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STATE OF HAWAII
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P. O. Box 339
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December 26, 2019

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,

Cathy Betts
Deputy Director

Ecopy 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

AN EQUAL OPPORTUNITY AGENCY

**REPORT TO THE THIRTIETH
HAWAII STATE LEGISLATURE 2020**

**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 2019

In 2018, the Hawaii State Legislature passed HB 1650, which was enacted as Act 176; Act 176 created 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.” This law amended section 350, Hawaii Revised Statutes (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 inform parents' and guardians' child care choices. This temporary working group was tasked to examine current rules, regulations, and procedures, with the knowledge that various agencies and jurisdictions overlap and there are different civil, criminal, administrative and regulatory processes. In performing the different tasks, responsible agencies have different investigatory goals.

Act 176 exempted the work group from provisions of the Sunshine Law. Act 176 required the working group to submit a report of findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular sessions of 2019 and 2020. This will be the final report to the legislature.

The named members of the working group are:

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.

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. Though for the period of July 3, 2019 to present, the Honolulu Police Department attendees did not attend. Throughout the two year working group meetings, representatives from U.S. military Family Advocacy Centers did not participate. As such, these recommendations do not reflect or incorporate positions of either agency.

The Director of the Department of Human Services expresses sincere appreciation and gratitude to parent participants and the community advocates for their commitment and time to improve the system's response, safety, and transparency.

Act 176 Working Group members met on July 3, 2019; August 21, 2019; October 2, 2019; and December 4, 2019. At the July 3, 2019 convening, legislative updates to the group were provided including: Act 85 (2019) which allows any applicant for regulated child care to ask a care provider for consent to examine background check information about the provider; and Act 83 (2019) which allows for new penalties for unlicensed care and clarifies that DHS can take administrative and judicial action in cases.

Throughout the meetings, the group discussed the following 1) potential legislative proposals; 2) non-legislative solutions to the underlying issues of child safety and well-being in care facilities; and 3) educational trainings and potential avenues for increasing awareness.

The group discussed the following issues: defining unlicensed care explicitly; adding a criminal component to serious child injury or death in child care settings akin to negligent homicide (which only applies to vehicular deaths); strengthening law enforcement's ability to investigate initial suspicious injuries and deaths in child care settings.

Additionally, the group discussed the various exemptions under the child care licensing statute which potentially allow child care providers to go under the radar of regulation, and that the public is aware of the types of incidents that are occurring within care facilities with media attention on recent legal settlements involving child care settings.

Ongoing policy recommendations were discussed to address the gaps in services for families that further exacerbate unsafe care including but not limited to: lack of access to paid family leave; access to universal child care for families; the possibility of appropriating money to incentivize safe child care providers; incentivizing child care licensure; tax breaks for care providers obtaining licensure; prosecuting child care providers who are committing subsidy fraud; and providing bonuses for providers who are continuing their training and education. The group also discussed inviting the respective fire departments to the working group as they are often the very first responders to the scene, and providing child abuse and neglect training to all first responders in the state.

The Child Care Programs Office (CCPO) provided continual updates on the development of the public consumer education website, changes to investigations, and future programmatic changes. The consumer education website will include information on providers, including any confirmed child abuse and neglect records and substantiated allegations of violations of child care licensing regulations for a period of three years. This website may also include a list of legal settlements related to child care. CCPO will continue to work on a public campaign to educate the public about the available information about providers on the website.

ONGOING DISCUSSIONS SURROUNDING LEGISLATIVE PROPOSALS GOING FORWARD

The group had ongoing discussions about potential legislative change in several areas, including:

- 1) Increasing available training for mandated reporters under section 350, HRS, and create an annual certification training.
- 2) Requesting an appropriation of general funds for training and specify “periodic training” under section 350, HRS.
- 3) Specifying the duty of care that is required by child care providers, whether licensed or unlicensed, and examine the criminal penalties for violations of the specified duty of care.
- 4) Defining familial relationships, as it relates to child care subsidies and exemptions from licensure.
- 5) Providing tax credits for individuals who become licensed.
- 6) Creating a negligent manslaughter charge for child care providers.
- 7) Creating a manslaughter in the 2nd degree charge.
- 8) Making the provision of unlicensed care a criminal misdemeanor.

- 9) Mandating training on investigating suspicious child injury and/or death for police departments across the State.

NON-LEGISLATIVE RECOMMENDATIONS AND TRAINING

- 1) Create “community navigator” positions to assist in facilitating licensure and to ensure a pathway for providers to obtain licensure (creating a “warm handoff” between individuals and State government).
- 2) Create an annual online module training for all first responders (similar to module trainings on the Department of Human Resource Development website).
- 3) Regular media releases regarding what DHS/CCPO does, including the release of information regarding litigated and settled cases.
- 4) DHS should convene a statewide Child Abuse and Neglect/Suspicious Child Injury training with a focus on educating first responders.
- 5) Enhance CCPO’s consumer education website.
- 6) Initiate a public awareness campaign regarding licensed care providers, safe sleep, and how to choose a safe child care provider.
- 7) Increase suspicious child injury and death training and detection of child abuse and neglect trainings for all first responders.