

ACT 80

H.B. NO. 3040

A Bill for an Act Relating to Public Safety.

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

PART I

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§707- Indecent electronic display to a child. (1) Any person who intentionally masturbates or intentionally exposes the genitals in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or other electronic device by:

- (a) A minor known by the person to be under the age of eighteen years;
- (b) Another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
- (c) Another person who represents that person to be under the age of eighteen years,

is guilty of indecent electronic display to a child.

(2) Indecent electronic display to a child is a misdemeanor.”

SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 386-98(d)(1) relating to fraud violations and penalties; section 431:10A-131(b)(2) relating to insurance fraud; section 431:10C-307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2) relating to insurance fraud; section 432D-18.5(b)(2) relating to insurance fraud; section 707-703 relating to negligent homicide in the second degree; section 707-711 relating to assault in the second degree; section 707-713 relating to reckless endangering in the first degree; section 707-716 relating to terroristic threatening in the first degree; section 707-721 relating to unlawful imprisonment in the first degree; section 707-732 relating to sexual assault or rape in the third degree; section 707-752 relating to promoting child abuse in the third degree; section 707-757 relating to electronic enticement of a child in the second degree; section 707-766 relating to extortion in the second degree; section 708-811 relating to burglary in the second degree; section 708-821 relating to criminal property damage in the second degree; section 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; section 708-831 relating to theft in the second degree; section 708-835.5 relating to theft of livestock; section 708-836 relating to unauthorized control of propelled vehicle; section 708-839.8 relating to identity theft in the third degree; section 708-839.55 relating to unauthorized possession of confidential personal information; section 708-852 relating to forgery in the second degree; section 708-854 relating to criminal possession of a forgery device; section 708-875 relating to trademark counterfeiting; section 710-1071 relating to intimidating a witness; section 711-1103 relating to riot; section 712-1203 relating to promoting prostitution in the second degree; section 712-1221 relating to gambling in the first degree; section 712-1224 relating to possession of gambling records in the first degree; section 712-1243 relating to promoting a dangerous drug in the third degree; section 712-1247 relating to promoting a detrimental drug in the first degree; section 846E-9 relating to failure to comply with covered offender registration requirements; section 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; section 134-8 relating to ownership, etc., of prohibited weapons; section 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony

offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
 - (ii) Where the instant conviction is for a class A felony—six years, eight months;
 - (iii) Where the instant conviction is for a class B felony—three years, four months; and
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months; and
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
 - (ii) Where the instant conviction is for a class A felony—twenty years;
 - (iii) Where the instant conviction is for a class B felony—ten years; and
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 3. Section 707-756, Hawaii Revised Statutes, is amended to read as follows:

“§707-756 Electronic enticement of a child in the first degree. (1) Any person who, using a computer or any other electronic device:

- (a) Intentionally or knowingly communicates:
 - (i) With a minor known by the person to be under the age of eighteen years;
 - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
 - (iii) With another person who represents that person to be under the age of eighteen years; [and]
- (b) With the intent to promote or facilitate the commission of a felony:
 - (i) That is a murder in the first or second degree;
 - (ii) That is a class A felony; or
 - (iii) That is ~~[an]~~ another covered offense as defined in section 846E-1[~~];~~

agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

- (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time[~~];~~

is guilty of electronic enticement of a child in the first degree.

(2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, ~~[if a person sentenced under this section is sentenced to probation rather than]~~ a person convicted of electronic enticement of a child in the first degree shall be sentenced to an indeterminate term of imprisonment~~], the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.] as provided by law.~~

PART II

SECTION 4. Section 846E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“Clean record” means no conviction for a felony or covered offense, if placed on probation or parole, completion of probation or parole without more than one revocation, and, for sex offenders, successful completion of an appropriate sex offender treatment program, if such program was ordered.”

2. By amending the definitions of “crime against minors,” “registration information,” and “sexual offense” to read:

“Crime against minors”[;] excludes “sexual offenses” as defined in this section and means a criminal offense that consists of:

- (1) Kidnapping of a minor, ~~[except]~~ by someone other than a parent;
- (2) Unlawful imprisonment in the first or second degree that involves the unlawful imprisonment of a minor~~[-except]~~ by someone other than a parent;
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (1) or (2); or
- (4) A criminal offense that is comparable to or which exceeds one of the offenses designated in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that, under the laws of this State would be a crime against minors as designated in paragraphs (1) through (3).

“Registration information” means the information specified in section [846E-2(e)]- 846E-2(d) and (e).

“Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6, ~~[or]~~ 712-1202(1)(b), or 712-1203(1)(b), 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 under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
 - (A) Criminal sexual conduct toward a minor~~[-]~~, including but not limited to an offense set forth in section 707- ;
 - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
 - (C) Use of a minor in a sexual performance;
 - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;

- (E) Electronic enticement of a child chargeable ~~[as a felony]~~ under section 707-756 ~~[or]~~, 707-757, or 707- if the ~~[act involves:~~
 - (i) ~~Sexual conduct;~~
 - (ii) ~~Attempted sexual conduct; or~~
 - (iii) ~~A proposal to engage in sexual conduct;]~~ offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in section 846E-1; or
 - (F) Solicitation of a minor to practice prostitution;
 - (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
 - (5) 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 (4)."
3. By repealing the definitions of "aggravated sex offender," "aggravated sexual offense," and "sexually violent predator":
- ~~["Aggravated sex offender" means:~~
- ~~(1) A person convicted of an "aggravated sexual offense" as defined in this section; or~~
 - ~~(2) A person who is charged with an "aggravated sexual offense" as defined in this section and found unfit to proceed and is released into the community or acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.~~
- ~~"Aggravated sexual offense" means:~~
- ~~(1) A criminal offense described in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(b), 707-732(1)(b), 707-732(1)(f), and 707-733.6, but excludes conduct that is criminal only because of the age of the victim, if the perpetrator is under the age of eighteen;~~
 - ~~(2) A criminal offense that is comparable to one of the offenses designated in paragraph (1) or any federal, military, or out-of-state offense that, under the laws of this State would be an aggravated sexual offense as designated in paragraph (1); or~~
 - ~~(3) 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) or (2);~~
- ~~"Sexually violent predator" means a person:~~
- ~~(1) Who is a sex offender; and~~
 - ~~(2) Who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexual offenses."]~~

SECTION 5. Section 846E-2, Hawaii Revised Statutes, is amended to read as follows:

"§846E-2 Registration requirements. (a) A covered offender shall register with the attorney general and comply with the provisions of this chapter for life or for a shorter period of time as provided in this chapter. A covered offender ~~[who is not:~~

- ~~(1) An aggravated sex offender;~~
- ~~(2) A repeat covered offender; and~~
- ~~(3) A sexually violent predator;]~~

shall be eligible to petition the court in a civil proceeding for an order that the covered offender's registration requirements under this chapter be terminated, as provided in section 846E-10.

(b) A person who establishes or maintains a residence in this state and who has not been designated as a covered offender by a court of this State but who has been designated as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a covered offender, shall register in the manner provided in this section and shall be subject to community and public notification as provided in section 846E-3. A person who meets the criteria of this subsection is subject to the requirements and penalty provisions of section 846E-9 until the person successfully petitions the attorney general for termination of registration requirements by:

- (1) Providing an order issued by the court that designated the person as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in the state or jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the attorney general that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and such person does not meet the criteria for registration as a covered offender under the laws of this State; or
- (2) Demonstrating that the out-of-state convictions upon which the sexual offender designation was established are not covered offenses under section 846E-1, thereby showing that such person does not meet the criteria for registration as a covered offender under the laws of this State.

If the covered offender is not satisfied with the decision of the attorney general on the request for termination of registration requirements, the covered offender may appeal the decision pursuant to chapter 91.

[(b)] (c) Each provision of this chapter applicable to sex offenders shall also be applicable to offenders against minors, unless offenders against minors are specifically excluded. Whenever a covered offender's public information is made publicly accessible, separate registries shall be maintained for:

- (1) Sex offenders; and
- (2) Offenders against minors.

[(e)] (d) Registration information for each covered offender shall [consist of a recent photograph, verified fingerprints, and] include a signed statement by the covered offender containing:

- (1) The name, all prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known and other identifying information, including date of birth[;] and any alias date of birth, social security number[;] and any alias social security number, sex, race, height, weight, and hair and eye color;
- (2) The actual address and telephone number of the covered offender's residence [or mailing address;] or any current, temporary address where the covered offender resides, or if an address is not available, a description of the place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and for each address or place where the covered offender resides, how long the covered offender has resided there;
- (3) The actual address or description of the place or area, the actual length of time of the stay, and telephone number where the covered offender

is staying for a period of more than ten days, if other than the stated residence;

- (4) If known, the future address and telephone number where the covered offender is planning to reside, if other than the stated residence;
- (5) Any electronic mail address, any instant message name, any Internet designation or moniker, and any Internet address used for routing or self-identification;
- (6) Any cell phone number and other designations used for routing or self-identification in telephonic communications;
- ~~(5)~~ (7) Names and, if known, actual business addresses of current and known future employers, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration, and the starting and ending dates of any such employment;
- (8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works, such as information about normal travel routes or the general area or areas in which the covered offender works;
- (9) Professional licenses held by the covered offender;
- ~~(6)~~ (10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- ~~(7)~~ (11) The year, make, model, color, and license or registration or other identifying number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender[,] and the address or description of the place or places where the covered offender's vehicle or vehicles are habitually parked, docked, or otherwise kept;
- (12) Passports and information about the passports, if the covered offender has passports, and documents establishing immigration status and information about these documents, if the covered offender is an alien;
- ~~(8)~~ (13) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- ~~(9)~~ (14) A statement indicating whether the covered offender has received or is currently receiving treatment ordered by a court of competent jurisdiction or by the Hawaii paroling authority;
- ~~(10)~~ (15) A statement indicating whether the covered offender is a United States citizen; and
- ~~(11)~~ (16) Any additional identifying information about the covered offender.

(e) The following information shall also be included in the registry for each covered offender:

- (1) A current photograph of the covered offender;
- (2) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;
- (3) Confirmation that the covered offender has provided digitized fingerprints and palm prints of the covered offender;
- (4) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;

- (5) The text, or an electronic link to the text, of the provision of law defining the criminal offense or offenses for which the covered offender is registered;
- (6) The criminal history of the covered offender, or an electronic link to the criminal history, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the covered offender;
- (7) Confirmation that the covered offender has provided a DNA buccal swab sample as required by chapter 844D;
- (8) Digitized copies of a valid driver's license or identification card issued to the covered offender, or an electronic link to such records; and
- (9) Digitized copies of passports and documents establishing immigration status, or an electronic link to such records.

[(d)] (f) Whenever a covered offender provides registration information, during initial registration as a covered offender or when providing notice of a change in registration information, the covered offender also shall sign a statement verifying that all of the registration information is accurate and current.

[(e)] (g) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter until a court relieves the covered offender of the registration requirements of this chapter, each covered offender shall also register in person with the chief of police where the covered offender resides or is present. Registration under this subsection is for the purpose of providing the covered offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the covered offender, whether or not a resident of this [State,] state, remains in this [State] state for more than ten days or for an aggregate period exceeding thirty days in one calendar year. Covered offenders required to register in person with the chief of police under this subsection shall register no later than three working days after the earliest of:

- (1) Arrival in this [State,] state;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Conviction for a covered offense, unless incarcerated;
- (6) Release on probation;
- (7) Placement on parole; or
- (8) Arrival in a county in which the covered offender resides or expects to be present for a period exceeding ten days.

In addition to any other requirement to register under this subsection or subsection (a), each covered offender shall report in person every five years until June 30, 2009, and beginning on July 1, 2009, every year, within the thirty-day period following the offender's date of birth, to the chief of police where the covered offender resides [for purposes of having a new photograph taken,] or to such other department or agency that may be designated by the attorney general in rules adopted pursuant to chapter 91 for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender's knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other department or agency designated by the attorney general to take a current photograph of the offender.

[(f)] (h) The registration provisions of this section shall apply to all covered offenders without regard to:

- (1) The date of the covered offender's conviction;
- (2) The date of finding, pursuant to chapter 704, of the covered offender's unfitness to proceed; or

- (3) The date of the covered offender's acquittal due to mental disease, disorder, or defect, pursuant to chapter 704."

SECTION 6. Section 846E-3, Hawaii Revised Statutes, is amended to read as follows:

"§846E-3 Access to registration information. (a) Registration information shall be disclosed as follows:

- (1) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
 - (2) The information shall be disclosed to government agencies conducting confidential background checks; and
 - (3) The attorney general and any county police department shall release public information as provided in subsection (b) concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released.
- (b) For purposes of this section, "public information" means:
- (1) Name, prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known;
 - (2) The year of the covered offender's date of birth and the year of the covered offender's alias dates of birth;
 - (3) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;
 - [2] (4) The actual address where the covered offender resides [and] or any current, temporary address where the covered offender resides or, if an address is not available, a description of any place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and, for each address or place where the covered offender resides, how long the covered offender has resided there;
 - [3] (5) The actual address or description of the place or area where the covered offender is staying for more than ten days, if other than the stated residence[;], and the actual length of time of the stay;
 - [4] (6) The future actual address, if known, where the covered offender is planning to reside, if other than the stated residence;
 - [5] (7) The street name and zip code of the covered offender's current locations of employment[;], including information for any place where the covered offender works as a volunteer or otherwise works without remuneration;
 - (8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works;
 - (9) Professional licenses held by the covered offender;
 - [6] (10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
 - [7] (11) The year, make, model, color, and license number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender, excluding vehicles operated exclusively for purposes of work;
 - [8] (12) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; [and]

- (13) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;
- (14) The text, or an electronic link to the text, of the provision of law defining the criminal offense or offenses for which the covered offender is registered; and
- [(99)] (15) A recent photograph of the covered offender.

The identity of any victim of a sexual offense shall not be disclosed and any documentation containing such information shall be redacted to prevent disclosure.

(c) To facilitate community notification, after a covered offender registers or updates a registration, the attorney general may provide public information in the registry about that offender to any organization, company, or individual who requests such notification pursuant to procedures established by the attorney general through rules adopted pursuant to chapter 91.

(d) A covered offender may seek correction of erroneous public information by petitioning the attorney general to make the correction. If the covered offender is not satisfied with the decision of the attorney general on the request for correction, the covered offender may appeal the decision pursuant to chapter 91.

[(e)] (e) Public access to a covered offender's public information shall be permitted with regard to each covered offender beginning the next working day following the filing of a judgment of conviction, a finding of unfitness to proceed or an acquittal due to mental disease, disorder, or defect, for a covered offense, or as soon thereafter as is practical. When a notice of appeal has been filed, the public information shall note that the covered offender has filed a notice of appeal. The public information shall be removed upon the reversal of the covered offender's conviction or the granting of a pardon to the covered offender. ~~[Public access shall continue until the expiration of at least the following periods:~~

- ~~(1) Forty years after sentencing or release, whichever is later, of a sexually violent predator or a repeat covered offender with at least two separate convictions for a crime for which this chapter requires registration, one of which is a felony;~~
- ~~(2) Thirty years after sentencing or release, whichever is later, of any covered offender who has been convicted of an aggravated sexual offense;~~
- ~~(3) Twenty-five years after sentencing or release, whichever is later, of any covered offender who is not subject to paragraph (1) or (2), and whose most serious covered offense conviction, except for a conviction under section 707-730(1)(c), is a class A felony or its non-Hawaii equivalent;~~
- ~~(4) Fifteen years after a covered offender's date of sentencing or release, whichever is later, for those covered offenders who are not subject to paragraphs (1) through (3) and whose most serious covered offense conviction is a class B felony, or a conviction under section 707-730(1)(c), or its non-Hawaii equivalent; or~~
- ~~(5) Ten years after a covered offender's date of sentencing or release, whichever is later, for those covered offenders who are not subject to paragraphs (1) through (4) and:~~
 - ~~(A) Whose most serious covered offense conviction is a class C felony or its non-Hawaii equivalent; or~~
 - ~~(B) Have been convicted of a second or subsequent misdemeanor covered offense when all of the previous covered offenses are also misdemeanors.~~

~~(d)] (f) Public access authorized by this section [shall be accomplished by the following methods:~~

- (1) ~~Public access to the public information for each covered offender subject to subsection (c), paragraphs (1) through (4)] shall be provided by both public [internet] Internet access and on-site public access [or;~~
- (2) ~~Public access to the public information for each covered offender subject to subsection (c), paragraph (5) shall be provided by on-site public access];~~

provided that on-site public access shall be provided for each covered offender at the Hawaii criminal justice data center and at one or more designated police stations in each county, to be designated by the attorney general, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, excluding holidays.

~~[(e)After] (g) Public access to the public information for each covered offender shall be permitted while the covered offender is subject to sex offender registration, except that after forty years have elapsed after release or sentencing, whichever is later, [for covered offenders subject to subsection (c), paragraph (1); thirty years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (2); twenty-five years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (3); fifteen years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (4); and ten years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (5).]~~ a covered offender may petition the court in a civil proceeding to terminate public access. In the civil proceeding to terminate public access, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the [State] state to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that ~~[the covered offender]~~:

- (1) ~~[Has] The covered offender has~~ had no new convictions for covered offenses;
- (2) ~~[Is] The covered offender is~~ very unlikely to commit a covered offense ever again; and
- (3) Public access to the covered offender's public information will not assist in protecting the safety of the public or any member thereof;

provided that a denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

~~[(f)] (h)~~ If a covered offender has been convicted of only one covered offense and that covered offense is a misdemeanor, the covered offender shall not be subject to the public access requirements set forth in this section.

~~[(g)] (i)~~ The following message shall be posted at both the site of [internet] Internet access and on-site public access locations:

"Information regarding covered offenders is permitted pursuant to chapter 846E. Public access to this information is based solely on the fact of each offender's criminal conviction and is not based on an estimate of the offender's level of dangerousness. By allowing public access to this information, the State makes no representation as to whether the covered offenders listed are dangerous. Any person who uses the information in this registry to injure, harass, or commit a criminal act against any person included in the registry may be subject to criminal prosecution, civil liability, or both."

~~[(h)]~~ (j) The public access provisions of this section shall apply to all covered offenders without regard to the date of conviction.

~~[(i)]~~ (k) “Conviction” as used in this section means:

- (1) A judgment on the verdict, or a finding of guilt after a plea of ~~[[~~guilty~~]]~~ or nolo contendere, excluding the adjudication of a minor;
- (2) A finding of unfitness to proceed resulting in the release of the covered offender into the community, excluding such a finding as to a minor; or
- (3) An acquittal due to a physical or mental disease, disorder, or defect pursuant to chapter 704 resulting in the release of the covered offender into the community, excluding such acquittal as to a minor.”

SECTION 7. Section 846E-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The chief of police shall transmit any covered offender registration information required by this chapter to the attorney general, by entering the information into a statewide record system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph and fingerprints of the covered offender, taken at the time the covered offender registers with the chief of police. The covered offender shall report in person every five years until June 30, 2009, and beginning on July 1, 2009, every year, within the thirty-day period following the offender’s date of birth, to the chief of police where the covered offender’s residence is located ~~[for purposes of having a new photograph taken-], or to such other department or agency that may be designated by the attorney general in rules adopted pursuant to chapter 91 for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender’s knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other department or agency designated by the attorney general to take a current photograph of the offender.”~~

SECTION 8. Section 846E-9, Hawaii Revised Statutes, is amended to read as follows:

“§846E-9 Failure to comply with covered offender registration requirements. (a) A person commits the offense of failure to comply with covered offender registration requirements if the person is required to register under this chapter and the person intentionally, knowingly, or recklessly:

- (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 every five years until June 30, 2009, and beginning on July 1, 2009, once every year, during the thirty-day period following the offender’s date of birth, to the chief of police where the covered offender’s residence is located, ~~[for purposes of having a new photograph taken within five years after the previous photograph was taken-¹] or to such other department or agency² designated by the attorney general;~~
- (3) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to correct information in the registry within the offender’s knowledge that has changed or is inaccurate regarding information required by section 846E-2(d)(1) through (12);

- (4) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to provide new information that may be required by section 846E-2(d)(1) through (12);
- (5) While reporting to the chief of police or such other department or agency designated by the attorney general, does not allow the police or other designated department or agency to take a current photograph of the person;
- [(3)] (6) Fails to register in person with the chief of police having jurisdiction of the area where the covered offender resides or is present within three working days whenever the provisions of section 846E-2(g)³ require the person to do so;
- [(4)] (7) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the covered offender's registration information in writing within three working days of the change;
- [(5)] (8) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- [(6)] (9) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current;
- [(7)] (10) Having failed to establish a new residence within the ten days while absent from the person's registered residence for ten or more days:
 - (A) Fails to notify the attorney general in writing within three working days that the person no longer resides at the person's registered residence; or
 - (B) Fails to report to a police station in the [State] state by the last day of every month; or
- [(8)] (11) Fails to mail or deliver the periodic verification of registration information form to the attorney general within ten days of receipt, as required by section 846E-5; provided that it shall be an affirmative defense that the periodic verification form mailed to the covered offender was delivered when the covered offender was absent from the registered address and the covered offender had previously notified the Hawaii criminal justice data center that the covered offender would be absent during the period that the periodic verification form was delivered.

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

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

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

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

"[H]§846E-10[H] Termination of registration requirements. (a) Tier 3 offenses. A covered offender whose ~~[most serious covered offense is a class A felony or its non-Hawaii equivalent, who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, who is not a sexually violent predator, who is not an aggravated sex offender, and who is not a repeat covered offender, may petition the court, in a civil proceeding, for termination of registration requirements on the ground that registration is no longer necessary for the protection of the public.]~~ covered offense is any of the following offenses shall

register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements:

- (1) Any offense set forth in section 707-730(1)(a), (b), (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b), or (f), or 707-733.6;
- (2) An offense set forth in section 707-720; provided that the offense involves kidnapping of a minor by someone other than a parent;
- (3) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1) or (2);
- (4) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), or (3); or
- (5) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), or (3).

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

[(b)] (c) Tier 2 offenses. A covered offender [whose most serious covered offense is a class B felony or its non-Hawaii equivalent,] who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous [fifteen] twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not [a sexually violent predator, who is not an aggravated sex offender, and who is not] a repeat covered offender[;] may petition the court, in a civil proceeding, for termination of registration requirements [on the ground that registration is no longer necessary for the protection of the public.]; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202(1)(b), or 712-1203(1)(b);
- (2) An offense set forth in section 707-720; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

[(e)] (d) Tier 1 offenses. A covered offender [whose most serious covered offense is a class C felony or its non-Hawaii equivalent, or a misdemeanor or its non-Hawaii equivalent,] who has maintained a clean record for the previous ten years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous ten years, or for the portion of that ten years that this chapter has been applicable, and who is not [a sexually violent predator, who is not an aggravated sex offender, and who is not] a repeat covered offender[;] may petition the court, in a civil proceeding, for termination of registration requirements [on the ground that registration is no longer necessary for the protection of the public.]; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-732(1)(d) or (e), 707-733(1)(a), 707-752, 707-

- (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
- (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

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

(f) In the civil proceeding for termination of registration requirements, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the state to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

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

[(d)] (g) A denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial."

SECTION 10. Section 846E-11, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 846E-13, Hawaii Revised Statutes, is repealed.

PART III

SECTION 12. The federal Sex Offender Registration and Notification Act is Title I of the Adam Walsh Child Protection and Public Safety Act of 2006, Public Law No. 248-109, (Adam Walsh Act). The Adam Walsh Act requires the fifty states, the District of Columbia, the five principal United States territories, and federally recognized Indian tribes that function as sex offender registration jurisdictions to conform their laws by July 29, 2009, to guidelines for sex offender registration adopted by the Department of Justice. If a jurisdiction fails to substantially comply with the guidelines, the jurisdiction faces the loss of ten per cent of any federal funds it may receive pursuant to the Edward Byrne Memorial Justice Assistance Grant program.

SECTION 13. (a) There is established the Adam Walsh Act compliance working group. The working group shall be composed of the following:

- (1) The attorney general;
- (2) The director of public safety;
- (3) The director of the office of youth services;
- (4) The state public defender;
- (5) The administrative director of the courts;
- (6) The chief of police of the city and county of Honolulu;
- (7) A member of the Hawaii Prosecuting Attorneys Association;
- (8) A representative of a victim advocacy program who is not employed with an agency or entity otherwise represented on the working group and who shall be selected by the attorney general;
- (9) A representative of the American Civil Liberties Union; and
- (10) A representative of the Hawaii Criminal Defense Attorneys Association.

(b) The working group shall:

- (1) Determine which Hawaii laws, including chapter 846E, Hawaii Revised Statutes, need to be amended and whether any new laws need to be enacted to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it; including provisions on:
 - (A) Registration of juveniles;
 - (B) Lifetime registration;
 - (C) More frequent periodic in-person verification; and
 - (D) Classification of most serious covered offenses and duration of registration requirements for tier 1 offenses;
- (2) Identify what resources are necessary for the State to implement any new or amended laws to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it;
- (3) Identify all sources of funding, including federal grants and legislative appropriations, that may be available to implement programs necessary for compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it;
- (4) Consider whether the additional costs that may be incurred to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it outweigh the Edward Byrne Memorial Justice Assistance Grant funds that would be retained by compliance and any other benefits attributable to compliance;
- (5) Review the provisions of Part II of this Act, as those measures pertain to the sex offender registry laws; and
- (6) Draft proposed legislation necessary to bring the State into compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it.

(c) The department of the attorney general shall convene the working group and provide the administrative, technical, and clerical support services necessary to assist the working group in achieving its purpose as required under this Act.

(d) The working group shall submit a report of its findings and recommendations, including any proposed legislation to the legislature, no later than twenty days prior to the convening of the regular session of 2009.

(e) The Adam Walsh Act compliance working group shall cease to exist after June 30, 2009.

PART IV

SECTION 14. Except for Section 8 of this Act, part II of this Act shall apply to any acts committed prior to, on, or after the effective date of Part II of this Act.

SECTION 15. Part I of this Act and Section 8 of this Act do not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

SECTION 16. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 18. This Act shall take effect upon its approval; provided part II of this Act shall take effect on January 1, 2009.

(Approved May 16, 2008.)

Notes

1. Prior to amendment a semicolon appeared here.
2. "Agency" should be underscored.
3. Prior to amendment "846E-2(e)" appeared here.
4. Edited pursuant to HRS §23G-16.5.