
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 four states and three United States territories that do not
10 include members of the clergy as mandatory reporters of child
11 abuse and neglect. Additionally, sexual exploitation of
12 children occurs online, making it easier for some predators to
13 avoid detection and arrest. By requiring computer technicians
14 to report to law enforcement computer files containing child
15 pornography, the State can protect more children from
16 exploitation and abuse.



1 The purpose of this Act is to update Hawaii's mandatory
2 child abuse and neglect reporting law by adding members of the
3 clergy, commercial computer technicians, commercial film and
4 photographic print or image processors, and administrators and
5 employees of organizations that have direct contact with or
6 supervision of children to the categories of persons who are
7 required to report, based on California's Child Abuse and
8 Neglect Reporting Act.

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

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

19 (1) Any licensed or registered professional of the healing
20 arts or any health-related occupation who examines,
21 attends, treats, or provides other professional or



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



- 1 (8) Commercial film and photographic print or image
2 processors;
- 3 (9) Commercial computer technicians;
- 4 (10) Members of the clergy or custodians of records
5 therefor; provided that a clergy member who acquires
6 knowledge or a reasonable suspicion of child abuse or
7 neglect during a penitential communication shall not
8 be subject to the requirements of this section;
9 provided further that nothing in this section shall be
10 construed to modify or limit a clergy member's duty to
11 report known or suspected child abuse or neglect when
12 the clergy member is acting in some other capacity
13 that would otherwise make the clergy member a mandated
14 reporter; and
- 15 (11) Administrators and employees of any public or private
16 organization whose duties require direct contact with
17 or supervision of children.

18 (b) Whenever a person designated in subsection (a) is a
19 member of the staff of any public or private school, agency, or
20 institution, that staff member shall immediately report the
21 known or suspected child abuse or neglect directly to the



1 department or to the police department and also shall
2 immediately notify the person in charge or a designated delegate
3 of the report made in accordance with this chapter.

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

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

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



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

4 (4) Before January 1, 2021, and through and including
5 December 31, 2020, a member of the clergy, or a
6 custodian of records therefor, may report to the
7 department that the clergy member or custodian of
8 records, in the person's professional capacity or
9 within the scope of the person's employment other than
10 during a penitential communication, had acquired
11 knowledge or had a reasonable suspicion that a child
12 was a victim of abuse or neglect and that the clergy
13 member or custodian of records did not previously
14 report the abuse. A person who makes a report
15 pursuant to this paragraph shall not be subject to the
16 penalty for non-reporting under subsection 350-1.2.
17 This paragraph shall apply regardless of whether the
18 victim of the known or suspected abuse or neglect has
19 reached the age of eighteen by the time the report is
20 made.



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

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



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



1 department a written follow-up report of the incident
2 with a brief description of the images or materials.
3 An employer of a commercial computer technician may
4 establish internal procedures for facilitating
5 reporting for the purpose of complying with this
6 section. These procedures may direct employees who
7 are mandated reporters under this section to transmit
8 their reports to an employee who is designated by the
9 employer to receive these reports. A commercial
10 computer technician who transmits a report to a
11 designated employee in accordance with an employer-
12 established procedure shall be deemed to have complied
13 with the requirements of this section; provided that
14 the employer or employee designated to receive the
15 report is also subject to reporting requirements of
16 this section.

17 (e) The director may adopt, amend, or repeal rules,
18 subject to chapter 91, to further define or clarify the specific
19 forms of child abuse or neglect enumerated in section 350-1 for
20 use in implementing this chapter; provided that rules adopted



1 under this subsection shall be limited to such further or
2 clarifying definitions.

3 (f) All employers of persons subject to subsection (a)
4 shall provide statements to mandated reporters upon their hiring
5 and prior to the start date of their employment. The statements
6 shall be approved in advance by the department and shall clearly
7 explain the employee's obligation to report pursuant to this
8 section.

9 (g) As used in this section:

10 "Commercial computer technician" means a person who, for
11 compensation, works for a company that is in the business of
12 repairing, installing, or otherwise servicing a computer or
13 computer component, including any computer part, device, memory
14 storage or recording mechanism, auxiliary storage recording or
15 memory capacity, or any other material relating to the operation
16 and maintenance of a computer or computer network system. The
17 term includes an employee designated by an employer to receive
18 reports made pursuant to an internal reporting procedure that
19 has been voluntarily established by the employer pursuant to
20 subsection (d).



1 "Commercial film and photographic print or image processor"
2 means a person who, for compensation, develops exposed
3 photographic film into negatives, slides, or prints, or who
4 makes prints from negatives or slides, or who prepares,
5 publishes, produces, develops, duplicates, or prints any
6 representation of information, data, or an image, including any
7 film, filmstrip, photograph, negative, slide, photocopy,
8 videotape, video laser disc, computer hardware, computer
9 software, computer floppy disk, data storage medium, CD-ROM,
10 computer-generated equipment, or computer-generated image. The
11 term includes any employee of that person, but does not include
12 a person who develops film, or makes prints or images, for a
13 public agency.

14 "Electronic medium" includes any recording, CD-ROM,
15 magnetic disk memory, magnetic tape memory, CD, DVD, thumb
16 drive, or any other computer hardware or media.

17 "Member of the clergy" means a priest, minister, rabbi,
18 religious practitioner, or similar functionary of a church,
19 temple, or other religious organization.

20 "Penitential communication" means a communication,
21 including a sacramental confession, that is intended to be kept



1 confidential and is made to a member of the clergy who, in the
2 course of the discipline or practice of the applicable religious
3 organization, is authorized or accustomed to hear those
4 communications, and under the discipline, tenets, customs, or
5 practices of the applicable religious organization, has a duty
6 to keep those communications secret.

7 "Sexual conduct" means actual or simulated sexual
8 intercourse, including genital-genital contact, oral-genital
9 contact, anal-genital contact, or oral-anal contact, whether
10 between persons of the same or opposite sex, masturbation,
11 bestiality, sexual penetration, deviate sexual intercourse,
12 sadomasochistic abuse, or lascivious exhibition of the genital
13 or pubic area of a minor."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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



Report Title:

DHS; Child Abuse and Neglect; Mandatory Reporting

Description:

Adds members of the clergy, commercial computer technicians, commercial film and photographic print or image processors, and persons employed by organizations that have direct contact with or supervision of children 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. (SD1)

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