

S.B. NO. 2962

JAN 22 2008

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. This Act shall be known as the "Child and Adult
2 Protection and Safety Act of 2008."

3 SECTION 2. Chapter 707, Hawaii Revised Statutes, is
4 amended by adding to part VI two new sections to be
5 appropriately designated and to read as follows:

6 "§707-A Electronic enticement of a child in the third
7 degree. (1) Any person who knowingly uses a computer online
8 service, Internet service, or any other device capable of
9 electronic data storage or transmission to solicit, lure, or
10 entice, or attempt to solicit, lure, or entice:

11 (a) A minor known by the person to be under the age
12 of eighteen years;

13 (b) Another person, in reckless disregard of the risk
14 that the other person is under the age of eighteen
15 years, and the other person is under the age of
16 eighteen years; or

17 (c) Another person who represents that person to be
18 under the age of eighteen years,

1 to engage in sexual conduct with intent to promote or facilitate
2 the commission of another covered offense as defined in section
3 846E-1, is guilty of electronic enticement of a child in the
4 third degree.

5 (2) Electronic enticement of a child in the third degree
6 is a misdemeanor.

7 (3) Each separate use of a computer online service,
8 Internet service, or any other device capable of electronic data
9 storage or transmission wherein an offense described in this
10 section is committed may be charged as a separate offense.

11 (4) As used in this section, "sexual conduct" means acts
12 of sexual penetration, sexual contact, or masturbation.

13 **§707-B Indecent electronic display to a child.** (1) Any
14 person who intentionally masturbates or intentionally exposes
15 the genitals in a lewd or lascivious manner live over a computer
16 online service, Internet service, or local bulletin board
17 service and who knows or should know or has reason to believe
18 that the transmission is viewed on a computer or other
19 electronic device by:

20 (a) A minor known by the person to be under the age of
21 eighteen years;

22 (b) Another person, in reckless disregard of the

1 risk that the other person is under the age of
2 eighteen years, and the other person is under the age
3 of eighteen years; or

4 (c) Another person who represents that person to
5 be under the age of eighteen years,
6 is guilty of indecent electronic display to a child.

7 (2) Indecent electronic display to a child is a class C
8 felony."

9 SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is
10 amended by amending subsection (1) to read as follows:

11 "(1) Notwithstanding section 706-669 and any other law to
12 the contrary, any person convicted of murder in the second
13 degree, any class A felony, any class B felony, or any of the
14 following class C felonies: section 188-23 relating to
15 possession or use of explosives, electrofishing devices, and
16 poisonous substances in state waters; section 386-98(d)(1)
17 relating to fraud violations and penalties; section 431:10A-
18 131(b)(2) relating to insurance fraud; section 431:10C-
19 307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2)
20 relating to insurance fraud; section 432D-18.5(b)(2) relating to
21 insurance fraud; section 707-703 relating to negligent homicide
22 in the second degree; section 707-711 relating to assault in the

1 second degree; section 707-713 relating to reckless endangering
2 in the first degree; section 707-716 relating to terroristic
3 threatening in the first degree; section 707-721 relating to
4 unlawful imprisonment in the first degree; section 707-732
5 relating to sexual assault or rape in the third degree; section
6 707-752 relating to promoting child abuse in the third degree;
7 section 707-757 relating to electronic enticement of a child in
8 the second degree; section 707-B relating to indecent electronic
9 display to a child; section 707-766 relating to extortion in the
10 second degree; section 708-811 relating to burglary in the
11 second degree; section 708-821 relating to criminal property
12 damage in the second degree; section 708-831 relating to theft
13 in the first degree as amended by Act 68, Session Laws of Hawaii
14 1981; section 708-831 relating to theft in the second degree;
15 section 708-835.5 relating to theft of livestock; section 708-
16 836 relating to unauthorized control of propelled vehicle;
17 section 708-839.8 relating to identity theft in the third
18 degree; section 708-839.55 relating to unauthorized possession
19 of confidential personal information; section 708-852 relating
20 to forgery in the second degree; section 708-854 relating to
21 criminal possession of a forgery device; section 708-875
22 relating to trademark counterfeiting; section 710-1071 relating

1 to intimidating a witness; section 711-1103 relating to riot;
2 section 712-1203 relating to promoting prostitution in the
3 second degree; section 712-1221 relating to gambling in the
4 first degree; section 712-1224 relating to possession of
5 gambling records in the first degree; section 712-1243 relating
6 to promoting a dangerous drug in the third degree; section 712-
7 1247 relating to promoting a detrimental drug in the first
8 degree; section 846E-9 relating to failure to comply with
9 covered offender registration requirements; section 134-7
10 relating to ownership or possession of firearms or ammunition by
11 persons convicted of certain crimes; section 134-8 relating to
12 ownership, etc., of prohibited weapons; section 134-9 relating
13 to permits to carry, or who is convicted of attempting to commit
14 murder in the second degree, any class A felony, any class B
15 felony, or any of the class C felony offenses enumerated above
16 and who has a prior conviction or prior convictions for the
17 following felonies, including an attempt to commit the same:
18 murder, murder in the first or second degree, a class A felony,
19 a class B felony, any of the class C felony offenses enumerated
20 above, or any felony conviction of another jurisdiction, shall
21 be sentenced to a mandatory minimum period of imprisonment
22 without possibility of parole during such period as follows:

- 1 (a) One prior felony conviction:
- 2 (i) Where the instant conviction is for murder in the
- 3 second degree or attempted murder in the second
- 4 degree--ten years;
- 5 (ii) Where the instant conviction is for a class A
- 6 felony--six years, eight months;
- 7 (iii) Where the instant conviction is for a class B
- 8 felony--three years, four months;
- 9 (iv) Where the instant conviction is for a class C
- 10 felony offense enumerated above--one year, eight
- 11 months;
- 12 (b) Two prior felony convictions:
- 13 (i) Where the instant conviction is for murder in the
- 14 second degree or attempted murder in the second
- 15 degree--twenty years;
- 16 (ii) Where the instant conviction is for a class A
- 17 felony--thirteen years, four months;
- 18 (iii) Where the instant conviction is for a class B
- 19 felony--six years, eight months;
- 20 (iv) Where the instant conviction is for a class C
- 21 felony offense enumerated above--three years,
- 22 four months;

- 1 (c) Three or more prior felony convictions:
- 2 (i) Where the instant conviction is for murder in the
- 3 second degree or attempted murder in the second
- 4 degree--thirty years;
- 5 (ii) Where the instant conviction is for a class A
- 6 felony--twenty years;
- 7 (iii) Where the instant conviction is for a class B
- 8 felony--ten years;
- 9 (iv) Where the instant conviction is for a class C
- 10 felony offense enumerated above--five years."

11 SECTION 4. Section 707-751, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§707-751 Promoting child abuse in the second degree.**

14 (1) A person commits the offense of promoting child abuse in
15 the second degree if, knowing or having reason to know its
16 character and content, the person:

- 17 (a) Disseminates child pornography;
- 18 (b) Reproduces child pornography with intent to
- 19 disseminate;
- 20 (c) Disseminates any book, magazine, periodical, film,
- 21 videotape, computer disk, or any other material that
- 22 contains an image of child pornography; [e#]

1 (d) Disseminates any pornographic material [~~which~~] that
2 employs, uses, or otherwise contains a minor engaging
3 in or assisting others to engage in sexual conduct[-];
4 or

5 (e) Possesses ten or more images of any form of
6 child pornography, and the content of at least one
7 image contains one or more of the following:

8 (i) A minor who is younger than the age of
9 twelve;

10 (ii) Sadomasochistic abuse of a minor;

11 (iii) Sexual penetration of a minor; or

12 (iv) Bestiality involving a minor.

13 (2) As used in this section:

14 "Child pornography" means any pornographic visual
15 representation, including any photograph, film, video, picture,
16 or computer or computer-generated image or picture, whether made
17 or produced by electronic, mechanical, or other means, of sexual
18 conduct, if:

19 (a) The pornographic production of such visual
20 representation involves the use of a minor engaging in
21 sexual conduct; or

22 (b) The pornographic visual representation has been

1 created, adapted, or modified to appear that an
2 identifiable minor is engaging in sexual conduct.

3 "Community standards" means the standards of the State.

4 "Computer" shall have the same meaning as in section
5 708-890.

6 "Disseminate" means to publish, sell, distribute, transmit,
7 exhibit, present material, mail, ship, or transport by any
8 means, including by computer, or to offer or agree to do the
9 same.

10 "Lascivious" means tending to incite lust, to deprave the
11 morals in respect to sexual relations, or to produce voluptuous
12 or lewd emotions in the average person, applying contemporary
13 community standards.

14 "Material" means any printed matter, visual representation,
15 or sound recording and includes, but is not limited to, books,
16 magazines, motion picture films, pamphlets, newspapers,
17 pictures, photographs, and tape or wire recordings.

18 "Minor" means any person less than eighteen years old.

19 "Pornographic" shall have the same meaning as in section
20 712-1210.

21 "Sadomasochistic abuse" means flagellation or torture by or
22 upon a person as an act of sexual stimulation or gratification.

1 "Sexual conduct" means acts of masturbation, homosexuality,
2 lesbianism, bestiality, sexual penetration, deviate sexual
3 intercourse, sadomasochistic abuse, or lascivious exhibition of
4 the genital or pubic area of a minor.

5 "Visual representation" refers to, but is not limited to,
6 undeveloped film and videotape, and data stored on computer disk
7 or by electronic means that are capable of conversion into a
8 visual image.

9 (3) The fact that a person engaged in the conduct
10 specified by this section is prima facie evidence that the
11 person engaged in that conduct with knowledge of the character
12 and content of the material. The fact that the person who was
13 employed, used, or otherwise contained in the pornographic
14 material was at that time, a minor, is prima facie evidence that
15 the defendant knew the person to be a minor.

16 (4) Promoting child abuse in the second degree is a class
17 B felony.

18 (5) Notwithstanding any law to the contrary, a person
19 convicted of promoting child abuse in the second degree shall be
20 sentenced to an indeterminate term of imprisonment as provided
21 by law with a mandatory minimum term of imprisonment of five

1 years, unless a greater mandatory minimum term is authorized by
2 law."

3 SECTION 5. Section 707-752, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]~~§707-752 ~~[+]~~ **Promoting child abuse in the third**
6 **degree.** (1) A person commits the offense of promoting child
7 abuse in the third degree if, knowing or having reason to know
8 its character and content, the person possesses:

- 9 (a) Child pornography;
- 10 (b) Any book, magazine, periodical, film, videotape,
11 computer disk, electronically stored data, or any
12 other material that contains an image of child
13 pornography; or

- 14 (c) Any pornographic material that employs, uses, or
15 otherwise contains a minor engaging in or assisting
16 others to engage in sexual conduct.

17 (2) As used in this section:

18 "Child pornography" means any pornographic visual
19 representation, including any photograph, film, video, picture,
20 or computer or computer-generated image or picture, whether made
21 or produced by electronic, mechanical, or other means, of sexual
22 conduct, if:

1 (a) The pornographic production of the visual
2 representation involves the use of a minor engaging in
3 sexual conduct; or

4 (b) The pornographic visual representation has been
5 created, adapted, or modified to appear that an
6 identifiable minor is engaging in sexual conduct.

7 "Community standards" means the standards of the State.

8 "Computer" shall have the same meaning as in section 708-
9 890.

10 "Lascivious" means tending to incite lust, to deprave the
11 morals with respect to sexual relations, or to produce
12 voluptuous or lewd emotions in the average person, applying
13 contemporary community standards.

14 "Material" means any printed matter, visual representation,
15 or sound recording and includes, but is not limited to, books,
16 magazines, motion picture films, pamphlets, newspapers,
17 pictures, photographs, and tape or wire recordings.

18 "Minor" means any person less than eighteen years old.

19 "Pornographic" shall have the same meaning as in section
20 712-1210.

21 "Sodomasochistic abuse" means flagellation or torture by or
22 upon a person as an act of sexual stimulation or gratification.

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1 "Sexual conduct" means acts of masturbation, homosexuality,
2 lesbianism, bestiality, sexual penetration, deviate sexual
3 intercourse, sadomasochistic abuse, or lascivious exhibition of
4 the genital or pubic area of a minor.

5 "Visual representation" includes but is not limited to
6 undeveloped film and videotape and data stored on computer disk
7 or by electronic means that are capable of conversion into a
8 visual image.

9 (3) The fact that a person engaged in the conduct
10 specified by this section is prima facie evidence that the
11 person engaged in that conduct with knowledge of the character
12 and content of the material. The fact that the person who was
13 employed, used, or otherwise contained in the pornographic
14 material was, at that time, a minor is prima facie evidence that
15 the defendant knew the person to be a minor.

16 (4) Promoting child abuse in the third degree is a class C
17 felony.

18 (5) Notwithstanding any law to the contrary, if a person
19 convicted of promoting child abuse in the third degree is
20 sentenced to probation rather than an indeterminate term of
21 imprisonment, the terms and conditions of probation shall

1 include, but not be limited to, a term of imprisonment of one
2 year."

3 SECTION 6. Section 707-756, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§707-756 Electronic enticement of a child in the first**
6 **degree.** (1) Any person who, using a computer or any other
7 electronic device:

8 (a) Intentionally or knowingly communicates:

9 (i) With a minor known by the person to be under the
10 age of eighteen years;

11 (ii) With another person, in reckless disregard of the
12 risk that the other person is under the age of
13 eighteen years, and the other person is under the
14 age of eighteen years; or

15 (iii) With another person who represents that person to
16 be under the age of eighteen years; and

17 (b) With the intent to promote or facilitate the
18 commission of a felony:

19 (i) That is a murder in the first or second degree;

20 (ii) That is a class A felony; or

21 (iii) That is ~~[a]~~ another covered offense as defined
22 in section 846E-1[+],

1 agrees to meet with the minor, or with another person
2 who represents that person to be a minor under the age
3 of eighteen years; and

4 (c) Intentionally or knowingly travels to the agreed upon
5 meeting place at the agreed upon meeting time[+],
6 is guilty of electronic enticement of a child in the first
7 degree.

8 (2) Electronic enticement of a child in the first degree
9 is a class B felony. Notwithstanding any law to the contrary,
10 ~~[if a person sentenced under this section is sentenced to~~
11 ~~probation rather than]~~ a person convicted of electronic
12 enticement of a child in the first degree shall be sentenced to
13 an indeterminate term of imprisonment[~~, the terms and conditions~~
14 ~~of probation shall include, but not be limited to, a term of~~
15 ~~imprisonment of one year.]~~ as provided by law."

16 SECTION 7. Section 707-757, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§707-757 Electronic enticement of a child in the second**
19 **degree.** (1) Any person who, using a computer or any other
20 electronic device:

21 (a) Intentionally or knowingly communicates:

- 1 (i) With a minor known by the person to be under the
2 age of eighteen years;
- 3 (ii) With another person, in reckless disregard of the
4 risk that the other person is under the age of
5 eighteen years, and the other person is under the
6 age of eighteen years; or
- 7 (iii) With another person who represents that person to
8 be under the age of eighteen years; and
- 9 (b) With the intent to promote or facilitate the
10 commission of a felony~~[7]~~ or another covered offense
11 as defined in section 846E-1, agrees to meet with the
12 minor, or with another person who represents that
13 person to be a minor under the age of eighteen years~~[+~~
14 and],

15 ~~[(c) Intentionally or knowingly travels to the agreed upon~~
16 ~~meeting place at the agreed upon meeting time,]~~

17 is guilty of electronic enticement of a child in the second
18 degree.

19 (2) Electronic enticement of a child in the second degree
20 is a class C felony. Notwithstanding any law to the contrary,
21 if a person sentenced under this section is sentenced to
22 probation rather than an indeterminate term of imprisonment, the

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1 terms and conditions of probation shall include, but not be
2 limited to, a term of imprisonment of one year."

3 SECTION 8. Section 846E-1, Hawaii Revised Statutes, is
4 amended as follows:

5 (1) By adding a new definition to be appropriately
6 inserted and to read as follows:

7 "Clean record" means no conviction for a felony or covered
8 offense, if placed on probation or parole, completion of
9 probation or parole without more than one revocation, and, for
10 sex offenders, successful completion of an appropriate sex
11 offender treatment program, if such program was ordered."

12 (2) By amending the definitions of "crime against minors",
13 "registration information", and "sexual offense" to read as
14 follows:

15 "Crime against minors" [τ] excludes "sexual offenses" as
16 defined in this section and means a criminal offense that
17 consists of:

18 (1) Kidnapping of a minor, [~~except~~] by someone other
19 than a parent;

20 (2) Unlawful imprisonment in the first or second degree
21 that involves the unlawful imprisonment of a minor [τ
22 ~~except~~] by someone other than a parent;

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1 (3) An act, as described in chapter 705, that is an
2 attempt, criminal solicitation, or criminal conspiracy
3 to commit one of the offenses designated in paragraph
4 (1) or (2); or

5 (4) A criminal offense that is comparable to or which
6 exceeds one of the offenses designated in paragraphs
7 (1) through (3) or any federal, military, or
8 out-of-state conviction for any offense that, under
9 the laws of this State would be a crime against minors
10 as designated in paragraphs (1) through (3).

11 "Registration information" means the information specified
12 in section [~~846E-2(e)~~] 846E-2(d) and (e)."

13 "Sexual offense" means an offense that is:

14 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),
15 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),
16 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-
17 732(2)(b), 707-732(1)(c), 707-732(1)(d), 707-
18 732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6,
19 ~~[e]~~ 712-1202(1)(b), or 712-1203(1)(b), but excludes
20 conduct that is criminal only because of the age of
21 the victim, as provided in section 707-730(1)(b), or

- 1 section 707-732(1)(b) if the perpetrator is under the
2 age of eighteen;
- 3 (2) An act defined in section 707-720 if the charging
4 document for the offense for which there has been a
5 conviction alleged intent to subject the victim to a
6 sexual offense;
- 7 (3) An act that consists of:
- 8 (A) Criminal sexual conduct toward a minor[+],
9 including but not limited to an offense set forth
10 in section 707-B;
- 11 (B) Solicitation of a minor who is less than fourteen
12 years old to engage in sexual conduct;
- 13 (C) Use of a minor in a sexual performance;
- 14 (D) Production, distribution, or possession of child
15 pornography chargeable as a felony under section
16 707-750, 707-751, or 707-752;
- 17 (E) Electronic enticement of a child chargeable [~~as a~~
18 ~~felony~~] under section 707-756 [~~or~~], 707-757, or
19 707-A, if the [act involves:
20 ~~(i) Sexual conduct,~~
21 ~~(ii) Attempted sexual conduct, or~~
22 ~~(iii) A proposal to engage in sexual conduct,~~]

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1 offense was committed with the intent to promote
2 or facilitate the commission of another covered
3 offense as defined in section 846E-1; or

4 (F) Solicitation of a minor to practice prostitution;

5 (4) A criminal offense that is comparable to or that
6 exceeds a sexual offense as defined in paragraphs (1)
7 through (3) or any federal, military, or out-of-state
8 conviction for any offense that under the laws of this
9 State would be a sexual offense as defined in
10 paragraphs (1) through (3); or

11 (5) An act, as described in chapter 705, that is an
12 attempt, criminal solicitation, or criminal conspiracy
13 to commit one of the offenses designated in paragraphs
14 (1) through (4)."

15 (3) By repealing the definitions of "aggravated sex
16 offender," "aggravated sexual offense" and "sexually violent
17 predator".

18 ~~["Aggravated sex offender" means:~~

19 ~~(1) A person convicted of an "aggravated sexual offense"~~
20 ~~as defined in this section; or~~

21 ~~(2) A person who is charged with an "aggravated sexual~~

1 ~~offense" as defined in this section and found unfit to~~
2 ~~proceed and is released into the community or~~
3 ~~acquitted due to a physical or mental disease,~~
4 ~~disorder, or defect pursuant to chapter 704 and is~~
5 ~~released into the community.~~

6 ~~"Aggravated sexual offense" means:~~

7 ~~(1) A criminal offense described in section 707 730(1)(a),~~
8 ~~707 730(1)(b), 707 731(1)(b), 707 732(1)(b),~~
9 ~~707 732(1)(f), and 707 733.6, but excludes conduct~~
10 ~~that is criminal only because of the age of the~~
11 ~~victim, if the perpetrator is under the age of~~
12 ~~eighteen;~~

13 ~~(2) A criminal offense that is comparable to one of the~~
14 ~~offenses designated in paragraph (1) or any federal,~~
15 ~~military, or out of state offense that, under the laws~~
16 ~~of this State would be an aggravated sexual offense as~~
17 ~~designated in paragraph (1); or~~

18 ~~(3) An act, as described in chapter 705, that is an~~
19 ~~attempt, criminal solicitation, or criminal conspiracy~~
20 ~~to commit one of the offenses designated in paragraphs~~
21 ~~(1) or (2).~~

22 ~~"Sexually violent predator" means a person:~~

- 1 ~~(1) Who is a sex offender, and~~
- 2 ~~(2) Who suffers from a mental abnormality or personality~~
- 3 ~~disorder that makes the person likely to engage in~~
- 4 ~~predatory sexual offenses."]~~

5 SECTION 9. Section 846E-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§846E-2 Registration requirements.** (a) A covered
8 offender shall register with the attorney general and comply
9 with the provisions of this chapter for life or for a shorter
10 period of time as provided in this chapter. A covered offender
11 ~~[who is not:~~

- 12 ~~(1) An aggravated sex offender;~~
- 13 ~~(2) A repeat covered offender; and~~
- 14 ~~(3) A sexually violent predator;]~~

15 shall be eligible to petition the court in a civil proceeding
16 for an order that the covered offender's registration
17 requirements under this chapter be terminated, as provided in
18 section 846E-10.

19 (b) A person who establishes or maintains a residence in
20 this State and who has not been designated as a covered offender
21 by a court of this State but who has been designated as a
22 covered offender, sex offender, offender against minors, repeat

1 covered offender, sexually violent predator, or any other sexual
2 offender designation in another state or jurisdiction and was,
3 as a result of such designation, subjected to registration or
4 community or public notification, or both, or would be if the
5 person was a resident of that state or jurisdiction, without
6 regard to whether the person otherwise meets the criteria for
7 registration as a covered offender, shall register in the manner
8 provided in this section and shall be subject to community and
9 public notification as provided in section 846E-3. A person who
10 meets the criteria of this subsection is subject to the
11 requirements and penalty provisions of section 846E-9 until the
12 person petitions the attorney general for termination of
13 registration requirements by (1) providing an order issued by
14 the court that designated the person as a covered offender, sex
15 offender, offender against minors, repeat covered offender,
16 sexually violent predator, or any other sexual offender
17 designation in the state or jurisdiction in which the order was
18 issued, which states that such designation has been removed or
19 demonstrates to the attorney general that such designation, if
20 not imposed by a court, has been removed by operation of law or
21 court order in the state or jurisdiction in which the
22 designation was made, and such person does not meet the criteria

1 for registration as a covered offender under the laws of this
2 State, or (2) by demonstrating that the out-of-state convictions
3 upon which the sexual offender designation was established are
4 not covered offenses under section 846E-1, thereby showing that
5 such person does not meet the criteria for registration as a
6 covered offender under the laws of this State. If the covered
7 offender is not satisfied with the decision of the attorney
8 general on the request for termination of registration
9 requirements, the covered offender may appeal the decision
10 pursuant to chapter 91.

11 ~~[(b)]~~ (c) Each provision of this chapter applicable to sex
12 offenders shall also be applicable to offenders against minors,
13 unless offenders against minors are specifically excluded.

14 Whenever a covered offender's public information is made
15 publicly accessible, separate registries shall be maintained
16 for:

- 17 (1) Sex offenders; and
18 (2) Offenders against minors.

19 ~~[(e)]~~ (d) Registration information for each covered
20 offender shall ~~[consist of a recent photograph, verified~~
21 ~~fingerprints, and]~~ include a signed statement by the covered
22 offender containing:

- 1 (1) The name, all prior names, nicknames and pseudonyms,
2 and all aliases used by the covered offender or under
3 which the covered offender has been known and other
4 identifying information, including date of birth[~~7~~]
5 and any alias date of birth, social security number[~~7~~]
6 and any alias social security number, sex, race,
7 height, weight, and hair and eye color;
- 8 (2) The actual address and telephone number of the covered
9 offender's residence [~~or mailing address,~~] or any
10 current, temporary address where the covered offender
11 resides, or if an address is not available, a
12 description of the place or area in which the covered
13 offender resides for at least thirty nonconsecutive
14 days within a sixty-day period, and for each address
15 or place where the covered offender resides, how long
16 the covered offender has resided there;
- 17 (3) The actual address or description of the place or
18 area, the actual length of time of the stay, and
19 telephone number where the covered offender is staying
20 for a period of seven or more [~~than ten~~] days, if
21 other than the stated residence;

- 1 (4) If known, the future address and telephone number
2 where the covered offender is planning to reside, if
3 other than the stated residence;
- 4 (5) Any electronic mail address, any instant message name,
5 any internet designation or moniker, and any internet
6 address used for routing or self-identification;
- 7 (6) Any cell phone number and other designations used for
8 routing or self-identification in telephonic
9 communications;
- 10 [~~5~~] (7) Names and, if known, actual business addresses
11 of current and known future employers, including
12 information for any place where the covered offender
13 works as a volunteer or otherwise works without
14 remuneration, and the starting and ending dates of any
15 such employment;
- 16 (8) For covered offenders who may not have a fixed place
17 of employment, a description of the places where such
18 a covered offender works, such as information about
19 normal travel routes or the general area or areas in
20 which the covered offender works;
- 21 (9) Professional licenses held by the covered offender;

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1 [~~6~~] (10) Names and actual addresses of current and known
2 future educational institutions with which the covered
3 offender is affiliated in any way, whether or not
4 compensated, including but not limited to affiliation
5 as a faculty member, an employee, or a student, and
6 the starting and ending dates of any such affiliation;

7 [~~7~~] (11) The year, make, model, color, and license or
8 registration or other identifying number of all
9 vehicles, including automobiles, watercrafts, and
10 aircrafts, currently owned or operated by the covered
11 offender[+] and the address or description of the
12 place or places where the covered offender's vehicle
13 or vehicles are habitually parked, docked, or
14 otherwise kept;

15 (12) Passports and information about the passports, if the
16 covered offender has passports, and documents
17 establishing immigration status and information about
18 these documents, if the covered offender is an alien;

19 [~~8~~] (13) A statement listing all covered offenses for
20 which the covered offender has been convicted or found
21 unfit to proceed or acquitted pursuant to chapter 704;

1 ~~[(9)]~~ (14) A statement indicating whether the covered
2 offender has received or is currently receiving
3 treatment ordered by a court of competent jurisdiction
4 or by the Hawaii paroling authority;

5 ~~[(10)]~~ (15) A statement indicating whether the covered
6 offender is a United States citizen; and

7 ~~[(11)]~~ (16) Any additional identifying information about
8 the covered offender.

9 (e) The following information shall also be included in
10 the registry for each covered offender:

- 11 (1) A current photograph of the covered offender;
- 12 (2) A physical description of the covered offender,
13 including a description of particular identifying
14 characteristics such as scars or tattoos;
- 15 (3) Confirmation that the covered offender has provided
16 digitized fingerprints and palm prints of the covered
17 offender;
- 18 (4) Judgment of conviction, judgment of acquittal, or
19 judicial determination of unfitness to proceed
20 documenting the criminal offense or offenses for which
21 the covered offender is registered;

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- 1 (5) The text, or an electronic link to the text, of the
2 provision of law defining the criminal offense or
3 offenses for which the covered offender is registered;
- 4 (6) The criminal history of the covered offender, or an
5 electronic link to the criminal history, including the
6 date of all arrests and convictions, the status of
7 parole, probation, or supervised release, registration
8 status, and the existence of any outstanding arrest
9 warrants for the covered offender;
- 10 (7) Confirmation that the covered offender has provided a
11 DNA buccal swab sample as required by chapter 844D;
- 12 (8) Digitized copies of a valid driver's license or
13 identification card issued to the covered offender, or
14 an electronic link to such records; and
- 15 (9) Digitized copies of passports and documents
16 establishing immigration status, or an electronic link
17 to such records.

18 [~~d~~] (f) Whenever a covered offender provides
19 registration information, during initial registration as a
20 covered offender or when providing notice of a change in
21 registration information, the covered offender also shall sign a

1 statement verifying that all of the registration information is
2 accurate and current.

3 ~~(f)~~ (g) In addition to the requirement under subsection
4 (a) to register with the attorney general and comply with the
5 provisions of this chapter until a court relieves the covered
6 offender of the registration requirements of this chapter, each
7 covered offender shall also register in person with the chief of
8 police where the covered offender resides or is present.

9 Registration under this subsection is for the purpose of
10 providing the covered offender's photograph, fingerprints, and
11 registration information. Registration under this subsection is
12 required whenever the covered offender, whether or not a
13 resident of this State, remains in this State for more than
14 ~~ten~~ seven days or for an aggregate period exceeding thirty
15 days in one calendar year. Covered offenders required to
16 register in person with the chief of police under this
17 subsection shall register no later than three working days after
18 the earliest of:

- 19 (1) Arrival in this State;
- 20 (2) Release from incarceration;
- 21 (3) Release from commitment;
- 22 (4) Release on furlough;

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

7 In addition to any other requirement to register under this
8 subsection or subsection (a), each covered offender shall report
9 in person every five years until June 30, 2009, and beginning on
10 July 1, 2009, every year, within the thirty-day period following
11 the offender's date of birth, to the chief of police where the
12 covered offender resides ~~{for purposes of having a new-~~
13 ~~photograph taken-}~~, or to such other department or agency that
14 may be designated by the attorney general in rules adopted
15 pursuant to chapter 91 for purposes of the administration of
16 this subsection, and shall review the existing information in
17 the registry that is within the offender's knowledge, correct
18 any information that has changed or is inaccurate, provide any
19 new information that may be required, and allow the police and
20 such other department or agency designated by the attorney
21 general to take a current photograph of the offender.

1 [~~f~~] (h) The registration provisions of this section
2 shall apply to all covered offenders without regard to:

- 3 (1) The date of the covered offender's conviction;
4 (2) The date of finding, pursuant to chapter 704, of the
5 covered offender's unfitness to proceed; or
6 (3) The date of the covered offender's acquittal due to
7 mental disease, disorder, or defect, pursuant to
8 chapter 704."

9 SECTION 10. Section 846E-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§846E-3 Access to registration information.** (a)

12 Registration information shall be disclosed as follows:

- 13 (1) The information shall be disclosed to law enforcement
14 agencies for law enforcement purposes;
15 (2) The information shall be disclosed to government
16 agencies conducting confidential background checks;
17 (3) The attorney general and any county police department
18 shall release public information as provided in
19 subsection (b) concerning a specific person required
20 to register under this chapter; provided that the
21 identity of a victim of an offense that requires
22 registration under this chapter shall not be released.

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1 (b) For purposes of this section, "public information"
2 means:

3 (1) Name, prior names, nicknames and pseudonyms, and all
4 aliases used by the covered offender or under which
5 the covered offender has been known;

6 (2) The year of the covered offender's date of birth and
7 the year of the covered offender's alias dates of
8 birth;

9 (3) A physical description of the covered offender,
10 including a description of particular identifying
11 characteristics such as scars or tattoos;

12 [+2+] (4) The actual address where the covered offender
13 resides [and] or any current, temporary address where
14 the covered offender resides or, if an address is not
15 available, a description of any place or area in which
16 the covered offender resides for at least thirty
17 nonconsecutive days within a sixty-day period, and,
18 for each address or place where the covered offender
19 resides, how long the covered offender has resided
20 there;

21 [+3+] (5) The actual address or description of the place
22 or area where the covered offender is staying for more

1 than [~~ten~~] seven days, if other than the stated
2 residence[+], and the actual length of time of the
3 stay;

4 [~~4~~] (6) The future actual address, if known, where the
5 covered offender is planning to reside, if other than
6 the stated residence;

7 [~~5~~] (7) The street name and zip code of the covered
8 offender's current locations of employment[+],
9 including information for any place where the covered
10 offender works as a volunteer or otherwise works
11 without remuneration;

12 (8) For covered offenders who may not have a fixed place
13 of employment, a description of the places where such
14 a covered offender works, such as information about
15 normal travel routes or the general area or areas in
16 which the covered offender works;

17 (9) Professional licenses held by the covered offender;

18 [~~6~~] (10) Names and actual addresses of current and known
19 future educational institutions with which the covered
20 offender is affiliated as a faculty member, an
21 employee, or a student, and the starting and ending
22 dates of any such affiliation;

- 1 ~~[(7)]~~ (11) The year, make, model, color, and license
2 number of all vehicles, including automobiles,
3 watercrafts, and aircrafts, currently owned or
4 operated by the covered offender, ~~[excluding vehicles~~
5 ~~operated exclusively for purposes of work,~~] and the
6 address or description of the place or places where
7 the covered offender's vehicle or vehicles are
8 habitually parked, docked, or otherwise kept;
- 9 ~~[(8)]~~ (12) A statement listing all covered offenses for
10 which the covered offender has been convicted or found
11 unfit to proceed or acquitted pursuant to chapter 704;
12 ~~[and]~~
- 13 (13) An electronic link to the public criminal conviction
14 history of the covered offender;
- 15 (14) Judgment of conviction, judgment of acquittal, or
16 judicial determination of unfitness to proceed
17 documenting the criminal offense or offenses for which
18 the covered offender is registered;
- 19 (15) The text, or an electronic link to the text, of the
20 provision of law defining the criminal offense or
21 offenses for which the covered offender is registered;
- 22 ~~[(9)]~~ (16) A recent photograph of the covered offender.

1 The identity of any victim of a sexual offense shall not be
2 disclosed and any documentation containing such information
3 shall be redacted to prevent disclosure.

4 (c) To facilitate community notification, after a covered
5 offender registers or updates a registration, the attorney
6 general may provide public information in the registry about
7 that offender to any organization, company, or individual who
8 requests such notification pursuant to procedures established by
9 the attorney general through rules adopted pursuant to chapter
10 91.

11 (d) A covered offender may seek correction of erroneous
12 public information by petitioning the attorney general to make
13 the correction. If the covered offender is not satisfied with
14 the decision of the attorney general on the request for
15 correction, the covered offender may appeal the decision
16 pursuant to chapter 91.

17 [~~(e)~~] (e) Public access to a covered offender's public
18 information shall be permitted with regard to each covered
19 offender beginning the next working day following the filing of
20 a judgment of conviction, a finding of unfitness to proceed or
21 an acquittal due to mental disease, disorder, or defect, for a
22 covered offense, or as soon thereafter as is practical. When a

1 notice of appeal has been filed, the public information shall
2 note that the covered offender has filed a notice of appeal.
3 The public information shall be removed upon the reversal of the
4 covered offender's conviction or the granting of a pardon to the
5 covered offender. ~~[Public access shall continue until the~~
6 ~~expiration of at least the following periods:~~

- 7 ~~(1) Forty years after sentencing or release, whichever is~~
8 ~~later, of a sexually violent predator or a repeat~~
9 ~~covered offender with at least two separate~~
10 ~~convictions for a crime for which this chapter~~
11 ~~requires registration, one of which is a felony;~~
- 12 ~~(2) Thirty years after sentencing or release, whichever is~~
13 ~~later, of any covered offender who has been convicted~~
14 ~~of an aggravated sexual offense;~~
- 15 ~~(3) Twenty five years after sentencing or release,~~
16 ~~whichever is later, of any covered offender who is not~~
17 ~~subject to paragraph (1) or (2), and whose most~~
18 ~~serious covered offense conviction, except for a~~
19 ~~conviction under section 707-730(1)(c), is a class A~~
20 ~~felony or its non-Hawaii equivalent;~~
- 21 ~~(4) Fifteen years after a covered offender's date of~~

1 ~~sentencing or release, whichever is later, for those~~
2 ~~covered offenders who are not subject to paragraphs~~
3 ~~(1) through (3) and whose most serious covered offense~~
4 ~~conviction is a class B felony, or a conviction under~~
5 ~~section 707-730(1)(c), or its non Hawaii equivalent;~~
6 ~~or~~

7 ~~(5) Ten years after a covered offender's date of~~
8 ~~sentencing or release, whichever is later, for those~~
9 ~~covered offenders who are not subject to paragraphs~~
10 ~~(1) through (4) and:~~

11 ~~(A) Whose most serious covered offense conviction is~~
12 ~~a class C felony or its non Hawaii equivalent; or~~

13 ~~(B) Have been convicted of a second or subsequent~~
14 ~~misdemeanor covered offense when all of the~~
15 ~~previous covered offenses are also misdemeanors.~~

16 ~~(d)] (f) Public access authorized by this section [shall~~
17 ~~be accomplished by the following methods:~~

18 ~~(1) Public access to the public information for each~~
19 ~~covered offender subject to subsection (c), paragraphs~~
20 ~~(1) through (4)] shall be provided by both public~~
21 ~~internet access and on-site public access [or,~~

22 ~~(2) Public access to the public information for each~~

1 ~~covered offender subject to subsection (c), paragraph~~
2 ~~(5) shall be provided by on-site public access];~~

3 provided that on-site public access shall be provided for each
4 covered offender at the Hawaii criminal justice data center and
5 at one or more designated police stations in each county, to be
6 designated by the attorney general, between the hours of 8:00
7 a.m. and 4:30 p.m. on weekdays, excluding holidays.

8 ~~[(e) After]~~ (g) Public access to the public information
9 for each covered offender shall be permitted while the covered
10 offender is subject to sex offender registration, except that
11 after forty years have elapsed after release or sentencing,
12 whichever is later, [for covered offenders subject to subsection
13 (c), paragraph (1); thirty years have elapsed after release or
14 sentencing, whichever is later, for covered offenders subject to
15 subsection (c), paragraph (2); twenty five years have elapsed
16 after release or sentencing, whichever is later, for covered
17 offenders subject to subsection (c), paragraph (3); fifteen
18 years have elapsed after release or sentencing, whichever is
19 later for covered offenders subject to subsection (c), paragraph
20 (4); and ten years have elapsed after release or sentencing,
21 whichever is later, for covered offenders subject to subsection
22 (c), paragraph (5),] a covered offender may petition the court

1 in a civil proceeding to terminate public access. In the civil
2 proceeding to terminate public access, the State shall be
3 represented by the attorney general; provided that the attorney
4 general, with the prosecuting agency's consent, may designate
5 the prosecuting agency that prosecuted the covered offender for
6 the most recent covered offense within the State to represent
7 the State. For covered offenders who have never been convicted
8 of a covered offense within the State of Hawaii, the attorney
9 general shall represent the State; provided that the attorney
10 general, with the prosecuting agency's consent, may designate
11 the prosecuting agency for the county in which the covered
12 offender resides to represent the State. The court may order
13 this termination upon proof by [~~a preponderance of the~~] clear
14 and convincing evidence that [~~the covered offender~~]:

- 15 (1) [~~Has~~] The covered offender has had no new
16 convictions for covered offenses;
- 17 (2) [~~Is~~] The covered offender is very unlikely to commit a
18 covered offense ever again; and
- 19 (3) Public access to the covered offender's public
20 information will not assist in protecting the safety
21 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 ~~[(f)]~~ (h) If a covered offender has been convicted of only
5 one covered offense and that covered offense is a misdemeanor,
6 the covered offender shall not be subject to the public access
7 requirements set forth in this section.

8 ~~[(g)]~~ (i) The following message shall be posted at both
9 the site of internet access and on-site public access locations:

10 "Information regarding covered offenders is permitted
11 pursuant to chapter 846E. Public access to this
12 information is based solely on the fact of each offender's
13 criminal conviction and is not based on an estimate of the
14 offender's level of dangerousness. By allowing public
15 access to this information, the State makes no
16 representation as to whether the covered offenders listed
17 are dangerous. Any person who uses the information in this
18 registry to injure, harass, or commit a criminal act
19 against any person included in the registry may be subject
20 to criminal prosecution, civil liability, or both."

1 ~~(h)~~ (j) The public access provisions of this section
2 shall apply to all covered offenders without regard to the date
3 of conviction.

4 ~~(i)~~ (k) "Conviction" as used in this section means:

- 5 (1) A judgment on the verdict, or a finding of guilt after
6 a plea of ~~[+]~~guilty~~[+]~~ or nolo contendere, excluding
7 the adjudication of a minor;
- 8 (2) A finding of unfitness to proceed resulting in the
9 release of the covered offender into the community,
10 excluding such a finding as to a minor; or
- 11 (3) An acquittal due to a physical or mental disease,
12 disorder, or defect pursuant to chapter 704 resulting
13 in the release of the covered offender into the
14 community, excluding such acquittal as to a minor."

15 SECTION 11. Section 846E-4, Hawaii Revised Statutes, is
16 amended by amending subsection (e) to read as follows:

17 "(e) The chief of police shall transmit any covered
18 offender registration information required by this chapter to
19 the attorney general, by entering the information into a
20 statewide record system, if the information has not previously
21 been entered into the system, and also shall provide the
22 attorney general with a photograph and fingerprints of the

1 covered offender, taken at the time the covered offender
2 registers with the chief of police. The covered offender shall
3 report in person every five years until June 30, 2009, and
4 beginning on July 1, 2009, every year, within the thirty-day
5 period following the offender's date of birth, to the chief of
6 police where the covered offender's residence is located [~~for~~
7 ~~purposes of having a new photograph taken.~~], or to such other
8 department or agency that may be designated by the attorney
9 general in rules adopted pursuant to chapter 91 for purposes of
10 the administration of this subsection, and shall review the
11 existing information in the registry that is within the
12 offender's knowledge, correct any information that has changed
13 or is inaccurate, provide any new information that may be
14 required, and allow the police and such other department or
15 agency designated by the attorney general to take a current
16 photograph of the offender."

17 SECTION 12. Section 846E-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§846E-9 Failure to comply with covered offender**
20 **registration requirements.** (a) A person commits the offense of
21 failure to comply with covered offender registration

1 requirements if the person is required to register under this
2 chapter and the person intentionally, knowingly, or recklessly:

3 (1) Fails to register with the attorney general by
4 providing to the attorney general or the Hawaii
5 criminal justice data center the person's registration
6 information;

7 (2) Fails to report in person every five years until June
8 30, 2009, and beginning on July 1, 2009, once every
9 year, during the thirty-day period following the
10 offender's date of birth, to the chief of police where
11 the covered offender's residence is [~~located, for~~
12 ~~purposes of having a new photograph taken within five~~
13 ~~years after the previous photograph was taken.]~~
14 located, or to such other department or agency
15 designated by the attorney general;

16 (3) While reporting to the chief of police or such
17 other department or agency designated by the attorney
18 general, fails to correct any information in
19 the registry within the offender's knowledge that has
20 changed or is inaccurate;

21 (4) While reporting to the chief of police or such
22 other department or agency designated by the attorney

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1 general, fails to provide any new information that may
2 be required;

3 (5) While reporting to the chief of police or such
4 other department or agency designated by the attorney
5 general, does not allow the police or other designated
6 department or agency to take a current photograph of
7 the person;

8 ~~[(3)]~~ (6) Fails to register in person with the chief of
9 police having jurisdiction of the area where the
10 covered offender resides or is present within three
11 working days whenever the provisions of section
12 846E-2(e) require the person to do so;

13 ~~[(4)]~~ (7) Fails to notify the attorney general or the
14 Hawaii criminal justice data center of a change of any
15 of the covered offender's registration information in
16 writing within three working days of the change;

17 ~~[(5)]~~ (8) Provides false registration information to the
18 attorney general, the Hawaii criminal justice data
19 center, or a chief of police;

20 ~~[(6)]~~ (9) Signs a statement verifying that all of the

1 registration information is accurate and current when
2 any of the registration information is not
3 substantially accurate and current;

4 ~~(7)~~ (10) Having failed to establish a new residence
5 within the ten days while absent from the person's
6 registered residence for ten or more days:

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

11 (B) Fails to report to a police station in the State
12 by the last day of every month; or

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

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1 the covered offender would be absent during the period
2 that the periodic verification form was delivered.

3 (b) ~~[Any person required to register under this chapter~~
4 ~~who intentionally or knowingly violates subsection (a) shall be~~
5 ~~guilty of]~~ Failure to comply with covered offender registration
6 requirements is a class C felony.

7 ~~[(c) Any person required to register under this chapter~~
8 ~~who recklessly violates subsection (a) shall be guilty of a~~
9 ~~misdemeanor.~~

10 ~~(d) For any second or subsequent offense, any person~~
11 ~~required to register under this chapter who intentionally,~~
12 ~~knowingly, or recklessly violates subsection (a) shall be guilty~~
13 ~~of a class C felony.] "~~

14 SECTION 13. Section 846E-10, Hawaii Revised Statutes, is
15 amended to read as follows:

16 " ~~[f]~~ **§846E-10** ~~[+]~~ **Termination of registration requirements.**

17 (a) Tier 3 offenses. A covered offender whose ~~[most serious~~
18 ~~covered offense is a class A felony or its non-Hawaii~~
19 ~~equivalent, who has substantially complied with the registration~~
20 ~~requirements of this chapter for the previous twenty five years,~~
21 ~~who is not a sexually violent predator, who is not an aggravated~~
22 ~~sex offender, and who is not a repeat covered offender, may~~

1 ~~petition the court, in a civil proceeding, for termination of~~
2 ~~registration requirements on the ground that registration is no~~
3 ~~longer necessary for the protection of the public.] covered~~
4 offense is any of the following offenses shall register for life
5 and, except as provided in subsection (e), may not petition the
6 court, in a civil proceeding, for termination of registration
7 requirements:

- 8 (1) Any offense set forth in section 707-730(1)(a),
9 (b), (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a),
10 (b), or (f), or 707-733.6;
- 11 (2) An offense set forth in section 707-720, provided that
12 the offense involves kidnapping of a minor by someone
13 other than a parent;
- 14 (3) An offense that is an attempt, criminal solicitation,
15 or criminal conspiracy to commit any of the offenses
16 in paragraph (1) or (2);
- 17 (4) Any criminal offense that is comparable to one of the
18 offenses in paragraph (1), (2), or (3); or
- 19 (5) Any federal, military, or out-of-state offense that is
20 comparable to one of the offenses in paragraph (1),
21 (2), or (3).

1 (b) A repeat covered offender shall register for life and,
2 except as provided in subsection (e), may not petition the
3 court, in a civil proceeding, for termination of registration
4 requirements.

5 [~~(b)~~] (c) Tier 2 offenses. A covered offender [~~whose most~~
6 ~~serious covered offense is a class B felony or its non Hawaii~~
7 ~~equivalent,~~] who has maintained a clean record for the previous
8 twenty-five years, excluding any time the offender was in
9 custody or civilly committed, and who has substantially complied
10 with the registration requirements of this chapter for the
11 previous [~~fifteen~~] twenty-five years, or for the portion of that
12 twenty-five years that this chapter has been applicable, and who
13 is not [~~a sexually violent predator, who is not an aggravated~~
14 sex offender, and who is not] a repeat covered offender[~~7~~] may
15 petition the court, in a civil proceeding, for termination of
16 registration requirements [~~on the ground that registration is no~~
17 ~~longer necessary for the protection of the public.]; provided~~
18 that the covered offender's most serious covered offense is one
19 of the following:

20 (1) Any offense set forth in section 707-730(1)(c),
21 707-731(1)(c), 707-732(1)(c), 707-750, 707-751,
22 712-1202(1)(b), or 712-1203(1)(b);

1 (2) An offense set forth in section 707-720, provided that
2 the charging document for the offense for which there
3 has been a conviction alleged intent to subject the
4 victim to a sexual offense;

5 (3) An offense set forth in section 707-756 that includes
6 an intent to promote or facilitate the commission of
7 another felony covered offense as defined in section
8 846E-1;

9 (4) An offense that is an attempt, criminal solicitation,
10 or criminal conspiracy to commit any of the offenses
11 in paragraph (1), (2), or (3);

12 (5) Any criminal offense that is comparable to one of the
13 offenses in paragraph (1), (2), (3), or (4); or

14 (6) Any federal, military, or out-of-state offense that is
15 comparable to one of the offenses in paragraph (1),
16 (2), (3), or (4).

17 ~~[(e)]~~ (d) Tier 1 offenses. A covered offender ~~[whose most-~~
18 ~~serious covered offense is a class C felony or its non Hawaii-~~
19 ~~equivalent, or a misdemeanor or its non Hawaii equivalent,~~] who
20 has maintained a clean record for the previous fifteen years,
21 excluding any time the offender was in custody or civilly
22 committed, and who has substantially complied with the

1 registration requirements of this chapter for the previous [~~ten~~
2 fifteen years, or for the portion of that fifteen years that
3 this chapter has been applicable, and who is not [~~a sexually-~~
4 ~~violent predator, who is not an aggravated sex offender, and who~~
5 ~~is not~~] a repeat covered offender[~~7~~] may petition the court, in
6 a civil proceeding, for termination of registration requirements
7 [~~on the ground that registration is no longer necessary for the~~
8 ~~protection of the public.~~]; provided that the covered offender's
9 most serious covered offense is one of the following:

10 (1) Any offense set forth in section 707-732(1)(d) or
11 (e), 707-733(1)(a), 707-752, 707-A, or
12 707-B.

13 (2) An offense set forth in section 707-721 or 707-722,
14 provided that the offense involves unlawful
15 imprisonment of a minor by someone other than a
16 parent;

17 (3) An offense set forth in section 707-757 that includes
18 an intent to promote or facilitate the commission of
19 another covered offense as defined in section
20 846E-1;

21 (4) An offense that is an attempt, criminal solicitation,
22 or criminal conspiracy to commit any of the offenses

1 in paragraph (1), (2), or (3);

2 (5) Any criminal offense that is comparable to one of the
3 offenses in paragraph (1), (2), (3), or (4); or

4 (6) Any federal, military, or out-of-state offense that is
5 comparable to one of the offenses in paragraph (1),
6 (2), (3), or (4).

7 (e) Notwithstanding any other provisions in this section,
8 any covered offender, forty years after the covered offender's
9 date of release or sentencing, whichever is later, for the
10 covered offender's most recent covered offense, may petition the
11 court, in a civil proceeding, for termination of registration
12 requirements.

13 (f) In the civil proceeding for termination of
14 registration requirements, the State shall be represented by the
15 attorney general; provided that the attorney general, with the
16 prosecuting agency's consent, may designate the prosecuting
17 agency that prosecuted the covered offender for the most recent
18 covered offense within the State to represent the State. For
19 covered offenders who have never been convicted of a covered
20 offense within the State of Hawaii, the attorney general shall
21 represent the State; provided that the attorney general, with
22 the prosecuting agency's consent, may designate the prosecuting

1 agency for the county in which the covered offender resides to
2 represent the State. The court may order this termination upon
3 proof by clear and convincing evidence that:

- 4 (1) The covered offender has met the statutory
5 requirements of eligibility to petition for
6 termination;
- 7 (2) The covered offender has substantially complied with
8 registration requirements;
- 9 (3) The covered offender is very unlikely to commit a
10 covered offense ever again; and
- 11 (4) Registration by the covered offender will not assist
12 in protecting the safety of the public or any member
13 thereof.

14 ~~[(d)]~~ (g) A denial by the court for relief pursuant to a
15 petition under this section shall preclude the filing of another
16 petition for five years from the date of the last denial."

17 SECTION 14. Sections 846E-11 and 846E-13, Hawaii Revised
18 Statutes, are repealed.

19 ~~["~~§846E-11~~ Presumptions, civil proceeding. (a) For any~~
20 ~~civil proceeding required or permitted by this chapter, the~~
21 ~~following presumptions shall apply:~~

22 ~~(1) For a covered offender who is a sexually violent~~

1 ~~predator, an aggravated sex offender, or a repeat~~
2 ~~covered offender, there shall be a presumption that~~
3 ~~the covered offender's registration requirement and~~
4 ~~public access shall continue;~~

5 ~~(2) For a covered offender convicted of a class C felony~~
6 ~~or a misdemeanor who is not a sexually violent~~
7 ~~predator, an aggravated sex offender, or a repeat~~
8 ~~covered offender, there shall be a presumption that~~
9 ~~the covered offender's registration requirement and~~
10 ~~public access shall end; and~~

11 ~~(3) For all other covered offenders, there shall be no~~
12 ~~presumption concerning the covered offender's~~
13 ~~registration requirement and public access.~~

14 ~~(b) The presumptions created in this section shall not~~
15 ~~apply to criminal proceedings initiated pursuant to section~~
16 ~~846E-9.~~

17 ~~**[5846E-13] Determination of whether a sex offender is a**~~
18 ~~**sexually violent predator.** Whenever a petition for termination~~
19 ~~of registration requirements is filed pursuant to section~~
20 ~~846E-10, or upon petition by the State at any time after a~~
21 ~~determination of guilt, a court, in a civil proceeding, shall~~
22 ~~make a determination as to whether a sex offender is a sexually~~

1 ~~violent predator. The determination of whether a person is a~~
2 ~~sexually violent predator for purposes of this section shall be~~
3 ~~made by a court after considering the recommendation of a board,~~
4 ~~appointed by the chief justice of the supreme court, composed of~~
5 ~~experts in the behavior and treatment of sex offenders, victims'~~
6 ~~rights advocates, and representatives of law enforcement~~
7 ~~agencies. The State and the sex offender may, at their~~
8 ~~discretion and expense, select additional experts in the field~~
9 ~~of psychiatry or psychology to conduct additional evaluations of~~
10 ~~the covered offender. The court shall make a determination as~~
11 ~~to whether or not the sex offender is a sexually violent~~
12 ~~predator for purposes of this chapter."]~~

13 SECTION 15. Sections 8, 9, 10, 11, and 13 shall apply to
14 any acts committed prior to, on, or after the effective date of
15 this Act.

16 SECTION 16. Sections 3, 4, 5, and 6 do not affect rights
17 and duties that matured, penalties that were incurred, and
18 proceedings that were begun, before the effective date of this
19 Act.

20 SECTION 17. In codifying the new sections added to chapter
21 707, Hawaii Revised Statutes, by section 2 of this Act, the
22 revisor of statutes shall substitute appropriate section numbers

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1 for the letters used in the designations of, and references to,
2 those new sections in this Act.

3 SECTION 18. If any provision of this Act, or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act, which can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

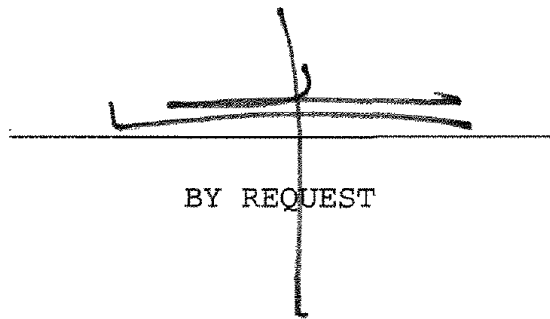
9 SECTION 19. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 20. This Act shall take effect upon its approval.

12

13

INTRODUCED BY:



14

BY REQUEST

Report Title:

PUBLIC SAFETY; CRIMES; SEX OFFENDERS; ELECTRONIC ENTICEMENT.

Description:

Revamps Hawaii's sex offender registry laws so as to provide more up-to-date and more useful information about registered sex offenders to the public; strengthens some criminal laws, including relating to electronic enticement of a child; and makes other criminal law changes.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC SAFETY.

PURPOSE: To amend chapter 846E, Hawaii Revised Statutes (HRS), Hawaii's sex offender registration laws, to comply with parts of Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA), to the extent that is reasonable and acceptable under Hawaii law and will enable the Hawaii sex offender registration program to effectively participate with the nationwide network of sex offender registries; to adequately address instances of electronic enticement of children where a predator attempts to lure or solicit a minor or arrange a meeting with a minor over the Internet with intent to commit a sex offense or crime against minors, regardless of whether the predator actually attends the arranged meeting; to address a specific form of grooming conduct by child predators involving masturbation or the lewd or lascivious exposure of the predator's genitals over the computer for view by a minor; to update the repeat offender sentencing law to include the offense of failure to comply with covered offender registration requirements and the new offense of indecent electronic display to a child; to address instances of possession of particularly violent or egregious child pornography; to clarify the element of electronic enticement of a child in the first degree regarding the intent to promote or facilitate the commission of another crime; and to provide greater protection for our children by adding mandatory sentencing provisions for the following serious child abuse and electronic enticement offenses: (1) promoting child abuse in the second degree (section 707-

751), (2) promoting child abuse in the third degree (section 707-752), and (3) electronic enticement of a child in the first degree (section 707-756).

MEANS: Add two new sections to part VI of chapter 707, amend sections 706-606.5(1), 707-751, 707-752, 707-756, 707-757, 846E-1, 846E-2, 846E-3, 846E-4(e), 846E-9, and 846E-10, and repeal sections 846E-11 and 846E-13, HRS.

JUSTIFICATION: Title I of the Adam Walsh Child Protection and Safety Act of 2006 is the Sex Offender Registration and Notification Act (SORNA). In declaring the purpose of the Act, Congress stated, "In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators . . . Congress in this Act establishes a comprehensive national system for the registration of those offenders." Prior to 2006, all states had adopted their own independent sex offender registration systems in response to the Jacob Wetterling Act in 1994 and subsequent amending legislation. The proposed May 2007 national SORNA guidelines state, "Ultimately, Congress concluded that the patchwork of standards that resulted from piecemeal amendments should be replaced with a comprehensive new set of standards—the SORNA reforms . . . that would close potential gaps and loopholes under the old law, and generally strengthen the nationwide network of sex offender registration and notification programs." SORNA was in response to a number of high profile violent crimes committed by individuals who had previously been convicted of sex crimes but under the old standards were not required to register as sex offenders. Under SORNA, the predecessor sex offender program was repealed. SORNA established new baseline sex offender registry standards for state registries. States that do not substantially comply with the new SORNA

provisions by July 27, 2009, will not receive ten percent of the federal Byrne Justice Assistance Grant funds that would otherwise be allocated annually to the states. While the funding penalty provision is intended to strongly encourage nationwide compliance, the real motivation for states to comply with SORNA is the opportunity to participate in the development of a comprehensive nationwide network of state registries that work together to effectively share information to support public safety efforts and protect our citizens, particularly our children. Because SORNA did not create a federal sex offender registry, the development of a comprehensive and effective nationwide network of state registries is critical to keeping track of sex offenders in our communities, especially those offenders who travel between jurisdictions.

While this bill does not provide for substantial compliance with all of the SORNA requirements, it does provide for sufficient compliance with the new SORNA baseline standards to enable the Hawaii sex offender registry to be an effective participant in the comprehensive nationwide network of state registries.

This bill adds a few offenses to the list of covered offenses subject to registration in an effort to include all of the Hawaii offenses that are comparable to the covered offenses required by SORNA. This bill seeks to place the Hawaii offenses into three tiers that are consistent with the three SORNA tiers. While Hawaii law requires lifetime registration, the bill allows offenders to petition to get off the registry after fifteen years of compliance as a tier 1 offender and twenty-five years of compliance as a tier 2 offender to meet the duration requirements under SORNA. Tier 3 offenders, contrary to SORNA's lifetime registration requirement, are being allowed

to petition to get off the registry after forty years.

This bill requires offenders to report to police for in-person verification of registration information once a year. This annual reporting provision is delayed for a year to allow the police time to prepare for the increased workload. The bill also allows the Attorney General, through rulemaking, to designate additional departments or agencies to assist the police in this effort.

The scope of required registration information and information disseminated to the public are expanded to meet the SORNA requirements. They include helpful information such as the text of the law defining the registration offense, criminal history information, information about where a homeless offender habitually lives, and Internet designations used for routing or self-identification. This bill also provides for the development of a community notification system that would allow anyone to request and obtain notifications about covered offenders.

This bill does not provide for compliance with the following significant SORNA requirements: (1) the registration of juveniles, fourteen years or older, who have been adjudicated of committing aggravated sexual abuse crimes; (2) lifetime registration of SORNA "tier 3" offenders without any possibility of getting off the registry; (3) in-person verification of registration information by offenders every three months for "tier 3" offenders and every six months for "tier 2" offenders; (4) in-person updates for any changes to significant registration information; and (5) public web access to the registration information for the entire time that the offender is subject to the registration requirements.

The sex offender registration and notification programs serve a number of purposes. The programs provide systems for tracking sex offenders released into our communities. In the event of a violent sex crime, the programs provide law enforcement with information on sex offenders in the area the crime was committed. The information may help law enforcement identify the perpetrator, and may help law enforcement to quickly locate and apprehend the perpetrator. The programs may also deter released offenders from committing other crimes because they require offenders to maintain contact with authorities and provide detailed information regarding their whereabouts. The public notification aspects of the programs allow members of the public access to information on sex offenders in their area, thereby enabling them to take reasonable measures to protect themselves.

This bill also includes provisions to strengthen our laws regarding the electronic enticement of children. Predators meet children over the Internet and entice the children to engage in sexual offenses. Grooming the children is a key aspect of this predatory behavior. It usually involves conduct to gain the children's trust, develop the relationship, make the children feel comfortable with the offender and the idea of engaging in sexual acts, and ultimately make the children more willing to engage in sexual acts with the offender. Current laws only prohibit conduct that includes arranging a meeting with the child and actually traveling to the agreed upon meeting place. This bill amends the offense of electronic enticement in the second degree to only require the agreement to meet. Sometimes, actual travel to the meeting place may not take place because the offender realizes he is being watched or followed by law enforcement, or unrelated

circumstances, perhaps related to transportation difficulties, may prevent his arrival at the meeting place. In such situations, where the offender has identified his victim over the Internet and developed the relationship to the point where he has arranged a meeting with the child to engage in a sexual offense, the conduct should still be prohibited.

This bill also creates the misdemeanor offense of electronic enticement of a child in the third degree to prohibit the use of a computer to solicit, lure or entice a child to engage in sexual conduct with intent to facilitate the commission of a sexual offense. The conduct prohibited in this offense focuses on the grooming activity. Although the offense does not require a meeting, it still requires the prosecution to prove that the offender engaged in the conduct with intent to facilitate the commission of a sexual offense.

This bill also creates the class C felony offense of indecent electronic display to a child. This offense targets a specific form of grooming conduct that is frequently encountered by law enforcement officers posing as children over the Internet. During the course of Internet communications with a child, an offender may use a camera to transmit images of him masturbating or exposing his genitals in a lewd or lascivious manner as part of a scheme to desensitize the child to sexual activity and entice the child into engaging in sexual conduct.

This bill updates the repeat offender sentencing law to include the offense of failure to comply with covered offender registration requirements and the new offense of indecent electronic display to a child. The registration offense is a felony that involves offenders who are only subject to the registration requirements because

they previously committed a sexual offense or an offense against minors as defined in chapter 846E. For the sex offender registration program to work effectively and achieve its purposes as described earlier, the covered offenders must comply with the registration laws, and compliance can only be achieved if the registration laws are taken seriously. Including the registration offense in the repeat offender law will confirm the importance of the registration program and the seriousness of the offense.

The offense of indecent electronic display to a child is added to the repeat offender law in an effort to provide greater protection to children from these dangerous predators. It is also consistent with the existing repeat offender law which already includes the offenses of electronic enticement of a child in the first and second degrees.

In another effort to provide greater protection to children in this age of electronic communication and sharing of digital information, this bill amends the offense of promoting child abuse in the second degree to include the possession of particularly violent or egregious child pornography that involves a child under the age of twelve, sadomasochistic abuse of a minor, sexual penetration of a minor, or bestiality involving a minor.

And finally, to provide greater protection for our children, this bill adds mandatory sentencing provisions for serious child abuse and electronic enticement offenses. These provisions focus on offenses involving the dissemination or possession of child pornography and the electronic enticement of a child that result in the offender actually traveling to meet with the child to engage in a sexual offense.

Impact on the public: This bill will provide greater protection to children from sexual offenders and predators. It will strengthen our covered offender registration program by providing for the collection of additional helpful and relevant registration information, much of which will be made available to the general public. It provides for the development of a community notification system which will facilitate the dissemination of information requested by members of the public.

Impact on the department and other agencies: The department and the four county police departments will be greatly affected by the changes in the covered offender registration program. The Judiciary, the Department of Public Safety, and the Hawaii Paroling Authority will also be affected by these changes. Significant work will be required to comply with the changes and to make Hawaii's registration program an effective part of the nationwide network of state registries. And in response to the new electronic enticement type of offenses, police and prosecutors will need to make some changes in how they investigate and prosecute those types of offenses.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, county prosecutors,
Judiciary, Office of the Public Defender,
Department of Public Safety, and Hawaii
Paroling Authority.

EFFECTIVE DATE: Upon approval.