

S.B. NO. 2667

JAN 25 2010

A BILL FOR AN ACT

RELATING TO SEX OFFENDER REGISTRATION.

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 "sexual offense" to read
3 as follows:

4 "Sexual offense" means an offense that is:

- 5 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),
6 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),
7 707-731(1)(b), 707-731(1)(c), 707-732(1)(a),
8 707-732(1)(b), 707-732(1)(c), 707-732(1)(d),
9 707-732(1)(e), 707-732(1)(f), 707-733(1)(a),
10 707-733.6, 711-1110.9, 711-1111(1)(c), (f), or (i), or
11 712-1202(1)(b), [~~or 712-1203(1)(b),~~] but excludes
12 conduct that is criminal only because of the age of
13 the victim, as provided in section 707-730(1)(b), or
14 section 707-732(1)(b) if the perpetrator is under the
15 age of eighteen;
- 16 (2) An act defined in section 707-720 if the charging

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1 document for the offense for which there has been a
2 conviction alleged intent to subject the victim to a
3 sexual offense;

4 (3) An act that consists of:

5 (A) Criminal sexual conduct toward a minor, including
6 but not limited to an offense set forth in
7 section 707-759;

8 (B) Solicitation of a minor who is less than fourteen
9 years old to engage in sexual conduct;

10 (C) Use of a minor in a sexual performance;

11 (D) Production, distribution, or possession of child
12 pornography chargeable as a felony under section
13 707-750, 707-751, or 707-752;

14 (E) Electronic enticement of a child chargeable under
15 section 707-756 or 707-757 if the offense was
16 committed with the intent to promote or
17 facilitate the commission of another covered
18 offense as defined in this section; or

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

20 (4) A criminal offense that is comparable to or that
21 exceeds a sexual offense as defined in paragraphs (1)
22 through (3) [~~or any~~];

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1 (5) Any federal, military, or out-of-state conviction for
2 [any] :

3 (A) Any offense that under the laws of this State
4 would be a sexual offense as defined in
5 paragraphs (1) through (3); or

6 (B) Any offense that subjected the offender to sex
7 offender registration or public notification, or
8 both, in the other state or jurisdiction of
9 conviction, or would have if the offender had
10 been a resident of that other state or
11 jurisdiction; or

12 [~~5~~] (6) An act, as described in chapter 705, that is an
13 attempt, criminal solicitation, or criminal conspiracy
14 to commit one of the offenses designated in paragraphs
15 (1) through [~~4~~]. (5)."

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

18 "**§846E-5 Periodic verification of registration**
19 **information.** Unless the covered offender is incarcerated or has
20 registered with a designated law enforcement agency after
21 establishing residence in another state, on the first day of

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1 every ninety-day period following the covered offender's initial
2 registration date:

3 (1) The attorney general shall mail a nonforwardable
4 verification form to the last reported address of the
5 covered offender;

6 (2) The covered offender shall sign the verification form
7 and state that the covered offender still resides at
8 the address last reported to the attorney general and
9 that no other registration information has changed or
10 shall provide the new information; and

11 (3) The covered offender shall mail the signed and
12 completed verification form to the attorney general
13 within ten days after receipt of the form[~~and~~

14 ~~(4) If the covered offender fails to mail the verification~~
15 ~~form to the attorney general within ten days after~~
16 ~~receipt of the form, the covered offender shall be in~~
17 ~~violation of this chapter, unless the covered offender~~
18 ~~proves that the covered offender has not changed the~~
19 ~~residence address].~~

20 This section shall become effective on July 1, 1998."

21 SECTION 3. Section 846E-10, Hawaii Revised Statutes, is
22 amended by amending subsections (c) and (d) to read as follows:

1 "(c) Tier 2 offenses. A covered offender who has
2 maintained a clean record for the previous twenty-five years,
3 excluding any time the offender was in custody or civilly
4 committed, and who has substantially complied with the
5 registration requirements of this chapter for the previous
6 twenty-five years, or for the portion of that twenty-five years
7 that this chapter has been applicable, and who is not a repeat
8 covered offender may petition the court, in a civil proceeding,
9 for termination of registration requirements; provided that the
10 covered offender's most serious covered offense is one of the
11 following:

- 12 (1) Any offense set forth in section 707-730(1)(c),
13 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, or
14 712-1202(1)(b) [~~707-752, 707-753, or 712-1203(1)(b)~~];
15 (2) An offense set forth in section 707-720; provided that
16 the charging document for the offense for which there
17 has been a conviction alleged intent to subject the
18 victim to a sexual offense;
19 (3) An offense set forth in section 707-756 that includes
20 an intent to promote or facilitate the commission of
21 another felony covered offense as defined in section
22 846E-1;

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- 1 (4) An offense that is an attempt, criminal solicitation,
2 or criminal conspiracy to commit any of the offenses
3 in paragraph (1), (2), or (3);
- 4 (5) Any criminal offense that is comparable to one of the
5 offenses in paragraph (1), (2), (3), or (4); or
- 6 (6) Any federal, military, or out-of-state offense that is
7 comparable to one of the offenses in paragraph (1),
8 (2), (3), or (4).

9 (d) Tier 1 offenses. A covered offender who has
10 maintained a clean record for the previous ten years, excluding
11 any time the offender was in custody or civilly committed, and
12 who has substantially complied with the registration
13 requirements of this chapter for the previous ten years, or for
14 the portion of that ten years that this chapter has been
15 applicable, and who is not a repeat covered offender may
16 petition the court, in a civil proceeding, for termination of
17 registration requirements; provided that the covered offender's
18 most serious covered offense is one of the following:

- 19 (1) Any offense set forth in section 707-732(1)(d) or (e),
20 707-733(1)(a), 707-752, 707-759[+], 711-1110.9, or
21 711-1111(1)(c), (f), or (i);
- 22 (2) An offense set forth in section 707-721 or 707-722;

1 provided that the offense involves unlawful
2 imprisonment of a minor by someone other than a
3 parent;

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

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

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

12 (6) Any federal, military, or out-of-state offense that is
13 comparable to one of the offenses in paragraph (1),
14 (2), (3), or (4) [~~-~~]; or

15 (7) Any other covered offense that is not specified in
16 subsections (a), (c), or (d) (1), (2), (3), (4), (5),
17 or (6)."

18 SECTION 4. Sections 1 and 3 shall apply to any acts
19 committed prior to, on, or after the effective date of this Act.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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4

BY REQUEST

Report Title:

Sex Offender Registration

Description:

Clarifies the definition of a covered, "sexual offense" for convictions from other jurisdictions; corrects an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information; creates a tier classification for any covered sexual offenses that are not clearly included within the current tier classification law; and updates the list of covered sexual offenses and adds the violation of privacy offenses to the list.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO SEX OFFENDER REGISTRATION.

PURPOSE: To clarify the definition of a covered "sexual offense" for convictions from other jurisdictions; correct an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information; create a tier classification for any covered sexual offenses that are not clearly included within the current tier classification law; and update the list of covered sexual offenses by deleting a repealed subsection of the offense of promoting prostitution in the second degree and adding violation of privacy offenses to the list.

MEANS: Amend sections 846E-1, 846E-5, and 846E-10(c) and (d), Hawaii Revised Statutes.

JUSTIFICATION: References to section 712-1203(1)(b), Hawaii Revised Statutes, are being deleted from sections 846E-1 and 846E-10, Hawaii Revised Statutes, because that subsection was repealed by section 9 of Act 147, Session Laws of Hawaii 2008.

Violation of privacy in the first degree and specified subsections of violation of privacy in the second degree that are based on sexual conduct are being added to the definition of "sexual offense" under section 846E-1. The violation of privacy offenses are not currently listed in the covered "sexual offense" definition, but they clearly prohibit sexual conduct that should trigger sex offender registration requirements. While a violation of privacy offense that is committed against a minor may be "criminal sexual conduct toward a minor" that triggers registration

requirements, the proposed amendments in this bill will make it clear that offenses against anyone make the offender subject to sex offender registration requirements.

The recent case of Robert T. Franks highlights the need to add violation of privacy to the list of covered sexual offenses. In March 2007, Franks' family discovered DVDs that contained video images Franks' stepdaughters undressing, and a small video camera hidden inside a clock radio in a bathroom in their home. Franks was sentenced in August 2009 for the offense of violation of privacy in the first degree for secretly videotaping his stepdaughters while they were undressing.

As defined, the offense of violation of privacy in the first degree involves the installation or use of "any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place." This clearly prohibits sexual conduct, and the legislative history of section 711-1110.9 confirms a specific legislative intent to address conduct of a sexual nature. Conference Committee Report No. 87, on House Bill No. 955, H.D. 1, S.D. 1, C.D. 1, from the Regular Session of 1999, stated the following about the legislation that created the offense:

The purpose of this bill is to make it a felony to take sexual photographs or videotapes of a person without that person's consent and when the person expects privacy Your Committee finds that people's expectation of privacy in sexual matters should be protected. The creation of criminal sanctions against invasions into one's sexual privacy will deter these types of activities.

The offense of violation of privacy in the second degree, as defined in sections 711-1111(1)(c), (f), and (i), also prohibit conduct of a sexual nature.

The definition of a covered "sexual offense" in section 846E-1 is also being amended to clarify the definition as it relates to convictions from other jurisdictions. The amendment would make offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law. In evaluating offenders with convictions from other jurisdictions, it sometimes is very difficult to determine whether or not, and how, Hawaii registration requirements apply. Some offenses from other jurisdictions are very different from Hawaii law. This bill will facilitate the process and make it clearer for everyone that if the laws in the jurisdiction of conviction required the offender to register, then if the offender moves to Hawaii, the offender must also register in Hawaii.

This bill repeals paragraph (4) from section 846E-5. That paragraph refers to a violation of the chapter if the covered offender fails to mail the periodic verification form to the attorney general within ten days after receipt of the form, "unless the covered offender proves that the covered offender has not changed the residence address." This provision is confusing and unnecessary because section 846E-9 sets out the offenses for failure to comply with registration requirements. And section 846E-9(11) sets out the offense for failure to return the periodic verification form within ten days, and sets out an affirmative defense that the form was mailed out when the offender was absent from the offender's registered address and had notified the attorney general of the offender's absence. Thus, paragraph (4)

from section 846E-5 conflicts with 846E-9 and appears to attempt to create a defense that does not make sense. If the covered offender has not changed the offender's address and has received the verification form, the offender must return the form, and failure to do so should be an offense.

This bill amends section 846E-10 to classify the violation of privacy offenses as Tier 1 offenses. It also creates a residual category to classify as Tier 1 offenses those offenses that do not fall within any of the other tier classifications. Some offenses, especially those from other jurisdictions, are difficult to classify. This provision addresses that concern.

Impact on the public: This bill will clarify certain issues regarding sex offender registration. It will also address concerns about registration of offenders who are convicted of violation of privacy offenses.

Impact on the department and other agencies: This bill will clarify the law and facilitate the application and administration of the sex offender registration law.

- GENERAL FUND: None.
- OTHER FUNDS: None.
- PPBS PROGRAM DESIGNATION: None.
- OTHER AFFECTED AGENCIES: Judiciary, county prosecutors, and the Office of the Public Defender.
- EFFECTIVE DATE: Upon approval.