

SB2741

Measure Title: RELATING TO COVERED OFFENDER REGISTRATION.

Report Title: Covered Offender Registration

Description:

Adds section 707-733(1)(b), Hawaii Revised Statutes, as a covered offense when committed towards a minor, and provides uniformity to the requirements for defendants that are involuntarily hospitalized pursuant to section 706-607, Hawaii Revised Statutes, or have charges dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, Hawaii Revised Statutes.

Companion: [HB2314](#)

Package: Governor

Current Referral: CPH/PSM, JDC

Introducer(s): KOUCHI (Introduced by request of another party)



**Office of the Public Defender
State of Hawaii**



**Testimony of the Office of the Public Defender
to the Senate Committee on Public Safety, Intergovernmental, and Military Affairs
and the Senate Committee on Commerce, Consumer Protection, and Health**

January 31, 2018

S.B. No. 2741: RELATING TO COVERED OFFENDER REGISTRATION.

Chair Clarence K. Nishihara, Chair Rosalyn H. Baker, and Members of the Committees:

The Office of the Public Defender opposes passage of S.B. No. 2741 in its current form. Specifically, we are concerned about the inclusion of the misdemeanor offense of Sexual Assault in the Fourth Degree in violation of 707-733(1)(b) as committed toward a minor. Specifically, 707-733(1)(b) states the following offense:

- (1) A person commits the offense of sexual assault in the fourth degree if:
 - (b) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury.

We are concerned that the requirement of lifetime mandatory sex offender registration for this misdemeanor offense – if committed against a minor – would be an over use and an abuse of the sex offender registration requirements. A misdemeanor offense generally carries a penalty of the possibility of a one-year term of incarceration and/or a fine of \$2,000. This reflects the severity of the offense in our current penal code. By including the proposed language, this measure in essence is creating a lifetime penalty upon any person convicted of this misdemeanor offense. We submit that a lifetime requirement to register as a sex offender for this offense is inappropriate and goes beyond the needs of the safety of the community.

Sex offender registration is more than a mere list of people with convictions – it requires mandatory reporting, mandatory inclusion of personal information accessible to the public, and it has the real life consequences of dictating where you can or cannot live, your ability to participate in the lives of your children and their school activities, your ability to get a job, your ability to attend college or seek higher education, your ability to rent an apartment. We submit that mandatory sex offender registration for this misdemeanor offense goes too far and subjects people to a “penalty” that far exceeds the level of offense in our penal code.

Our office is mindful of the need to protect the public and the need to keep our children safe. However, we urge caution in expanding the sex offender registration requirements to include misdemeanor offenses.

For these reasons, we oppose S.B. No. 2741.

Thank you for the opportunity to provide testimony in this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2741, RELATING TO COVERED OFFENDER REGISTRATION.

BEFORE THE:

SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH AND ON
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

DATE: Tuesday, February 6, 2018 **TIME:** 12:45 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Christopher D.W. Young, Hawaii Criminal Justice Data Center
Administrator

Chairs Baker and Nishihara and Members of the Committees:

The Department of the Attorney General supports this bill.

The purpose of this bill is to specifically include section 707-733(1)(b), Hawaii Revised Statutes (HRS), as a tier 1 covered sexual offense when the offense is committed toward a minor, and to provide uniformity by adding wording relating to covered offender requirements when the defendant is charged with a covered offense and subject to involuntary hospitalization under section 706-607, HRS, or the charges are dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS to the existing requirements of when the defendant is charged with a covered offense and acquitted by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS.

A person commits an offense under section 707-733(1)(b), HRS, when the person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the person in fear of bodily injury. When committed against a minor, this offense is considered a covered sexual offense under chapter 846E, HRS, under the broad term of "sexual conduct towards a minor", which may be subject to interpretation and potentially challenged in court. Explicitly listing section 707-733(1)(b) as a covered offense when committed

toward a minor will resolve any interpretation issues and allow for timelier determinations of whether the offender is subject to register as a covered offender.

This bill will also provide uniformity for the application of registration requirements regarding defendants with diminished mental capacities. Currently, registration under chapter 846E, HRS, is required by offenders charged with a covered offense and acquitted due to a physical and mental disease, disorder, or defect pursuant to chapter 704, HRS, but is not required when the offender had the charges dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS, or is involuntarily hospitalized under section 706-607, HRS. The passage of this bill will allow the public and other entities who check the covered sex offender and offender against minor registry to be aware of these offenders' registration status.

We respectfully ask the Committee to pass this bill.