



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2013

TO: The Honorable Mele Carroll, Chair
House Committee on Human Services

FROM: Patricia McManaman, Director

**SUBJECT: H.B. 700 - RELATING TO MANDATORY REPORTING
REQUIREMENTS**

Hearing: Thursday, February 14, 2013, 9:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of this bill is to amend the definition of child abuse or neglect and to expand the scope of incidents to be reported as child abuse.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the overall intent of this bill to ensure the safety of children. The Department respectfully opposes the proposed changes to the definition of child abuse in chapter 350, Hawaii Revised Statutes (HRS). The Federal Child Abuse Prevention and Treatment Act (CAPTA) [42 U.S.C. 5106g] specifies that the term "child abuse and neglect" relates to an act or failure to act on the part of a parent or caretaker. This provision is echoed in chapter 350, HRS, Child Abuse, and chapter 587A, HRS, Child Protective Act, with their reference to persons responsible for the care of a child. To broaden the definition of child abuse to "the acts or omissions of any person or legal entity" expands the scope child abuse and neglect beyond the Department's ability to respond.

Compliance with CAPTA requirements is necessary for the State's compliance with its federal Title IV-E State Plan, so that Hawaii can continue to remain eligible for approximately \$40,000,000 in annual federal Title IV-E funding. These federal funds support the State's child welfare services programs.

Section 3 of the proposed legislation also raises concerns for the DHS for its overly broad language which may deter youth from seeking medical care knowing that they will lose their right to confidential treatment. In addition, the measure would deter persons engaged in the sex industry from seeking testing and treatment for HIV, and other sexually transmitted diseases. Such a measure will increase the spread of HIV/AIDS and other sexually transmitted disease to the detriment of the public.

Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/14/2013

Committee: House Human Services

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0700 RELATING TO MANDATORY REPORTING REQUIREMENTS

Purpose of Bill: Amends the definition of child abuse or neglect to include acts or omissions of any person or legal entity. Clarifies reporting duty to be based on a reasonable suspicion. Expands medical personnel's duty to report to include reporting injuries suffered by a victim of labor trafficking or prostitution.

Department's Position:

The Department of Education (Department) supports HB 700 with the following reservations. The proposed language broadens: 1) the definition of perpetrator with respect to acts or omissions; and 2) includes incidents based on reasonable suspicion. This broadened definition will create an unmanageable process of reporting.

Given this definition, school employees will be mandated to report on a much broader range of perpetrators, based on reasonable suspicion. Potentially, a school employee would be required to report a fight in which one or both students sustain an injury. These types of incidents are not currently classified in the realm of child abuse or neglect.

The Department acknowledges the intent of the bill to ensure the safety and well-being of all children; however, we recommend that the definition of the alleged perpetrator and resulting abuse and/or neglect be more clearly defined.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 700, RELATING TO MANDATORY REPORTING REQUIREMENTS.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 14, 2013 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Jay K. Goss, Deputy Attorney General

Chair Carroll and Members of the Committee:

The Department of the Attorney General appreciates the effort this bill makes to better protect our children; however, for the reasons stated herein, we recommend section 1 of the bill be deleted.

Section 1 of this bill amends the definition of "child abuse and neglect" under chapter 350, Hawaii Revised Statutes, (HRS). Under the current provisions of chapter 350, mandated reporters are required to report any act or omission by a person who is related to or is responsible for a child that causes harm or may subject the child to threatened harm. The amendments in this bill delete the requirement that the harm or threatened harm be by a person who is related to or is responsible for the child.

Under chapter 350, mandated reporters enumerated in section 350-1.1, HRS, are required to report all incidents of "child abuse and neglect" to the Department of Human Services (DHS) and to the police department. Deleting the requirement that the abuse or neglect be committed by a person related to the child could lead to situations where a teacher would be required to call DHS and make a child abuse report if two children got into a fight in school resulting in injuries to one of the children. A probation officer or employee of the Department of Public Safety would be required to report to DHS every time a child was harmed in a correctional facility. A doctor in an emergency room would be required to report to DHS if a child came into the emergency room after being assaulted by a stranger. The challenge with these types of reports coming into DHS is that DHS cannot do anything with them. Pursuant to section 350-2 (a), HRS, when DHS receives a report under chapter 350, it must follow the provisions of chapter

587A, HRS. Pursuant to section 587A-5, HRS, however, the family court only has jurisdiction over a child who "is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family." (Emphasis added). In addition, the entire statutory scheme of chapter 587A involves attempts to reunify children with their parents when that is appropriate and to terminate parental rights when those efforts fail. If the child and perpetrator are not related in some manner, it would not make sense to attempt to reunify the two of them and there would be no parental rights to terminate.

For the above stated reasons, we respectfully ask the Committee to delete section 1 of the bill.

HAWAII YOUTH SERVICES NETWORK

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Daryl Selman, President
Judith F. Clark, Executive Director
Aloha House
American Civil Liberties Union of Hawaii
Bay Clinic, Inc.
Big Brothers Big Sisters of Honolulu
Big Island Substance Abuse Council
Blueprint for Change
Bobby Benson Center
Catholic Charities Hawaii
Child and Family Service
Coalition for a Drug Free Hawaii
Domestic Violence Action Center
EPIC, Inc.
Family Support Hawaii
Hale Kipa, Inc.
Hale 'Opio Kauai, Inc.
Hawaii Behavioral Health
Hawaii Student Television
Healthy Mothers Healthy Babies Coalition
Hina Mauka Teen Care
Hui Malama Learning Center
Kahi Mohala Behavioral Health
KEY (Kualoa-Heeia Ecumenical Youth)
Project
Kids Hurt Too
Kokua Kalihi Valley
Life Foundation
Marimed Foundation
Maui Youth and Family Services
Palama Settlement
P.A.R.E.N.T.S., Inc.
Parents and Children Together (PACT)
Planned Parenthood of Hawaii
REAL
Salvation Army Family Intervention Svcs.
Salvation Army Family Treatment Svcs.
Sex Abuse Treatment Center
Susannah Wesley Community Center
The Catalyst Group
The Children's Alliance of Hawaii
Waikiki Health Center
Women Helping Women
YWCA of Kauai

February 11, 2013

To: Representative Mele Carroll, Chair,
And members of the Committee on Human Services

Comments on HB 700 Relating to Mandatory Reporting

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, opposes HB 700 Relating to Mandatory Reporting.

This bill will impede efforts by medical and social service workers to provide counseling and medical care services to victims of rape or sexual abuse. It will negatively impact outreach to prevent the transmission of HIV and other sexually transmitted infections (STI) and discourage persons engaged in prostitution and other forms of commercial sexual activities from being tested and treated for HIV/STIs. It will become more difficult to reach out to runaway and homeless youth and help them to leave the streets for safe and appropriate living situations.

This bill is designed to assist law enforcement and criminal justice agencies in the arrest and prosecution of persons involved in sex or labor trafficking, but it would reduce access to critically needed services for survivors of sex and labor trafficking, by eliminating their right to confidential services. These victims can be further traumatized by forcible involvement with the legal system, and many will choose to conceal their needs and not seek help.

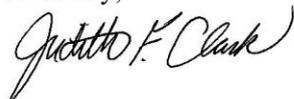
I worked in the area of rape and sexual assault years ago, at a time when medical providers were required to report all rapes to the police. When victims gained the right to choose whether or not to report their abuse to law enforcement, the number of victims seeking help tripled in a one-year period.

Every state in the U.S. allows confidential testing and treatment for HIV and other STIs due to the public health risks of allowing dangerous infections to spread through the population. This needs to continue.

Medical personnel and counselors must be able to provide confidential services. Efforts to bring sex and labor traffickers to justice must not take precedence over the needs and well-being of victims and survivors.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

**TESTIMONY FOR HOUSE BILL 700, RELATING TO MANDATORY
REPORTING REQUIREMENTS**

**House Committee on Human Services
Hon. Mele Carroll, Chair
Hon. Bertrand Kobayashi, Vice Chair**

**Thursday, February 14, 2013, 9:30 AM
State Capitol, Conference Room 329**

Honorable Chair Carroll and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in support of the intent of HB 700, relating to mandatory reporting requirements.

In 2011, lawmakers passed HB 141 and HB 240, the former of which outlawed labor trafficking in the islands and the latter of which strengthened existing anti-prostitution laws by expanding witness protection for victims and targeting repeat offenders, particularly pimps and johns. Both bills were important steps in rectifying Hawaii's poor image and record with regard to anti-trafficking statutes. Importantly, these new laws focus on demand for labor and sex trafficking, signaling our state's move toward combating those most responsible for trafficking violations—pimps, johns, owners and managers of prostitution houses, and traffickers themselves—while protecting those who are most vulnerable. In 2012, policymakers passed a “vacating convictions” bill, for the first time allowing persons who have been wrongfully convicted of prostitution-related offenses and can demonstrate that their offenses were coerced to petition to have these convictions vacated from their record, so that they can matriculate into healthy, sustainable, fruitful lifestyles.

The IMUAlliance lauds the State Legislature's efforts during the last two sessions. At the same time, we call upon lawmakers to continue the fight against human trafficking by hearing and advancing bills that increase services afforded to victims. To that end, IMUAlliance supports the enactment of “mandatory reporting”

legislation that requires medical personnel to report signs of human trafficking to law enforcement for investigation. We note, though, that an administration bill, HB 874, is moving through the State Legislature that would amend the definitions of “child abuse and neglect” and “harm” in the state's human services and family court statutes to include child victims of human trafficking. Accordingly, if the committee decides to move this bill forward, we encourage you to amend this bill to apply only to adult victims of human trafficking by deleting Sections 1 and 2 of this bill, while amending Section 3 to read: SECTION 3. Section 453-14, Hawaii Revised Statutes, is amended to read as follows:

"§453-14 Duty of physician, osteopathic physician, surgeon, hospital, clinic, etc., to report wounds. (a) Every physician, osteopathic physician, physician assistant, and surgeon attending or treating a case of knife wound, bullet wound, gunshot wound, powder burn, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, or any other injury reasonably believed to have been caused by the use of violence or sustained in a suspicious or unusual manner, including injuries suffered by **an adult victim of labor trafficking in the first degree pursuant to 707-781 or an adult victim of promoting prostitution pursuant to 712-1202(1)(a)**, or in motor vehicle collisions resulting in serious injury or death, or, whenever the case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report the case or provide requested information to the chief of police of the county within which the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of the injury, together with other pertinent information that may be of use to the chief of police. As used herein[, the term "chief of police"]:

“Adult” has the same meaning as provided in section 571-2.

"Chief of police" means the chief of police of each county and any of the chief's authorized subordinates.

~~"Prostitution" has the same meaning as provided in section 712-1200.~~

"Victim" means a person against whom a crime has been committed.

(b) This section shall not apply to wounds, burns, or injuries received by a member of the armed forces of the United States or of the State while engaged in the actual performance of duty.

(c) A person who makes a report called for under this section shall be subject to the physician-patient privilege under section 626-1, rule 504, with regard to confidential communications made by the patient for the purpose of diagnosis or treatment of that patient, but the privilege shall not apply to testimony about the physician's observations of the patient.

~~[(e)]~~ (d) Any person who fails to make the report called for herein within twenty-four hours after the attendance or treatment shall be fined not less than \$50 nor more than \$500."

Again, the IMUAlliance thanks you for your hard work to stem human trafficking on our shores. Room for improvement remains, however, and we feel that the measure in question, with proposed amendments, will consecrate last biennium's momentum into a concerted movement. Mahalo for the opportunity to testify in support of the intent of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

February 12th 2013

COMMITTEE ON HUMAN SERVICES

Rep. Mele Carroll, Chair
Rep. Bertrand Kobayashi, Vice Chair
Rep. Della Au Belatti
Rep. Dee Morikawa

Rep. Rida T.R. Cabanilla
Rep. Justin H. Woodson
Rep. Jo Jordan
Rep. Beth Fukumoto

NOTICE OF HEARING

DATE: Thursday, February 14, 2013

TIME: 09:30 am

PLACE: Conference Room 329, State Capitol, 415 South Beretania Street

RE: COMMENTS ONLY ON HB700
RELATING TO MANDATORY REPORTING REQUIREMENTS

Amends the definition of child abuse or neglect to include acts or omissions of any person or legal entity. Clarifies reporting duty to be based on a reasonable suspicion. Expands medical personnel's duty to report to include reporting injuries suffered by a victim of labor trafficking or prostitution.

Dear Committee on Human Services:

The Pacific Alliance to Stop Slavery (PASS) would like to comment on HB700 as this bill is identical to the bill we introduced for last year's legislative session in 2012 (SB2575 of 2012). This bill, which will mimic the testimony last year, will incur major opposition from several social services who do not want the definition of child abuse altered for fear of their current funding being disqualified under the new proposed definition in HB700.

As such, we highly recommend that you amend HB700 to exclude the proposed amendments to the child abuse definitions in 350-1 and 350-1.1 and have this bill focus on the mandatory reporting of adults suspected to be trafficked for sex or labor. There is serious need for health care professionals to have this ability defined by state law to release them from federal HIPA restrictions.

There were several incidences at hospitals where doctors were unable to report suspected trafficking activity because of HIPA restrictions. The suspected female trafficking victims were not reported by hospital staff, despite their desire to, and the suspected victims ended up dead. Law enforcement and a few health care professionals approached PASS and asked us to urge the drafting of state legislation which would allow them to report suspected trafficking based upon victims' injuries and disclosure.

While we know now that there is a fundamental issue with changing the definitions of the child abuse laws, our intent was to exclude minors from this bill last year. It was only to pertain to adults. We had amendments to submit but the bill was deferred.

We would also like to point out that the highly speculative argument that this type of legislation would deter rape victims from accessing health care is flat out wrong. This coincidentally was similar to

arguments posed to lawmakers when Mandatory Child Abuse Reporting was in its legislative phase before this became the law of the land. There is no empirical proof stating that children are not coming to hospitals now that this type mandatory reporting is in place for youth.

We highly recommend deleting the proposals to change anything related to children in this HB700. There is another bill which seeks to address this definitional change more appropriately, SB1105/HB874 Relating to Child Victims of Sex and Labor Trafficking—a bill introduced by the Governor. We are fully supporting this alternate bill which seeks to re-defining the meaning of "harm" within the Child Abuse laws to include victims of promoting prostitution by non-family members.

Last year, an agency testified on this issue conveying their belief that there are “independent child prostitutes” in Hawaii who engage in “survival sex.” This is not true at all. PASS is baffled by their past testimony and do not know where this agency receives their data. All the minors in prostitution in Hawaii have pimps and therefore, by legal definition, they are sex trafficked victims or victims of promoting prostitution. We also know for a fact that if questioned about pimp activity, the juveniles are forced to say that they are independent or else they will suffer harm to themselves, their friends, or their family. We denounce the incredibly ignorant belief that there exists “independent child prostitutes” for many reasons including the detrimental implication that patrons of prostitution may provide these “independent child prostitutes” a basic need, which is money for their [the child’s] “survival” in exchange for their commercial sexual exploitation. Patrons of prostitution are not benefactors of exploited children. They do not provide a basic need for children. Patrons of prostituted children are sexual predators.

PASS serves victims of Human Trafficking for sex or labor in the state of Hawaii and has a support base of over 7000 persons. PASS is one of Hawaii’s few services that helps heal survivors of human trafficking. We testify that there are no specific services tailored to the survivors of this crime. As a result, survivors fall through the cracks or are often re-victimized and criminalized as either “prostitutes” if they are sex trafficked victims or “illegal immigrants” if they are labor trafficked victims. Hawaii must accurately and effectively address the handling of human trafficking survivors.

Since 2009, PASS alone has assisted 96 victims of human trafficking. The need to expand anti trafficking services is very severe.

Thank you for hearing this much needed legislation.

Sincerely,



Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

DATE: February 14, 2013

Advisory Board

TO: The Honorable Mele Carroll, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Human Services

President
Mimi Beams

Vice President
Peter Van Zile

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

RE: H.B. 700
Relating to Mandatory Reporting Requirements

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

Good morning Chair Carroll, Vice Chair Kobayashi and members of the House Committee on Human Services. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

H.B. 700 would amend Hawai'i Revised Statutes (HRS) Chapter 350 to expand the definition of "child abuse or neglect" to include acts or omissions of *any* person or legal entity and change the reporting duty to be based on a "reasonable suspicion". The bill would also amend HRS § 453-14 to expand the reporting duty for medical professionals to include the reporting of injuries reasonably believed to be suffered by a victim of human trafficking or prostitution.

While SATC supports the intent to protect children and victims of human trafficking, SATC opposes the proposed amendments in H.B. 700.

A victim should have the right to confidential medical care and support services. H.B. 700 would significantly expand the mandatory reporting requirements and have the effect of discouraging victims of sexual abuse and exploitation from accessing the assistance they critically need. We believe the unintended consequences of expanding the mandatory reporting requirements far outweigh any benefits of this measure.

SATC opposes the proposed amendments to Chapter 350 of the HRS. Chapter 350 of the HRS currently applies to child abuse perpetrated by a family member or caregiver. Expanding the duty to *any* act or omission that results in harm to the physical or psychological health or welfare of a child under the age of eighteen has the potential to prevent many from seeking essential services.

Fear of being reported to Child Welfare Services or the police by service providers could have a chilling effect on the willingness to trust and benefit from professional help. For example, a 17 year-old sexually assaulted by a classmate may not seek medical or psychological care if the victim knows that by accessing such services,

providers are required to report the victim's situation to law enforcement. In another example, a parent of a 12 year-old who learns that his or her child was sexually assaulted by someone who used to live in their neighborhood may not seek services, fearing the traumatic impact on the child of forced Child Welfare Services or police involvement. These victims and their families should be able to access confidential care.

In the situations above, SATC staff discusses police reporting with clients. Clients are given the choice about whether or not they want to involve law enforcement. Many of them report the incident to the police and are supported through this process by SATC, while others choose treatment only. The proposed amendment takes the choice away from the victim or family, and would likely be a barrier to many who critically need supportive services.

Additionally, the proposed change from "reason to believe" to "reasonable suspicion" is unnecessary and may confuse mandated reporters. The term "reasonable suspicion" is a legal term of art used by law enforcement and criminal justice attorneys. Many mandated reporters do not have familiarity with or understanding of the term and its legal implications.

SATC opposes the proposed amendments to Section 453-14 of the HRS. Section 453-14 of the HRS already mandates health care professionals to report to law enforcement knife wounds, bullet wounds, gunshot wounds, powder burns, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner. The inclusion of injuries suffered by a victim of labor trafficking or from prostitution is unnecessary as the reporting of serious suspicious wounds of these individuals is currently required under the existing law. The proposed amendment needlessly shifts the medical professional's focus from the person's injuries to the person's status.

SATC acknowledges that intervention is critical when an injured victim of human trafficking presents for medical treatment. It may be one of the only opportunities for the victim to accept supportive services and escape the trafficker. However, mandated reporting when a victim is not ready can lead to harmful retaliation by the trafficker and deter the victim from accessing medical help or counseling in the future.

For example, if a victim of sex trafficking presents for medical treatment and the police are notified but the victim does not disclose any wrongdoing on the part of her trafficker to police, they will not be able to intervene. The police will leave, and the trafficker will leave with the victim. The trafficker's psychological hold over the victim will be reinforced, physical violence against the victim may increase, the victim will no longer trust the health care system, and there will be a high likelihood that critical medical care will not be sought in the future. Calling the police will not force a disclosure, especially where a victim has been programmed by the trafficker to believe law enforcement cannot be trusted.

Rather than mandated police reporting, SATC recommends that health care providers develop policies regarding the identification of trafficked victims and the implementation of practices to protect and help them. A victim of human trafficking

needs to know that the health care professional is knowledgeable about the issue and that help exists when the victim is ready. Trained advocates skilled in the area can be called in to work with the victim prior to discharge. If the victim is not ready, a proposed plan can be discussed and later implemented when the victim is ready. If at any point a victim chooses to report her situation, the medical provider can and should assist in immediately contacting the police.

SATC believes there are alternatives to mandated reporting, such as education and outreach, training of professionals, and strengthening and funding of community resources. For the reasons stated above, SATC opposes H.B. 700.

Thank you for this opportunity to testify.



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February 12, 2013

Comments on HB 700

To: Chair Mele Carroll, Vice Chair Bertrand Kobayashi and Members of the House Committee on Human Services

From: Katie Reardon Polidoro, Director of Public Affairs and Government Relations, Planned Parenthood of Hawaii

Re: Comments on HB 700, Related to Mandatory Reporting Requirements

Planned Parenthood of Hawaii wishes to offer comments on HB 700. While we support the intent of better addressing the needs of human trafficking victims, we feel the proposed bill may result in confusion for health care providers. In addition, we are very concerned about the sections of the bill that require reports to be made on adult patients who are involved in prostitution or human trafficking.

As a provider of sexual and reproductive health care to many of Hawaii's young people, PPHI is deeply concerned about the rate of child abuse and sexual exploitation of children and adults, including trafficking and prostitution, that occurs in our state. As mandated reporters, we take HRS §350-1 very seriously. Over the years we have sought legal counsel in developing our own policy based on the statute. That policy has been used as model for other Family Planning Providers in our state.

A. Crimes Against Minors By Non-Family Relations Are Already Reportable Under §HRS 350-1. Section 1 of HB 700 adds language to Hawaii's current mandatory reporting statute that would require reports of abuse and neglect by non-family members.

Reports of harm done to minors by a person outside the family falls under the current statute. Parsing the statute, child abuse or neglect is defined as an "*act or omission*"¹ on the part of a parent, guardian, relation, or household member which results in physical or psychological harm to a minor or the substantial risk of such harm. The statute goes on to state that "*the act or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:*"² and goes on to list a number of injuries and crimes of which a minor might be a victim. The statute does not require that the perpetrator of the enumerated crimes be a parent or family member.

Put into context, PPHI most commonly reports on sexual abuse of minors. If a minor discloses sexual contact that meets the definition of sexual assault or sexual exploitation we are required to file a report under HRS §350-1, even when the perpetrator is not a family or household member. The rationale is that under the statute, the minor's victimization is indicative of child abuse or neglect under the statute. The "act or omission" occurs when a parent or guardian fails to protect a child from the sexual assault or fails to act after the fact.

¹ Hawaii Revised Statutes §350-1 (1982)

² Id.

We acknowledge that the intent of HB 700 is to better address crimes of sexual exploitation against children; however, we do not think that it substantively changes the mandated reporting requirements under the existing law. The proposed change in language does not add any new obligation for reporters and the amount or types of crimes against minors, whoever commits them, would not change.

B. The Term of Art “Reasonable Suspicion” Needlessly Confuses Reporters.

PPHI is concerned about the effect of changing the current language of “reason to believe” to “reasonable suspicion” in Section 2. Providers are familiar with the term “reason to believe” and have been using it for years. The term “reasonable suspicion” is a term of art describing the legal standard required before law enforcement officials perform some types of searches and arrests. Applying a “reasonable suspicion” standard would needlessly confuse mandated reporters, many of whom are not attorneys or law enforcement. Such confusion may inhibit reporting.

C. Mandated Reporting of Adult Victims Is Broad and May Interfere with Patient Privacy

Section 3 of HB 700 seeks to expand the existing requirements for physicians to report serious injuries to law enforcement. PPHI is concerned by the broadening of this reporting requirement because we believe it will imminently harm trafficking victims and sex workers who seek care. HRS §453-14 is intended to require reports of serious injury. The proposed language broadens the requirement to report *any* injury resulting from violence, labor trafficking or prostitution. This overly broad language could lead to unnecessary reports, jeopardizing patient privacy.

We are also concerned that this broad definition may be in conflict with the Health Information Portability and Privacy Act (HIPAA). While 45 CFR §164.512 (f)1(i) does allow providers to comply with state laws that require the reporting of wounds and physical injury to law enforcement, it is clear that this section of HIPAA was written to facilitate reporting of very serious and life threatening injuries. HIPAA strikes a balance of requiring reports of injuries to protect patients’ safety and preserving patient privacy and control over information sharing. We fear that frustrates HIPAA’s protections in a way that is out of balance with a patient’s right to privacy and access to health care.

D. Mandatory Reporting Proposed by HB 700 Further Endangers Victims

Our most pressing concern is the safety of victims and we believe HB 700 endangers them. The violence experienced by victims of labor and sex trafficking is extreme. In many cases of sex trafficking, a victim lives under the constant threat of physical violence, and required reports may end up exposing her to further harm. Moreover, arrest and prosecution rates of those responsible for trafficking are exceedingly rare in Hawaii. According to an investigation done by the Civil Beat in 2011, over 200 prostitution related arrests were made. Almost all of those arrests were of “johns” or of prostitutes themselves. Only a single pimp was arrested in 2011, and he was released without charge.

In that same investigation, a police officer told Civil Beat reporters that Hawaii’s law allowing prostitutes to enter into protective custody when pressing charges “has not had an impact on investigations.” In order for HB 700 to have its intended effect, there must be effective legal and safety protections for victims before providers make disclosures to law enforcement and service providers must be afforded the discretion to plan for a patient’s safety prior to making reports to law enforcement.

Finally, all people have a right to health care, especially when sick or injured. Despite HB 700’s very worthy intent of protecting victims, it would clearly require health care providers to call the police on patients who report involvement with prostitution. Sex workers who are victims of sexual assault will have to choose between accessing much needed health care and the very real possibility that they will be arrested and

charged with a crime. The end result will undoubtedly be a widespread reluctance among victims and sex workers alike to seek health care when they need it most.

Thank you very much for hearing these comments. We hope that these comments help the Committee in addressing the very important needs of victims of trafficking and prostitution. Mahalo.

Testimony in Strong Support of: HB 700

Mandatory Reporting for Health Care Providers When Caring for Victims of Human Trafficking

Dear Committee on Human Services:

Human Trafficking is on the rise both here in Hawaii and worldwide. Studies have shown that many victims have sought medical attention while being held in captivity but have not been identified as victims of trafficking. Currently, health care providers do not receive training on working with human trafficking victims, as it is not required in most schools. We receive training on domestic violence, rape, and physical abuse. We are taught extensively about child abuse, in which we are mandated to report any sign of abuse. Similarly to child abuse, domestic violence, human trafficking involves physical, emotional, and mental abuses, yet it is not mandatory for health care providers to report this abuse. The victim is often brought into the health care setting with the trafficker at the bedside. The history of violence, fear of retaliation, and the power of psychological control prevents the victims from seeking help out of their situation. Currently, if a health care provider encounters a victim of trafficking who is over 18 years of age, we are only able to offer to have law enforcement or a victims specialist notified. If the victim declines wanting to speak to anyone about their situation, we are unable to proceed with getting the victim help. Sadly, most victims are so afraid to disclose their situation due to fear of violence and retaliation, they will decline wanting to speak with anyone. Despite the fact that we suspect there is some sort of abuse occurring, we are unable to report to law enforcement or speak with a victims specialist due to fear of potentially violating confidentiality rules and policies. If we were mandated to report suspected abuse, we would be able to seek help from individuals who have special training in working with individuals who are trapped in this type of slavery. In my work with victims of trafficking, when a victim has had the chance to interact with an individual who specializes in working with trafficked victims, the doors are opened for interaction and discussion. I have seen several victims seek help after having the chance to speak with someone who understands their situation, even though they initially denied the abuse.

If human trafficking was deemed a mandatory reporting issue for health care providers, I believe that this would increase awareness in medical training programs. Similarly to the training on child abuse reporting, implementation of training on human trafficking and reporting suspected cases would be required in order to fulfill the law requirements. Health care providers have a unique opportunity when working with patients to establish a trusting relationship and have the potential to be a doorway to freedom for those held in captivity. Failing to report these cases is causing unwarranted abuses and death to several victims of trafficking. The current confidentiality policies prohibit us from being able to report suspected abuse involving human trafficking victims. If we were mandated to report suspected human trafficking cases, more victims will be identified, more traffickers and perpetrators will be identified and brought to justice, and ultimately more lives will be saved.

Thank you for taking the time to hear this bill. Please examine how we can enable health care professionals to better serve and protect this vulnerable population.

Sincerely,

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