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**A BILL FOR AN ACT**

RELATING TO REGISTRATION OF COVERED OFFENDERS.

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

1           SECTION 1. Act 80 was passed in 2008 to amend chapter  
2 846E, Hawaii Revised Statutes, Hawaii's covered offender  
3 registration law, to take major steps toward compliance with  
4 title I of the federal Adam Walsh Child Protection and Safety  
5 Act of 2006, also known as the Sex Offender Registration and  
6 Notification Act, and enable the Hawaii covered offender  
7 registration program to effectively participate with the  
8 nationwide network of sex offender registries.

9           When declaring the purpose of the Sex Offender Registration  
10 and Notification Act, Congress stated: "In order to protect the  
11 public from sex offenders and offenders against children, and in  
12 response to the vicious attacks by violent predators . . .  
13 Congress in this Act establishes a comprehensive national system  
14 for the registration of those offenders." The Sex Offender  
15 Registration and Notification Act was in response to a number of  
16 high profile violent crimes committed by individuals who had  
17 previously been convicted of sex crimes but under the old  
18 standards were not required to register as sex offenders. Under

1 the Sex Offender Registration and Notification Act, the  
2 predecessor sex offender program was repealed. The Sex Offender  
3 Registration and Notification Act established new baseline sex  
4 offender registry standards for state registries.

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

20 The purpose of this Act is to clarify provisions in chapter  
21 846E, Hawaii Revised Statutes, the State's covered offender  
22 registration law, address important issues that have come up in

1 the implementation of the covered offender registration law, and  
2 continue to make efforts toward Sex Offender Registration and  
3 Notification Act compliance.

4 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is  
5 amended by adding the new definitions of "attorney general,"  
6 "chief of police," "foreign conviction," "out-of-state  
7 conviction," "permanent residence," "temporary residence," and  
8 "tribal conviction" to be appropriately inserted and to read as  
9 follows:

10 "Attorney general" means the attorney general of the State  
11 of Hawaii, the department of the attorney general, or an  
12 authorized representative of the attorney general.

13 "Chief of police" means the county chief of police, the  
14 county police department, or an authorized representative of the  
15 chief of police.

16 "Foreign conviction" means a conviction under the laws of:  
17 (1) Canada, United Kingdom, Australia, or New Zealand; or  
18 (2) Any other foreign country, if the United States  
19 Department of State, in its Country Reports on Human  
20 Rights Practices, has concluded that an independent  
21 judiciary vigorously enforced the right to a fair

1           trial in that country during the year in which the  
2           conviction occurred.

3           "Out-of-state conviction" means a conviction in any other  
4           state of the United States, the District of Columbia, or the  
5           five principal United States territories, including the  
6           Commonwealth of Puerto Rico, Guam, American Samoa, the Northern  
7           Mariana Islands, and the United States Virgin Islands.

8           "Permanent residence" means a building, permanent structure  
9           or unit therein, or watercraft where the covered offender  
10          resides and intends to reside indefinitely, or at least for the  
11          next one hundred eighty days, and which the offender owns,  
12          rents, or occupies with the consent of the owner, but excludes  
13          motor vehicles.

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

19          "Tribal conviction" means a conviction by a tribal court of  
20          a federally recognized Indian tribe."

1 SECTION 3. Section 846E-1, Hawaii Revised Statutes, is  
2 amended by amending the definitions of "conviction", "crime  
3 against minors", and "sexual offense" to read as follows:

4 "Conviction" means a judgment on the verdict, or a finding  
5 of guilt after a plea of guilty or nolo contendere, excluding  
6 the adjudication of a minor[-], and occurs on the date judgment  
7 is entered.

8 "Crime against minors" excludes "sexual offenses" as  
9 defined in this section and means a criminal offense that  
10 consists of:

- 11 (1) Kidnapping of a minor, by someone other than a parent;  
12 (2) Unlawful imprisonment in the first or second degree  
13 that involves the unlawful imprisonment of a minor by  
14 someone other than a parent;  
15 (3) An act, as described in chapter 705, that is an  
16 attempt, criminal solicitation, or criminal conspiracy  
17 to commit one of the offenses designated in paragraph  
18 (1) or (2); [~~or~~]  
19 (4) A criminal offense that is comparable to or which  
20 exceeds one of the offenses designated in paragraphs  
21 (1) through (3) [~~or any~~]; or  
22 (5) Any federal, military, [~~or~~ out-of-state, tribal, or

1           foreign conviction for any offense that, under the  
2           laws of this State, would be a crime against minors as  
3           designated in paragraphs (1) through [~~(3)~~] (4).

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), 707-~~  
8           ~~732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-~~  
9           ~~732(1)(e), 707-732(1)(f),~~] 707-730(1), 707-731(1),  
10           707-732(1), 707-733(1)(a), 707-733.6, [~~712-1202(1)(a),~~  
11           ~~712-1202(1)(b),~~] 712-1202(1), or 712-1203(1), but  
12           excludes conduct that is criminal only because of the  
13           age of the victim, as provided in section 707-  
14           730(1)(b), or section 707-732(1)(b) if the perpetrator  
15           is under the age of eighteen;

16           (2) An act defined in section 707-720 if the charging  
17           document for the offense for which there has been a  
18           conviction alleged intent to subject the victim to a  
19           sexual offense;

20           (3) An act that consists of:

21           (A) Criminal sexual conduct toward a minor, including

- 1 but not limited to an offense set forth in  
2 section 707-759;
- 3 (B) Solicitation of a minor who is less than fourteen  
4 years old to engage in sexual conduct;
- 5 (C) Use of a minor in a sexual performance;
- 6 (D) Production, distribution, or possession of child  
7 pornography chargeable as a felony under section  
8 707-750, 707-751, or 707-752;
- 9 (E) Electronic enticement of a child chargeable under  
10 section 707-756 or 707-757 if the offense was  
11 committed with the intent to promote or  
12 facilitate the commission of another covered  
13 offense as defined in this section; or
- 14 (F) Solicitation of a minor to practice prostitution;
- 15 (4) A violation of privacy under section 711-1110.9;
- 16 (5) An act, as described in chapter 705, that is an  
17 attempt, criminal solicitation, or criminal conspiracy  
18 to commit one of the offenses designated in paragraphs  
19 (1) through (4);
- 20 [~~5~~] (6) A criminal offense that is comparable to or that  
21 exceeds a sexual offense as defined in paragraphs (1)  
22 through [~~4~~ or any] (5); or

1        (7) Any federal, military, [øx] out-of-state, tribal, or  
2        foreign conviction for [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 [-(4)-] (6); 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.

12       ~~[(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 (5).]~~ "

16       SECTION 4. Section 846E-1, Hawaii Revised Statutes, is  
17       amended by repealing the definitions of "mental abnormality,  
18       "personality disorder," and "predatory".

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



1       ~~"Personality disorder" shall have the same meaning as the~~  
2 ~~term is used in the Diagnostic and Statistical Manual of Mental~~  
3 ~~Health Disorders: DSM IV, American Psychiatric Association,~~  
4 ~~Diagnostic and Statistical Manual of Mental Disorders (4th ed.~~  
5 ~~1994).~~

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

7       ~~(1) A stranger; or~~

8       ~~(2) A person with whom a relationship has been established~~  
9       ~~or promoted for the primary purpose of~~  
10       ~~victimization."]~~

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

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

1 under this chapter be terminated, as provided in section 846E-  
2 10.

3 ~~[(b) A person who establishes or maintains a residence in~~  
4 ~~this State and who has not been designated as a covered offender~~  
5 ~~by a court of this State but who has been designated as a~~  
6 ~~covered offender, sex offender, offender against minors, repeat~~  
7 ~~covered offender, sexually violent predator, or any other sexual~~  
8 ~~offender designation in another state or jurisdiction and was,~~  
9 ~~as a result of such designation, subjected to registration or~~  
10 ~~community or public notification, or both, or would be if the~~  
11 ~~person was a resident of that state or jurisdiction, without~~  
12 ~~regard to whether the person otherwise meets the criteria for~~  
13 ~~registration as a covered offender, shall register in the manner~~  
14 ~~provided in this section and shall be subject to community and~~  
15 ~~public notification as provided in section 846E 3. A person who~~  
16 ~~meets the criteria of this subsection is subject to the~~  
17 ~~requirements and penalty provisions of section 846E 9 until the~~  
18 ~~person successfully petitions the attorney general for~~  
19 ~~termination of registration requirements by:~~

20 ~~(1) Providing an order issued by the court that designated~~  
21 ~~the person as a covered offender, sex offender,~~  
22 ~~offender against minors, repeat covered offender,~~

1 ~~sexually violent predator, or any other sexual~~  
2 ~~offender designation in the state or jurisdiction in~~  
3 ~~which the order was issued, which states that such~~  
4 ~~designation has been removed or demonstrates to the~~  
5 ~~attorney general that such designation, if not imposed~~  
6 ~~by a court, has been removed by operation of law or~~  
7 ~~court order in the state or jurisdiction in which the~~  
8 ~~designation was made, and such person does not meet~~  
9 ~~the criteria for registration as a covered offender~~  
10 ~~under the laws of this State, or~~

11 ~~(2) Demonstrating that the out of state convictions upon~~  
12 ~~which the sexual offender designation was established~~  
13 ~~are not covered offenses under section 846E-1, thereby~~  
14 ~~showing that such person does not meet the criteria~~  
15 ~~for registration as a covered offender under the laws~~  
16 ~~of this State.~~

17 ~~If the covered offender is not satisfied with the decision of~~  
18 ~~the attorney general on the request for termination of~~  
19 ~~registration requirements, the covered offender may appeal the~~  
20 ~~decision pursuant to chapter 91.~~

21 ~~(e)]~~ (b) Each provision of this chapter applicable to sex  
22 offenders shall also be applicable to offenders against minors,

1 unless offenders against minors are specifically excluded.

2 Whenever a covered offender's public information is made  
3 publicly accessible, separate registries shall be maintained  
4 for:

- 5 (1) Sex offenders; and
- 6 (2) Offenders against minors.

7 [~~(d)~~] (c) Registration information for each covered  
8 offender shall include a signed statement by the covered  
9 offender containing:

- 10 (1) The name, all prior names, nicknames and pseudonyms,  
11 and all aliases used by the covered offender or under  
12 which the covered offender has been known and other  
13 identifying information, including date of birth and  
14 any alias date of birth, social security number and  
15 any alias social security number, sex, race, height,  
16 weight, and hair and eye color;
- 17 (2) The actual address and telephone number of the covered  
18 offender's permanent residence or [~~any current,~~  
19 ~~temporary address where the covered offender resides,~~]  
20 the address of the covered offender's current  
21 temporary residence, or if an address is not  
22 available, a description of the place or area in which

1 the covered offender resides for at least thirty  
2 nonconsecutive days within a sixty-day period, and for  
3 each address or place where the covered offender  
4 resides, how long the covered offender has resided  
5 there;

6 (3) The actual address or description of the place or  
7 area, the actual length of time of the stay, and  
8 telephone number where the covered offender is staying  
9 for a period of more than ten days, if other than the  
10 stated residence;

11 (4) If known, the future address and telephone number of  
12 the place where the covered offender is planning to  
13 reside, if other than the stated residence;

14 (5) Any electronic mail address, any instant message name,  
15 any internet designation or moniker, and any internet  
16 address used for routing or self-identification;

17 (6) Any cell phone number and other designations used for  
18 routing or self-identification in telephonic  
19 communications;

20 (7) Names and, if known, actual business addresses of  
21 current and known future employers, including  
22 information for any place where the covered offender

1 works as a volunteer or otherwise works without  
2 remuneration, and the starting and ending dates of any  
3 such employment;

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

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

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

16 (11) The year, make, model, color, and license or  
17 registration or other identifying number of all  
18 vehicles, including automobiles, watercrafts, and  
19 aircrafts, currently owned or operated by the covered  
20 offender and the address or description of the place  
21 or places where the covered offender's vehicle or

1 vehicles are habitually parked, docked, or otherwise  
2 kept;

3 (12) Passports and information about the passports, if the  
4 covered offender has passports, and documents  
5 establishing immigration status and information about  
6 these documents, if the covered offender is an alien;

7 (13) A statement listing all covered offenses for which the  
8 covered offender has been convicted or found unfit to  
9 proceed or acquitted pursuant to chapter 704;

10 (14) A statement indicating whether the covered offender  
11 has received or is currently receiving treatment  
12 ordered by a court of competent jurisdiction or by the  
13 Hawaii paroling authority;

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

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

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

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

21 (2) A physical description of the covered offender,

- 1 including a description of particular identifying  
2 characteristics such as scars or tattoos;
- 3 (3) Confirmation that the covered offender has provided  
4 digitized fingerprints and palm prints of the covered  
5 offender;
- 6 (4) Judgment of conviction, judgment of acquittal, or  
7 judicial determination of unfitness to proceed  
8 documenting the criminal offense or offenses for which  
9 the covered offender is registered;
- 10 (5) The text, or an electronic link to the text, of the  
11 provision of law defining the criminal offense or  
12 offenses for which the covered offender is registered;
- 13 (6) The criminal history of the covered offender, or an  
14 electronic link to the criminal history, including the  
15 date of all arrests and convictions, the status of  
16 parole, probation, or supervised release, registration  
17 status, and the existence of any outstanding arrest  
18 warrants for the covered offender;
- 19 (7) Confirmation that the covered offender has provided a  
20 DNA buccal swab sample as required by chapter 844D;
- 21 (8) Digitized copies of a valid driver's license or



1 identification card issued to the covered offender, or  
2 an electronic link to such records; and

3 (9) Digitized copies of passports and documents  
4 establishing immigration status, or an electronic link  
5 to such records.

6 [~~(f)~~] (e) Whenever a covered offender provides  
7 registration information, during initial registration as a  
8 covered offender or when providing notice of a change in  
9 registration information, the covered offender also shall sign a  
10 statement verifying that all of the registration information is  
11 accurate and current.

12 [~~(g)~~] (f) In addition to the requirement under subsection  
13 (a) to register with the attorney general and comply with the  
14 provisions of this chapter until a court relieves the covered  
15 offender of the registration requirements of this chapter, each  
16 covered offender shall also register in person with the chief of  
17 police where the covered offender resides or is present.

18 Registration under this subsection is for the purpose of  
19 providing the covered offender's photograph, fingerprints, and  
20 registration information. Registration under this subsection is  
21 required whenever the covered offender, whether or not a  
22 resident of this State, remains in this State for more than ten

1 days or for an aggregate period exceeding thirty days in one  
2 calendar year. Covered offenders required to register in person  
3 with the chief of police under this subsection shall register no  
4 later than three working days after the earliest of:

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

15 In addition to any other requirement to register under this  
16 subsection or subsection (a), each covered offender shall report  
17 in person every five years until June 30, 2009, and beginning on  
18 July 1, 2009, every year, within the thirty-day period following  
19 the offender's date of birth, to the chief of police where the  
20 covered offender resides, or to such other department or agency  
21 that may be designated by the attorney general in rules adopted  
22 pursuant to chapter 91 for purposes of the administration of

1 this subsection, and shall review the existing information in  
2 the registry that is within the offender's knowledge, correct  
3 any information that has changed or is inaccurate, provide any  
4 new information that may be required, and allow the police and  
5 such other department or agency designated by the attorney  
6 general to take a current photograph of the offender.

7 ~~[(h)]~~ (g) The registration provisions of this section  
8 shall apply to all covered offenders without regard to:

- 9 (1) The date of the covered offender's conviction;  
10 (2) The date of finding, pursuant to chapter 704, of the  
11 covered offender's unfitness to proceed; or  
12 (3) The date of the covered offender's acquittal due to  
13 mental disease, disorder, or defect, pursuant to  
14 chapter 704."

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

17 "(a) Each person, or that person's designee, in charge of  
18 a jail, prison, hospital, school, or other institution to which  
19 a covered offender has been committed pursuant to a conviction,  
20 or an acquittal or finding of unfitness to proceed pursuant to  
21 chapter 704, for a covered offense, and each judge, or that  
22 judge's designee, who continues bail for or releases a covered

1 offender following [~~a guilty verdict or a plea of guilty or nolo~~  
2 ~~contendere,~~] sentencing and the entry of a judgment of  
3 conviction, who releases a covered offender on probation or who  
4 discharges a covered offender upon payment of a fine, and each  
5 agency having jurisdiction, shall, prior to the discharge,  
6 parole, or release of the covered offender:

7 (1) Explain to the covered offender the duty to register  
8 and the consequences of failing to register under this  
9 chapter;

10 (2) Obtain from the covered offender all of the  
11 registration information required by this chapter;

12 (3) Inform the covered offender that if at any time the  
13 covered offender changes any of the covered offender's  
14 registration information, the covered offender shall  
15 notify the attorney general of the new registration  
16 information in writing within three working days;

17 (4) Inform the covered offender that, if at any time the  
18 covered offender changes residence to another state,  
19 the covered offender shall register the new address  
20 with the attorney general and also with a designated  
21 law enforcement agency in the new state, if the new  
22 state has a registration requirement, within the

- 1 period of time mandated by the new state's sex  
2 offender registration laws;
- 3 (5) Obtain and verify fingerprints and a photograph of the  
4 covered offender, if these have not already been  
5 obtained or verified in connection with the offense  
6 that triggers the registration;
- 7 (6) Require the covered offender to sign a statement  
8 indicating that the duty to register has been  
9 explained to the covered offender; and
- 10 (7) Give one copy of the signed statement and one copy of  
11 the registration information to the covered offender."

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

14 **"§846E-5 Periodic verification of registration**  
15 **information.** [~~Unless the covered offender is incarcerated or~~  
16 ~~has registered with a designated law enforcement agency after~~  
17 ~~establishing residence in another state, on the first day of~~  
18 ~~every ninety day period following the covered offender's initial~~  
19 ~~registration date+]~~ (a) For the covered offender who has  
20 registered a permanent residence address to which the United  
21 States Postal Service will deliver mail or a permanent residence

1 and a registered post office box, during the first week of the  
2 months of January, April, July, and October of every year,

3 ~~[(1) The]~~ the attorney general shall mail a nonforwardable  
4 verification form to the last reported permanent  
5 residence address or post office box of the covered  
6 offender~~[+]~~. Upon receipt of the verification form:

7 ~~[(2)]~~ (1) The covered offender shall sign the verification  
8 form and state that the covered offender still resides  
9 at the address last reported to the attorney general  
10 and that no other registration information has changed  
11 or shall provide the new information; and

12 ~~[(3)]~~ (2) The covered offender shall mail the signed and  
13 completed verification form to the attorney general  
14 within ten days after receipt of the form~~[+and~~

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

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

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

- 1        (1) A temporary residence address;
- 2        (2) A description of a place or area in which the covered  
3        offender resides for at least thirty nonconsecutive  
4        days within a sixty-day period;
- 5        (3) No place of residence; or
- 6        (4) A permanent residence address, to which the United  
7        States Postal Service will not deliver mail, and has  
8        no registered post office box,
- 9        by the last day of every month, the covered offender shall  
10       report to the chief of police where the covered offender  
11       resides, or to such other department or agency that may be  
12       designated by the attorney general in rules adopted pursuant to  
13       chapter 91 for purposes of administration of this section, and  
14       shall review the existing information in the registry that is  
15       within the offender's knowledge, correct any information that  
16       has changed or is inaccurate, provide any new information that  
17       may be required, and disclose every location where the covered  
18       offender has slept in the previous month.
- 19       (c) The periodic verification provisions of this section  
20       shall not apply to covered offenders who are incarcerated or  
21       have registered with a designated law enforcement agency after  
22       establishing residence in another state."

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

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



4.B. NO. 786

1 ~~attorney general in writing of the actual address of the new~~  
2 ~~residence. Each time the covered offender reports to a police~~  
3 ~~station, the covered offender shall disclose every location~~  
4 ~~where the covered offender has slept in the previous month.] of~~  
5 the covered offender's current residence information. If the  
6 covered offender leaves the State and establishes a new  
7 residence [~~is~~] in another state that has a registration  
8 requirement, the person shall register with the designated law  
9 enforcement agency in the state to which the person moves,  
10 within the period of time mandated by the new state's sex  
11 offender registration laws."

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

14 **"§846E-9 Failure to comply with covered offender**  
15 **registration requirements.** (a) A person commits the offense of  
16 failure to comply with covered offender registration  
17 requirements if the person is required to register under this  
18 chapter and the person intentionally, knowingly, or recklessly:

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

- 1           (2) Fails to report in person every five years until  
2                   June 30, 2009, and beginning on July 1, 2009, once  
3                   every year, during the thirty-day period following the  
4                   offender's date of birth, to the chief of police where  
5                   the covered offender's residence is located, or to  
6                   such other department or agency designated by the  
7                   attorney general;
- 8           (3) While reporting to the chief of police or such other  
9                   department or agency designated by the attorney  
10                  general, fails to correct information in the registry  
11                  within the offender's knowledge that has changed or is  
12                  inaccurate regarding information required by section  
13                  [~~846E-2(d)(1)~~] 846E-2(c)(1) through (12);
- 14           (4) While reporting to the chief of police or such other  
15                   department or agency designated by the attorney  
16                   general, fails to provide new information that may be  
17                   required by section [~~846E-2(d)(1)~~] 846E-2(c)(1)  
18                   through (12);
- 19           (5) While reporting to the chief of police or such other  
20                   department or agency designated by the attorney  
21                   general, does not allow the police or other designated

- 1 department or agency to take a current photograph of  
2 the person;
- 3 (6) Fails to register in person with the chief of police  
4 having jurisdiction of the area where the covered  
5 offender resides or is present within three working  
6 days whenever the provisions of section [~~846E-2(g)~~  
7 846E-2(f)] require the person to do so;
- 8 (7) Fails to notify the attorney general or the Hawaii  
9 criminal justice data center of a change of any of the  
10 covered offender's registration information in writing  
11 within three working days of the change;
- 12 (8) Provides false registration information to the  
13 attorney general, the Hawaii criminal justice data  
14 center, or a chief of police;
- 15 (9) Signs a statement verifying that all of the  
16 registration information is accurate and current when  
17 any of the registration information is not  
18 substantially accurate and current;
- 19 (10) Having failed to establish a new residence within the  
20 ten days while absent from the person's registered  
21 residence for ten or more days[+]

1 ~~(A) Fails]~~ fails to notify the attorney general in  
 2 writing within three working days [~~that the~~  
 3 ~~person no longer resides at the person's~~  
 4 ~~registered residence,~~] of the covered offender's  
 5 current residence information; or  
 6 [~~(B) Fails to report to a police station in the State~~  
 7 ~~by the last day of every month; or]~~

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

19 (12) Fails to report to the chief of police where the  
 20 covered offender resides, or to such other department  
 21 or agency that may be designated by the attorney  
 22 general in rules adopted pursuant to chapter 91, by

1           the last day of every month for verification of the  
2           covered offender's registration information, as  
3           required by section 846E-5(b); or

4       (13) Fails to disclose every location where the covered  
5           offender has slept in the previous month, as required  
6           by section 846E-5(b).

7       (b) With respect to paragraph (1), (2), (6), (7), (10),  
8       (11), or (12) of subsection (a), it shall be an affirmative  
9       defense that the covered offender failed to comply with the  
10       requirements of the paragraph because the covered offender was  
11       in custody or civilly committed.

12       ~~(b)~~ (c) Failure to comply with covered offender  
13 registration requirements is a class C felony."

14       SECTION 10. 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, [~~ex~~] 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 11. Sections 2, 3, 5, 6, 7, 8, 10, and 11 shall  
15 apply to any acts committed prior to, on, or after the effective  
16 date of this Act.

17 SECTION 12. Section 9 of this Act does not affect rights  
18 and duties that matured, penalties that were incurred, and  
19 proceedings that were begun, before the effective date of this  
20 Act.

21 SECTION 13. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

H.B. NO. 786

1 SECTION 14. This Act, upon its approval, shall take effect  
2 on January 1, 2014.

3

4

INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "J. J. ...", is written over a horizontal line.

BY REQUEST

5

JAN 22 2013

# H.B. NO. 786

**Report Title:**

Covered Offenders; Registration of

**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 REGISTRATION OF COVERED OFFENDERS.

PURPOSE: Update chapter 846E, Hawaii Revised Statutes, to clarify provisions, address issues that have come up in the implementation of the covered offender registration law, and continue to make efforts toward Sex Offender Registration and Notification Act (SORNA) compliance 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) creating a new offense for those covered offenders

who fail to disclose every location where the offender has slept in the previous month as required by law; (9) correcting an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information; (10) repealing the definitions of "mental abnormality," "personality disorder," and "predatory," which are no longer used in the chapter; and (11) making it an affirmative defense that the covered offender failed to comply with the registration requirements because the covered offender was in custody or civilly committed.

**MEANS:** Amend sections 846E-1, 846E-2, 846E-4(a), 846E-5, 846E-6(a), 846E-9, 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 covered offenders. This bill is intended to update and improve the covered 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-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 the chief of police to verify the registration information, and a new offense for those covered offenders who are required to report once per month to the chief of police and fail to disclose every location where the covered offender has slept in the previous month.

Section 846E-9, Hawaii Revised Statutes, is also being amended by adding a new subsection (b) that makes it an affirmative defense that the covered offender failed to comply with registration requirements because the offender was in custody or civilly committed. This is intended to address the concern that it is sometimes difficult for prosecutors to disprove that a covered offender did not comply with registration requirements because the offender was in custody or civilly committed.

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."

Subsections (a), (c), and (d) of section 846E-10, Hawaii Revised Statutes, are being amended to include the tier classifications for the new covered foreign and tribal offenses.

Section 846E-10(d), Hawaii Revised Statutes, is also 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:

January 1, 2014.