

CHAPTER 350
CHILD ABUSE

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Cross References

Hawaii children's trust fund, see chapter 350B.

Case Notes

Hawaii legislature did not intend to create a duty that would subject a private party (and analogously the government) to tort liability based upon a failure to report in violation of this chapter. 711 F. Supp. 2d 1195 (2010).

Nothing in this chapter prevents the issuance of a search warrant based on information obtained by the department or the police while investigating an abuse case. 70 H. 627, 780 P.2d 1103 (1989).

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

"Child abuse or neglect" means 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; or
 - (M) Death; andsuch 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) 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) 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) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
- (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; or
- (6) When the child has been the victim of labor trafficking under chapter 707.

"Department" means the department of human services.

"Report" means the initial oral statement and, if required by section 350-1.1(c), 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. [L 1982, c 77, §1; am L 1983, c 171, §5; am L 1987, c 204, §3 and c 339, §4; am L 1988, c 141, §29; am L 2013, c 246, §3]

Revision Note

Pursuant to §23G-15, in:

- (1) Paragraphs (1) to (4) of the definition of "child abuse or neglect", "or" deleted; and
- (2) The definition of "report", section "350-1.1(c)" substituted for "350-1.1(d)".

" **§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.

(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. 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. 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. 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, 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).

(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. [L 1967, c 261, §2; HRS §350-1; am L 1970, c 21, §1 and c 105, §5; am L 1975, c 147, §1; am L 1977, c 81, §2; am L 1979, c 171, §1; am L 1981, c 59, §1; ren and am L 1982, c 77, §2; am L 1985, c 17, §1 and c 208, §3; am L 1987, c 204, §4 and c 339, §4; am L 1988, c 323, §2; am L 1998, c 134, §4; am L 1999, c 271, §4; am L 2000, c 248, §1; am L 2006, c 159, §1 and c 193, §2]

Cross References

Child abuse, see chapter 707, part VI.

Case Notes

Cited: 711 F. Supp. 2d 1195 (2010).

" **[§350-1.15] Orientation and training.** To improve the identification of child abuse and neglect, the department shall offer periodic orientation and training to those responsible for making child abuse and neglect reports pursuant to section 350-1.1. [L 1988, c 323, §1]

" **§350-1.2 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. [L 1985, c 17, §3; am L 1987, c 204, §5 and c 339, §4]

Case Notes

Cited: 711 F. Supp. 2d 1195 (2010).

" **[§350-1.3] 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. [L 1987, c 204, §1]

" **§350-1.4 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.

(c) Notwithstanding subsection (a) and section 346-10, the director may adopt rules pursuant to chapter 91 to provide for the release of information required by federal statute or regulation. [L 1987, c 204, §2; am L 1999, c 34, §2]

" **[§350-1.5] Authorization for color photographs, x-rays, and radiological or other diagnostic examination.** (a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, registered nurse or licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care, or treatment of patients, and any medical examiner, coroner, social worker, or police officer, who has before the person a child the person reasonably believes has been harmed, shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child or cause a radiological or other diagnostic examination to be performed on the child.

(b) Color photographs, x-rays, radiological, or other diagnostic examination reports that show evidence of imminent harm, harm, or threatened harm to a child shall immediately be forwarded to the department. [L 2010, c 135, pt of §3]

" **[§350-1.6] Disclosure of records.** (a) The department shall disclose to resource parents and the foster child's

principal treating physician copies of the foster child's complete medical records in the department's physical custody and relevant social history within thirty days of foster placement.

(b) If a child is active in the child protective services system, physicians may share with other physicians, orally or in writing, or both, medical information without parental consent.

(c) Any records or information released to a foster child's resource parents, or the foster child's principal treating physician pursuant to subsection (a), or any information shared by one physician with another physician pursuant to subsection (b), shall remain confidential in accordance with section 350-1.4. [L 2010, c 135, pt of §3]

" **§350-2 Action on reporting.** (a) Upon receiving a report concerning child abuse or neglect, the department shall proceed pursuant to chapter 587A and the department's rules.

(b) The department shall inform the appropriate police department of all reports received by the department regarding a case of child abuse or neglect, including reports received under section 350-1.1; provided that the name of the person who reported the case of child abuse or neglect shall be released to the police department pursuant only to court order or the person's consent.

(c) 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 the 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 the person who reported the case of child abuse or neglect shall be released to the police department or the office of the prosecuting attorney pursuant only to court order or the person's consent.

(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; 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.

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.

The department shall adopt rules as may be necessary in carrying out this section. [L 1967, c 261, §3; HRS §350-2; am L 1970, c 105, §5; am L 1987, c 204, §6 and c 339, §4; am L 1991, c 123, §1; am L 1998, c 134, §5; am L 1999, c 271, §5; am L 2010, c 135, §7]

Cross References

Rulemaking, see chapter 91.

Vexatious litigants, see chapter 634J.

Case Notes

Cited: 711 F. Supp. 2d 1195 (2010).

" **§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 587A 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, any other state agency, or any private organization for the conduct of individuals provided immunity herein. [L 1967, c 261, §4; HRS §350-3; am L 1986, c 229, §1; am L 1987, c 204, §7 and c 339, §4; am L 2010, c 135, §7]

Case Notes

Cited: 711 F. Supp. 2d 1195 (2010).

" **§350-4 REPEALED.** L 1992, c 200, §1.

" **§350-5 Admissibility of evidence.** The physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report of child abuse or neglect pursuant to

this chapter. [L 1967, c 261, §6; HRS §350-5; am L 1987, c 204, §8; am L 1992, c 217, §3]

Cross References

Physician-patient privilege, see §626-1, rule 504.
Psychologist-client privilege, see §626-1, rule 504.1.
Spousal privilege, see §626-1, rule 505.
Victim-counselor privilege, see §626-1, rule 505.5.

" **§§350-6 and 350-7 REPEALED.** L 1987, c 204, §§9, 10.