



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Tuesday, January 29, 2013

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Hee 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 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;
- (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 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.

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), HRS, 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), 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), 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, 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 once per month to any police station to verify the 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 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, HRS, 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, 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 I 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.

The Department respectfully requests passage of this bill.

William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

## County of Hawai`i

### POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998  
(808) 935-3311 • Fax (808) 961-8865

January 28, 2013

Senator Clayton Hee  
Chairperson and Committee Members  
Committee On Judiciary and Labor  
415 South Beretania Street, Room 016  
Honolulu, Hawai`i 96813

#### **Re: Senate Bill 1016 Relating to Registration of Covered Offenders**

Dear Senator Hee:

The Hawai`i Police Department supports Senate Bill 1016 with its purpose being 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 s 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:

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- (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 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;

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"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, 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.

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Section 846E-9, HRS, 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.

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Senator Clayton Hee  
January 28, 2013  
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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.

In essence, it is our belief that this bill will clarify many issues regarding sex offender registration and make it easier for the public to understand and abide by the law. The clarifications will also facilitate the application and administration of the sex offender registration law.

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.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK W. CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE TN-DNK

January 29, 2013

The Honorable Clayton Hee, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. 1016, 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, Relating to the 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. Kealoa in black ink.

LOUIS M. KEALOHA  
Chief of Police



# THE SEX ABUSE TREATMENT CENTER

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

*Executive Director*  
Adriana Ramelli

*Advisory Board*

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

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Donne Dawson

Dennis Dunn

Councilmember  
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

DATE: January 27, 2013

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

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

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

Good morning Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor. 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 to amend chapter 846E of the Hawai'i Revised Statutes, Hawai'i's covered offender registration law.

As detailed in testimony by the Department of the Attorney General, 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. 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 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. It also clarifies the periodic verification requirements, especially as to those offenders who have no permanent address and will now be required to report monthly to any police station 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. A strong and effective sex offender registration and notification program is essential to public safety in Hawai'i.