

**CHAPTER 846E**  
**REGISTRATION OF SEX OFFENDERS AND OTHER COVERED**  
**OFFENDERS AND PUBLIC ACCESS TO REGISTRATION INFORMATION**

Section

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### **Note**

Chapter heading amended by L 2005, c 45, §2.

### **Revision Note**

Chapter was enacted as addition to title 37 but was renumbered pursuant to §23G-15.

In this chapter, subsection, paragraph, and subparagraph designations are redesignated pursuant to §23G-15(1).

### **Law Journals and Reviews**

When Children Prey on Children: A Look at Hawai'i's Version of Megan's Law and its Application to Juvenile Sex Offenders. 20 UH L. Rev. 477 (1998).

### **Case Notes**

Indecent exposure, in violation of §707-734, does not constitute an offense that entails "criminal sexual conduct" and, consequently, persons convicted of indecent exposure are not "sex offenders" for purposes of this chapter; thus, defendant was not required to register as a "sex offender" pursuant to this chapter. 102 H. 383, 76 P.3d 935 (2003).

Registration requirements under this chapter not cruel and unusual punishment under article I, §12 of the Hawaii constitution as registration requirements are not so punitive in nature as to overcome legislature's remedial purpose. 105 H. 222, 96 P.3d 242 (2004).

The lifetime registration component of the Hawaii sex offender registration statute implicates a protected liberty interest under the Hawaii constitution, article I, §5 and requires that minimum requirements of due process--notice and opportunity to be heard--be afforded to convicted sex offenders; such a proceeding may be instituted by a sex offender in a special proceeding. 105 H. 222, 96 P.3d 242 (2004).

This chapter, as applied to defendant, was not grossly disproportionate to the offenses for which defendant was convicted, as proportionality is not guaranteed by the Eighth Amendment; the question was whether the statute itself effects a punishment which was both severe and unknown to Anglo-American tradition. 105 H. 222, 96 P.3d 242 (2004).

This chapter not violative of ex post facto clause under Article I, §10 of the U.S. Constitution as legislature's express purpose was for chapter to be remedial rather than punitive and

statutory scheme is not so punitive as to negate the State's remedial purpose. 105 H. 222, 96 P.3d 242 (2004).

" **§846E-1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Agency having jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement or place a person on probation, supervised release, or parole and includes the department of public safety, the Hawaii paroling authority, the courts, and the department of health.

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

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

"Clean record" means no conviction for a felony or covered offense, if placed on probation or parole, completion of probation or parole without more than one revocation, and, for sex offenders, successful completion of an appropriate sex offender treatment program, if such program was ordered.

"Conviction" means a judgment on the verdict, or a finding of guilt after a plea of guilty or nolo contendere, excluding the adjudication of a minor, and occurs on the date judgment is entered.

"Covered offender" means a "sex offender" or an "offender against minors", as defined in this section.

"Covered offense" means a criminal offense that is:

- (1) A crime within the definition of "crimes against minors" in this section; or
- (2) A crime within the definition of "sexual offense" in this section.

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

- (1) Kidnapping of a minor, by someone other than a parent;
- (2) Unlawful imprisonment in the first or second degree that involves the unlawful imprisonment of a minor by someone other than a parent;
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (1) or (2);
- (4) A criminal offense that is comparable to or which exceeds one of the offenses designated in paragraphs (1) through (3); or

- (5) Any federal, military, out-of-state, tribal, or foreign conviction for any offense that, under the laws of this State, would be a crime against minors as designated in paragraphs (1) through (4).

"Foreign conviction" means a conviction under the laws of:

- (1) Canada, United Kingdom, Australia, or New Zealand; or
- (2) Any other foreign country, if the United States Department of State, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred and enforces the right to a fair trial to the same or higher standard as the countries listed in paragraph (1).

"Offender against minors" means a person who is not a "sex offender", as defined in this section, and is or has been:

- (1) Convicted at any time, whether before or after May 9, 2005, of a "crime against minors" as defined in this section; or
- (2) Charged at any time, whether before or after May 9, 2005, with a "crime against minors" as defined in this section and who is found unfit to proceed and is released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.

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

"Parent" means a parent, legal guardian, or a person who has a substantial familial or hanai relationship with the minor.

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

"Registration information" means the information specified in section 846E-2(d) and (e).

"Release" means release from:

- (1) Imprisonment;
- (2) Imprisonment and placed on parole;
- (3) Imprisonment and placed on furlough;
- (4) Any form of commitment, custody, or confinement resulting from an order made pursuant to chapter 704; or

(5) A halfway house or other equivalent facility, whichever is later.

"Repeat covered offender" means:

- (1) A person who is or has been convicted at any time, whether before or after May 9, 2005, of more than one covered offense as defined in this section, except that a conviction for multiple counts within a single charging document that allege covered offenses against the same victim and that allege the same date of the covered offense against that single victim shall be considered, for the purposes of this definition, a single covered offense; or
- (2) A person who is or has been charged at any time, whether before or after May 9, 2005, with more than one covered offense as defined in this section and who has been, more than once, either:
  - (A) Convicted;
  - (B) Found unfit to proceed pursuant to chapter 704; or
  - (C) Acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.

"Sex offender" means:

- (1) A person who is or has been convicted at any time, whether before or after May 9, 2005, of a "sexual offense"; or
- (2) A person who is or has been charged at any time, whether before or after May 9, 2005, with a "sexual offense" and is or has been found unfit to proceed and is or has been released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.

"Sexual offense" means an offense that is:

- (1) Set forth in section 707-730(1), 707-731(1), 707-732(1), 707-733(1)(a), 707-733.6, 712-1202(1), or 712-1203(1), but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
  - (A) Criminal sexual conduct toward a minor, including but not limited to an offense set forth in section 707-759;

- (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
  - (C) Use of a minor in a sexual performance;
  - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
  - (E) Electronic enticement of a child chargeable under section 707-756 or 707-757 if the offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in this section; or
  - (F) Solicitation of a minor for prostitution in violation of section 712-1209.1;
- (4) A violation of privacy under section 711-1110.9;
  - (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4);
  - (6) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (5); or
  - (7) Any federal, military, out-of-state, tribal, or foreign conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (6).

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

"Tribal conviction" means a conviction by a tribal court of an Indian tribe recognized by the government of the United States. [L 1997, c 316, pt of §2; am L 1998, c 194, §1; am L 2003, c 62, §3; am L 2004, c 59, §1; am L 2005, c 45, §3; am L 2006, c 60, §5 and c 106, §1; am L 2008, c 80, §4; am L 2009, c 11, §10; am L 2011, c 125, §1; am L 2013, c 64, §§3, 4 and c 247, §5]

#### **Note**

Applicability of 2011 amendment. L 2011, c 125, §4.

The L 2013, c 64, §3 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

#### **Case Notes**

Indecent exposure, in violation of §707-734, does not constitute an offense that entails "criminal sexual conduct"

and, consequently, persons convicted of indecent exposure are not "sex offenders" for purposes of this chapter; thus, defendant was not required to register as a "sex offender" pursuant to this chapter. 102 H. 383, 76 P.3d 935 (2003).

Under article I, §5, of the Hawaii constitution, due process requires that a convicted sex offender under this section be afforded the right to a judicial hearing at which evidence may be offered to demonstrate that continuance of all or part of the lifetime registration requirements are not necessary in a particular case to fulfill the public need to which the sex offender act responded. 105 H. 222, 96 P.3d 242 (2004).

Defendant argued that §707-756 was void for vagueness because "it refers to a confusing labyrinth of language in [this section] that results in guesswork and differences in opinion". There was no constitutionally-infirm vagueness in the "comparable to" language of the catchall provisions in the definitions of "crime against minors" and "sexual offense" (2012); however, the language regarding a criminal offense that "exceeds" one of the specifically-described offenses was unconstitutionally vague. Because defendant's behavior fell under a "clearly proscribed" "covered offense", the "exceeds" language in this section was unnecessary to sustain a conviction against defendant and defendant could not complain of the vagueness of the law as applied to defendant. The second part of the catchall provisions contained some redundancy in the application to §707-756(1), but the criminal prohibition was clear. 131 H. 312 (App.), 318 P.3d 602 (2013).

Where it was not necessary for defendant to actually commit one of the felony offenses defined in this section in order to violate the prohibition against the electronic enticement of a child under §707-756(1) but only necessary under §707-756(1)(b)(iii) that defendant act with the intent to promote or facilitate the commission of a felony offense defined in this section, the State was not required to specify in the indictment which felony offense defined in this section that defendant intended to promote or facilitate. 120 H. 480 (App.), 210 P.3d 3 (2009).

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

order that the covered offender's registration requirements under this chapter be terminated, as provided in section 846E-10.

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

- (1) Providing an order issued by the court that designated the person as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in the state or jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the attorney general that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and such person does not meet the criteria for registration as a covered offender under the laws of this State; or
- (2) Demonstrating that the out-of-state convictions upon which the sexual offender designation was established are not covered offenses under section 846E-1, thereby showing that such person does not meet the criteria for registration as a covered offender under the laws of this State.

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

(c) Each provision of this chapter applicable to sex offenders shall also be applicable to offenders against minors, unless offenders against minors are specifically excluded. Whenever a covered offender's public information is made



publicly accessible, separate registries shall be maintained for:

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

(d) Registration information for each covered offender shall include a signed statement by the covered offender containing:

- (1) The name, all prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known and other identifying information, including date of birth and any alias date of birth, social security number and any alias social security number, sex, race, height, weight, and hair and eye color;
- (2) The actual address and telephone number of the covered offender's permanent residence or the address of the covered offender's current temporary residence, 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;
- (3) The actual address or description of the place or area, the actual length of time of the stay, and telephone number where the covered offender is staying for a period of more than ten days, if other than the stated residence;
- (4) If known, the future address and telephone number of the place where the covered offender is planning to reside, if other than the stated residence;
- (5) Any electronic mail address, any instant message name, any internet designation or moniker, and any internet address used for routing or self-identification;
- (6) Any cell phone number and other designations used for routing or self-identification in telephonic communications;
- (7) Names and, if known, actual business addresses of current and known future employers, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration, and the starting and ending dates of any such employment;
- (8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works, such as information about

normal travel routes or the general area or areas in which the covered offender works;

- (9) Professional licenses held by the covered offender;
- (10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (11) The year, make, model, color, and license or registration or other identifying number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender and the address or description of the place or places where the covered offender's vehicle or vehicles are habitually parked, docked, or otherwise kept;
- (12) Passports and information about the passports, if the covered offender has passports, and documents establishing immigration status and information about these documents, if the covered offender is an alien;
- (13) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- (14) A statement indicating whether the covered offender has received or is currently receiving treatment ordered by a court of competent jurisdiction or by the Hawaii paroling authority;
- (15) A statement indicating whether the covered offender is a United States citizen; and
- (16) Any additional identifying information about the covered offender.

(e) The following information shall also be included in the registry for each covered offender:

- (1) A current photograph of the covered offender;
- (2) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;
- (3) Confirmation that the covered offender has provided digitized fingerprints and palm prints of the covered offender;
- (4) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;

- (5) The text, or an electronic link to the text, of the provision of law defining the criminal offense or offenses for which the covered offender is registered;
- (6) The criminal history of the covered offender, or an electronic link to the criminal history, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the covered offender;
- (7) Confirmation that the covered offender has provided a DNA buccal swab sample as required by chapter 844D;
- (8) Digitized copies of a valid driver's license or identification card issued to the covered offender, or an electronic link to such records; and
- (9) Digitized copies of passports and documents establishing immigration status, or an electronic link to such records.

(f) Whenever a covered offender provides registration information, during initial registration as a covered offender or when providing notice of a change in registration information, the covered offender also shall sign a statement verifying that all of the registration information is accurate and current.

(g) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter until a court relieves the covered offender of the registration requirements of this chapter, each covered offender shall also register in person with the chief of police where the covered offender resides or is present. Registration under this subsection is for the purpose of providing the covered offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the covered offender, whether or not a resident of this State, remains in this State for more than ten days or for an aggregate period exceeding thirty days in one calendar year. Covered offenders required to register in person with the chief of police under this subsection shall register no later than three working days after the earliest of:

- (1) Arrival in this State;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Conviction for a covered offense, unless incarcerated;
- (6) Release on probation;
- (7) Placement on parole; or

- (8) Arrival in a county in which the covered offender resides or expects to be present for a period exceeding ten days.

In addition to any other requirement to register under this subsection or subsection (a), each covered offender shall report in person every five years until June 30, 2009, and beginning on July 1, 2009, every year, within the thirty-day period following the offender's date of birth, 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 for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender's knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other department or agency designated by the attorney general to take a current photograph of the offender.

(h) The registration provisions of this section shall apply to all covered offenders without regard to:

- (1) The date of the covered offender's conviction;
- (2) The date of finding, pursuant to chapter 704, of the covered offender's unfitness to proceed; or
- (3) The date of the covered offender's acquittal due to mental disease, disorder, or defect, pursuant to chapter 704. [L 1997, c 316, pt of §2; am L 1998, c 194, §2; am L 2002, c 234, §1; am L 2003, c 62, §4; am L 2004, c 59, §2; am L 2005, c 45, §4; am L 2006, c 106, §2; am L 2008, c 80, §5; am L 2013, c 64, §5]

#### **Note**

The 2013 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

#### **Case Notes**

As the registration requirements of chapter 846E do not interfere with any of a sex offender's protected liberty interests, the protections of procedural due process are not triggered. 97 H. 285, 36 P.3d 1255 (2001).

The lifetime registration component of the Hawaii sex offender registration statute implicates a protected liberty interest under the Hawaii constitution, article I, §5 and requires that minimum requirements of due process--notice and opportunity to be heard--be afforded to convicted sex offenders; such a proceeding may be instituted by a sex offender in a special proceeding. 105 H. 222, 96 P.3d 242 (2004).

" **§846E-3 Access to registration information.** (a)

Registration information shall be disclosed as follows:

- (1) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
  - (2) The information shall be disclosed to government agencies conducting confidential background checks; and
  - (3) The attorney general and any county police department shall release public information as provided in subsection (b) concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released.
- (b) For purposes of this section, "public information"

means:

- (1) Name, prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known;
- (2) The year of the covered offender's date of birth and the year of the covered offender's alias dates of birth;
- (3) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;
- (4) The actual address where the covered offender resides or any current, temporary address where the covered offender resides or, if an address is not available, a description of any 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;
- (5) The actual address or description of the place or area where the covered offender is staying for more than ten days, if other than the stated residence, and the actual length of time of the stay;
- (6) The future actual address, if known, where the covered offender is planning to reside, if other than the stated residence;
- (7) The street name and zip code of the covered offender's current locations of employment, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration;
- (8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works;

- (9) Professional licenses held by the covered offender;
- (10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (11) The year, make, model, color, and license number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender, excluding vehicles operated exclusively for purposes of work;
- (12) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- (13) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;
- (14) The text, or an electronic link to the text, of the provision of law defining the criminal offense or offenses for which the covered offender is registered; and
- (15) A recent photograph of the covered offender.

The identity of any victim of a sexual offense shall not be disclosed and any documentation containing such information shall be redacted to prevent disclosure.

(c) To facilitate community notification, after a covered offender registers or updates a registration, the attorney general may provide public information in the registry about that offender to any organization, company, or individual who requests such notification pursuant to procedures established by the attorney general through rules adopted pursuant to chapter 91.

(d) A covered offender may seek correction of erroneous public information by petitioning the attorney general to make the correction. If the covered offender is not satisfied with the decision of the attorney general on the request for correction, the covered offender may appeal the decision pursuant to chapter 91.

(e) Public access to a covered offender's public information shall be permitted with regard to each covered offender beginning the next working day following the filing of a judgment of conviction, a finding of unfitness to proceed or an acquittal due to mental disease, disorder, or defect, for a covered offense, or as soon thereafter as is practical. When a notice of appeal has been filed, the public information shall note that the covered offender has filed a notice of appeal.

The public information shall be removed upon the reversal of the covered offender's conviction or the granting of a pardon to the covered offender.

(f) Public access authorized by this section shall be provided by both public internet access and on-site public access; provided that on-site public access shall be provided for each covered offender at the Hawaii criminal justice data center and at one or more designated police stations in each county, to be designated by the attorney general, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, excluding holidays.

(g) Public access to the public information for each covered offender shall be permitted while the covered offender is subject to sex offender registration, except that after forty years have elapsed after release or sentencing, whichever is later, a covered offender may petition the court in a civil proceeding to terminate public access. In the civil proceeding to terminate public access, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the State to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

- (1) The covered offender has had no new convictions for covered offenses;
- (2) The covered offender is very unlikely to commit a covered offense ever again; and
- (3) Public access to the covered offender's public information will not assist in protecting the safety of the public or any member thereof;

provided that a denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

(h) If a covered offender has been convicted of only one covered offense and that covered offense is a misdemeanor, the covered offender shall not be subject to the public access requirements set forth in this section.

(i) The following message shall be posted at both the site of internet access and on-site public access locations:

"Information regarding covered offenders is permitted pursuant to chapter 846E. Public access to this information is based solely on the fact of each offender's criminal conviction and is not based on an estimate of the offender's level of dangerousness. By allowing public access to this information, the State makes no representation as to whether the covered offenders listed are dangerous. Any person who uses the information in this registry to injure, harass, or commit a criminal act against any person included in the registry may be subject to criminal prosecution, civil liability, or both."

(j) The public access provisions of this section shall apply to all covered offenders without regard to the date of conviction.

(k) "Conviction" as used in this section means:

- (1) A judgment on the verdict, or a finding of guilt after a plea of guilty or nolo contendere, excluding the adjudication of a minor;
- (2) A finding of unfitness to proceed resulting in the release of the covered offender into the community, excluding such a finding as to a minor; or
- (3) An acquittal due to a physical or mental disease, disorder, or defect pursuant to chapter 704 resulting in the release of the covered offender into the community, excluding such acquittal as to a minor. [L 1997, c 316, pt of §2; am L 1998, c 194, §3; am L 2002, c 234, §2; am L 2003, c 62, §5; am L 2004, c 59, §3; am L 2005, c 45, §5; am L 2006, c 106, §3; am L 2008, c 80, §6]

#### Case Notes

As this section operated to deprive defendant of a protected liberty interest and provided defendant with neither notice nor an opportunity to be heard prior to notifying the public of defendant's status as a convicted sex offender, this section denied defendant due process under article I, §5 of the Hawaii constitution; this section is thus void and unenforceable. 97 H. 285, 36 P.3d 1255 (2001).

" **§846E-4 Duties upon discharge, parole, or release of covered offender.** (a) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a covered offender has been committed pursuant to a conviction, or an acquittal or finding of unfitness to proceed pursuant to chapter 704, for a covered offense, and each judge, or that judge's designee, who continues



bail for or releases a covered offender following sentencing and the entry of a judgment of conviction, who releases a covered offender on probation or who discharges a covered offender upon payment of a fine, and each agency having jurisdiction, shall, prior to the discharge, parole, or release of the covered offender:

- (1) Explain to the covered offender the duty to register and the consequences of failing to register under this chapter;
- (2) Obtain from the covered offender all of the registration information required by this chapter;
- (3) Inform the covered offender that if at any time the covered offender changes any of the covered offender's registration information, the covered offender shall notify the attorney general of the new registration information in writing within three working days;
- (4) Inform the covered offender that, if at any time the covered offender changes residence to another state, the covered offender shall register the new address with the attorney general and also with a designated law enforcement agency in the new state, if the new state has a registration requirement, within the period of time mandated by the new state's sex offender registration laws;
- (5) Obtain and verify fingerprints and a photograph of the covered offender, if these have not already been obtained or verified in connection with the offense that triggers the registration;
- (6) Require the covered offender to sign a statement indicating that the duty to register has been explained to the covered offender; and
- (7) Give one copy of the signed statement and one copy of the registration information to the covered offender.

(b) No covered offender required to register under this chapter shall be discharged, released from any confinement, or placed on parole or probation unless the requirements of subsection (a) have been satisfied and all registration information required under section 846E-2 has been obtained.

(c) Notwithstanding any law to the contrary, a copy of the signed statement and one copy of the registration information shall be transmitted to the attorney general within three working days.

(d) Following receipt of the information from the agency having jurisdiction over the covered offender, the attorney general immediately shall enter the information into a statewide record system, unless the information has been previously entered into a statewide record system, and notify the county

police department or appropriate law enforcement agency having jurisdiction where the covered offender expects to reside. The attorney general immediately shall transmit the conviction data and verified fingerprints to the Federal Bureau of Investigation, unless the items have been previously transmitted to the Federal Bureau of Investigation.

(e) The chief of police shall transmit any covered offender registration information required by this chapter to the attorney general, by entering the information into a statewide record system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph and fingerprints of the covered offender, taken at the time the covered offender registers with the chief of police. The covered offender shall report in person every five years until June 30, 2009, and beginning on July 1, 2009, every year, within the thirty-day period following the offender's date of birth, to the chief of police where the covered offender's residence is located, or to such other department or agency that may be designated by the attorney general in rules adopted pursuant to chapter 91 for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender's knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other department or agency designated by the attorney general to take a current photograph of the offender. [L 1997, c 316, pt of §2; am L 1998, c 194, §§4 to 6; am L 2003, c 62, §§6, 7; am L 2005, c 45, §6; am L 2008, c 80, §7; am L 2013, c 64, §6]

#### **Note**

The 2013 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

#### **Case Notes**

As the registration requirements of chapter 846E do not interfere with any of a sex offender's protected liberty interests, the protections of procedural due process are not triggered. 97 H. 285, 36 P.3d 1255 (2001).

#### **" §846E-5 Periodic verification of registration information.**

(a) For the covered offender who has registered a permanent residence address to which the United States Postal Service will deliver mail or a permanent residence and a registered post office box, during the first week of the months of January,

April, July, and October of every year, the attorney general shall mail a nonforwardable verification form to the last reported permanent residence address or post office box of the covered offender. Upon receipt of the verification form:

- (1) The covered offender shall sign the verification form and state that the covered offender still resides at the address last reported to the attorney general and that no other registration information has changed or shall provide the new information; and
- (2) The covered offender shall mail the signed and completed verification form to the attorney general within ten days after receipt of the form.
- (b) For the covered offender who has registered:
  - (1) A temporary residence address;
  - (2) A description of a place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period;
  - (3) No place of residence; or
  - (4) A permanent residence address, to which the United States Postal Service will not deliver mail, and has no registered post office box,

during the first week of the months of January, April, July, and October of every year, the covered offender shall 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 for purposes of administration of this section, and shall review the existing information in the registry that is within the covered offender's knowledge, correct any information that has changed or is inaccurate, and provide any new information that may be required.

(c) The periodic verification provisions of this section shall not apply to covered offenders who are incarcerated or have registered with a designated law enforcement agency after establishing residence in another state. [L 1997, c 316, pt of §2; am L 2005, c 45, §7; am L 2013, c 64, §7]

#### **Note**

The 2013 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

#### **Case Notes**

As the registration requirements of chapter 846E do not interfere with any of a sex offender's protected liberty

interests, the protections of procedural due process are not triggered. 97 H. 285, 36 P.3d 1255 (2001).

" **§846E-6 Requirement to register a change of registration information; verification by the attorney general.** (a) A covered offender required to register under this chapter, who changes any of the covered offender's registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person is absent from the person's registered residence for ten or more days. If, at any time, a covered offender required to register under this chapter is absent from the person's registered residence for ten or more days, the covered offender shall notify the attorney general in writing within three working days of the covered offender's current residence information. If the covered offender leaves the State and establishes a new residence in another state that has a registration requirement, the person shall register with the designated law enforcement agency in the state to which the person moves, within the period of time mandated by the new state's sex offender registration laws.

(b) If the attorney general receives notice from the Federal Bureau of Investigation that a covered offender required to be registered under this chapter or under any federal law has entered the State, the attorney general shall notify the Federal Bureau of Investigation of the offender's new residence.

(c) If the attorney general cannot verify the address of or locate a covered offender required to be registered under this chapter or under federal law, the attorney general immediately shall notify the Federal Bureau of Investigation. [L 1997, c 316, pt of §2; am L 1998, c 194, §§7, 8; am L 2003, c 62, §8; am L 2004, c 59, §4; am L 2005, c 45, §8; am L 2006, c 106, §4; am L 2013, c 64, §8]

#### **Note**

The 2013 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

#### **Case Notes**

As the registration requirements of chapter 846E do not interfere with any of a sex offender's protected liberty

interests, the protections of procedural due process are not triggered. 97 H. 285, 36 P.3d 1255 (2001).

" **§846E-7 Notification by the attorney general of changes in registration information.** Immediately, and in no event, not later than ten days after receiving notice of a change of registration information, the attorney general shall report the change of registration information by a covered offender required to register under this chapter to the county police department where the covered offender is residing and, in the event the covered offender changes address to another county or state, shall report such change of address to the Federal Bureau of Investigation. If the person changes residence to another state, the attorney general also shall notify the law enforcement agency with which the person must register in the new state, if the new state has a registration requirement. [L 1997, c 316, pt of §2; am L 1998, c 194, §9; am L 2005, c 45, §9]

" **[§846E-8] Good faith immunity.** Law enforcement agencies, employees of law enforcement agencies, and state and county officials shall be immune from liability for good faith conduct under this chapter. [L 1997, c 316, pt of §2]

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

- (1) Fails to register with the attorney general by providing to the attorney general or the Hawaii criminal justice data center the person's registration information;
- (2) Fails to report in person every five years until June 30, 2009, and beginning on July 1, 2009, once every year, during the thirty-day period following the offender's date of birth, to the chief of police where the covered offender's residence is located, or to such other department or agency designated by the attorney general;
- (3) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to correct information in the registry within the offender's knowledge that has changed or is inaccurate regarding information required by section 846E-2(d)(1) through (12);

- (4) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to provide new information that may be required by section 846E-2(d)(1) through (12);
- (5) While reporting to the chief of police or such other department or agency designated by the attorney general, does not allow the police or other designated department or agency to take a current photograph of the person;
- (6) Fails to register in person with the chief of police having jurisdiction of the area where the covered offender resides or is present within three working days whenever the provisions of section 846E-2(g) require the person to do so;
- (7) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the covered offender's registration information in writing within three working days of the change;
- (8) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- (9) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current;
- (10) Having failed to establish a new residence within the ten days while absent from the person's registered residence for ten or more days fails to notify the attorney general in writing within three working days of the covered offender's current residence information;
- (11) Fails to mail or deliver the periodic verification of registration information form to the attorney general within ten days of receipt, as required by section 846E-5; provided that it shall be an affirmative defense that the periodic verification form mailed to the covered offender was delivered when the covered offender was absent from the registered address and the covered offender had previously notified the Hawaii criminal justice data center that the covered offender would be absent during the period that the periodic verification form was delivered; or
- (12) 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).

(b) With respect to subsection (a)(1), (2), (6), (7), (10), (11), or (12), if a defendant intends to rely upon the defense that the covered offender was in custody or civilly committed, the defendant shall within the time provided for the filing of pretrial motions or at a later time as the court may direct, notify the prosecutor in writing of the defendant's intention and file a copy of the notice with the court.

(c) Failure to comply with covered offender registration requirements is a class C felony. [L 1997, c 316, pt of §2; am L 2004, c 59, §5; am L 2005, c 45, §10; am L 2006, c 106, §5; am L 2008, c 80, §8; am L 2013, c 64, §9]

" **§846E-10 Termination of registration requirements.** (a) Tier 3 offenses. A covered offender whose covered offense is any of the following offenses shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements:

- (1) Any offense set forth in section 707-730(1)(a), (b), (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b), or (f), or 707-733.6;
- (2) An offense set forth in section 707-720; provided that the offense involves kidnapping of a minor by someone other than a parent;
- (3) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1) or (2);
- (4) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), or (3); or
- (5) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), or (3).

(b) A repeat covered offender shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements.

(c) Tier 2 offenses. A covered offender who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding,

for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202, or 712-1203(1)(b), as section 712-1203(1)(b) read prior to its amendment pursuant to section 9 of Act 147, Session Laws of Hawaii 2008;
- (2) An offense set forth in section 707-720; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

(d) Tier 1 offenses. A covered offender who has maintained a clean record for the previous ten years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous ten years, or for the portion of that ten years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-732(1)(d) or (e), 707-733(1)(a), 707-752, 707-759, 711-1110.9, 712-1203(1), or 712-1209.1;
- (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
- (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);



- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4);
- (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (7) Any other covered offense that is not specified in subsection (a) or (c) or paragraph (1), (2), (3), (4), (5), or (6).

(e) Notwithstanding any other provisions in this section, any covered offender, forty years after the covered offender's date of release or sentencing, whichever is later, for the covered offender's most recent covered offense, may petition the court, in a civil proceeding, for termination of registration requirements.

(f) In the civil proceeding for termination of registration requirements, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the State to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

- (1) The covered offender has met the statutory requirements of eligibility to petition for termination;
- (2) The covered offender has substantially complied with registration requirements;
- (3) The covered offender is very unlikely to commit a covered offense ever again; and
- (4) Registration by the covered offender will not assist in protecting the safety of the public or any member thereof.

(g) A denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial. [L 2005, c 45, pt of §1; am L 2008, c 80, §9; am L 2011, c 125, §2; am L 2013, c 64, §10 and c 247, §6; am L 2016, c 206, §19]

#### **Note**

Applicability of 2011 amendment. L 2011, c 125, §4.

The L 2013, c 64, §10 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

" **§846E-11 REPEALED.** L 2008, c 80, §10.

" **[§846E-12] Tolling.** The time periods provided for in this chapter shall be tolled during any period of time the covered offender is committed or recommitted to prison or confined to a halfway house, or an equivalent facility, pursuant to a parole or probation violation. [L 2005, c 45, pt of §1]

" **§846E-13 REPEALED.** L 2008, c 80, §11.