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STATE OF HAWAII
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December 24, 2018

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott Saiki
Speaker and Members of the House
of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

SUBJECT: REPORT IN ACCORDANCE WITH SECTION 2(e), ACT 176, SESSION LAWS OF HAWAII
2018 RELATING TO CHILD SAFETY

Dear President Kouchi, Speaker Saiki, and members of the Legislature,

Attached is the following report submitted in accordance with:

- REPORT IN ACCORDANCE WITH SECTION 2(e), ACT 176, SESSION LAWS OF HAWAII
2018 RELATING TO CHILD SAFETY.

In accordance with section 93-16, HRS, copies of these reports have been transmitted to the
Legislative Reference Bureau Library and the reports may be viewed electronically at
<http://humanservices.hawaii.gov/reports/legislative-reports/>.

Sincerely,

Pankaj Bhanot
Director

Ec copy only:

Office of the Governor
Office of the Lieutenant Governor
Department of Budget & Finance
Legislative Auditor
Senator Russell E. Ruderman, Chair, Senate Committee on Human Services
Representative Joy A. San Buenaventura, House Committee on Human Services &
Homelessness

**REPORT TO THE THIRTIETH
HAWAII STATE LEGISLATURE 2019**

**IN ACCORDANCE WITH
SECTION 2(e), ACT 176, SESSION LAWS OF HAWAII 2018,
RELATING TO CHILD SAFETY**

DEPARTMENT OF HUMAN SERVICES

Office of the Director

December 2018

In 2018, the Hawaii State Legislature passed HB 1650, enacted as Act 176, Session Laws of Hawaii (SLH) 2018. Section 2(a) of Act 176 established a legislative working group to “review laws, rules, and procedures relating to the coordination of investigations and enforcement efforts of the child welfare services branch and child care licensing program to improve child care safety in child care settings.” Section 2(d) exempted the work group from provisions of chapter 92, Hawaii Revised Statutes (HRS), or the Sunshine Law. Section 2(e) required the working group to submit a report of findings and recommendations to the legislature prior to the convening of the regular sessions of 2019 and 2020. Section 2(f) describes that the working group shall cease to exist on January 30, 2020.

Act 176 (SLH 2018) also amended section 350-2, HRS, which provides directives and reporting procedures in instances of suspected child abuse and neglect. These amendments were intended to clarify how parents and/or guardians may access certain information about child care providers to better inform parents' and guardians' child care choices.

This temporary working group is tasked to examine current rules, regulations, and procedures, with the knowledge that various agencies and jurisdictions have different civil, criminal, administrative, and regulatory processes that overlap. In performing the different tasks, responsible agencies also have different investigatory goals.

Section 2(b) identified named members of the working group:

1. The director of Human Services or the director’s designee;
2. The administrator of the child welfare services branch or the administrator’s designee;
3. A representative from the child care licensing program designed by the administrator of the benefit, employment and support services division;
4. Four representatives from the department of the attorney general (to include one who specializes in criminal prosecution; one who specializes in child welfare; one who specializes in child care licensing administration; and one who specializes in criminal investigations);
5. The prosecuting attorney of the city and county of Honolulu or the prosecuting attorney’s designee;
6. A representative from each of the county police departments in the state;
7. Four community advocates designated by the director of human services; and
8. A representative from the United States Department of Defense Family Advocacy program.

*The Director of the Department of Human Services **expresses special appreciation** to parent participants and the community advocate for their commitment and time to improve the system's response and transparency.*

Participants from state agencies included staff from the Department of Human Services and the Department of the Attorney General. Participants from the City & County of Honolulu included staff from the Honolulu Police Department and the Office of the Prosecuting Attorney. This report is limited in scope in that discussion of criminal investigations and prosecution practices are primarily for the City & County of Honolulu.

Act 176 Working Group meetings were held on September 20, 2018, October 24, 2018, November 16, 2018, and December 7, 2018. Participants all recognize the importance and need of safe quality child care for Hawaii's children and families, and the difficult decisions parents and guardians face in finding providers to entrust their children's care. Participants

Participants were keenly aware that in cases of serious injury occurring in a child care setting, Hawaii lacks a clear response protocol that ensures all necessary investigations are collaborative and complete...

were keenly aware that in cases of serious injury occurring in a child care setting, Hawaii lacks a clear response protocol that ensures all necessary investigations are collaborative and complete so that all appropriate actions may be taken, as well as to identify points of intervention to prevent future injury or harm.

The group discussed the following issues: proposed revisions to HB 1650/Act 176 for consistency; discussion of various CAPTA¹ provisions and federal guidance regarding release of confidential information; differences in regulations for licensed, license exempt, subsidy, and unlicensed care; situations of overlap between Child Welfare Service, Child Care Licensing Unit, and the Honolulu Police Department; exploration of potential criminal charges for violations of child care laws; the need for more child abuse and neglect trainings for stakeholders; discussion of how to provide more oversight of unlicensed/unregulated, exempt care providers and child subsidy providers; strategies to improve current systems and procedures to ensure the safety of children in care settings; and discussion of balancing enforcement of child care regulations with the public policy to improve the safety and increase the number of individuals to become regulated child care providers for Hawaii's children and families; simply, if child care regulations become too punitive or complex, the number of regulated child care providers will be reduced, resulting in a decrease to the overall safety and quality of Hawaii's child care.

The group compared and reviewed different local processes and models from different states. Additionally, the working group began drafting a Model Protocol/Procedure for Investigating Suspicious Child Deaths and Serious Injuries cases in child care settings. The group

¹ Child Abuse Prevention and Treatment Act, as amended.

examined current procedures for each investigating agency (DHS/CCPO; DHS/CWS; and HPD) to better understand the current systems and identify gaps in investigation (see attachment, entitled *Investigations of Serious Injury to Children and Death of Children in Child Care Settings DRAFT*).

CHILD CARE LICENSING UNIT PROCEDURES FOR COMPLAINTS

Current procedures for complaints against or about child care providers are civil and administrative in nature. While complaints may be referred to HPD for further investigation, HPD determines whether there is enough evidence of an underlying crime for a charge to be made. The group agreed that there is a need for improvement in the way investigations of scenes of when injuries occur in child care settings.

The working group discussed recent developments at the Department of the Attorney General (ATG) and the DHS Benefit, Employment and Support Services Division (BESSD) which oversees the Child Care Programs Office (CCPO). The agencies entered into a Memorandum of Understanding (MOU) to create one full time investigator from the ATGs office to support CCPO in reviewing existing processes and structure of complaint reports, and assisting in investigating reports of violations of laws or child care administrative rules. Thus far, ATGs substantiated violations such as: failing to report child abuse or neglect (pursuant to section 350); providing

Innovative process to address child care program violations and encourage licensure: *The Department of the Attorney General (ATG) and the DHS Benefit, Employment and Support Services Division (BESSD) - Child Care Programs Office (CCPO) entered into a Memorandum of Understanding (MOU) to create one full time investigator from the ATGs office to support CCPO in reviewing existing processes and structure of complaint reports, and assisting in investigating reports of violations of laws or child care administrative rules...The initial approach is to refer the provider to the child care licensing office to assist the provider in becoming licensed. If the provider refuses to cooperate, the case proceeds to assess civil penalties or in some cases, a request for an injunction on the provision of care.*

child care without a license (this may include not having a license at all and providing care for more than 2 unrelated children or this could include those who applied for a license but are not yet licensed). The initial approach is to refer the provider to the child care licensing office to assist the provider in becoming licensed. If the provider refuses to cooperate, the case proceeds to assess civil penalties or in some cases, a request for an injunction on the provision of care.

MULTIPLE AGENCY JURISDICTIONS, ROLES, AND OBLIGATIONS

This working group had robust discussions regarding multi-agency roles and obligations; current civil and criminal procedures and protocol in suspicious child death and serious injury cases; the role of parents and caregivers and their right to know and understand the multi-agency response; the lack of collaboration and coordination between multiple jurisdictions and agencies; and how to improve the current procedure and protocol to keep children safe in all types of care (unregulated/unlicensed, exempt, licensed). Working group members recognized better historical multi-agency collaboration and cooperation. The members acknowledged that laws already exist for the protection of children from harm and for safe child care, but all stakeholder agencies need to communicate and work together in timely alignment for these laws to work as they are intended.

RECOMMENDATIONS

1. Create of a rapid response team, a timeline for expedited investigations, and a check list of every step that should occur. Other considerations: types of documentation that needs to be obtained for potential criminal prosecution; questions that should be asked during an expedited investigation; and a streamlined cross-agency response that is detailed and specific in its goals. All first responders should be involved and included.
2. Formalize a task force to coordinate efforts; create through statute to ensure data sharing and case coordination.
3. Map the different investigation processes.
4. Formalize a consumer information online system so that parents can obtain information regarding safety and background checks of potential child care providers.
5. Ensure information on safety and minimum standards of child care providers be made available through a private non-profit.
6. Create a substantiated “bad actor” list which contains child care providers who have had serious injuries or deaths occur while in their care, any safety issues, or past revocation of licensing.
7. Provide specialized child abuse and neglect (CAN) cross training for all involved agencies.
8. Create a specialized unit with specialized training within HPD to investigate infant/child injury and deaths.
9. Develop more robust civil mechanisms to deter unlicensed care. Currently, if an investigation of an unlicensed care provider is substantiated, the ATG can file a request for injunctive relief to prevent the person from continuing with illegal care. However, once this occurs, it becomes difficult to find out information about the other children and parents who may be using the unlicensed provider for care. The group discussed the recommendation that the court's order for injunctive relief include orders requiring the respondent-provider to provide the contact information of parents and names of

children in their care to CCPO within a specified amount of time or face additional civil or administrative penalties (i.e., stopper on driver's license or other licenses, posting of the order at the property).

10. DHS should have information on child care providers readily available on a website that is accessible to the public. Providers can consent to have their information posted on the website (i.e. licensing violations, revocations of licensure, lapses in licensure, etc.).
11. Develop a cross discipline training component and readily available Frequently Asked Questions (FAQ) regarding child care.
12. Create a distinct cross systems protocol to adhere to situations involving a fatality or serious child injury.
13. Currently, if a serious child injury or death occurs at a child care facility and there is no finding of either child abuse, neglect, or an underlying crime resulting in the serious injury or death, there is no public mechanism to allow people or the community to know that an incident occurred with that particular child care provider. One recommendation is to publish the address of the location whenever a child serious injury or death has occurred, such that, no confidentiality is being violated, yet people will know an incident occurred at the address.
14. Research the viability of a special charge for criminal abuse of children in child care settings. Elevate assault against a child in a care setting, to a felony based on the class of victim.
15. HPD should create a specialized child homicide unit, with specialized training to handle child only cases.

The working group will reconvene following the end of the Thirtieth Legislative Session.

Report of Act 176 (2018) Workgroup - Attachment
 INVESTIGATIONS OF SERIOUS INJURY TO CHILDREN AND DEATH OF CHILDREN IN CHILD CARE SETTINGS

	Child Care Licensing (CCL)	Child Welfare Services (CWS)	Police Department (PD)
Who they investigate	<ol style="list-style-type: none"> 1. Child care providers who are licensed by the Department of Human Services (DHS); or 2. Child care facilities that are conducting child care and operating without a license or registration and are required to be licensed by or registered with DHS. 	<ul style="list-style-type: none"> • Children’s legal caretakers (people who have legal relationships with a child) • DHS-regulated child care providers 	<ul style="list-style-type: none"> • Children’s legal caretakers (people who have legal relationships with a child) • DHS-regulated child care providers
Why do they investigate	<ol style="list-style-type: none"> 1. To determine whether there is a violation of the administrative rules that may affect their license or registration; or 2. To determine whether there is a violation of the law (Part VIII of Chapter 346, HRS) 	To determine whether an individual(s) are confirmed as perpetrators of abuse or neglect of a child	To determine whether there is any criminal wrong-doing
How an investigation begins	<p>Upon receipt of the information, the CCL unit determines whether there is a legal basis for them to conduct an investigation. The CCL unit may be contacted by the following:</p> <ul style="list-style-type: none"> • The affected child care provider • A parent or relative of a child • Child Welfare Services • The police • Any member of the public 	<p>Upon receipt of information through their Hotline, CWS will determine whether there is legal basis for them to conduct an investigation. The CWS may be contacted by the following:</p> <ul style="list-style-type: none"> • The affected child care provider • A parent • CCL unit • The police • Any member of the public 	<p>Upon receipt of information through a 911 call or protocols established with other agencies, the police determine whether there is legal basis to conduct an investigation. The police may be contacted by the following:</p> <ul style="list-style-type: none"> • The affected child care provider • A parent • CCL unit • CWS • Any member of the public

	Child Care Licensing (CCL)	Child Welfare Services (CWS)	Police Department (PD)
Legal basis for conducting the investigation	<p>1. CCL enforces DHS' administrative rules for licensed and registered child care providers</p> <ul style="list-style-type: none"> • Chapter 17-891.1, HAR • Chapter 17-892.1, HAR • Chapter 17-895, HAR • Chapter 17-896, HAR <p>or</p> <p>2. Part VIII of Chapter 346, Hawaii Revised Statutes (HRS)</p>	<ul style="list-style-type: none"> • The situation needs to meet the definition of harm or threatened harm as it relates to child abuse and neglect in Hawaii Revised Statutes (HRS) 350-1, 587a-4 • The investigation is initiated and conducted in accordance with HRS 587a-11 and 350-2 	<p>HRS Title 37 provides the full definition of criminal offenses. The most relevant for this situation may be HRS 707, which includes information on negligent homicide and injury, reckless endangerment, and promoting child abuse.</p>
Outcomes of investigation	<ul style="list-style-type: none"> • Determination of violation of administrative requirements for licensed or registered child care facilities <ul style="list-style-type: none"> ○ The CCL unit could confirm that there was serious injury to a child or death of a child in care, but unable to confirm that it was due to a child care provider's actions or inactions ○ The CCLU unit could confirm that there was serious injury to a child or death of a child in care that happened as a result of the child care provider's actions or inactions • Determination of violation of the child care law (Part VIII of Chapter 346, HRS) 	<p>CWS could confirm that there was serious injury to a child or death of a child but unable to determine who the perpetrator was</p> <p>CWS could confirm that there was serious injury to a child or death of a child and that it was caused by either the child's parent(s)/guardian(s) or the child care provider</p>	<p>The police could confirm that there was serious injury to a child or death of a child but unable to determine who the perpetrator was</p> <p>The police could confirm that there was serious injury to a child or death of a child and that it was caused by a specific individual(s)</p>

<p>Consequences for confirmation of serious injury or death of a child in care</p>	<p>Depending on the findings, the consequences could be any one of the following:</p> <ul style="list-style-type: none"> • Continue to regulate and placed on additional unannounced monitoring visits • Fine imposed <ul style="list-style-type: none"> ○ Up to \$1000 for the first violation; and ○ Up to \$3000 for the second and each succeeding violation. <p>Fines may be assessed for violations of administrative rules for:</p> <ul style="list-style-type: none"> ○ Caring for more children than allowed by the license or registration; ○ Violation of the staff-child ratios; ○ Failure to comply with timely request for background checks; ○ Allowing conditions to exist which constitute an imminent danger to the health, welfare, or safety of the children in care; or ○ Injuries to children due to the provider's or staff negligence. <ul style="list-style-type: none"> • Suspension of a license or registration • Immediate exclusion of an individual caregiver from being on-site at a child care facility 	<ul style="list-style-type: none"> • If no confirmation of who the perpetrator is, there is no further action • If confirmation of abuse or neglect or threatened harm is confirmed on the child's parent(s)/caretaker(s) there would be further CWS involvement for other children in the home such as removal from the home or services provided to the family • If confirmation of abuse or neglect or threatened harm is confirmed on the child care provider, CWS may investigate further if the child care provider has their own minor children and it may result in CWS involvement • If confirmation of abuse or neglect or threatened harm is confirmed on the child care provider, and the provider has no minor children of their own, CWS will end its investigation 	<ul style="list-style-type: none"> • Based on the allegation and their preliminary findings they may arrest the individual who is suspected of wrongdoing • Based on the evidence gathered during the investigation, if the police believe that there is a violation of HRS Title 37, they may refer the case to their respective prosecutor's office for prosecution
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	Child Care Licensing (CCL)	Child Welfare Services (CWS)	Police Department (PD)
	pending completion of investigation <ul style="list-style-type: none"> • Termination of an individual caregiver from employment at a child care facility • Revocation of a license or registration 		

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