
A BILL FOR AN ACT

RELATING TO COVERED OFFENDER REGISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that sex offenders
2 present an extreme threat to public safety due to high rates of
3 sexual recidivism. To mitigate this threat, Hawaii established
4 covered offender registration laws to require the public release
5 of relevant information concerning the presence of convicted sex
6 offenders in the community.

7 The legislature further finds that there are certain gaps
8 under the current registration laws for sexual offenses,
9 including offenses committed against minors. For example, the
10 public disclosure of registration information is not required
11 for an offender who, while acting in a professional capacity,
12 commits the offense of sexual assault in the fourth degree
13 against a minor who is at least sixteen years of age. This
14 omission would allow these sex offenders, who abused their
15 position of trust, power, authority, or supervision to engage in
16 sexual contact with a minor, to evade public detection and
17 continue to prey upon children in the community.



1 Accordingly, the purpose of this Act is to amend the
2 covered offender registration laws to:

- 3 (1) Include offenders who commit the offense of:
- 4 (A) Sexual assault in the fourth degree by exposing
 - 5 the offender's genitals to another person under
 - 6 circumstances in which the offender's conduct is
 - 7 likely to alarm the other person or put the other
 - 8 person in fear of bodily injury;
 - 9 (B) Sexual assault in the fourth degree against a
 - 10 minor who is at least sixteen years old while the
 - 11 offender is acting in a professional capacity;
 - 12 (C) Incest;
 - 13 (D) Sexual assault of an animal; or
 - 14 (E) Use a computer in the commission of a separate
 - 15 crime, wherein the separate crime is a covered
 - 16 offense subject to covered offender registration
 - 17 laws;
- 18 (2) Require public disclosure for covered offenses that
- 19 are committed against minors, regardless of whether
- 20 the conviction was for a first-time misdemeanor
- 21 offense;



1 (3) Clarify that a person who is required to report their
2 location of residence in person every year under the
3 covered offender registration requirements shall
4 report during the thirty-day period following the
5 offender's birthday, rather than the offender's actual
6 date of birth; and

7 (4) Specify how certain covered offenses are to be tiered
8 for purposes of seeking termination of registration
9 requirements.

10 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "sexual offense" to read
12 as follows:

13 ""Sexual offense" means an offense that is:

14 (1) Set forth in section 707-730(1), 707-731(1),
15 707-732(1), 707-733(1)(a), (b), or (d), 707-733.6,
16 707-741, 711-1109.8, 712-1200.5(4), 712-1202(1), or
17 712-1203(1), but excludes conduct that is criminal
18 ~~[only because of the age of the victim, as provided~~
19 ~~in] pursuant to section 707-730(1)(b), [or section]~~
20 707-732(1)(b), or 707-741, if the perpetrator is under
21 the age of eighteen~~[+]~~, and also excludes conduct that



1 is criminal pursuant to section 707-733(1)(b) or (d)
2 if the perpetrator is under the age of twenty-five at
3 the time of the offense;

4 (2) An act defined in section 707-720 if the charging
5 document for the offense for which there has been a
6 conviction alleged intent to subject the victim to a
7 sexual offense;

8 (3) An act that consists of:

9 (A) Criminal sexual conduct toward a minor, including
10 but not limited to an offense set forth in
11 section 707-759;

12 (B) Solicitation of a minor who is less than fourteen
13 years old to engage in sexual conduct;

14 (C) Use of a minor in a sexual performance;

15 (D) Production, distribution, or possession of child
16 pornography chargeable as a felony under section
17 707-750, 707-751, or 707-752;

18 (E) Electronic enticement of a child chargeable under
19 section 707-756 or 707-757 if the offense was
20 committed with the intent to promote or



1 facilitate the commission of another covered
2 offense as defined in this section; or

3 (F) Commercial sexual exploitation of a minor in
4 violation of section 712-1209.1;

5 (4) A violation of privacy under section 711-1110.9;

6 (5) An act that consists of use of a computer in the
7 commission of a separate crime under section 708-893,
8 wherein the separate crime is a covered offense, as
9 defined in this section;

10 [~~5~~] (6) An act, as described in chapter 705, that is an
11 attempt, criminal solicitation, or criminal conspiracy
12 to commit one of the offenses designated in paragraphs
13 (1) through [~~4~~] (5);

14 [~~6~~] (7) A criminal offense that is comparable to or that
15 exceeds a sexual offense as defined in paragraphs (1)
16 through [~~5~~] (6); or

17 [~~7~~] (8) Any federal, military, out-of-state, tribal, or
18 foreign conviction for any offense that under the laws
19 of this State would be a sexual offense as defined in
20 paragraphs (1) through [~~6~~] (7)."



1 SECTION 3. Section 846E-3, Hawaii Revised Statutes, is
2 amended by amending subsection (h) to read as follows:

3 "(h) If a covered offender has been convicted of only one
4 covered offense and that covered offense is a misdemeanor~~[7]~~ and
5 was not committed against a minor, the covered offender shall
6 not be subject to the public access requirements set forth in
7 this section."

8 SECTION 4. Section 846E-9, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) A person commits the offense of failure to comply
11 with covered offender registration requirements if the person is
12 required to register under this chapter and the person
13 intentionally, knowingly, or recklessly:

14 (1) Fails to register with the attorney general by
15 providing to the attorney general or the Hawaii
16 criminal justice data center the person's registration
17 information;

18 (2) Fails to report in person every five years until
19 June 30, 2009, and beginning on July 1, 2009, once
20 every year, during the thirty-day period following the
21 offender's ~~[date of birth,]~~ birthday to the chief of



- 1 police where the covered offender's residence is
2 located, or to such other department or agency
3 designated by the attorney general;
- 4 (3) While reporting to the chief of police or such other
5 department or agency designated by the attorney
6 general, fails to correct information in the registry
7 within the offender's knowledge that has changed or is
8 inaccurate regarding information required by section
9 846E-2(d) (1) through (12);
- 10 (4) While reporting to the chief of police or such other
11 department or agency designated by the attorney
12 general, fails to provide new information that may be
13 required by section 846E-2(d) (1) through (12);
- 14 (5) While reporting to the chief of police or such other
15 department or agency designated by the attorney
16 general, does not allow the police or other designated
17 department or agency to take a current photograph of
18 the person;
- 19 (6) Fails to register in person with the chief of police
20 having jurisdiction of the area where the covered
21 offender resides or is present within three working



- 1 days whenever the provisions of section 846E-2(g)
2 require the person to do so;
- 3 (7) Fails to notify the attorney general or the Hawaii
4 criminal justice data center of a change of any of the
5 covered offender's registration information in writing
6 within three working days of the change;
- 7 (8) Provides false registration information to the
8 attorney general, the Hawaii criminal justice data
9 center, or a chief of police;
- 10 (9) Signs a statement verifying that all of the
11 registration information is accurate and current when
12 any of the registration information is not
13 substantially accurate and current;
- 14 (10) Having failed to establish a new residence within the
15 ten days while absent from the person's registered
16 residence for ten or more days, fails to notify the
17 attorney general in writing within three working days
18 of the covered offender's current residence
19 information;
- 20 (11) Fails to mail or deliver the periodic verification of
21 registration information form to the attorney general



1 within ten days of receipt, as required by section
 2 846E-5; provided that it shall be an affirmative
 3 defense that the periodic verification form mailed to
 4 the covered offender was delivered when the covered
 5 offender was absent from the registered address and
 6 the covered offender had previously notified the
 7 Hawaii criminal justice data center that the covered
 8 offender would be absent during the period that the
 9 periodic verification form was delivered; or

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

18 SECTION 5. Section 846E-10, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 "§846E-10 Termination of registration requirements. (a)
 21 Tier 3 offenses. A covered offender whose covered offense is



1 any of the following offenses shall register for life and,
2 except as provided in subsection [~~(e)~~, ~~may~~] (f), shall not
3 petition the court, in a civil proceeding, for termination of
4 registration requirements:

5 (1) Any offense set forth in section 707-730(1) (a), (b),
6 (d), or (e); 707-731(1) (a) or (b); 707-732(1) (a), (b),
7 or (g); or 707-733.6;

8 (2) An offense set forth in section 707-720; provided that
9 the offense involves kidnapping of a minor by someone
10 other than a parent;

11 (3) An offense that is an attempt, criminal solicitation,
12 or criminal conspiracy to commit any of the offenses
13 in paragraph (1) or (2);

14 (4) Any criminal offense that is comparable to one of the
15 offenses in paragraph (1), (2), or (3); or

16 (5) Any federal, military, out-of-state, tribal, or
17 foreign offense that is comparable to one of the
18 offenses in paragraph (1), (2), or (3).

19 (b) A repeat covered offender shall register for life and,
20 except as provided in subsection [~~(e)~~, ~~may~~] (f), shall not



1 petition the court, in a civil proceeding, for termination of
2 registration requirements.

3 (c) Tier 2 offenses. A covered offender who has
4 maintained a clean record for the previous twenty-five years,
5 excluding any time the offender was in custody or civilly
6 committed, and who has substantially complied with the
7 registration requirements of this chapter for the previous
8 twenty-five years, or for the portion of that twenty-five years
9 that this chapter has been applicable, and who is not a repeat
10 covered offender may petition the court, in a civil proceeding,
11 for termination of registration requirements; provided that the
12 covered offender's most serious covered offense is one of the
13 following:

14 (1) Any offense set forth in section 707-730(1)(c),
15 707-731(1)(c) [~~7~~] or (d), 707-732(1)(c), 707-750,
16 707-751, 712-1202, or 712-1203(1)(b), as section
17 712-1203(1)(b) read before its amendment pursuant to
18 section 9 of Act 147, Session Laws of Hawaii 2008;

19 (2) An offense set forth in section 707-720; provided that
20 the charging document for the offense for which there



1 has been a conviction alleged intent to subject the
2 victim to a sexual offense;

3 (3) An offense set forth in section 707-756 that includes
4 an intent to promote or facilitate the commission of
5 another felony covered offense as defined in section
6 846E-1;

7 (4) An offense that is an attempt, criminal solicitation,
8 or criminal conspiracy to commit any of the offenses
9 in paragraph (1), (2), or (3);

10 (5) Any criminal offense that is comparable to one of the
11 offenses in paragraph (1), (2), (3), or (4); or

12 (6) Any federal, military, out-of-state, tribal, or
13 foreign offense that is comparable to one of the
14 offenses in paragraph (1), (2), (3), or (4).

15 (d) Tier 1 offenses. A covered offender who has
16 maintained a clean record for the previous ten years, excluding
17 any time the offender was in custody or civilly committed, and
18 who has substantially complied with the registration
19 requirements of this chapter for the previous ten years, or for
20 the portion of that ten years that this chapter has been
21 applicable, and who is not a repeat covered offender may



1 petition the court, in a civil proceeding, for termination of
2 registration requirements; provided that the covered offender's
3 most serious covered offense is one of the following:

4 (1) Any offense set forth in section 707-732(1)(d), (e),
5 or (f); 707-733(1)(a) [~~+~~], (b), or (d); 707-741;
6 707-752; 707-759; 711-1109.8; 711-1110.9; 712-1203(1);
7 or 712-1209.1;

8 (2) An offense set forth in section 707-721 or 707-722;
9 provided that the offense involves unlawful
10 imprisonment of a minor by someone other than a
11 parent;

12 (3) An offense set forth in section 707-757 that includes
13 an intent to promote or facilitate the commission of
14 another covered offense as defined in section 846E-1;

15 (4) An offense that is an attempt, criminal solicitation,
16 or criminal conspiracy to commit any of the offenses
17 in paragraph (1), (2), or (3);

18 (5) Any criminal offense that is comparable to one of the
19 offenses in paragraph (1), (2), (3), or (4);



1 (6) Any federal, military, out-of-state, tribal, or
2 foreign offense that is comparable to one of the
3 offenses in paragraph (1), (2), (3), or (4); or

4 (7) Any other covered offense that is not specified in
5 subsection (a) or (c) or paragraph (1), (2), (3), (4),
6 (5), or (6).

7 (e) If the covered offender's most serious covered offense
8 is set forth in section 708-893, then the designated tier of the
9 separate crime as provided in section 708-893, shall set forth
10 the covered offender's appropriate termination of registration
11 requirements.

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

18 [~~(f)~~] (g) In the civil proceeding for termination of
19 registration requirements, the State shall be represented by the
20 attorney general; provided that the attorney general, with the
21 prosecuting agency's consent, may designate the prosecuting



1 agency that prosecuted the covered offender for the most recent
2 covered offense within the State to represent the State. For
3 covered offenders who have never been convicted of a covered
4 offense within the State, the attorney general shall represent
5 the State; provided that the attorney general, with the
6 prosecuting agency's consent, may designate the prosecuting
7 agency for the county in which the covered offender resides to
8 represent the State. The court may order this termination upon
9 substantial evidence and more than proof by a preponderance of
10 the evidence that:

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



1 [~~(g)~~] (h) A person who does not meet the criteria for
2 registration as a covered offender under the laws of this State,
3 but is subject to registration pursuant to section 846E-2(b),
4 may petition the court, in a civil proceeding, for termination
5 of registration requirements; provided that the person has
6 maintained a clean record for the previous ten years, excluding
7 any time the person was in custody or civilly committed; has
8 substantially complied with the registration requirements of
9 this chapter for the previous ten years; and was not designated
10 a repeat covered offender in any state or jurisdiction. The
11 attorney general shall represent the State; provided that the
12 attorney general, with the prosecuting agency's consent, may
13 designate the prosecuting agency for the county in which the
14 person resides to represent the State. The court may order this
15 termination upon substantial evidence and more than proof by a
16 preponderance of the evidence that:

- 17 (1) The person has met the statutory requirements of
18 eligibility to petition for termination;
- 19 (2) The person has substantially complied with
20 registration requirements;



1 (3) The person is very unlikely to commit a covered
2 offense; and

3 (4) Registration by the person will not assist in
4 protecting the safety of the public or any member
5 thereof.

6 [~~h~~] (i) A denial by the court for relief pursuant to a
7 petition under this section shall preclude the filing of another
8 petition for five years from the date of the most recent
9 denial."

10 SECTION 6. This Act shall not affect rights and duties
11 that matured, penalties and forfeitures that were incurred, and
12 proceedings that were begun before its effective date.

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Covered Offender Registration; Sexual Offense; Public Access;
Termination of Registration

Description:

Amends covered offender registration laws by expanding the definition of "sexual offense" to include additional sexual offenses from the Penal Code. Provides that the exception to covered offender registry public access requirements for a first-time misdemeanor offense does not apply when the covered offense was committed against a minor. Clarifies that a person who is required to report their location of residence in person every year under the covered offender registration requirements shall report during the thirty-day period following the offender's birthday, rather than from the offender's actual date of birth. Specifies how certain covered offenses are to be tiered for purposes of seeking termination of registration requirements. (CD1)

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