



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

S.B. NO. 1016, S.D. 1, H.D. 1, RELATING TO THE REGISTRATION OF COVERED OFFENDERS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, April 5, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

This bill has the unanimous support of the Hawaii Law Enforcement Coalition. The Coalition is composed of the Chiefs of Police of all four counties, the Prosecuting Attorneys of all four counties, the Attorney General, and the United States Attorney for the District of Hawaii.

The purpose of this bill is to update our covered offender registration law under chapter 846E, Hawaii Revised Statutes (HRS), to clarify provisions, address issues that have come up in the implementation of the covered offender registration law, and continue to make efforts toward compliance with the federal Sex Offender Registration and Notification Act (SORNA). This bill achieves this purpose by amending sections 846E-1, 846E-2, 846E-4(a), 846E-5, 846E-6(a), 846E-9, and 846E-10(a), (c), and (d), HRS, to do the following:

- (1) Add comparable foreign convictions and tribal convictions to the covered offenses to comply with the federal requirements of SORNA;
- (2) Make 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;
- (3) Amend 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;

- (4) Create a tier classification for any covered sexual offenses that are not included within the current tier classification law;
- (5) Address 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 in person during the first week of the months of January, April, July, and October;
- (6) Create a new offense for those covered offenders who are required to and fail to report in person during the first week of the months of January, April, July, and October ;
- (7) Correct an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information;
- (8) Repeal the definitions of "mental abnormality, "personality disorder," and "predatory," which are no longer used in the chapter; and
- (9) Makes conforming amendments.

In section 846E-1, HRS, 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.

Section 846E-2(a), HRS, 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), HRS, 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 new definitions for both terms in section 846E-1. 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, HRS. 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 during the first week of the months of January, April, July, and October of every year, to verify and update the covered offender's registration information.

Section 846E-9(a), HRS, 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 during the first week of the months of January, April, July, and October of every year, to verify and update the covered offender's registration information.

This bill amends the definition of "conviction" in section 846E-1, HRS, 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), HRS, 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, HRS, are being amended to include the tier classifications for the new covered foreign and tribal offenses.

Section 846E-10(d), HRS, 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, HRS. 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, HRS, 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.

This bill will clarify certain issues regarding sex offender registration and make it easier for the public to understand and follow the law. The clarifications will also facilitate the application and administration of the sex offender registration law. This bill will also show that Hawaii is continuing to make efforts toward SORNA compliance.

The Department respectfully requests passage of this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

April 5, 2013

RE: S.B. 1016 S.D. 1, H.D. 1; RELATING TO REGISTRATION OF COVERED OFFENDERS.

Chair Rhoads, Vice Chair Har, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 1016, S.D. 1, H.D. 1. The original S.B. 1016 was part of the 2013 Law Enforcement Coalition (LEC) Legislative Package.

S.B. 1016, S.D. 1, H.D. 1, updates the covered offender registration law to address numerous issues that have arisen over the course of its implementation, by:

- Adding comparable foreign convictions and tribal convictions to covered offenses;
- Making offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law;
- Making 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;
- Amending 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;
- Creating a tier classification for any covered sexual offenses that are not clearly included within the current tier classification law;
- Addressing 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 during the first weeks of the months of January, April, July, and October; and

- Repealing the definitions of "mental abnormality," "personality disorder," and "predatory."

Taken as a whole, these changes would significantly clarify the law, not only for law enforcement purposes, but also for the courts and ultimately for the public.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 1016, S.D. 1, H.D. 1. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **TN-DNK**

April 5, 2013

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State House of Representatives
Hawaii State Capitol
415 South King Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: Senate Bill No. 1016, S.D. 1, H.D. 1, Relating to Registration of Covered Offenders

I am Thomas Nitta, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

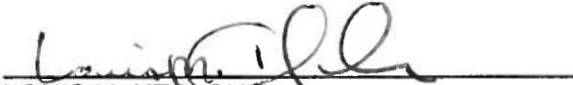
The HPD supports Senate Bill No. 1016, S.D. 1, H.D. 1, Relating to Registration of Covered Offenders. The updating of Chapter 846E of the Hawaii Revised Statutes is an important stride in bringing Hawaii into compliance with federal law.

Thank you for the opportunity to testify.

Sincerely,


THOMAS NITTA, Major
Records and Identification Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: April 5, 2013

TO: The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
House Committee on Judiciary

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: S.B. 1016 S.D. 1 H.D. 1
Relating to Registration of Covered Offenders

Good afternoon Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC supports S.B. 1016 S.D. 1 H.D. 1 to amend chapter 846E of the Hawai'i Revised Statutes, Hawai'i's covered offender registration law.

This bill amends the law to comply with key aspects of Title 1 of the Adam Walsh Child Protection and Safety Act, also known as the Sex Offender Registration and Notification Act (SORNA). These changes will enable Hawai'i to be an active, effective participant in the nationwide network of state sex offender registries created to protect the public. Without question, it is imperative that we move toward a national comprehensive program of sex offender registration and notification.

S.B. 1016 S.D. 1 H.D. 1 contains provisions vital to the protection of our communities. For example, this bill will require persons convicted of sex offenses in other jurisdictions that are required to register in the jurisdictions of conviction to register in Hawai'i and will add comparable foreign and tribal convictions to covered offenses to comply with SORNA. It also clarifies the periodic verification requirements, especially as to those offenders who have no permanent address that will be required to quarterly report in person to verify their registration information. Further, it creates new offenses for covered offenders who fail to comply with the verification requirements. These amendments, among others, will enhance the information available to law enforcement and the public and better facilitate the application and administration of the covered offender registration law.

We urge you to pass S.B. 1016 S.D. 1 H.D. 1. A strong and effective sex offender registration and notification program is essential to public safety in Hawai'i.