
A BILL FOR AN ACT

RELATING TO CHILD ABUSE REPORTING.

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

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

8 The legislature further finds that Hawaii is only one of
9 seven states that do not include members of the clergy as
10 mandatory reporters of child abuse and neglect. Additionally,
11 sexual exploitation of children occurs online, making it easier
12 for some predators to avoid detection and arrest. By requiring
13 computer technicians to report to law enforcement computer files
14 containing child pornography, the State can protect more
15 children from exploitation and abuse.

16 The purpose of this Act is to update Hawaii's mandatory
17 child abuse and neglect reporting law by adding members of the



1 clergy, commercial computer technicians, and commercial film and
2 photographic print or image processors to the categories of
3 persons who are required to report, based on California's Child
4 Abuse and Neglect Reporting Act.

5 SECTION 2. Section 350-1.1, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§350-1.1 Reports.** (a) Notwithstanding any other state
8 law concerning confidentiality to the contrary, the following
9 persons who, in their professional or official capacity, have
10 reason to believe that child abuse or neglect has occurred or
11 that there exists a substantial risk that child abuse or neglect
12 may occur in the reasonably foreseeable future, shall
13 immediately report the matter orally to the department or to the
14 police department:

- 15 (1) Any licensed or registered professional of the healing
16 arts or any health-related occupation who examines,
17 attends, treats, or provides other professional or
18 specialized services, including but not limited to
19 physicians, including physicians in training,
20 psychologists, dentists, nurses, osteopathic
21 physicians and surgeons, optometrists, chiropractors,



- 1 podiatrists, pharmacists, and other health-related
2 professionals;
- 3 (2) Employees or officers of any public or private school;
- 4 (3) Employees or officers of any public or private agency
5 or institution, or other individuals, providing
6 social, medical, hospital, or mental health services,
7 including financial assistance;
- 8 (4) Employees or officers of any law enforcement agency,
9 including but not limited to the courts, police
10 departments, department of public safety, correctional
11 institutions, and parole or probation offices;
- 12 (5) Individual providers of child care, or employees or
13 officers of any licensed or registered child care
14 facility, foster home, or similar institution;
- 15 (6) Medical examiners or coroners; [~~and~~]
- 16 (7) Employees of any public or private agency providing
17 recreational or sports activities[-];
- 18 (8) Commercial film and photographic print or image
19 processors;
- 20 (9) Commercial computer technicians;



1 (10) Members of the clergy or custodians of records
2 therefor; provided that a clergy member who acquires
3 knowledge or a reasonable suspicion of child abuse or
4 neglect during a penitential communication shall not
5 be subject to the requirements of this section;
6 provided further that nothing in this section shall be
7 construed to modify or limit a clergy member's duty to
8 report known or suspected child abuse or neglect when
9 the clergy member is acting in some other capacity
10 that would otherwise make the clergy member a mandated
11 reporter; and

12 (11) Administrators and employees of any public or private
13 organization whose duties require direct contact with
14 or supervision of children.

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



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

4 (1) If a police department or the department of public
5 safety is the initiating agency, a written report
6 shall be filed with the department for cases that the
7 police or the department of public safety takes
8 further action on or for active cases in the
9 department under this chapter[-];

10 (2) All written reports shall contain the name and address
11 of the child and the child's parents or other persons
12 responsible for the child's care, if known, the
13 child's age, the nature and extent of the child's
14 injuries, and any other information that the reporter
15 believes might be helpful or relevant to the
16 investigation of the child abuse or neglect[-];

17 (3) This subsection shall not be construed to serve as a
18 cause of action against the department, the police, or
19 the department of public safety[-]; and

20 (4) Before January 1, 2021, and through and including
21 December 31, 2020, a member of the clergy, or a



1 custodian of records therefor, may report to the
2 department that the clergy member or custodian of
3 records, in the person's professional capacity or
4 within the scope of the person's employment other than
5 during a penitential communication, had acquired
6 knowledge or had a reasonable suspicion that a child
7 was a victim of abuse or neglect and that the clergy
8 member or custodian of records did not previously
9 report the abuse. A person who makes a report
10 pursuant to this paragraph shall not be subject to the
11 penalty for non-reporting under subsection 350-1.2.
12 This paragraph shall apply regardless of whether the
13 victim of the known or suspected abuse or neglect has
14 reached the age of eighteen by the time the report is
15 made.

16 (d) Any person subject to subsection (a) shall, upon
17 demand of the department or any police department, provide all
18 information related to the alleged incident of child abuse or
19 neglect, including, but not limited to, medical records and
20 medical reports, which was not included in the written report
21 submitted pursuant to subsection (c) [-]; provided that:



- 1 (1) A commercial film, photographic print, or image
2 processor who has knowledge of or who observes, within
3 the scope of the processor's professional capacity or
4 employment, any film, photograph, videotape, negative,
5 slide, or any representation of information, data, or
6 an image, including any film, filmstrip, photograph,
7 negative, slide, photocopy, videotape, video laser
8 disc, computer hardware, computer software, computer
9 floppy disk, data storage medium, CD-ROM, computer-
10 generated equipment, or computer-generated image,
11 depicting a child under eighteen years of age engaged
12 in an act of sexual conduct, shall immediately or as
13 soon as practicable, telephonically report the
14 instance of suspected abuse to the police department
15 of the county in which the images are seen. Within
16 thirty-six hours of becoming aware of the suspected
17 abuse, the person shall provide to that police
18 department a written follow-up report of the incident
19 with a copy of the image or material attached; and
20 (2) A commercial computer technician who has knowledge of
21 or who observes, within the scope of the technician's



1 professional capacity or employment, any
2 representation of information, data, or an image,
3 including any computer hardware, computer software,
4 computer file, computer floppy disk, data storage
5 medium, CD-ROM, computer-generated equipment, or
6 computer-generated image that is retrievable in
7 perceivable form and that is saved, transmitted, or
8 organized on an electronic medium, depicting a child
9 under eighteen years of age engaged in an act of
10 sexual conduct, shall immediately or as soon as
11 practicable, telephonically report the instance of
12 suspected abuse to the police department of the county
13 in which the images or materials are seen. As soon as
14 practicable after becoming aware of the suspected
15 abuse, the person shall provide to that police
16 department a written follow-up report of the incident
17 with a brief description of the images or materials.
18 An employer of a commercial computer technician may
19 establish internal procedures for facilitating
20 reporting for the purpose of complying with this
21 section. These procedures may direct employees who



1 are mandated reporters under this section to transmit
2 their reports to an employee who is designated by the
3 employer to receive these reports. A commercial
4 computer technician who transmits a report to a
5 designated employee in accordance with an employer-
6 established procedure shall be deemed to have complied
7 with the requirements of this section.

8 (e) The director may adopt, amend, or repeal rules,
9 subject to chapter 91, to further define or clarify the specific
10 forms of child abuse or neglect enumerated in section 350-1 for
11 use in implementing this chapter; provided that rules adopted
12 under this subsection shall be limited to such further or
13 clarifying definitions.

14 (f) All employers of persons subject to subsection (a)
15 shall provide statements to mandated reporters upon their hiring
16 and prior to the start date of their employment. The statements
17 shall be approved in advance by the department and shall clearly
18 explain the employee's obligation to report pursuant to this
19 section.

20 (g) As used in this section:



1 "Commercial computer technician" means a person who, for
2 compensation, works for a company that is in the business of
3 repairing, installing, or otherwise servicing a computer or
4 computer component, including any computer part, device, memory
5 storage or recording mechanism, auxiliary storage recording or
6 memory capacity, or any other material relating to the operation
7 and maintenance of a computer or computer network system. The
8 term includes an employee designated by an employer to receive
9 reports made pursuant to an internal reporting procedure that
10 has been voluntarily established by the employer pursuant to
11 subsection (d).

12 "Commercial film and photographic print or image processor"
13 means a person who, for compensation, develops exposed
14 photographic film into negatives, slides, or prints, or who
15 makes prints from negatives or slides, or who prepares,
16 publishes, produces, develops, duplicates, or prints any
17 representation of information, data, or an image, including any
18 film, filmstrip, photograph, negative, slide, photocopy,
19 videotape, video laser disc, computer hardware, computer
20 software, computer floppy disk, data storage medium, CD-ROM,
21 computer-generated equipment, or computer-generated image. The



1 term includes any employee of that person, but does not include
2 a person who develops film, or makes prints or images, for a
3 public agency.

4 "Electronic medium" includes any recording, CD-ROM,
5 magnetic disk memory, magnetic tape memory, CD, DVD, thumb
6 drive, or any other computer hardware or media.

7 "Member of the clergy" means a priest, minister, rabbi,
8 religious practitioner, or similar functionary of a church,
9 temple, or other religious organization.

10 "Penitential communication" means a communication,
11 including a sacramental confession, that is intended to be kept
12 confidential and is made to a member of the clergy who, in the
13 course of the discipline or practice of the applicable religious
14 organization, is authorized or accustomed to hear those
15 communications, and under the discipline, tenets, customs, or
16 practices of the applicable religious organization, has a duty
17 to keep those communications secret.

18 "Sexual conduct" means actual or simulated sexual
19 intercourse, including genital-genital contact, oral-genital
20 contact, anal-genital contact, or oral-anal contact, whether
21 between persons of the same or opposite sex, masturbation,



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1 bestiality, sexual penetration, deviate sexual intercourse,
2 sadomasochistic abuse, or lascivious exhibition of the genital
3 or pubic area of a minor."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

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

9 SECTION 5. This Act shall take effect upon its approval.

10

INTRODUCED BY: *Robert Chizome*

JAN 17 2020



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Report Title:

DHS; Child Abuse and Neglect; Mandatory Reporting

Description:

Adds members of the clergy, commercial computer technicians, and commercial film and photographic print or image processors to the categories of persons who are required to report child abuse and neglect to the Department of Human Services or to police. Provides a "safe harbor" through December 31, 2020, for reporting by clergy of known or suspected child abuse that was previously unreported and that did not arise during a penitential communication.

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

