

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-1605

Hawaii Administrative Rules

April 3, 2025

1. Chapter 17-1605, Hawaii Administrative Rules, entitled "Child Abuse and Neglect Central Registry" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE XI

CHILD WELFARE SERVICES PROGRAM

CHAPTER 1605

CHILD ABUSE OR NEGLECT CENTRAL REGISTRY

Subchapter 1 General Provisions

§17-1605-1 Purpose
§17-1605-2 Definitions
§17-1605-3 Establishment of registry
§§17-1605-4 to 17-1605-19 (Reserved)

§17-1605-1

Subchapter 2 Expungement

- §17-1605-20 Expungement when report is not confirmed
- §17-1605-21 Expungement of confirmed reports by request
- §17-1605-22 Request for expungement
- §17-1605-23 Denial of request for expungement
- §17-1605-24 Notice of disposition of request for expungement
- §17-1605-25 Expungement by department's own action
- §17-1605-26 Action upon approval of request for expungement
- §§17-1605-27 to 17-1605-29 (Reserved)

Subchapter 3 Miscellaneous Provisions

- §17-1605-30 Hearings
- §17-1605-31 Confidentiality

SUBCHAPTER 1

GENERAL PROVISIONS

§17-1605-1 Purpose. The purpose of this chapter is to establish the requirements for the administration, implementation, and maintenance of the department's central registry of confirmed reports of child abuse or neglect. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-2 Definitions. As used in this chapter:

"Aggravated circumstances" means the same as defined in section 587A-4, Hawaii Revised Statutes (HRS).

"Applicant" means a person who is requesting expungement of their record pursuant to section 350-2, HRS.

"Central registry" means the department's record established pursuant to section 350-2.5, HRS, of the names of individuals who are confirmed as perpetrators of child abuse, neglect, harm, or threatened harm.

"Child" means a person who is born alive and is less than eighteen years of age.

"Child abuse or neglect" means the same as defined in section 350-1, HRS.

"Confirmed" means that, following an investigation conducted by the department, the department determined, or following a hearing in family court, the family court determined, by a preponderance of the evidence that a person was the perpetrator of child abuse or neglect, harm, or threatened harm.

"Department" means the department of human services or its designee.

"Electronic medium" means any recording, synthetic media, magnetic disc memory, magnetic tape memory, compact disk, digital video disk, thumb drive, or any other data recording hardware or media used with a computer.

"Expungement" means that the name of a person whose record was in the central registry has been removed, so that when a person whose name was included in the central registry authorizes a search of their name on the registry, the results will indicate that their name is not on the registry.

"Harm" means the same as defined in section 587A-4, HRS.

"Not Confirmed" means that, following an investigation conducted by the department, the department determined, or following a hearing in

family court, the family court determined, that there was not a preponderance of the evidence that a person was the perpetrator of child abuse or neglect, harm or threatened harm.

"Preponderance of the evidence" means the same as defined in §587A-4, HRS.

"Report" means the same as defined in section 350-1, HRS, unless otherwise required by the context in which it is used.

"Severe forms of trafficking in persons" means the same as provided in title 22 United States Code Annotated section 7102.

"Sex trafficking" means the same as provided in title 22 United States Code Annotated section 7102.

"Threatened harm" means the same as defined in section 587A-4, HRS. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-3 Establishment of registry. (a)

There is established the central registry of reported child abuse or neglect cases.

(b) When the department confirms a report by a preponderance of the evidence that a person is the perpetrator of child abuse or neglect, harm, or threatened harm, the person's name shall be included in the central registry.

(c) The name of a person included in the central registry will appear in the results when the department conducts a search of the central registry as part of a background check authorized by federal or state law unless the name is expunged pursuant to this chapter.

(d) A search of the central registry for a person's name may only be conducted upon authorization by the person in accordance with chapter 17-1601, or as otherwise authorized by federal or state law,

including a personal records request under Part III of chapter 92F, HRS. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§§17-1605-4 to 17-1605-19 (Reserved)

SUBCHAPTER 2

EXPUNGEMENT

§17-1605-20 Expungement when a report is not confirmed. (a) The department shall promptly expunge a person's name from the central registry if:

- (1) The report is determined not confirmed by the department, including after an administrative hearing conducted pursuant to chapter 17-1602; or
- (2) The family court determines that the report is not confirmed after:
 - (A) A petition filed pursuant to section 587A-12, HRS, that was based on the allegations in the report, has been dismissed by order of the family court because the court did not find sufficient evidence based upon a preponderance of the evidence to assume jurisdiction pursuant to section 587A-5, HRS; or
 - (B) A written court report with the disposition is submitted to the family court pursuant to a referral under section 586-10.5, HRS, and the family court finds that the facts supporting

the confirmation were not proven by a preponderance of the evidence.

(b) The family court shall retain exclusive jurisdiction for purposes of determining that a report was correctly confirmed under subsection (a) as long as the family court matter is pending. The person whose name is included in the central registry shall not be entitled to an administrative appeal hearing to contest the confirmation unless the family court dismisses or closes the related matter without making findings as to the facts supporting the confirmation. [Eff

] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-21 Criteria for expungement of confirmed reports by request. (a) A person whose name is included in the central registry pursuant to section 17-1605-3(b), may submit a request for expungement to the department; provided that:

- (1) The confirmation for which expungement is requested is more than five years old;
- (2) The record does not involve aggravated circumstances or conduct described in paragraph (1)(B) of the definition of child abuse or neglect in section 350-1, HRS; and
- (3) There are no other reports of abuse or neglect subsequent to the confirmation for which expungement is being requested.

(b) For a confirmation of a report upheld by the family court as described in section 17-1605-20, the confirmed perpetrator may submit a request for expungement of their name from the central registry five years after the family court's order affirming the confirmation, or five years after the family court's order is upheld on appeal, whichever is later.

- (1) Length of time since the report was confirmed;
 - (2) Severity of the abuse or neglect, harm, or threatened harm;
 - (3) Age of the child at the time of the report;
 - (4) Age of the confirmed perpetrator at the time of the report;
 - (5) Evidence of the confirmed perpetrator's rehabilitation;
 - (6) Any other relevant information received and deemed credible by the department, including but not limited to results of a criminal history record check. [Eff _____]
- (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

- (2) Severity of the abuse or neglect, harm, or threatened harm;

- (3) Age of the child at the time of the report;

- (4) Age of the confirmed perpetrator at the time of the report;

- (5) Evidence of the confirmed perpetrator's rehabilitation;

- (6) Any other relevant information received and deemed credible by the department, including but not limited to results of a criminal history record check. [Eff _____]
(Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-22 Requests for expungement. (a) A person seeking to have the person's own name expunged pursuant to section 17-1605-21 shall submit a request for expungement to the department on a form prescribed by the department.

- (b) The person shall:

- (1) Submit with the request for expungement any supporting evidence to establish good cause that expungement would serve the interests of justice; and
- (2) Shall sign the request acknowledging under penalty of law that all information provided on the request form and any supporting evidence submitted is true and correct.

- (c) The date of the request for expungement

shall be the date the completed and signed form and any supporting evidence is received by the department.

§17-1605-22

(d) Upon review of a request for expungement, including consideration of the criteria in section 17-1605-21, the department may grant the request for expungement based on a finding of good cause shown that the expungement would serve the interests of justice, or may deny the request in accordance with section 17-1605-23.

(e) When the department grants a request for expungement, the person's name shall be removed from the central registry, consistent with section 17-1605-26. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-23 Denial of request for expungement.

(a) The department shall deny a request for expungement submitted pursuant to section 17-1605-22 when:

- (1) The request does not satisfy the minimum requirements of section 17-1605-21; or
- (2) The department determines after a review of the request that a person has not shown good cause as to why expungement would serve the interests of justice.

(b) The department shall deny a request for expungement that does not meet the minimum requirements set out in subsection 17-1605-21(a).

(c) The department shall deny a request for expungement for which the five-year period described in section 17-1605-24(d) has not yet passed. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-24 Notice of disposition of request for expungement. (a) The department shall give written notice to the person when the department has made a decision on the person's request for expungement.

(b) A notice that the department has granted the request for expungement shall be made in accordance with section 17-1605-26.

(c) A notice of denial of a request for expungement shall:

- (1) Be sent to the mailing address provided on the request for expungement;
- (2) Contain a concise statement of the department's decision, reason for the decision, and the department's rules supporting the decision; and
- (3) Inform the person of the right to submit a written request for a hearing pursuant to section 17-1605-30, that must be received by the department no later than ten working days of the mailing of the notice.

(b) Upon receiving a timely written appeal, the department shall give notice of and an opportunity for an administrative appeal hearing before a hearing officer in accordance with the provisions set forth in chapter 17-1602. The requester shall have the burden of proof to show based upon a preponderance of the evidence that the request for expungement was incorrectly denied. On the basis of the evidence adduced at the hearing, the hearing officer shall make a decision in writing pursuant to section 91-12, HRS.

(c) The name of a person whose request for expungement is denied shall remain on the central registry pending the decision of the hearing officer and any subsequent appeal.

(d) A person whose request for expungement is denied shall not submit another request for expungement for a period of five years from the date of the denial or five years from the date the denial is affirmed on appeal, whichever is later. [Eff

] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp:

§17-1605-24

HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-25 Expungement by department's own action. (a) The department may review its records of the names in the central registry at any time and, in its discretion, may expunge the name of a person who has been confirmed as the perpetrator of abuse or neglect, harm, or threatened harm from the central registry in accordance with this section.

(b) When the department reviews a report for expungement pursuant to subsection (a), it shall consider the following:

- (1) The criteria in section 17-1605-22(d), to the extent the information is available;
- (2) The extent to which the records exist and are available to support the confirmation of a report. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-26 Action upon approval of request for expungement. (a) When the department approves a request for expungement, the department shall complete the expungement within 30 days and shall send notice to the person that the request was approved and include the date that the expungement was completed.

(b) The department shall not release the name of any person whose name has been expunged pursuant to this chapter when a request is made to search the central registry as part of a background check pursuant to authorized purposes. [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS

§§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22
United States Code Annotated section 7102; Title 42
United States Code Chapter 67)

§§17-1605-27-1605-29 (Reserved)

Subchapter 3

MISCELLANEOUS PROVISIONS

§17-1605-30 Hearings. (a) A request for administrative hearing to contest the denial of request for expungement shall be submitted in writing, and shall specify the reasons why the person does not agree with the denial of the request for expungement, and a copy of the department's notice of denial.

(b) A request for administrative hearing shall be received by the department within 10 working days of the notice of denial. If the tenth working day falls on a weekend or holiday, the tenth working day shall then be the first working day following the weekend or holiday.

(c) When a request for administrative hearing is not received within 10 working days of the date of the notice of denial, the department shall deny the request for administrative hearing and mail a notice to the claimant informing the claimant of the denial of the request for administrative hearing.

(d) A hearing to contest the denial of a request for expungement shall be conducted in accordance with chapter 17-1602.

(e) The person requesting a hearing to contest a denial of a request for expungement shall have the burden of production to show evidence of the criteria considered in section 17-1605(b), and the burden of

§17-1605-30

proof to show by a preponderance of the evidence that the department's denial of the expungement was incorrect. [Eff] (Auth: HRS §§91-9, 346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

§17-1605-31 Confidentiality. (a) A person's request for expungement, as well as any records or documents submitted with the request or for purposes of an administrative hearing related to the request, shall be confidential, in accordance with section 346-10, HRS, and chapter 17-1601.

(b) The records and information related to a report for which a person's name is expunged from the central registry shall be maintained by the department solely for future risk and safety assessment purposes." [Eff] (Auth: HRS §§346-14, 350, and 587A-4; Title 42 United States Code Chapter 67) (Imp: HRS §§346-14, 350-1, 350-2, 350-2.5, and 587A-4; Title 22 United States Code Annotated section 7102; Title 42 United States Code Chapter 67)

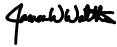
2. The adoption of chapter 17-1605, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on April 3, 2025 and filed with the Office of the Lieutenant Governor.



RYAN I. YAMANE
Director of Human Services

APPROVED AS TO FORM:



Deputy Attorney General