
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:

2 (1) Amend the offense of sexual assault in the fourth
3 degree to exclude a person who knowingly engages in or
4 causes sexual contact with a minor who is at least
5 sixteen years of age and the person is
6 contemporaneously acting in a professional capacity to
7 instruct, advise, or supervise the minor, if the
8 person is younger than twenty-four years of age at the
9 time of the offense; and

10 (2) Amend the covered offender registration laws to:

11 (A) Include offenders who commit the offense of:

12 (i) Sexual assault in the fourth degree by
13 exposing the offender's genitals to another
14 person under circumstances in which the
15 offender's conduct is likely to alarm the
16 other person or put the other person in fear
17 of bodily injury;

18 (ii) Sexual assault in the fourth degree against
19 a minor who is at least sixteen years old
20 while the offender is acting in a
21 professional capacity;



- 1 (iii) Incest;
- 2 (iv) Sexual assault of an animal; or
- 3 (v) Use a computer in the commission of a
- 4 separate crime, wherein the separate crime
- 5 is a covered offense subject to covered
- 6 offender registration laws;
- 7 (B) Require public disclosure for covered offenses
- 8 that are committed against minors, regardless of
- 9 whether the conviction was for a first-time
- 10 misdemeanor offense;
- 11 (C) Clarify that a person who is required to report
- 12 their location of residence in person every year
- 13 under the covered offender registration
- 14 requirements shall report during the thirty-day
- 15 period following the offender's birthday, rather
- 16 than the offender's actual date of birth; and
- 17 (D) Specify how certain covered offenses are to be
- 18 tiered for purposes of seeking termination of
- 19 registration requirements.

20 SECTION 2. Section 707-733, Hawaii Revised Statutes, is
21 amended by amending subsection (1) to read as follows:



1 "(1) A person commits the offense of sexual assault in the
2 fourth degree if:

3 (a) The person knowingly subjects another person, not
4 married to the actor, to sexual contact by compulsion
5 or causes another person, not married to the actor, to
6 have sexual contact with the actor by compulsion;

7 (b) The person knowingly exposes the person's genitals to
8 another person under circumstances in which the
9 actor's conduct is likely to alarm the other person or
10 put the other person in fear of bodily injury;

11 (c) The person knowingly trespasses on property for the
12 purpose of subjecting another person to surreptitious
13 surveillance for the sexual gratification of the
14 actor; or

15 (d) The person knowingly engages in or causes sexual
16 contact with a minor who is at least sixteen years old
17 and the person is contemporaneously acting in a
18 professional capacity to instruct, advise, or
19 supervise the minor; provided that:

20 (i) The person is not less than five years older than
21 the minor; [~~and~~]



- 1 (ii) The person is not legally married to the
2 minor[-]; and
3 (iii) The person is at least twenty-four years of age
4 at the time of the offense."

5 SECTION 3. Section 846E-1, Hawaii Revised Statutes, is
6 amended by amending the definition of "sexual offense" to read
7 as follows:

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

- 9 (1) Set forth in section 707-730(1), 707-731(1),
10 707-732(1), 707-733(1)(a), (b), or (d), 707-733.6,
11 707-741, 711-1109.8, 712-1200.5(4), 712-1202(1), or
12 712-1203(1), but excludes conduct that is criminal
13 ~~[only because of the age of the victim, as provided~~
14 ~~in] pursuant to section 707-730(1)(b), [or section]~~
15 707-732(1)(b), or 707-741, if the perpetrator is under
16 the age of eighteen;
- 17 (2) An act defined in section 707-720 if the charging
18 document for the offense for which there has been a
19 conviction alleged intent to subject the victim to a
20 sexual offense;
- 21 (3) An act that consists of:



- 1 (A) Criminal sexual conduct toward a minor, including
- 2 but not limited to an offense set forth in
- 3 section 707-759;
- 4 (B) Solicitation of a minor who is less than fourteen
- 5 years old to engage in sexual conduct;
- 6 (C) Use of a minor in a sexual performance;
- 7 (D) Production, distribution, or possession of child
- 8 pornography chargeable as a felony under section
- 9 707-750, 707-751, or 707-752;
- 10 (E) Electronic enticement of a child chargeable under
- 11 section 707-756 or 707-757 if the offense was
- 12 committed with the intent to promote or
- 13 facilitate the commission of another covered
- 14 offense as defined in this section; or
- 15 (F) Commercial sexual exploitation of a minor in
- 16 violation of section 712-1209.1;
- 17 (4) A violation of privacy under section 711-1110.9;
- 18 (5) An act that consists of use of a computer in the
- 19 commission of a separate crime under section 708-893,
- 20 wherein the separate crime is a covered offense, as
- 21 defined in this section;



1 ~~[(5)]~~ (6) An act, as described in chapter 705, that is an
2 attempt, criminal solicitation, or criminal conspiracy
3 to commit one of the offenses designated in paragraphs
4 (1) through ~~[(4)]~~ (5);
5 ~~[(6)]~~ (7) A criminal offense that is comparable to or that
6 exceeds a sexual offense as defined in paragraphs (1)
7 through ~~[(5)]~~ (6); or
8 ~~[(7)]~~ (8) Any federal, military, out-of-state, tribal, or
9 foreign conviction for any offense that under the laws
10 of this State would be a sexual offense as defined in
11 paragraphs (1) through ~~[(6)]~~ (7)."

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

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

19 SECTION 5. Section 846E-9, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



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

5 (1) Fails to register with the attorney general by
6 providing to the attorney general or the Hawaii
7 criminal justice data center the person's registration
8 information;

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

16 (3) While reporting to the chief of police or such other
17 department or agency designated by the attorney
18 general, fails to correct information in the registry
19 within the offender's knowledge that has changed or is
20 inaccurate regarding information required by section
21 846E-2(d)(1) through (12);



- 1 (4) While reporting to the chief of police or such other
2 department or agency designated by the attorney
3 general, fails to provide new information that may be
4 required by section 846E-2(d)(1) through (12);
- 5 (5) While reporting to the chief of police or such other
6 department or agency designated by the attorney
7 general, does not allow the police or other designated
8 department or agency to take a current photograph of
9 the person;
- 10 (6) Fails to register in person with the chief of police
11 having jurisdiction of the area where the covered
12 offender resides or is present within three working
13 days whenever the provisions of section 846E-2(g)
14 require the person to do so;
- 15 (7) Fails to notify the attorney general or the Hawaii
16 criminal justice data center of a change of any of the
17 covered offender's registration information in writing
18 within three working days of the change;
- 19 (8) Provides false registration information to the
20 attorney general, the Hawaii criminal justice data
21 center, or a chief of police;



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



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

9 SECTION 6. Section 846E-10, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§846E-10 Termination of registration requirements.** (a)
12 Tier 3 offenses. A covered offender whose covered offense is
13 any of the following offenses shall register for life and,
14 except as provided in subsection [~~(e), may~~] (f), shall not
15 petition the court, in a civil proceeding, for termination of
16 registration requirements:

17 (1) Any offense set forth in section 707-730(1)(a), (b),
18 (d), or (e); 707-731(1)(a) or (b); 707-732(1)(a), (b),
19 or (g); or 707-733.6;



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

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

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

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

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

16 (c) Tier 2 offenses. A covered offender who has
17 maintained a clean record for the previous twenty-five years,
18 excluding any time the offender was in custody or civilly
19 committed, and who has substantially complied with the
20 registration requirements of this chapter for the previous
21 twenty-five years, or for the portion of that twenty-five years



1 that this chapter has been applicable, and who is not a repeat
2 covered offender may petition the court, in a civil proceeding,
3 for termination of registration requirements; provided that the
4 covered offender's most serious covered offense is one of the
5 following:

- 6 (1) Any offense set forth in section 707-730(1)(c),
7 707-731(1)(c) [~~7~~] or (d), 707-732(1)(c), 707-750,
8 707-751, 712-1202, or 712-1203(1)(b), as section
9 712-1203(1)(b) read before its amendment pursuant to
10 section 9 of Act 147, Session Laws of Hawaii 2008;
- 11 (2) An offense set forth in section 707-720; provided that
12 the charging document for the offense for which there
13 has been a conviction alleged intent to subject the
14 victim to a sexual offense;
- 15 (3) An offense set forth in section 707-756 that includes
16 an intent to promote or facilitate the commission of
17 another felony covered offense as defined in section
18 846E-1;
- 19 (4) An offense that is an attempt, criminal solicitation,
20 or criminal conspiracy to commit any of the offenses
21 in paragraph (1), (2), or (3);



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

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

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

16 (1) Any offense set forth in section 707-732(1)(d), (e),
17 or (f); 707-733(1)(a) [~~+~~], (b), or (d); 707-741;
18 707-752; 707-759; 711-1109.8; 711-1110.9; 712-1203(1);
19 or 712-1209.1;

20 (2) An offense set forth in section 707-721 or 707-722;
21 provided that the offense involves unlawful



- 1 imprisonment of a minor by someone other than a
2 parent;
- 3 (3) An offense set forth in section 707-757 that includes
4 an intent to promote or facilitate the commission of
5 another covered offense as defined in section 846E-1;
- 6 (4) An offense that is an attempt, criminal solicitation,
7 or criminal conspiracy to commit any of the offenses
8 in paragraph (1), (2), or (3);
- 9 (5) Any criminal offense that is comparable to one of the
10 offenses in paragraph (1), (2), (3), or (4);
- 11 (6) Any federal, military, out-of-state, tribal, or
12 foreign offense that is comparable to one of the
13 offenses in paragraph (1), (2), (3), or (4); or
- 14 (7) Any other covered offense that is not specified in
15 subsection (a) or (c) or paragraph (1), (2), (3), (4),
16 (5), or (6).
- 17 (e) If the covered offender's most serious covered offense
18 is set forth in section 708-893, then the designated tier of the
19 separate crime as provided in section 708-893, shall set forth
20 the covered offender's appropriate termination of registration
21 requirements.



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

7 ~~(f)~~ (g) In the civil proceeding for termination of
8 registration requirements, the State shall be represented by the
9 attorney general; provided that the attorney general, with the
10 prosecuting agency's consent, may designate the prosecuting
11 agency that prosecuted the covered offender for the most recent
12 covered offense within the State to represent the State. For
13 covered offenders who have never been convicted of a covered
14 offense within the State, the attorney general shall represent
15 the State; provided that the attorney general, with the
16 prosecuting agency's consent, may designate the prosecuting
17 agency for the county in which the covered offender resides to
18 represent the State. The court may order this termination upon
19 substantial evidence and more than proof by a preponderance of
20 the evidence that:



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

11 [~~(g)~~] (h) A person who does not meet the criteria for
12 registration as a covered offender under the laws of this State,
13 but is subject to registration pursuant to section 846E-2(b),
14 may petition the court, in a civil proceeding, for termination
15 of registration requirements; provided that the person has
16 maintained a clean record for the previous ten years, excluding
17 any time the person was in custody or civilly committed; has
18 substantially complied with the registration requirements of
19 this chapter for the previous ten years; and was not designated
20 a repeat covered offender in any state or jurisdiction. The
21 attorney general shall represent the State; provided that the



1 attorney general, with the prosecuting agency's consent, may
2 designate the prosecuting agency for the county in which the
3 person resides to represent the State. The court may order this
4 termination upon substantial evidence and more than proof by a
5 preponderance of the evidence that:

6 (1) The person has met the statutory requirements of
7 eligibility to petition for termination;

8 (2) The person has substantially complied with
9 registration requirements;

10 (3) The person is very unlikely to commit a covered
11 offense; and

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

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

19 SECTION 7. This Act shall not affect rights and duties
20 that matured, penalties and forfeitures that were incurred, and
21 proceedings that were begun before its effective date.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 3000.



Report Title:

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

Description:

Amends the offense of sexual assault in the fourth degree to exclude a person who knowingly engages in or causes sexual contact with a minor who is at least sixteen years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, if the person is younger than twenty-four years of age at the time of the offense. 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. Effective 7/1/3000. (SD1)

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