

JAN 25 2006

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**A BILL FOR AN ACT**

RELATING TO CHAPTER 846E.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 846E-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "repeat covered offender"  
3 to read as follows:

4           "Repeat covered offender" means:

5           (1) A person who is or has been convicted at any time,  
6 whether before or after [+]May 9, 2005, [+] of more  
7 than one covered offense as defined in this  
8 section[+], except that a conviction for multiple  
9 counts within a single charging document that allege  
10 offenses against the same victim and that allege the  
11 same date of offense against that single victim shall  
12 be considered, for the purposes of this definition, a  
13 single offense; or

14           (2) A person who is or has been charged at any time,  
15 whether before or after the [+]May 9, 2005, [+] with  
16 more than one covered offense as defined in this  
17 section and who has been, more than once, either:

18           (A) Convicted;

1 (B) Found unfit to proceed pursuant to chapter 704;  
2 or

3 (C) Acquitted due to a physical or mental disease,  
4 disorder, or defect pursuant to chapter 704."

5 SECTION 2. Section 846E-2, Hawaii Revised Statutes, is  
6 amended by amending subsection (e) to read as follows:

7 "(e) In addition to the requirement under subsection (a)  
8 to register with the attorney general and comply with the  
9 provisions of this chapter until a court relieves the covered  
10 offender of the registration requirements of this chapter, each  
11 covered offender shall also register in person with the chief of  
12 police where the covered offender resides or is present.  
13 Registration under this subsection is for the purpose of  
14 providing the covered offender's photograph, fingerprints, and  
15 registration information. Registration under this subsection is  
16 required whenever the covered offender, whether or not a  
17 resident of this State, remains in this State for more than ten  
18 days or for an aggregate period exceeding thirty days in one  
19 calendar year. Covered offenders required to register in person  
20 with the chief of police under this subsection shall register no  
21 later than three working days after[+] the earliest of:

22 (1) Arrival in this State;

- 1           (2) Release from incarceration;
- 2           (3) Release from commitment;
- 3           (4) Release on furlough;
- 4           (5) Conviction for a covered offense, unless incarcerated;
- 5           (6) Release on probation;
- 6           ~~[(5)]~~ (7) Placement on parole; or
- 7           ~~[(6)]~~ (8) Arrival in a county in which the covered offender
- 8                       resides or expects to be present for a period
- 9                       exceeding ten days.

10 In addition to any other requirement to register under this  
11 subsection or subsection (a), each covered offender shall report  
12 in person every five years to the chief of police where the  
13 covered offender resides for purposes of having a new photograph  
14 taken."

15           SECTION 3. Section 846E-3, Hawaii Revised Statutes, is  
16 amended by amending subsection (e) to read as follows:

17           "(e) After forty years have elapsed after release or  
18 sentencing, whichever is later, for covered offenders subject to  
19 subsection (c), paragraph (1); thirty years have elapsed after  
20 release or sentencing, whichever is later, for covered offenders  
21 subject to subsection (c), paragraph (2); twenty-five years have  
22 elapsed after release or sentencing, whichever is later, for

1 covered offenders subject to subsection (c), paragraph (3);  
2 fifteen years have elapsed after release or sentencing,  
3 whichever is later for covered offenders subject to subsection  
4 (c), paragraph (4); and ten years have elapsed after release or  
5 sentencing, whichever is later, for covered offenders subject to  
6 subsection (c), paragraph (5), a covered offender may petition  
7 the court in a civil proceeding to terminate public access. In  
8 the civil proceeding to terminate public access, the State shall  
9 be represented by the prosecuting agency that prosecuted the  
10 covered offender for the most recent covered offense within the  
11 State of Hawaii. For covered offenders who have never been  
12 convicted of a covered offense within the State of Hawaii, the  
13 prosecuting attorney for the county in which the covered  
14 offender resides shall represent the State. The court may order  
15 this termination upon proof by a preponderance of the evidence  
16 that the covered offender:

- 17 (1) Has had no new convictions for covered offenses;  
18 (2) Is very unlikely to commit a covered offense ever  
19 again; and  
20 (3) Public access to the covered offender's public  
21 information will not assist in protecting the safety  
22 of the public or any member thereof;

1 provided that a denial by the court for relief pursuant to a  
2 petition under this section shall preclude the filing of another  
3 petition for five years from the date of the last denial."

4 SECTION 4. Section 846E-6, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) A covered offender required to register under this  
7 chapter, who changes any of the covered offender's registration  
8 information after an initial registration with the attorney  
9 general, shall notify the attorney general of the new  
10 registration information in writing within three working days of  
11 the change. For purposes of this section, a person shall be  
12 deemed to have established a new residence during any period in  
13 which the person is absent from the person's registered  
14 residence for ten or more days. If, at any time, a covered  
15 offender required to register under this chapter is absent from  
16 the person's registered residence for ten or more days and fails  
17 to establish a new residence within the ten days that the  
18 covered offender is absent from their registered residence, the  
19 covered offender shall, in addition to notifying the attorney  
20 general in writing within three working days that the covered  
21 offender no longer resides at the covered offender's registered  
22 residence, also report to any police station in the state on the

1 first day and on the fifteenth day of every month for  
2 verification of identity by photograph and finger print  
3 impression until the covered offender establishes a new  
4 residence and notifies the attorney general in writing of the  
5 actual address of the new residence. Each time the covered  
6 offender reports to a police station, the covered offender shall  
7 disclose every location where the covered offender has slept in  
8 the previous two weeks. If the new residence is in another  
9 state that has a registration requirement, the person shall  
10 register with the designated law enforcement agency in the state  
11 to which the person moves, within the period of time mandated by  
12 the new state's sex offender registration laws."

13 SECTION 5. Section 846E-9, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) A person commits the offense of failure to comply  
16 with covered offender registration requirements if the person is  
17 required to register under this chapter and the person  
18 intentionally, knowingly, or recklessly:

19 (1) Fails to register with the attorney general by  
20 providing to the attorney general or the Hawaii  
21 criminal justice data center the person's registration  
22 information;

- 1           (2) Fails to report in person to the chief of police where  
2           the covered offender's residence is located, for  
3           purposes of having a new photograph taken within five  
4           years after the previous photograph was taken;
- 5           (3) Fails to register in person with the chief of police  
6           having jurisdiction of the area where the covered  
7           offender resides or is present within three working  
8           days whenever the provisions of section 846E-2(e)  
9           require the person to do so;
- 10          (4) Fails to notify the attorney general or the Hawaii  
11          criminal justice data center of a change of any of the  
12          covered offender's registration information in writing  
13          within three working days of the change;
- 14          (5) Provides false registration information to the  
15          attorney general, the Hawaii criminal justice data  
16          center, or a chief of police;
- 17          (6) Signs a statement verifying that all of the  
18          registration information is accurate and current when  
19          any of the registration information is not  
20          substantially accurate and current; [œ]

1        (7) Having failed to establish a new residence within the  
2        ten days while absent from the person's registered  
3        residence for ten or more days:

4        (A) Fails to notify the attorney general in writing  
5        within three working days that the person no  
6        longer resides at the person's registered  
7        residence; or

8        (B) Fails to report to a police station in the state  
9        on the first day and on the fifteenth day of  
10       every month; or

11       ~~(7)~~ (8) Fails to mail or deliver the periodic  
12       verification of registration information form to the  
13       attorney general within ten days of receipt, as  
14       required by section 846E-5; provided that it shall be  
15       an affirmative defense that the periodic verification  
16       form mailed to the covered offender was delivered when  
17       the covered offender was absent from the registered  
18       address and the covered offender had previously  
19       notified the Hawaii criminal justice data center that  
20       the covered offender would be absent during the period  
21       that the periodic verification form was delivered."



S.B. NO. 2245

1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

# SB. NO. 2245

## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHAPTER 846E.

PURPOSE: To amend the definition of "repeat covered offender," to expressly except conviction of multiple counts within a single charging document; to add conviction for a covered offense, unless incarcerated, and released on probation as events requiring a covered offender to register with the attorney general; and to clarify that the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the State must represent the State in any civil proceeding to terminate public access.

MEANS: Amend sections 846E-1, 846E-2(e), and 846E-3(e), Hawaii Revised Statutes.

JUSTIFICATION: The definition of "repeat covered offender" should be amended in order to clarify which convictions subject a covered offender to being classified as a "repeat covered offender." The special provisions in chapter 846E regarding repeat covered offenders are intended for those covered offenders who have been convicted of having committed covered offenses on multiple occasions or against multiple victims. However, the language of the current definition of "repeat covered offender" could be misinterpreted in a way that could subject a covered offender who had been convicted of multiple counts in a single indictment or complaint, committed in the same incident against the same victim. This amendment to the definition of "repeat covered offender" will eliminate that ambiguity and limit the definition of "repeat covered offender" to only those covered offenders who have been convicted of covered offenses against multiple victims or

who have been convicted of committing covered offenses on multiple occasions.

Section 846E-2 establishes a three-day time limit during which sex offenders must register in person with the chief of police following their arrival in the State or their release. Subsection (e) lists arrival in this State, arrival in a county, and release from incarceration, commitment, furlough, and placement on parole, but it does not list release on probation. Therefore, those covered offenders who have violated the three-day time limit after being released on probation cannot be prosecuted under section 846E-9(a)(3), Hawaii Revised Statutes, until section 846E-2(e) is amended. Also, section 846E-2(a), Hawaii Revised Statutes, requires registration with the Attorney General upon conviction of a covered offense. Although the current language of section 846E-2(e) requires a covered offender to register in person with the chief of police within three days of the events listed in paragraphs (1)-(5), it does not clearly specify the time limit for registration with the chief of police for those covered offenders who have been convicted, but are free on bail or supervised release until sentencing. Therefore, section 846E-2(e) needs to be amended to clarify that all covered offenders who are not incarcerated are required to report to the chief of police within three working days to provide their photograph, fingerprints, and registration information to the chief of police.

Language clarifying that the State will be represented by the prosecutor who prosecuted the underlying criminal case needs to be added to section 846E-3(e) in order to eliminate the current ambiguity as to what entity should defend the State in civil actions brought by covered offenders to reduce or end public access to their registration information, and actions

brought by covered offenders to end registration requirements.

Impact on the public: The additional clarity brought to chapter 846E by these amendments will be a benefit to the public because the administration of sex offender registration, and public access to the registration information, will be made more efficient by the additional clarity in the sections amended.

Impact on the department and other agencies: The additional clarity brought to chapter 846E by these amendments will also be a benefit to the department and other agencies because the additional clarity will facilitate the administration of sex offender registration program.

GENERAL FUND:

None.

OTHER FUNDS:

None.

PPBS PROGRAM  
DESIGNATION:

None.

OTHER AFFECTED  
AGENCIES:

Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE:

Upon approval.