approval, shall take effect

S.B. NO. 965

1 on May 29, 2017.

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INTRODUCED BY: Wm. P. W.

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BY REQUEST

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# SB. NO. 965

**Report Title:**

Reports of Child Abuse

**Description:**

Adds sex trafficking to the definition of child abuse and neglect, along with a definition of sex trafficking, thereby updating the requirements of mandated reporters of child abuse and neglect to also report minor sex trafficking to the Department of Human Services. Additionally, clarifies that the department may retain expunged reports of child abuse and neglect for risk and safety assessment and replaces references to unsubstantiated reports of child abuse or neglect with not confirmed reports of child abuse or neglect. Also, clarifies that child abuse reports may proceed through the administrative procedure act or the family court.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

# SB. NO. 965

## JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO REPORTS OF CHILD ABUSE.

PURPOSE: To bring the State into compliance with the Justice for Victims Act of 2015, Public Law (P.L.) 114-22, by amending the definition of child abuse and neglect to include victims of sex trafficking and severe forms of trafficking, and to clarify that child abuse and neglect reports that are expunged from the State's central registry may be retained by the department for future risk and safety assessment purposes, in accordance with the Child Abuse and Prevention and Treatment Act of 2010, P.L. 111-320. This measure also replaces references to unsubstantiated reports of child abuse and neglect with not confirmed reports and clarifies that child abuse reports may proceed through the administrative procedure act or the family court.

MEANS: Amend sections 350-1 and 350-2(d), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Human Trafficking has garnered increased attention in the United States and abroad requiring public action to address its growing prevalence.

In particular, human service agencies are mobilizing to address this issue, due to the fact that foster youth are at a higher risk of being victims of sex trafficking, which stems from their vulnerability as victims of child abuse and neglect.

Hawaii is not isolated from this problem simply because of the fact that it is an island state. On the contrary, its location in the Pacific makes it a highly sought after tourist destination and lucrative place for national and international

conferences, thereby creating a demand for prostitution.

It is difficult to obtain an accurate picture of this issue, due to the covert nature of sex trafficking and the fact that victims often do not identify themselves as victims. In order to ensure the safety and well-being of all children, identifying and serving this population has become a national concern.

The federal Justice for Victims of Trafficking Act (P.L. 114-22) was introduced and signed into law on May 29, 2015 to address sex trafficking of minors. This Act amends the Child Abuse Prevention and Treatment Act (CAPTA) requirements so that by May 29, 2017 the state definitions of "child abuse and neglect" and "sexual abuse" must include children who are identified as being a victim of sex trafficking or a victim of severe forms of trafficking.

All confirmed reports of child abuse and neglect in Hawaii are maintained in the State's central registry. State law requires that the central registry be checked for certain employment and background clearances. The Child Abuse and Prevention Act of 2010, P.L. 111-320, requires reports where there is no finding of child abuse or neglect to be expunged from the central registry, so the report cannot be used for employment or background check purposes. However, federal law allows states to maintain expunged reports for future risk and safety assessment purposes.

Historically, investigations of child abuse and neglect reports result in one of three dispositions: *confirmed*, *not confirmed*, or *unsubstantiated*. The finding of *confirmed* is made when the preponderance of the evidence is found to support that children have suffered abuse or neglect, or are at risk for abuse and/or neglect. The finding of

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*not confirmed* is made when there is less than a preponderance of evidence to support that children have suffered or are at a risk for abuse and/or neglect. The finding of *unsubstantiated* is made when the report is found to be frivolous or made in bad faith.

Both *not confirmed* reports and *unsubstantiated* reports are maintained by the department for future risk and safety assessment purposes. The third category, *unsubstantiated*, is unnecessary; the federal law only has two categories.

Impact on the public: The amendment to section 350-1, HRS, requiring mandated reporters to report victims of sex trafficking and severe forms of trafficking will ensure the well-being and safety of our children through identification, assessment and provision of services.

The added requirement of mandated reporters to report minor victims of sex trafficking and severe forms of trafficking will necessitate an increase in community education, but positively lead to an eventual increased awareness of this national issue.

The amendment to section 350-2, HRS, will help families more clearly understand that even if a report of child abuse and neglect is expunged from the State's central registry, the report is retained by the department for future risk and safety assessment purposes.

Impact on the department and other agencies: With the additional reports to child welfare services of minor sex trafficking and severe forms of trafficking, there may be an increase in the workload for the department and its contracted providers.

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The elimination of *unsubstantiated* as a finding is expected to increase clarity and consistency in the work of department staff.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: Department of Education, Department of Health, medical and mental health professionals, law enforcement, child care providers, public and private schools.

EFFECTIVE DATE: May 29, 2017.