
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. This omission would
14 allow these sex offenders, who abused their position of trust,
15 power, authority, or supervision to engage in sexual contact
16 with a minor, to evade public detection and continue to prey
17 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) Require a person who is required to report every year
2 under the covered offender registration requirements
3 to report during the thirty-day period following the
4 offender's birthday, rather than date of birth; and
- 5 (4) Specify how certain covered offenses are to be tiered
6 for purposes of seeking termination of registration
7 requirements.

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

11 "Sexual offense" means an offense that is:

- 12 (1) Set forth in section 707-730(1), 707-731(1), 707-
13 732(1), 707-733(1)(a), (b), or (d), 707-733.6, 707-
14 741, 711-1109.8, 712-1200.5(4), 712-1202(1), or 712-
15 1203(1), but excludes conduct that is criminal [~~only~~
16 ~~because of the age of the victim~~], as provided in
17 section 707-730(1)(b), [~~or section~~] 707-732(1)(b), or
18 707-741, if the perpetrator is under the age of
19 eighteen;
- 20 (2) An act defined in section 707-720 if the charging
21 document for the offense for which there has been a



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

3 (3) An act that consists of:

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

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

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

10 (D) Production, distribution, or possession of child
11 pornography chargeable as a felony under section
12 707-750, 707-751, or 707-752;

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

16 facilitate the commission of another covered
17 offense as defined in this section; or

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

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



1 (5) An act that consists of use of a computer in the
 2 commission of a separate crime under section 708-893,
 3 wherein the separate crime is a covered offense, as
 4 defined in this section;

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

9 [~~6~~] (7) A criminal offense that is comparable to or that
 10 exceeds a sexual offense as defined in paragraphs (1)
 11 through [~~5~~] (6); or

12 [~~7~~] (8) Any federal, military, out-of-state, tribal, or
 13 foreign conviction for any offense that under the laws
 14 of this State would be a sexual offense as defined in
 15 paragraphs (1) through [~~6~~] (7)."

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

18 "(h) If a covered offender has been convicted of only one
 19 covered offense and that covered offense is a misdemeanor, and
 20 was not committed against a minor, the covered offender shall



1 not be subject to the public access requirements set forth in
2 this section."

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

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

9 (1) Fails to register with the attorney general by
10 providing to the attorney general or the Hawaii
11 criminal justice data center the person's registration
12 information;

13 (2) Fails to report in person every five years until
14 June 30, 2009, and beginning on July 1, 2009, once
15 every year, during the thirty-day period following the
16 offender's [~~date of birth,~~] birthday to the chief of
17 police where the covered offender's residence is
18 located, or to such other department or agency
19 designated by the attorney general;

20 (3) While reporting to the chief of police or such other
21 department or agency designated by the attorney



1 general, fails to correct information in the registry
2 within the offender's knowledge that has changed or is
3 inaccurate regarding information required by section
4 846E-2(d) (1) through (12);

5 (4) While reporting to the chief of police or such other
6 department or agency designated by the attorney
7 general, fails to provide new information that may be
8 required by section 846E-2(d) (1) through (12);

9 (5) While reporting to the chief of police or such other
10 department or agency designated by the attorney
11 general, does not allow the police or other designated
12 department or agency to take a current photograph of
13 the person;

14 (6) Fails to register in person with the chief of police
15 having jurisdiction of the area where the covered
16 offender resides or is present within three working
17 days whenever the provisions of section 846E-2(g)
18 require the person to do so;

19 (7) Fails to notify the attorney general or the Hawaii
20 criminal justice data center of a change of any of the



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



1 offender was absent from the registered address and
2 the covered offender had previously notified the
3 Hawaii criminal justice data center that the covered
4 offender would be absent during the period that the
5 periodic verification form was delivered; or

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

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

16 "**§846E-10 Termination of registration requirements.** (a)
17 Tier 3 offenses. A covered offender whose covered offense is
18 any of the following offenses shall register for life and,
19 except as provided in subsection [~~(e), may~~] (f), shall not
20 petition the court, in a civil proceeding, for termination of
21 registration requirements:



- 1 (1) Any offense set forth in section 707-730(1)(a), (b),
2 (d), or (e); 707-731(1)(a) or (b); 707-732(1)(a), (b),
3 or (g); or 707-733.6;
- 4 (2) An offense set forth in section 707-720; provided that
5 the offense involves kidnapping of a minor by someone
6 other than a parent;
- 7 (3) An offense that is an attempt, criminal solicitation,
8 or criminal conspiracy to commit any of the offenses
9 in paragraph (1) or (2);
- 10 (4) Any criminal offense that is comparable to one of the
11 offenses in paragraph (1), (2), or (3); or
- 12 (5) Any federal, military, out-of-state, tribal, or
13 foreign offense that is comparable to one of the
14 offenses in paragraph (1), (2), or (3).
- 15 (b) A repeat covered offender shall register for life and,
16 except as provided in subsection [~~(e), may~~] (f), shall not
17 petition the court, in a civil proceeding, for termination of
18 registration requirements.
- 19 (c) Tier 2 offenses. A covered offender who has
20 maintained a clean record for the previous twenty-five years,
21 excluding any time the offender was in custody or civilly



1 committed, and who has substantially complied with the
2 registration requirements of this chapter for the previous
3 twenty-five years, or for the portion of that twenty-five years
4 that this chapter has been applicable, and who is not a repeat
5 covered offender may petition the court, in a civil proceeding,
6 for termination of registration requirements; provided that the
7 covered offender's most serious covered offense is one of the
8 following:

- 9 (1) Any offense set forth in section 707-730(1)(c),
10 707-731(1)(c) [~~7~~] or (d), 707-732(1)(c), 707-750, 707-
11 751, 712-1202, or 712-1203(1)(b), as section 712-
12 1203(1)(b) read before its amendment pursuant to
13 section 9 of Act 147, Session Laws of Hawaii 2008;
- 14 (2) An offense set forth in section 707-720; provided that
15 the charging document for the offense for which there
16 has been a conviction alleged intent to subject the
17 victim to a sexual offense;
- 18 (3) An offense set forth in section 707-756 that includes
19 an intent to promote or facilitate the commission of
20 another felony covered offense as defined in section
21 846E-1;



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

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

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

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

19 (1) Any offense set forth in section 707-732(1)(d), (e),
20 or (f); 707-733(1)(a) [~~+~~], (b), or (d); 707-741; 707-



- 1 752; 707-759; 711-1109.8; 711-1110.9; 712-1203(1); or
2 712-1209.1;
- 3 (2) An offense set forth in section 707-721 or 707-722;
4 provided that the offense involves unlawful
5 imprisonment of a minor by someone other than a
6 parent;
- 7 (3) An offense set forth in section 707-757 that includes
8 an intent to promote or facilitate the commission of
9 another covered offense as defined in section 846E-1;
- 10 (4) An offense that is an attempt, criminal solicitation,
11 or criminal conspiracy to commit any of the offenses
12 in paragraph (1), (2), or (3);
- 13 (5) Any criminal offense that is comparable to one of the
14 offenses in paragraph (1), (2), (3), or (4);
- 15 (6) Any federal, military, out-of-state, tribal, or
16 foreign offense that is comparable to one of the
17 offenses in paragraph (1), (2), (3), or (4); or
- 18 (7) Any other covered offense that is not specified in
19 subsection (a) or (c) or paragraph (1), (2), (3), (4),
20 (5), or (6).



1 (e) If the covered offender's most serious covered offense
2 is set forth in section 708-893, then the designated tier of the
3 separate crime as provided in section 708-893, shall set forth
4 the covered offender's appropriate termination of registration
5 requirements.

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

12 [~~f~~] (g) In the civil proceeding for termination of
13 registration requirements, the State shall be represented by the
14 attorney general; provided that the attorney general, with the
15 prosecuting agency's consent, may designate the prosecuting
16 agency that prosecuted the covered offender for the most recent
17 covered offense within the State to represent the State. For
18 covered offenders who have never been convicted of a covered
19 offense within the State, the attorney general shall represent
20 the State; provided that the attorney general, with the
21 prosecuting agency's consent, may designate the prosecuting



1 agency for the county in which the covered offender resides to
2 represent the State. The court may order this termination upon
3 substantial evidence and more than proof by a preponderance of
4 the evidence that:

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

15 [~~g~~] (h) A person who does not meet the criteria for
16 registration as a covered offender under the laws of this State,
17 but is subject to registration pursuant to section 846E-2(b),
18 may petition the court, in a civil proceeding, for termination
19 of registration requirements; provided that the person has
20 maintained a clean record for the previous ten years, excluding
21 any time the person was in custody or civilly committed; has



1 substantially complied with the registration requirements of
2 this chapter for the previous ten years; and was not designated
3 a repeat covered offender in any state or jurisdiction. The
4 attorney general shall represent the State; provided that the
5 attorney general, with the prosecuting agency's consent, may
6 designate the prosecuting agency for the county in which the
7 person resides to represent the State. The court may order this
8 termination upon substantial evidence and more than proof by a
9 preponderance of the evidence that:

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

19 [~~h~~] (i) A denial by the court for relief pursuant to a
20 petition under this section shall preclude the filing of another



1 petition for five years from the date of the most recent
2 denial."

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

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

8 SECTION 8. This Act shall take effect on July 1, 3000.



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 public access requirements for misdemeanors does not apply when the covered offense was committed against a minor. Requires a person who is required to report every year under the covered offender registration requirements to 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. Effective 7/1/3000. (HD2)

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