

**ACT 59**

**S.B. NO. 2842**

**A Bill for an Act Relating to Chapter 846E, Hawaii Revised Statutes.**

***Be It Enacted by the Legislature of the State of Hawaii:***

**SECTION 1.** Section 846E-1, Hawaii Revised Statutes, is amended by amending the definition of “criminal offense against a victim who is a minor” to read as follows:

““Criminal offense against a victim who is a minor” means any criminal offense that consists of:

- (1) Kidnapping of a minor, except by a parent;
- (2) Unlawful imprisonment in the first degree of a minor, except by a parent;
- (3) Criminal sexual conduct toward a minor;

- (4) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
- (5) Use of a minor in a sexual performance; or any crime defined in part VI of chapter 707 involving:
  - (a) Sexual conduct;
  - (b) Attempted sexual conduct; or
  - (c) A proposal to engage in sexual conduct;
- (6) Solicitation of a minor to practice prostitution;
- (7) Any conduct that by its nature is a sexual offense against a minor, 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 eighteen years of age or younger;
- (8) 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 (7); or
- (9) Any state, federal, or military law similar to paragraphs (1) through (8).”

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

“(d) ~~[Each]~~ In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter for life, each sex offender shall also register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present. Registration under this subsection is for the purpose of providing the sex offender’s photograph, fingerprints, and registration information. Registration under this subsection is required whenever the sex offender, whether or not a resident of this State, [who] remains in [the] this State for more than ten days or for an aggregate period exceeding thirty days in one calendar year[;]. Sex offenders required to register in person with the county chief of police under this subsection shall register within three working days upon:

- (1) Arrival in this State;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Placement on parole; or
- (6) Arrival in a county in which the sex offender resides or expects to be present for a period exceeding ten days.

~~[Each sex offender shall register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present.]~~ In addition to any other requirement to register under this subsection or subsection (a), each sex offender shall report in person every five years to the county chief of police of the county where the sex offender’s residence is located for purposes of having a new photograph taken.”

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

“(b) For purposes of this section, “relevant information that is necessary to protect the public” means:

- (1) Name and all aliases used by the sex offender or under which the sex offender has been known;
- (2) The ~~[street name and zip code]~~ actual address where the sex offender resides and how long the sex offender has resided there;

- (3) The ~~[street name and zip code]~~ actual address where the sex offender is staying for more than ten days, if other than the stated residence;
- (4) The future ~~[street name and zip code,]~~ actual address, if known, where the sex offender is planning to reside, if other than the stated residence;
- (5) The ~~[street name and zip code]~~ actual addresses of the sex offender's current locations of employment;
- (6) Names and legal addresses of current and known future educational institutions with which the sex offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the sex offender;
- (8) A brief summary of the criminal offenses against victims who were minors and the sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and
- (9) A recent photograph of the sex offender."

SECTION 4. Section 846E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A sex offender required to register under this chapter, who changes any of the sex 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 ~~[resides at a different address for not less than ten days.]~~ is absent from the person's registered residence for ten or more days. If the new residence is 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."

SECTION 5. Section 846E-9, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§846E-9~~]-Penalty.] Failure to comply with sex offender registration requirements.** (a) ~~[For a first offense: (1) Any]~~ A person commits the offense of failure to comply with sex offender registration requirements if the person is required to register under this chapter [who] and the person intentionally, knowingly, or recklessly [fails to comply with any of the requirements of this chapter shall be guilty of a misdemeanor; and];

- (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 to the county chief of police of the county where the sex offender's residence is located, for purposes of having a new photograph taken within five years after the previous photograph was taken;
- (3) Fails to register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present within three working days whenever the provisions of section 846E-2(d) require the person to do so;
- (4) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the sex offender's registration information in writing within three working days of the change;

- (5) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- (6) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not accurate and current; or
- (7) Fails to comply with any other requirement of this chapter.

~~[(2)] (b) Any person required to register under this chapter who intentionally or knowingly [fails to comply with any requirements of this chapter]~~ violates subsection (a) shall be guilty of a class C felony.

(c) Any person required to register under this chapter who recklessly violates subsection (a) shall be guilty of a misdemeanor.

~~[(b)] (d) For any second or subsequent offense, any person required to register under this chapter who [recklessly,] intentionally, [or] knowingly [fails to comply with any of the requirements of this chapter], or recklessly violates subsection (a) shall be guilty of a class C felony."~~

SECTION 6. The legislature created a sex offender registry in 1997 (chapter 846E, Hawaii Revised Statutes). In 2001, the Hawaii supreme court held that the public access portion of the law was unconstitutional because it did not provide sex offenders with an opportunity to be heard before their information was posted on the Internet. In 2002 and again in 2003, the legislature amended the law to provide for hearings so that Internet information would once more be available to the public.

In the interim since the enactment of a process by which sex offender information could be placed on the Internet, almost no hearings have been requested. As a result of the supreme court's decision and delays in hearings, there is a backlog of offenders whose information should have been available to the public.

For the sake of processing the nearly two thousand cases waiting to be put on the list, a constitutional amendment has been proposed to:

- (1) Allow the legislature to define what sex offender registration information constitutes registration information to which the public will have access; and
- (2) Decide the manner in which public access to the registration information is obtained.

In anticipation of the enactment of the amendment and before any legislation is enacted pursuant to it, thereto, a task force should be convened to study proposed legislation. The task force should make recommendations to the legislature in the event the constitution is amended. However, should the proposed amendment fail, the task force recommendations need not be implemented since legislation would be unnecessary to effectuate the constitutional amendment. Although the task force may submit its recommendations prior to the enactment of the constitutional amendment, in no way should the creation of the task force be construed to endorse or support the proposed constitutional amendment.

SECTION 7. The judicial council of Hawaii, established pursuant to section 601-4, Hawaii Revised Statutes, shall convene a task force to engage in a comprehensive review of public access to information regarding persons convicted of sexual offenses and to recommend to the legislature amendments, if any, to existing procedures.

The task force shall serve without compensation, and its membership shall comprise a balanced representation of interested parties in the community, which shall include but not be limited to representatives of:

- (1) The judiciary;
- (2) The department of the attorney general;
- (3) The office of the public defender;

- (4) The department of the prosecuting attorney of each county;
- (5) The police department of each county;
- (6) The Hawaii State Bar Association;
- (7) The Hawaii Association of Criminal Defense Lawyers;
- (8) The American Civil Liberties Union of Hawaii;
- (9) Private citizens interested in criminal law and civil liberties;
- (10) Attorneys in private practice involving the criminal law; and
- (11) Victim advocate groups.

The task force shall review the applicable offenses that subject a person to possible publication of registration information under chapter 846E, Hawaii Revised Statutes, and review:

- (1) Standards and criteria that may be required by the federal government in order for Hawaii to receive funding to support registration and publication of information;
- (2) Differing requirements for publication of information throughout the nation;
- (3) Applicable state statutes and rules from jurisdictions other than Hawaii;
- (4) Cost factors involved with various procedures used in other jurisdictions;
- (5) Evaluations of such statutes and procedures and the anticipated impact of enacting similar laws and procedures in Hawaii; and
- (6) Other relevant issues as deemed appropriate for discussion by the task force.

Findings shall provide the legislature with factual information, the national experience, and "best practices" for the purpose of assisting the legislature in determining and developing proposed legislature to ensure:

- (1) The most appropriate identification of offenses that are subject to chapter 846E, Hawaii Revised Statutes;
- (2) The nature, scope, and extent of information to which the public has a right of access;
- (3) The manner of access to the registration information; and
- (4) Any periods of time or procedures by which convicted persons may petition for termination of public access in Hawaii.

Further, findings shall specifically include but not be limited to:

- (1) A compilation of the relevant Hawaii statutes and rules;
- (2) A compilation of the number of cases in each judicial circuit of Hawaii affected by the proposed changes in procedures;
- (3) A compilation of statutes and practices in other jurisdictions; and
- (4) An evaluation of statutes and charging practices and their impact on the administration of justice.

The task force shall also review and evaluate the issue of the lifetime requirement for public access to registration information and shall issue findings that provide the legislature with factual information, the national experience, and "best practices" for the purpose of assisting the legislature in determining whether there is any period for any of the offenses whereby a person may be relieved of a requirement of public access to registration information or request that the person may be relieved of the requirement.

The task force shall report its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2005.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken.  
New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 10, 2004.)