

JAN 17 2020

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# 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,



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- 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.

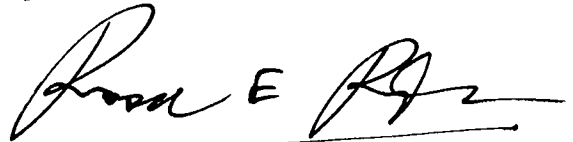
9 SECTION 5. This Act shall take effect upon its approval.

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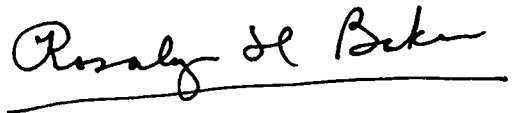
INTRODUCED BY:




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# S.B. NO. 2502

**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.*

