

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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, March 21, 2013 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 309

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

Chair Aquino and Members of the Committee:

The Department of the Attorney General strongly supports this bill with a few amendments.

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.

PROPOSED AMENDMENTS

The Department recommends the following amendments to this bill.

In section 2 of the bill, on page 7, at line 19, the proposed amendment to "846E-9(c)" should actually read, "846E-9". Section 2 amends section 806-83, HRS, which sets out the criminal charges that may be instituted by written information. Section 846E-9(c) is simply the penalty provision for the offense of failure to comply with covered offender registration requirements. To be more accurate, section 806-83 should reference the entire section 846E-9, which sets out the offense upon which the charge is based.

In section 6 of the bill, subsection (b) of section 846E-2, located on page 14, lines 13-22, page 15, lines 1-22, and page 16, lines 1-8, should not be repealed. It should be left unchanged. Subsection (b) provides that a person, who establishes or maintains a residence in Hawaii and has been designated a covered offender in another state or jurisdiction, and was subjected to registration or public notification under the laws of that other state or jurisdiction, is required to register as a covered offender until it has been determined that the person is not required to register under State law. This provision was placed in the law to make sure that sex offenders and offenders against minors from other jurisdictions did not move to Hawaii and avoid the registration requirements. S. B. No. 1016, repealed section 846E-2(b) because, on page 8, lines 6-11, it amended the definition of "sexual offense" to include as a covered offense under Hawaii law any offense from another state or jurisdiction that subjected the offender to registration or public notification in that other state or jurisdiction. S.B. No. 1016, S.D. 1, deleted this amendment to the definition of "sexual offense." In doing so, however, it failed to conform the bill by reinstating section 846E-2(b).

Once section 846E-2(b) is reinstated in the bill, other conforming amendments need to be made. Because subsection (b) should not be bracketed and stricken from the section 846E-2, the amendments to the letter designations for the subsections that follow (b) need to be undone. The letter designations should not change. Accordingly, the definition of "registration information"

in section 846E-1 does not need conforming amendment, and the proposed amendment in section 4, on page 10 of the bill, at lines 19-20, should be deleted. The reference to "registration information" on page 9, line 15, should also be deleted.

Other conforming amendments need to be made to address the reinstatement of section 846E-2(b). In section 10, on page 31 of this bill, the amendments at line 6, line 10 and lines 20-21, are unnecessary. The amendments had been made to address the change in the letter designations for the subsections after section 846E-2(b) was marked for repeal.

Section 10, paragraph (12), on page 33, lines 12-18, should be amended to conform to section 8, on page 27, lines 13-21, and page 28, lines 1-10, which changed the in-person reporting requirement for those offenders without a permanent residence address from once per month, to four times per year, in January, April, July, and October. Paragraph (12) should be amended to read as follows:

Fails to report to the chief of police where the covered offender resides, or to such other department or agency that may be designated by the attorney general in rules adopted pursuant to chapter 91, during the first week of the months of January, April, July, and October of every year, and verify and update the covered offender's registration information as required by section 846E-5(b).

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.

The Department respectfully requests passage of this bill with the recommended amendments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE HENRY J.C. AQUINO, CHAIR
HOUSE PUBLIC SAFETY COMMITTEE
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

March 21, 2013

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

Chair Aquino, Vice Chair Ing, and members of the House Committee on Public Safety 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, which is part of the 2013 Law Enforcement Coalition (LEC) Legislative Package.

The bill does the following:

- 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 during the first weeks of the months of January, April, July, and October; and
- Repeals the definitions of "mental abnormality," "personality disorder," and "predatory."

For the following reasons, we support the passage of S.B. 1016, S.D. 1. Thank you.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE TN-DNK

March 21, 2013

The Honorable Henry J. C. Aquino, Chair
and Members
Committee on Public Safety
State House of Representatives
Hawaii State Capitol
415 South King Street
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

Subject: Senate Bill No. 1016, S.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, 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,

Handwritten signature of Thomas Nitta in black ink.

THOMAS NITTA, Major
Records and Identification Division

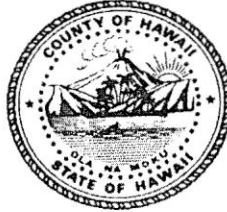
APPROVED:

Handwritten signature of Louis M. Kealoaha in black ink, written over a horizontal line.

LOUIS M. KEALOHA
Chief of Police

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 1016 SD1

RELATING TO REGISTRATION
OF COVERED OFFENSES

COMMITTEE ON PUBLIC SAFETY
Rep. Henry J.C. Aquino, Chair
Rep. Kaniela Ing, Vice Chair

Thursday, March 21, 2013 10:00 AM
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Ing, and Members of the Committee:

The Hawaii County Office of the Prosecuting Attorney, joins the rest of the State's law enforcement community and supports Senate Bill 1016 SD1, relating to the registration of covered offenders.

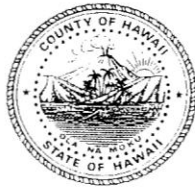
This bill updates and clarifies our current covered offender registration law under 846E, and makes offenders who are subject to sex offender registration or notification laws in their jurisdiction of conviction, covered offenders under Hawaii law. This bill will increase compliance by through clarity of the sexual offender requirements. Thus making our communities safer.

For the forgoing reasons, the Office of the Prosecuting Attorney, County of Hawaii, supports Senate Bill 1016 SD1.

Mahalo for the opportunity to provide testimony on this bill.

Mitchell D. Roth
Prosecuting Attorney
County of Hawaii

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawai'i 96720-3998
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March 20, 2013

Representative Henry J. C. Aquino
Chairperson and Committee Members
Committee on Public Safety
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

RE: SENATE BILL 1016, SD1 RELATING TO REGISTRATION OF COVERED OFFENDERS

Dear Representative Aquino:

The Hawai'i Police Department supports Senate Bill 1016 with its purpose being to update our covered offender registration law under Chapter 846E, Hawai'i 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 offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law;
- (3) 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;
- (4) 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;
- (5) Create a tier classification for any covered sexual offenses that are not included within the current tier classification law;
- (6) 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 to the chief of police once per month;

REPRESENTATIVE HENRY J. C. AQUINO
CHAIRPERSON AND COMMITTEE MEMBERS
COMMITTEE ON PUBLIC SAFETY

RE: SENATE BILL 1016, SD1 RELATING TO REGISTRATION OF COVERED OFFENDERS
MARCH 20, 2013

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- (7) Create a new offense for those covered offenders who are required to and fail to report once per month;
- (8) Create 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) Correct an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information;
- (10) Repeal the definitions of "mental abnormality," "personality disorder," and "predatory," which are no longer used in the Chapter; and
- (11) Make 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.

In short, we believe this Bill will address many loopholes that exist with respect to Registration Requirements related to Covered Offenders.

For these reasons, we urge this committee to approve this legislation.

Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 1016, SD1.

Sincerely,



HARRY S. KUBOJIRI
POLICE CHIEF



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

March 20, 2013

The Honorable Henry J. C. Aquino, Chair
And Members of the Committee on Public Safety
House of Representative
Hawaii State Capitol
Honolulu, HI 96813

**RE: Senate Bill No. 1016, SD1, RELATING TO REGISTRATION OF
COVERED OFFENDERS**

Dear Chair Aquino and Members of the Committee:

The Maui Police Department supports the passage of S.B. No. 1016, SD1. The passage of this bill 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 during the first weeks of the months of January, April, July, and October; and repeals the definitions of "mental abnormality," "personality disorder," and "predatory" Makes conforming amendments. Effective 07/01/50.

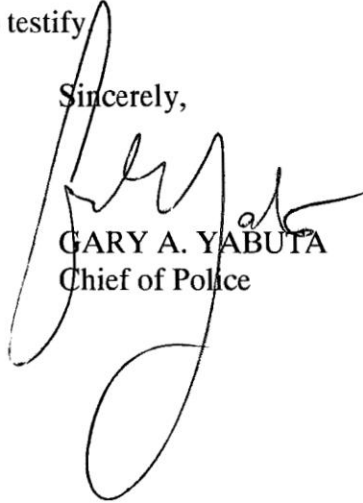
The Maui Police Department is in support of this bill as it helps to clarify the sex offender registration process and will require offenders to report in person at designated time periods. This ability to keep track of sex offenders in our communities is an important component that must be in place and enforceable. The Maui Police Department also supports the amendments suggested by the Department of the Attorney General in improving this bill.

The Honorable Henry J.C. Aquino, Chair
Committee on Public Safety
March 20, 2013
Page 2

The Maui Police Department again asks that you support the passage of S.B. No. 1016, SD1.

Thank you for the opportunity to testify

Sincerely,

A handwritten signature in black ink, appearing to read "Gary A. Yabuta". The signature is stylized with a large, sweeping initial "G" and a long, horizontal stroke extending to the right.

GARY A. YABUTA
Chief of Police



THE SEX ABUSE TREATMENT CENTER

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

Executive Director
Adriana Ramelli

DATE: March 21, 2013

Advisory Board

TO: The Honorable Henry J.C. Aquino, Chair
The Honorable Kaniela Ing, Vice Chair
House Committee on Public Safety

President
Mimi Beams

Vice President
Peter Van Zile

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

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

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

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

Good morning Chair Aquino, Vice Chair Ing and members of the House Committee on Public Safety. 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 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 contains provisions vital to the protection of our communities. For example, this bill 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. A strong and effective sex offender registration and notification program is essential to public safety in Hawai'i.