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JAN 25 2012

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 adding the new definitions of "foreign conviction,"
3 "out-of-state conviction," "permanent residence," "temporary
4 residence," and "tribal conviction" to be appropriately inserted
5 and to read as follows:

6 "Foreign conviction" means a conviction under the laws of:

7 (1) Canada, United Kingdom, Australia, or New Zealand; or

8 (2) Any other foreign country, if the United States

9 Department of State, in its Country Reports on Human Rights
10 Practices, has concluded that an independent judiciary generally
11 or vigorously enforced the right to a fair trial in that country
12 during the year in which the conviction occurred.

13 "Out-of-state conviction" means a conviction in any other
14 state of the United States, the District of Columbia, or the
15 five principal United States territories, including the
16 Commonwealth of Puerto Rico, Guam, American Samoa, the Northern
17 Mariana Islands, and the United States Virgin Islands.

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1 "Permanent residence" means a building, permanent structure
2 or unit therein, or watercraft where the covered offender
3 resides and intends to reside indefinitely, or at least for the
4 next one hundred eighty days, and which the offender owns,
5 rents, or occupies with the consent of the owner, but excludes
6 motor vehicles.

7 "Temporary residence" means a building, permanent structure
8 or unit therein, watercraft, emergency shelter, or transitional
9 housing facility where the covered offender resides, but does
10 not intend to reside for more than one hundred eighty days, but
11 excludes motor vehicles.

12 "Tribal conviction" means a conviction by a tribal court of
13 a federally recognized Indian tribe."

14 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is
15 amended by amending the definitions of "conviction," "crime
16 against minors," and "sexual offense" to read as follows:

17 "Conviction" means a judgment on the verdict, or a finding
18 of guilt after a plea of guilty or nolo contendere, excluding
19 the adjudication of a minor[-], and occurs on the date judgment
20 is entered.

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1 "Crime against minors" excludes "sexual offenses" as
2 defined in this section and means a criminal offense that
3 consists of:

- 4 (1) Kidnapping of a minor, by someone other than a parent;
5 (2) Unlawful imprisonment in the first or second degree
6 that involves the unlawful imprisonment of a minor by
7 someone other than a parent;
8 (3) An act, as described in chapter 705, that is an
9 attempt, criminal solicitation, or criminal conspiracy
10 to commit one of the offenses designated in paragraph
11 (1) or (2); [~~or~~]
12 (4) A criminal offense that is comparable to or which
13 exceeds one of the offenses designated in paragraphs
14 (1) through (3) [~~or any~~]; or
15 (5) Any federal, military, [~~or~~ out-of-state, tribal, or
16 foreign conviction for any offense that, under the
17 laws of this State, would be a crime against minors as
18 designated in paragraphs (1) through [~~(3)~~] (4).

19 "Sexual offense" means an offense that is:

- 20 (1) Set forth in section [~~707-730(1)(a), 707-730(1)(b),~~
21 ~~707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),~~
22 ~~707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-~~

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- 1 ~~732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-~~
2 ~~732(1)(e), 707-732(1)(f),~~] 707-730(1), 707-731(1),
3 707-732(1), 707-733(1)(a), 707-733.6, [712-1202(1)(a),
4 ~~712-1202(1)(b),~~] 712-1202(1), or 712-1203(1), but
5 excludes conduct that is criminal only because of the
6 age of the victim, as provided in section 707-
7 730(1)(b), or section 707-732(1)(b) if the perpetrator
8 is under the age of eighteen;
- 9 (2) An act defined in section 707-720 if the charging
10 document for the offense for which there has been a
11 conviction alleged intent to subject the victim to a
12 sexual offense;
- 13 (3) An act that consists of:
- 14 (A) Criminal sexual conduct toward a minor, including
15 but not limited to an offense set forth in
16 section 707-759;
- 17 (B) Solicitation of a minor who is less than fourteen
18 years old to engage in sexual conduct;
- 19 (C) Use of a minor in a sexual performance;
- 20 (D) Production, distribution, or possession of child
21 pornography chargeable as a felony under section
22 707-750, 707-751, or 707-752;

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1 (E) Electronic enticement of a child chargeable under
2 section 707-756 or 707-757 if the offense was
3 committed with the intent to promote or
4 facilitate the commission of another covered
5 offense as defined in this section; or

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

7 (4) A violation of privacy under section 711-1110.9;

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

12 [~~5~~] (6) A criminal offense that is comparable to or that
13 exceeds a sexual offense as defined in paragraphs (1)
14 through [~~4~~ or any] (5); or

15 (7) Any federal, military, [~~or~~] out-of-state, tribal, or
16 foreign conviction for [any]:

17 (A) Any offense that under the laws of this State
18 would be a sexual offense as defined in
19 paragraphs (1) through [~~4~~], (6); or

20 (B) Any offense that subjected the offender to sex
21 offender registration or public notification, or
22 both, in the other state or jurisdiction of

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1 conviction, or would have if the offender had
2 been a resident of that other state or
3 jurisdiction.

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

8 SECTION 3. Section 846E-1, Hawaii Revised Statutes, is
9 amended by repealing the definitions of "mental abnormality,
10 "personality disorder," and "predatory".

11 ~~["Mental abnormality" means a condition involving a~~
12 ~~disposition to commit criminal sexual offenses with a frequency~~
13 ~~that makes the person a menace to others.~~

14 ~~"Personality disorder" shall have the same meaning as the~~
15 ~~term is used in the Diagnostic and Statistical Manual of Mental~~
16 ~~Health Disorders: DSM-IV, American Psychiatric Association,~~
17 ~~Diagnostic and Statistical Manual of Mental Disorders (4th ed.~~
18 ~~1994).~~

19 ~~"Predatory" means an act directed at:~~

20 ~~(1) A stranger; or~~

21 ~~(2) A person with whom a relationship has been established~~

1 ~~or promoted for the primary purpose of~~
2 ~~victimization-"]~~

3 SECTION 4. Section 846E-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§846E-2 Registration requirements.** (a) A covered
6 offender shall register with the attorney general and comply
7 with the provisions of this chapter for life or for a shorter
8 period of time as provided in this chapter. Registration under
9 this subsection is required whenever the covered offender,
10 whether or not a resident of this State, remains in this State
11 for more than ten days or for an aggregate period exceeding
12 thirty days in one calendar year. A covered offender shall be
13 eligible to petition the court in a civil proceeding for an
14 order that the covered offender's registration requirements
15 under this chapter be terminated, as provided in section 846E-
16 10.

17 ~~[(b) A person who establishes or maintains a residence in~~
18 ~~this State and who has not been designated as a covered offender~~
19 ~~by a court of this State but who has been designated as a~~
20 ~~covered offender, sex offender, offender against minors, repeat~~
21 ~~covered offender, sexually violent predator, or any other sexual~~
22 ~~offender designation in another state or jurisdiction and was,~~

1 ~~as a result of such designation, subjected to registration or~~
2 ~~community or public notification, or both, or would be if the~~
3 ~~person was a resident of that state or jurisdiction, without~~
4 ~~regard to whether the person otherwise meets the criteria for~~
5 ~~registration as a covered offender, shall register in the manner~~
6 ~~provided in this section and shall be subject to community and~~
7 ~~public notification as provided in section 846E 3. A person who~~
8 ~~meets the criteria of this subsection is subject to the~~
9 ~~requirements and penalty provisions of section 846E 9 until the~~
10 ~~person successfully petitions the attorney general for~~
11 ~~termination of registration requirements by:~~

12 ~~(1) Providing an order issued by the court that designated~~
13 ~~the person as a covered offender, sex offender,~~
14 ~~offender against minors, repeat covered offender,~~
15 ~~sexually violent predator, or any other sexual~~
16 ~~offender designation in the state or jurisdiction in~~
17 ~~which the order was issued, which states that such~~
18 ~~designation has been removed or demonstrates to the~~
19 ~~attorney general that such designation, if not imposed~~
20 ~~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~~

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1 ~~the criteria for registration as a covered offender~~
2 ~~under the laws of this State, or~~

3 ~~(2) Demonstrating that the out of state convictions upon~~
4 ~~which the sexual offender designation was established~~
5 ~~are not covered offenses under section 846E 1, thereby~~
6 ~~showing that such person does not meet the criteria~~
7 ~~for registration as a covered offender under the laws~~
8 ~~of this State.~~

9 ~~If the covered offender is not satisfied with the decision of~~
10 ~~the attorney general on the request for termination of~~
11 ~~registration requirements, the covered offender may appeal the~~
12 ~~decision pursuant to chapter 91.]~~

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

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

- 19 (1) Sex offenders; and
20 (2) Offenders against minors.

1 ~~[(d)]~~ (c) Registration information for each covered
2 offender shall include a signed statement by the covered
3 offender containing:

4 (1) The name, all prior names, nicknames and pseudonyms,
5 and all aliases used by the covered offender or under
6 which the covered offender has been known and other
7 identifying information, including date of birth and
8 any alias date of birth, social security number and
9 any alias social security number, sex, race, height,
10 weight, and hair and eye color;

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

22 (3) The actual address or description of the place or

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

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1 normal travel routes or the general area or areas in
2 which the covered offender works;

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

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

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

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

22 (13) A statement listing all covered offenses for which the

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1 covered offender has been convicted or found unfit to
2 proceed or acquitted pursuant to chapter 704;

3 (14) A statement indicating whether the covered offender
4 has received or is currently receiving treatment
5 ordered by a court of competent jurisdiction or by the
6 Hawaii paroling authority;

7 (15) A statement indicating whether the covered offender is
8 a United States citizen; and

9 (16) Any additional identifying information about the
10 covered offender.

11 [~~e~~] (d) The following information shall also be included
12 in the registry for each covered offender:

13 (1) A current photograph of the covered offender;

14 (2) A physical description of the covered offender,
15 including a description of particular identifying
16 characteristics such as scars or tattoos;

17 (3) Confirmation that the covered offender has provided
18 digitized fingerprints and palm prints of the covered
19 offender;

20 (4) Judgment of conviction, judgment of acquittal, or

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1 judicial determination of unfitness to proceed
2 documenting the criminal offense or offenses for which
3 the covered offender is registered;

4 (5) The text, or an electronic link to the text, of the
5 provision of law defining the criminal offense or
6 offenses for which the covered offender is registered;

7 (6) The criminal history of the covered offender, or an
8 electronic link to the criminal history, including the
9 date of all arrests and convictions, the status of
10 parole, probation, or supervised release, registration
11 status, and the existence of any outstanding arrest
12 warrants for the covered offender;

13 (7) Confirmation that the covered offender has provided a
14 DNA buccal swab sample as required by chapter 844D;

15 (8) Digitized copies of a valid driver's license or
16 identification card issued to the covered offender, or
17 an electronic link to such records; and

18 (9) Digitized copies of passports and documents
19 establishing immigration status, or an electronic link
20 to such records.

21 [~~f~~] (e) Whenever a covered offender provides
22 registration information, during initial registration as a

1 covered offender or when providing notice of a change in
2 registration information, the covered offender also shall sign a
3 statement verifying that all of the registration information is
4 accurate and current.

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

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

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

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

8 In addition to any other requirement to register under this
9 subsection or subsection (a), each covered offender shall report
10 in person every five years until June 30, 2009, and beginning on
11 July 1, 2009, every year, within the thirty-day period following
12 the offender's date of birth, to the chief of police where the
13 covered offender resides, or to such other department or agency
14 that 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 ~~[(h)]~~ (g) 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 5. Section 846E-4, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Each person, or that person's designee, in charge of
12 a jail, prison, hospital, school, or other institution to which
13 a covered offender has been committed pursuant to a conviction,
14 or an acquittal or finding of unfitness to proceed pursuant to
15 chapter 704, for a covered offense, and each judge, or that
16 judge's designee, who continues bail for or releases a covered
17 offender following ~~[a guilty verdict or a plea of guilty or nolo~~
18 ~~contendere,]~~ sentencing and the entry of a judgment of
19 conviction, who releases a covered offender on probation or who
20 discharges a covered offender upon payment of a fine, and each
21 agency having jurisdiction, shall, prior to the discharge,
22 parole, or release of the covered offender:

- 1 (1) Explain to the covered offender the duty to register
2 and the consequences of failing to register under this
3 chapter;
- 4 (2) Obtain from the covered offender all of the
5 registration information required by this chapter;
- 6 (3) Inform the covered offender that if at any time the
7 covered offender changes any of the covered offender's
8 registration information, the covered offender shall
9 notify the attorney general of the new registration
10 information in writing within three working days;
- 11 (4) Inform the covered offender that, if at any time the
12 covered offender changes residence to another state,
13 the covered offender shall register the new address
14 with the attorney general and also with a designated
15 law enforcement agency in the new state, if the new
16 state has a registration requirement, within the
17 period of time mandated by the new state's sex
18 offender registration laws;
- 19 (5) Obtain and verify fingerprints and a photograph of the
20 covered offender, if these have not already been
21 obtained or verified in connection with the offense
22 that triggers the registration;

- 1 (6) Require the covered offender to sign a statement
2 indicating that the duty to register has been
3 explained to the covered offender; and
4 (7) Give one copy of the signed statement and one copy of
5 the registration information to the covered offender."

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

8 "**§846E-5 Periodic verification of registration**
9 **information.** [~~Unless the covered offender is incarcerated or~~
10 ~~has registered with a designated law enforcement agency after~~
11 ~~establishing residence in another state,~~] (a) For the covered
12 offender who has registered a permanent residence address to
13 which the United States Postal Service will deliver mail or a
14 permanent residence and a registered post office box, on the
15 first day of every ninety-day period following the covered
16 offender's initial registration date:

- 17 (1) The attorney general shall mail a nonforwardable
18 verification form to the last reported permanent
19 residence address or post office box of the covered
20 offender;
21 (2) The covered offender shall sign the verification form

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1 and state that the covered offender still resides at
2 the address last reported to the attorney general and
3 that no other registration information has changed or
4 shall provide the new information; and

5 (3) The covered offender shall mail the signed and
6 completed verification form to the attorney general
7 within ten days after receipt of the form[~~;~~ and

8 ~~(4) If the covered offender fails to mail the verification~~
9 ~~form to the attorney general within ten days after~~
10 ~~receipt of the form, the covered offender shall be in~~
11 ~~violation of this chapter, unless the covered offender~~
12 ~~proves that the covered offender has not changed the~~
13 ~~residence address.~~

14 ~~This section shall become effective on July 1, 1998].~~

15 (b) For the covered offender who has registered:

16 (1) A temporary residence address;

17 (2) A description of a place or area in which the covered
18 offender resides for at least thirty nonconsecutive
19 days within a sixty-day period;

20 (3) No place of residence; or

21 (4) A permanent residence address, to which the United

1 States Postal Service will not deliver mail, and has
2 no registered post office box,
3 by the last day of every month, the covered offender shall
4 report to any police station in the State, or to such other
5 department or agency that may be designated by the attorney
6 general in rules adopted pursuant to chapter 91 for purposes of
7 administration of this section, and shall review the existing
8 information in the registry that is within the offender's
9 knowledge, correct any information that has changed or is
10 inaccurate, provide any new information that may be required,
11 and allow the police and such other department or agency
12 designated by the attorney general to take a current photograph
13 of the offender.

14 (c) The periodic verification provisions of this section
15 shall not apply to covered offenders who are incarcerated or
16 have registered with a designated law enforcement agency after
17 establishing residence in another state."

18 SECTION 7. Section 846E-6, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) A covered offender required to register under this
21 chapter, who changes any of the covered offender's registration
22 information after an initial registration with the attorney

1 general, shall notify the attorney general of the new
2 registration information in writing within three working days of
3 the change. [~~For purposes of this section, a person shall be~~
4 ~~deemed to have established a new residence during any period in~~
5 ~~which the person is absent from the person's registered~~
6 ~~residence for ten or more days. If, at any time, a covered~~
7 ~~offender required to register under this chapter is absent from~~
8 ~~the person's registered residence for ten or more days and fails~~
9 ~~to establish a new residence within the ten days that the~~
10 ~~covered offender is absent from their registered residence, the~~
11 ~~covered offender, in addition to notifying the attorney general~~
12 ~~in writing within three working days that the covered offender~~
13 ~~no longer resides at the covered offender's registered~~
14 ~~residence, shall also report to any police station in the State~~
15 ~~by the last day of every month for verification of identity by~~
16 ~~photograph and fingerprint impression until the covered offender~~
17 ~~establishes a new residence and notifies the attorney general in~~
18 ~~writing of the actual address of the new residence. Each time~~
19 ~~the covered offender reports to a police station, the covered~~
20 ~~offender shall disclose every location where the covered~~
21 ~~offender has slept in the previous month.] If the covered
22 offender leaves the State and establishes a new residence [is]~~

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1 in another state that has a registration requirement, the person
2 shall register with the designated law enforcement agency in the
3 state to which the person moves, within the period of time
4 mandated by the new state's sex offender registration laws."

5 SECTION 8. Section 846E-9, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

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

11 (1) Fails to register with the attorney general by
12 providing to the attorney general or the Hawaii
13 criminal justice data center the person's registration
14 information;

15 (2) Fails to report in person every five years until
16 June 30, 2009, and beginning on July 1, 2009, once
17 every year, during the thirty-day period following the
18 offender's date of birth, to the chief of police where
19 the covered offender's residence is located, or to
20 such other department or agency designated by the
21 attorney general;

22 (3) While reporting to the chief of police or such other

- 1 department or agency designated by the attorney
2 general, fails to correct information in the registry
3 within the offender's knowledge that has changed or is
4 inaccurate regarding information required by section
5 ~~[846E-2(d)-(1)]~~ 846E-2(c)(1) through (12);
- 6 (4) While reporting to the chief of police or such other
7 department or agency designated by the attorney
8 general, fails to provide new information that may be
9 required by section ~~[846E-2(d)-(1)]~~ 846E-2(c)(1)
10 through (12);
- 11 (5) While reporting to the chief of police or such other
12 department or agency designated by the attorney
13 general, does not allow the police or other designated
14 department or agency to take a current photograph of
15 the person;
- 16 (6) Fails to register in person with the chief of police
17 having jurisdiction of the area where the covered
18 offender resides or is present within three working
19 days whenever the provisions of section ~~[846E-2(g)]~~
20 846E-2(f) require the person to do so;
- 21 (7) Fails to notify the attorney general or the Hawaii

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1 criminal justice data center of a change of any of the
2 covered offender's registration information in writing
3 within three working days of the change;

4 (8) Provides false registration information to the
5 attorney general, the Hawaii criminal justice data
6 center, or a chief of police;

7 (9) Signs a statement verifying that all of the
8 registration information is accurate and current when
9 any of the registration information is not
10 substantially accurate and current;

11 [~~(10)~~] ~~Having failed to establish a new residence within the~~
12 ~~ten days while absent from the person's registered~~
13 ~~residence for ten or more days:~~

14 ~~(A) Fails to notify the attorney general in writing~~
15 ~~within three working days that the person no~~
16 ~~longer resides at the person's registered~~
17 ~~residence; or~~

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

20 ~~(11)]~~ (10) Fails to mail or deliver the periodic
21 verification of registration information form to the
22 attorney general within ten days of receipt, as

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1 required by section 846E-5; provided that it shall be
2 an affirmative defense that the periodic verification
3 form mailed to the covered offender was delivered when
4 the covered offender was absent from the registered
5 address and the covered offender had previously
6 notified the Hawaii criminal justice data center that
7 the covered offender would be absent during the period
8 that the periodic verification form was delivered[-];
9 or

10 (11) Fails to report to any police station in the State by
11 the last day of every month for verification of the
12 covered offender's registration information, as
13 required by section 846E-5(b)."

14 SECTION 9. Section 846E-10, Hawaii Revised Statutes, is
15 amended as follows:

16 (1) By amending subsection (a) to read as follows:

17 "(a) Tier 3 offenses. A covered offender whose covered
18 offense is any of the following offenses shall register for life
19 and, except as provided in subsection (e), may not petition the
20 court, in a civil proceeding, for termination of registration
21 requirements:

22 (1) Any offense set forth in section 707-730(1)(a), (b),

1 (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b),
2 or (f), or 707-733.6;

3 (2) An offense set forth in section 707-720; provided that
4 the offense involves kidnapping of a minor by someone
5 other than a parent;

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

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

11 (5) Any federal, military, [~~e~~] out-of-state, tribal, or
12 foreign offense that is comparable to one of the
13 offenses in paragraph (1), (2), or (3)."

14 (2) By amending subsections (c) and (d) to read as
15 follows:

16 "(c) Tier 2 offenses. A covered offender who has
17 maintained a clean record for the previous twenty-five years,
18 excluding any time the offender was in custody or civilly
19 committed, and who has substantially complied with the
20 registration requirements of this chapter for the previous
21 twenty-five years, or for the portion of that twenty-five years
22 that this chapter has been applicable, and who is not a repeat

1 covered offender may petition the court, in a civil proceeding,
2 for termination of registration requirements; provided that the
3 covered offender's most serious covered offense is one of the
4 following:

- 5 (1) Any offense set forth in section 707-730(1)(c),
6 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-
7 1202(1)(b), or 712-1203(1)(b), as section 712-
8 1203(1)(b) read prior to its amendment pursuant to
9 section 9 of Act 147, Session Laws of Hawaii 2008;
- 10 (2) An offense set forth in section 707-720; provided that
11 the charging document for the offense for which there
12 has been a conviction alleged intent to subject the
13 victim to a sexual offense;
- 14 (3) An offense set forth in section 707-756 that includes
15 an intent to promote or facilitate the commission of
16 another felony covered offense as defined in section
17 846E-1;
- 18 (4) An offense that is an attempt, criminal solicitation,
19 or criminal conspiracy to commit any of the offenses
20 in paragraph (1), (2), or (3);
- 21 (5) Any criminal offense that is comparable to one of the
22 offenses in paragraph (1), (2), (3), or (4); or

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

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

14 (1) Any offense set forth in section 707-732(1)(d) or (e),
15 707-733(1)(a), 707-752, 707-759, 711-1110.9,
16 712-1202(1)(a), or 712-1203(1);

17 (2) An offense set forth in section 707-721 or 707-722;
18 provided that the offense involves unlawful
19 imprisonment of a minor by someone other than a
20 parent;

21 (3) An offense set forth in section 707-757 that includes

- 1 an intent to promote or facilitate the commission of
2 another covered offense as defined in section 846E-1;
- 3 (4) An offense that is an attempt, criminal solicitation,
4 or criminal conspiracy to commit any of the offenses
5 in paragraph (1), (2), or (3);
- 6 (5) Any criminal offense that is comparable to one of the
7 offenses in paragraph (1), (2), (3), or (4); [~~or~~]
- 8 (6) Any federal, military, [~~or~~] out-of-state, tribal, or
9 foreign offense that is comparable to one of the
10 offenses in paragraph (1), (2), (3), or (4) [~~or~~]; or
- 11 (7) Any other covered offense that is not specified in
12 subsection (a) or (c) or paragraph (1), (2), (3), (4),
13 (5), or (6) above."

14 SECTION 10. Sections 1, 2, 4, 5, 6, 8, and 9 shall apply
15 to any acts committed prior to, on, or after the effective date
16 of this Act.

17 SECTION 11. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun, before the effective date of this Act.

20 SECTION 12. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

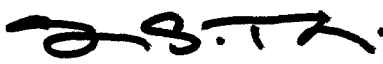
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S.B. NO. 2731

1 SECTION 13. This Act shall take effect upon its approval.

2

3

INTRODUCED BY: 

4

BY REQUEST

5

S.B. NO. 2731

Report Title:

Sex Offender Registration

Description:

Adds comparable foreign convictions and tribal convictions to covered offenses; makes offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law; makes it clear that a covered offender must register and report the offender's permanent residence, current temporary residence, or if an address is not available, a description of the place or area in which the covered offender resides; amends the definition of "conviction" in section 846E-1, Hawaii Revised Statutes, to clarify that conviction, for purposes of sex offender registration, occurs on the date judgment is entered; creates a tier classification for any covered sexual offenses that are not clearly included within the current tier classification law; addresses the problem of covered offenders who do not have registered residences to which the post office can deliver mail and cannot receive the ninety-day verification mailings by requiring these offenders to report in person once per month; and repeals the definitions of "mental abnormality," "personality disorder," and "predatory."

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: Update chapter 846E, Hawaii Revised Statutes, to clarify provisions and address issues that have come up in the implementation of the sex offender registration law by: (1) adding comparable foreign convictions and tribal convictions to covered offenses; (2) making offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law; (3) making the law clear that a covered offender must register and report the offender's permanent residence, current temporary residence, or if an address is not available, a description of the place or area in which the covered offender resides; (4) amending the definition of "conviction" in section 846E-1 to clarify that conviction, for purposes of sex offender registration, occurs on the date judgment is entered; (5) creating a tier classification for any covered sexual offenses that are not included within the current tier classification law; (6) addressing the problem of covered offenders who do not have registered residences to which the post office can deliver mail, and therefore cannot receive the 90-day verification mailings, by requiring these offenders to report to the chief of police once per month; (7) creating a new offense for those covered offenders who are required to and fail to report once per month; (8) correcting an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information; and (9) repealing the

definitions of "mental abnormality," "personality disorder," and "predatory," which are no longer used in the chapter.

MEANS: Amend sections 846E-1, 846E-2, 846E-4(a), 846E-5, 846E-6(a), 846E-9(a), and 846E-10(a), (c), and (d), Hawaii Revised Statutes.

JUSTIFICATION: Issues have arisen during the course of implementation of the provisions of chapter 846E, Hawaii Revised Statutes, regarding the registration of sex offenders. This bill is intended to update and improve the sex offender registration laws.

In section 846E-1, Hawaii Revised Statutes, the definitions of "crime against minor" and "sexual offense," which establish the covered offenses for registration, are being amended to include comparable foreign convictions and tribal convictions to comply with the federal requirements of the Sex Offender Registration and Notification Act (SORNA), title I of the Adam Walsh Child Protection and Safety Act of 2006. Pursuant to SORNA guidelines, a definition of "foreign conviction" has also been added to the section. A definition for "out-of-state conviction" was added for clarification.

The definition of "sexual offense" is also being amended to include any convictions for offenses from other jurisdictions that subjected the offender to sex offender registration or notification in the jurisdiction of conviction. The amendment will 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. To conform to this change in the law, section 846E-2(b), Hawaii Revised Statutes, is being repealed. Subsection (b) requires offenders from other jurisdictions, who were subject to registration or public notification requirements in the other jurisdiction, to register in Hawaii until it was established that the out-of-state conviction was not a covered offense under chapter 846E.

Section 846E-2(a), Hawaii Revised Statutes, is being amended to clarify the basic registration requirement, and make it clear that covered offenders, whether or not residents of this State, who remain in the State for more than ten days or for an aggregate period exceeding thirty days in one calendar year, must register with the Attorney General. This requirement is consistent with section 846E-2(g), which sets out the requirement to register with the chief of police.

Section 846E-2(d)(2), Hawaii Revised Statutes, is being amended to clarify the registration information required of a covered offender regarding the place of residence. The law currently requires an offender to report:

The actual address and telephone number of the covered offender's residence or any current temporary address where the covered offender resides, or if an address is not available, a description of the place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and for each address or place where the covered offender

resides, how long the covered offender has resided there[.]

"Residence" and "temporary address where the covered offender resides" are not defined. This bill amends the terms to "permanent residence" and "temporary residence" and provides definitions for both terms. With these amendments, covered offenders will be required to register **permanent residences, temporary residences, or if an address is not available, a description of the place** that the offender resides.

The two new terms, "permanent residence" and "temporary residence," are also important because this bill is amending section 846E-5, Hawaii Revised Statutes. That section sets out the requirements for the periodic verification of registration information. The section currently requires the Attorney General, every ninety days, to mail out a verification form to the last reported address of the covered offender, and requires the offender to fill out the form and return it. The section does not address the problem of offenders who only have temporary addresses, or have no addresses, and cannot receive any mail. The law is not clear as to how these offenders are to provide periodic verification of their registration information.

With the proposed amendments to section 846E-5, offenders who register permanent residence addresses to which mail can be delivered, or a permanent residence with a post office box, will be subject to the ninety-day mail verification provisions. Offenders who register temporary residence addresses, a description of a place with no mail address, no place of residence, or a permanent address to which the United States Postal Service will not deliver mail, will be required to report once per month to any police station to verify the offender's registration information.

Section 846E-6(a), Hawaii Revised Statutes, is being amended by deleting the provisions that require a covered offender to report to any police station by the last day of every month when the offender is absent from the offender's residence for ten or more days and fails to establish a new residence within that ten day period. These provisions are unnecessary as this circumstance is covered by section 846E-5(b).

Section 846E-9(a), Hawaii Revised Statutes, sets out the offenses for failing to comply with covered offender registration requirements. This section is being amended to create a new offense for those covered offenders who register a temporary address or no address and fail to report once per month to a police station to verify the registration information.

This bill amends the definition of "conviction" in section 846E-1, Hawaii Revised Statutes, to clarify that "conviction," for purposes of sex offender registration, occurs on the date **judgment is entered**. The various jurisdictions in Hawaii have inconsistently interpreted the law regarding the point in time in the criminal justice process when the registration requirement begins. While some start the registration process after plea, others wait until sentencing has been completed. This amendment will create uniformity in the application of registration requirements.

To be consistent with the amendment to the definition of "conviction," section 846E-4(a), Hawaii Revised Statutes, is also being amended to provide that the court's responsibility, to advise a covered offender of the registration requirements and to start the registration process, begins after sentencing and the **entry of a judgment** of

conviction. The current law requires the court to take action after "a guilty verdict or a plea of guilty or nolo contendere."

Section 846E-10(d), Hawaii Revised Statutes, is being amended to create a residual category in the tier 1 classification, to categorize any covered sexual offenses that are not clearly included within the current tier classification law. Some offenses, especially those from other jurisdictions, can be difficult to classify in a tier. This amendment addresses that concern.

This bill repeals paragraph (4) from section 846E-5, Hawaii Revised Statutes. 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 provides 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 section 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.

Section 846E-1, Hawaii Revised Statutes, is also being amended to repeal the definitions of "mental abnormality," "personality disorder," and "predatory." These terms

were necessary for a section of chapter 846E that has already been repealed.

Impact on the public: This bill will clarify certain issues regarding sex offender registration and make it easier for the public to understand and follow the law.

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.