

Honolulu, Hawaii

FEB 14 2013RE: S.B. No. 1016
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1016 entitled:

"A BILL FOR AN ACT RELATING TO REGISTRATION OF COVERED
OFFENDERS,"

begs leave to report as follows:

The purpose and intent of this measure is to update the covered offender registration law to clarify provisions, address issues that have arisen in the implementation of the covered offender registration law, and continue efforts in complying with the federal Sex Offender Registration and Notification Act. Specifically, this measure:

- (1) Makes several amendments to the definitions section of the covered offender registration law by:
 - (A) Defining foreign convictions and tribal convictions to comply with the federal requirements under the Sex Offender Registration and Notification Act;
 - (B) Defining "attorney general", "chief of police", and "out-of-state conviction" for clarity purposes;
 - (C) Defining "permanent residence" and "temporary residence" for purposes of clarifying covered offender registration requirements and specifying that a permanent residence or temporary residence does not include a motor vehicle;



- (D) Amending the definition of "conviction" to clarify that for purposes of covered offender registration, a conviction occurs on the date the judgment is entered;
 - (E) Amending the definitions of "crime against minors" and "sexual offense" to include comparable foreign and tribal convictions to comply with the requirements under the federal Sex Offender Registration and Notification Act, and further amending the definition of "sexual offense" to include any convictions for offenses from other jurisdictions that subjected the offender to covered offender registration and notification in the jurisdiction of the conviction; and
 - (F) Repealing the definitions of "mental abnormality", "personality disorder", and "predatory" as these terms are no longer applicable;
- (2) Makes several amendments to the registration requirements law by:
- (A) Clarifying that covered offenders, whether or not residents of Hawaii, who remain in Hawaii for more than ten days or for an aggregate period exceeding thirty days in one calendar year, are required to register with the Attorney General;
 - (B) Repealing the provision that requires covered offenders from other jurisdictions, who were subject to registration or public notification requirements in the other jurisdiction, to register in Hawaii to conform to the proposed amendments under this measure; and
 - (C) Clarifying the registration information required of a covered offender regarding the place of residence;
- (3) Amends the law relating to the duties upon discharge, parole, or release of a covered offender to clarify 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;

- (4) Makes several amendments to the periodic verification of registration information law by:
 - (A) Requiring covered offenders who register permanent residence addresses to which mail can be delivered, or a permanent residence with a registered post office box, to verify their registration information every ninety days;
 - (B) Requiring covered offenders who register a temporary residence address, a description of a place with no mailing address, no place of residence, or a permanent address to which the United States Postal Service will not deliver mail to report once a month to the Chief of Police to verify their registration information; and
 - (C) Repealing the provision that refers to a violation of the covered offender registration law if the covered offender fails to mail the periodic verification form to the Attorney General within ten days after receipt of the form in order to avoid a conflict with other existing sections of the covered offender registration law;
- (5) Amends requirements regarding registering a change in registration information in order to conform to the proposed amendments made to the periodic verification of registration information requirements under this measure;
- (6) Makes several amendments to the law relating to the failure to comply with covered offender registration requirements by:
 - (A) Creating a new offense for those covered offenders who register a temporary address or no address and fail to report once a month to the Chief of Police to verify the registration information;
 - (B) Creating a new offense for those covered offenders who are required to report once a month to the



Chief of Police and fail to disclose every location where the covered offender has slept in the previous month; and

- (C) Adding an affirmative defense for a covered offender who fails to comply with registration requirements if the covered offender was in custody or civilly committed; and
- (7) Makes several amendments to the termination of registration requirements by:
- (A) Amending tier 3, tier 2, and tier 1 offenses to include the proposed amendments relating to covered foreign and tribunal offenses under this measure; and
 - (B) Creating a residual category under the tier 1 offenses to categorize any covered offenses that are not clearly included within the existing tiered offenses classification.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of the Prosecuting Attorney, County of Maui; Police Department, County of Maui; Police Department, County of Hawai'i; Police Department, City and County of Honolulu; and The Sex Abuse Treatment Center. Testimony in opposition to this measure was submitted by the Office of the Public Defender.

Your Committee finds that this measure will facilitate the State in becoming an active and effective participant in the nationwide network of state sex offender registries that are created to protect the public. The Department of the Attorney General indicated in its written testimony that this measure has the unanimous support of the Hawaii Law Enforcement Coalition comprised 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.

However, your Committee notes the concerns raised by the Office of the Public Defender. The Office expressed the following concerns regarding excluding motor vehicles from the definitions of "permanent residence" and "temporary residence"; using the term "federally recognized" to define a tribal conviction; confusing



language relating to federal, military, out of state, tribal, or foreign convictions; requiring covered offenders who are homeless to report in person to the Chief of Police once a month; making it a violation for these same homeless covered offenders who fail to report once a month every location where the covered offenders slept in the previous month; and creating an affirmative defense to a violation that the covered offender was either in custody or was judicially committed.

Your Committee worked with the Department of the Attorney General and Office of the Public Defender to discuss the concerns that the Office indicated and develop language that both entities could agree upon. Your Committee notes that they were able to agree on language to resolve all but one concern regarding excluding motor vehicles as a permanent or temporary residence. The Office believes that residing in a motor vehicle should not deny a covered offender a permanent or temporary resident status. However, the Department indicated that because a motor vehicle allows a covered offender to move to various locations at any time, this movement makes it more difficult to keep track of these covered offenders. Your Committee agrees with the Office but recognizes the reasons presented by the Department.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the language agreed upon by the Department of the Attorney General and Office of the Public Defender, which:
 - (A) Clarifies that a tribal conviction means a conviction by a tribal court of an Indian tribe recognized by the government of the United States rather than a tribal court of a federally recognized Indian tribe;
 - (B) Deletes confusing language relating to federal, military, out of state, tribal, or foreign convictions under the definition of "sexual offense";
 - (C) Requires covered offenders who register a temporary residence address, a description of a place with no mailing address, or no place of residence to report to the Chief of Police to verify their registration information during the first week of the months of



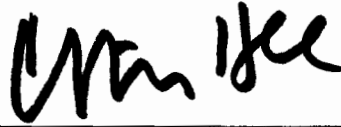
January, April, July, and October of every year rather than once every month;

- (D) Deletes the violation for covered offenders with a temporary residence or no residence who fail to report once a month every location where the covered offenders slept in the previous month; and
 - (E) Amends language that creates an affirmative defense for a covered offender who fails to comply with registration requirements if the covered offender was in custody or civilly committed to clarify that if the defendant intends to rely on this defense, the defendant is required to file a pretrial motion and notify the prosecutor and court;
- (2) Adopting the language developed by the Office of the Public Defender that deletes the exclusion of a motor vehicle under the definitions of "permanent residence" and "temporary residence";
 - (3) Making conforming amendments to the definition of "registration information" and section 806-83(a), Hawaii Revised Statutes, to properly account for the amendments made to the covered offender registration law;
 - (4) Inserting an effective date of July 1, 2050, to encourage further discussion; and
 - (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1016, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1016, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 1016	Committee Referral: JDL	Date: 2/5/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam				✓
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes