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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. Section 350-1.1, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) Notwithstanding any other state law concerning  
4 confidentiality to the contrary, the following persons who, in  
5 their professional or official capacity, have reason to believe  
6 that child abuse or neglect has occurred or that there exists a  
7 substantial risk that child abuse or neglect may occur in the  
8 reasonably foreseeable future, shall immediately report the  
9 matter orally to the department or to the police department:

10           (1) Any licensed or registered professional of the healing  
11 arts or any health-related occupation who examines,  
12 attends, treats, or provides other professional or  
13 specialized services, including but not limited to  
14 physicians, including physicians in training,  
15 psychologists, dentists, nurses, osteopathic  
16 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;
- 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; and



1           (10) Members of the clergy or custodians of records  
2           therefor; provided that a member of the clergy shall  
3           not be required to report information gained solely  
4           during a penitential communication[~~-~~], unless exigent  
5           circumstances exist that justify disclosure of the  
6           abuse or neglect, including the need to take immediate  
7           action for the purpose of preventing imminent harm to  
8           the child. When a clergy member receives reportable  
9           information from any other source, the clergy member  
10          shall comply with the reporting requirements of this  
11          section, regardless of whether the clergy member  
12          received the same information during a penitential  
13          communication. For purposes of this paragraph[~~-~~  
14          ~~"penitential communication"~~]:  
15          (A) "Member of the clergy" means a minister, pastor,  
16              priest, rabbi, Christian Science practitioner, or  
17              other similar functionary of a religious  
18              organization.  
19          (B) "Penitential communication" means a  
20              communication, including a sacramental  
21              confession, that is intended to be kept



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

9 SECTION 2. Section 626:1-506, Hawaii Revised Statutes, is  
 10 amended by amending subsection (a) and (b) to read as follows:

11 "(a) Definitions. As used in this rule:

12 (1) A "member of the clergy" is a minister, pastor,  
 13 priest, rabbi, Christian Science practitioner, or  
 14 other similar functionary of a religious organization,  
 15 or an individual reasonably believed so to be by the  
 16 communicant.

17 (2) A communication is "confidential" if made privately  
 18 and not intended for further disclosure except to  
 19 other persons present in furtherance of the purpose of  
 20 the communication.



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1 (b) General rule of privilege. A person has a privilege  
 2 to refuse to disclose and to prevent another from disclosing a  
 3 confidential communication by the person to a member of the  
 4 clergy in the latter's professional character as spiritual  
 5 advisor[-]; provided that a confidential communication relating  
 6 to the known or suspected abuse or neglect of a person under the  
 7 age of eighteen shall not be privileged under this rule when  
 8 exigent circumstances exist that justify disclosure of the abuse  
 9 or neglect, including the need to take immediate action for the  
 10 purpose of preventing imminent harm to the person under the age  
 11 of eighteen."

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

15 SECTION 4. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

*John M. Papp*  
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 JAN 20 2023



# H.B. NO. 789

**Report Title:**

Child Abuse and Neglect; Mandatory Reporting; Members of the Clergy; Rules of Evidence; Privileged Communications

**Description:**

Amends the child abuse and neglect reporting requirement to specify that a member of the clergy shall not be required to report information gained solely during a penitential communication, unless exigent circumstances exist that justify disclosure of the abuse or neglect. Specifies that the general rule of privilege applicable to confidential communications made to a member of the clergy does not apply to communications relating to known or suspected child abuse or neglect when exigent circumstances exist that justify disclosure of the abuse or neglect.

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

