

JAN 24 2019

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# 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 purposes of this Act are to:

2       (1) Amend chapter 846E, Hawaii Revised Statutes, the  
3             covered offender registration law, to require  
4             defendants charged with a covered offense to register  
5             whether they were subsequently involuntarily  
6             hospitalized; found unfit to proceed; had charges  
7             dismissed by reason of physical or mental disease,  
8             disorder, or defect; or were acquitted by reason of  
9             physical or mental disease, disorder, or defect;

10       (2) Clarify that persons required to register pursuant to  
11             section 846E-2(b), Hawaii Revised Statutes, are  
12             covered offenders; and

13       (3) Clarify that criminal justice agencies that are  
14             responsible for administering the covered offender  
15             registration program are authorized to access  
16             confidential registration information necessary to  
17             facilitate the required registration and verification  
18             provisions of chapter 846E.

# S.B. NO. 1175

SECTION 2. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definitions of "offender against minors", "release", "repeat covered offender", and "sex offender" to read as follows:

"Offender against minors" means a person who is not a "sex offender", as defined in this section, and ~~[is or]~~ has been:

(1) Convicted at any time, whether before or after May 9, 2005, of a "crime against minors" as defined in this section; or

(2) Charged at any time, whether before or after May 9, 2005, with a "crime against minors" as defined in this section and who is found unfit to proceed ~~[and is released into the community or who is]~~, acquitted, or had the charge dismissed due to a physical or mental disease, disorder, or defect pursuant to chapter 704 [and is released into the community.] or a comparable federal, military, out-of-state, tribal, or foreign law; or

(3) Charged at any time, whether before or after May 9, 2005, with a "crime against minors" and who is involuntarily hospitalized and granted a dismissal of prosecution pursuant to section 706-607 or a

1           comparable federal, military, out-of-state, tribal, or  
2           foreign law.

3           "Release" means release from:

- 4           (1) Imprisonment;
- 5           (2) Imprisonment and placed on parole;
- 6           (3) Imprisonment and placed on furlough;
- 7           (4) Any form of commitment, custody, or confinement
- 8                 resulting from an order made pursuant to chapter
- 9                 704 [7], section 334-60.2 or 706-607; or
- 10          (5) A halfway house or other equivalent facility,
- 11 whichever is later.

12          "Repeat covered offender" means:

- 13          (1) A person who is or has been convicted at any time,
- 14                 whether before or after May 9, 2005, of more than one
- 15                 covered offense as defined in this section, except
- 16                 that a conviction for multiple counts within a single
- 17                 charging document that allege covered offenses against
- 18                 the same victim and that allege the same date of the
- 19                 covered offense against that single victim shall be
- 20                 considered, for the purposes of this definition, a
- 21                 single covered offense; or
- 22          (2) A person who is or has been charged at any time,
- 23                 whether before or after May 9, 2005, with more than

one covered offense as defined in this section and who has been~~[, more than once, either:]~~ subject to more than one of the following dispositions:

(A) Convicted~~[,]~~ of a covered offense;

(B) Found unfit to proceed, acquitted, or granted a dismissal of charges due to a physical or mental disease, disorder, or defect pursuant to chapter 704~~[,]~~ or a comparable federal, military, out-of-state, tribal, or foreign law; or

(C) ~~[Acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.]~~  
Involuntarily hospitalized and granted a dismissal of prosecution pursuant to section 706-607 or a comparable federal, military, out-of-state, tribal, or foreign law.

"Sex offender" means:

(1) A person who ~~[is or]~~ has been convicted at any time, whether before or after May 9, 2005, of a "sexual offense"; or

(2) A person who is or has been charged at any time, whether before or after May 9, 2005, with a "sexual offense" and ~~[is or]~~ has been found unfit to proceed ~~[and is or has been released into the community or who~~

1            is], acquitted, or had the charge dismissed due to a  
2            physical or mental disease, disorder, or defect  
3            pursuant to chapter 704 ~~[and is released into the~~  
4            ~~community.]~~ or a comparable federal, military, out-of-  
5            state, tribal, or foreign law; or

6            (3) A person who has been charged, at any time, whether  
7            before or after May 9, 2005, with a "sexual offense"  
8            and has been involuntarily hospitalized and granted a  
9            dismissal of prosecution pursuant to section 706-607  
10           or a comparable federal, military, out-of-state,  
11           tribal, or foreign law."

12           SECTION 3. Section 846E-2, Hawaii Revised Statutes is  
13 amended as follows:

14           (1) By amending subsection (b) to read as follows:

15           "(b) A person who establishes or maintains a residence in  
16 this State and who has not been designated as a covered offender  
17 by a court of this State but who has been designated as a  
18 covered offender, sex offender, offender against minors, repeat  
19 covered offender, sexually violent predator, or any other sexual  
20 offender designation in another state or jurisdiction and was,  
21 as a result of such designation, subjected to registration or  
22 community or public notification, or both, or would be if the  
23 person was a resident of that state or jurisdiction, without

1 regard to whether the person otherwise meets the criteria for  
2 registration as a covered offender, shall register in a manner  
3 provided in this section [~~and shall be subject to community and~~  
4 ~~public notification as provided in section 846E-3~~]. A person  
5 who meets the criteria of this subsection is subject to the  
6 requirements of this chapter for sex offenders and penalty  
7 provisions of section 846E-9 until such person successfully  
8 petitions the attorney general for termination of registration  
9 requirements by:

- 10 (1) Providing an order issued by the court that designated  
11 the person as a covered offender, sex offender,  
12 offender against minors, repeat covered offender,  
13 sexually violent predator, or any other sexual  
14 offender designation in the state or jurisdiction in  
15 which the order was issued, which states that such  
16 designation has been removed or demonstrates to the  
17 attorney general that such designation, if not imposed  
18 by a court, has been removed by operation of law or  
19 court order in the state or jurisdiction in which the  
20 designation was made and such person does not meet the  
21 criteria for registration as a covered offender under  
22 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."

(2) By amending subsections (d) and (e) to read as follows:

"(d) Registration information for each covered offender shall 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;

- 1           (2) The actual address and telephone number of the covered  
2           offender's permanent residence or the address of the  
3           covered offender's current temporary residence, or if  
4           an address is not available, a description of the  
5           place or area in which the covered offender resides  
6           for at least thirty nonconsecutive days within a  
7           sixty-day period, and for each address or place where  
8           the covered offender resides, how long the covered  
9           offender has resided there;
- 10          (3) The actual address or description of the place or  
11          area, the actual length of time of the stay, and  
12          telephone number where the covered offender is staying  
13          for a period of more than ten days, if other than the  
14          stated residence;
- 15          (4) If known, the future address and telephone number of  
16          the place where the covered offender is planning to  
17          reside, if other than the stated residence;
- 18          (5) Any electronic mail address, any instant message name,  
19          any internet designation or moniker, and any internet  
20          address used for routing or self-identification;
- 21          (6) Any cell phone number and other designations used for  
22          routing or self-identification in telephonic  
23          communications;



1 (7) Names and, if known, actual business addresses of  
2 current and known future employers, including  
3 information for any place where the covered offender  
4 works as a volunteer or otherwise works without  
5 remuneration, and the starting and ending dates of any  
6 such employment;

7 (8) For covered offenders who may not have a fixed place  
8 of employment, a description of the places where such  
9 a covered offender works, such as information about  
10 normal travel routes or the general area or areas in  
11 which the covered offender works;

12 (9) Professional licenses held by the covered offender;

13 (10) Names and actual addresses of current and known future  
14 educational institutions with which the covered  
15 offender is affiliated in any way, whether or not  
16 compensated, including but not limited to affiliation  
17 as a faculty member, an employee, or a student, and  
18 the starting and ending dates of any such affiliation;

19 (11) The year, make, model, color, and license or  
20 registration or other identifying number of all  
21 vehicles, including automobiles, watercrafts, and  
22 aircrafts, currently owned or operated by the covered  
23 offender and the address or description of the place

1 or places where the covered offender's vehicle or  
2 vehicles are habitually parked, docked, or otherwise  
3 kept;

4 (12) Passports and information about the passports, if the  
5 covered offender has passports, and documents  
6 establishing immigration status and information about  
7 these documents, if the covered offender is an alien;

8 (13) A statement listing all covered offenses for which the  
9 covered offender ~~[has been convicted or found unfit to~~  
10 ~~proceed or acquitted pursuant to chapter 704,]~~ is  
11 required to register;

12 (14) A statement indicating whether the covered offender  
13 has received or is currently receiving treatment  
14 ordered by a court of competent jurisdiction or by the  
15 Hawaii paroling authority;

16 (15) A statement indicating whether the covered offender is  
17 a United States citizen; and

18 (16) Any additional identifying information about the  
19 covered offender.

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

22 (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, or  
order of dismissal 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."

(3) By amending subsections (g) and (h) to read as follows:

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

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

1 and allow the police and such other department or agency  
2 designated by the attorney general to take a current photograph  
3 of the offender.

4 (h) The registration provisions of this section shall  
5 apply to all covered offenders without regard to:

6 (1) The date of the covered offender's conviction;

7 (2) The date of finding, pursuant to chapter 704[7] or a  
8 comparable federal, military, out-of-state, tribal, or  
9 foreign law, of the covered offender's unfitness to  
10 proceed; [ex]

11 (3) The date of the covered offender's acquittal or  
12 dismissal due to a physical or mental disease,  
13 disorder, or defect, pursuant to chapter 704[-] or  
14 a comparable federal, military, out-of-state, tribal,  
15 or foreign law; or

16 (4) The date of the covered offender's involuntary  
17 hospitalization and order of dismissal pursuant to  
18 section 706-607 or a comparable federal, military,  
19 out-of-state, tribal, or foreign law."

20 SECTION 4. Section 846E-3, Hawaii Revised Statutes, is  
21 amended as follows:

22 (1) By amending subsections (a) and (b) to read as  
23 follows:

"(a) Registration information shall be disclosed as follows:

(1) The information shall be disclosed to ~~[law enforcement agencies for law enforcement]~~ criminal justice agencies, as defined in section 846-1, for administration of criminal justice and covered offender registration 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;

- 1           (2) The year of the covered offender's date of birth and  
2           the year of the covered offender's alias dates of  
3           birth;
- 4           (3) A physical description of the covered offender,  
5           including a description of particular identifying  
6           characteristics such as scars or tattoos;
- 7           (4) The actual address where the covered offender resides  
8           or any current, temporary address where the covered  
9           offender resides or, if an address is not available, a  
10          description of any place or area in which the covered  
11          offender resides for at least thirty nonconsecutive  
12          days within a sixty-day period, and, for each address  
13          or place where the covered offender resides, how long  
14          the covered offender has resided there;
- 15          (5) The actual address or description of the place or area  
16          where the covered offender is staying for more than  
17          ten days, if other than the stated residence, and the  
18          actual length of time of the stay;
- 19          (6) The future actual address, if known, where the covered  
20          offender is planning to reside, if other than the  
21          stated residence;
- 22          (7) The street name and zip code of the covered offender's  
23          current locations of employment, including information



1 for any place where the covered offender works as a  
2 volunteer or otherwise works without remuneration;

3 (8) For covered offenders who may not have a fixed place  
4 of employment, a description of the places where such  
5 a covered offender works;

6 (9) Professional licenses held by the covered offender;

7 (10) Names and actual addresses of current and known future  
8 educational institutions with which the covered  
9 offender is affiliated as a faculty member, an  
10 employee, or a student, and the starting and ending  
11 dates of any such affiliation;

12 (11) The year, make, model, color, and license number of  
13 all vehicles, including automobiles, watercrafts, and  
14 aircrafts, currently owned or operated by the covered  
15 offender, excluding vehicles operated exclusively for  
16 purposes of work;

17 (12) A statement listing all covered offenses for which the  
18 covered offender has been convicted or found unfit to  
19 proceed or acquitted pursuant to chapter 704;

20 (13) Judgment of conviction, judgment of acquittal, ~~[or]~~  
21 judicial determination of unfitness to proceed, or  
22 order of dismissal documenting the criminal offense or  
23 offenses for which the covered offender is registered;

1       (14) The text, or an electronic link to the text, of the  
2           provision of law defining the criminal offense or  
3           offenses for which the covered offender is registered;  
4           and

5       (15) A recent photograph of the covered offender.

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

9       (2) By amending subsection (e) to read as follows:

10       "(e) Public access to a covered offender's public  
11       information shall be permitted with regard to each covered  
12       offender beginning the next working day following the filing of  
13       a judgment of conviction, a finding of unfitness to proceed, or  
14       a dismissal or an acquittal due to a physical or mental disease,  
15       disorder, or defect, for a covered offense, or as soon  
16       thereafter as practical. When a notice of appeal has been  
17       filed, the public information shall note that the covered  
18       offender has filed a notice of appeal. The public information  
19       shall be removed upon reversal of the covered offender's  
20       conviction or granting of a pardon to the covered offender."

21       (3) By amending subsection (k) to read as follows:

22       "(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 a covered offender into the community~~], excluding such finding as to a minor; [~~or~~]

(3) An acquittal or dismissal 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,~~] or a comparable federal, military, out-of-state, tribal, or foreign law, excluding such acquittal or dismissal as to a minor[-]; or

(4) An order of involuntary hospitalization and dismissal of charges pursuant to section 706-607 or a comparable federal, military, out-of-state, tribal, or foreign law."

SECTION 5. Section 846E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a covered offender has been committed pursuant to a conviction, or an acquittal, dismissal, or finding of unfitness to proceed pursuant to chapter 704, or involuntarily hospitalization

1 pursuant to section 706-607 for a covered offense, and each  
2 judge, or that judge's designee, who continues bail for or  
3 releases a covered offender following sentencing and the entry  
4 of a judgment of conviction, who releases a covered offender on  
5 probation or who discharges a covered offender upon payment of a  
6 fine, and each agency having jurisdiction, shall, prior to the  
7 discharge, parole, or release of the covered offender:

8 (1) Explain to the covered offender the duty to register  
9 and the consequences of failing to register under this  
10 chapter;

11 (2) Obtain from the covered offender all of the  
12 registration information required by this chapter;

13 (3) Inform the covered offender that, if at any time the  
14 covered offender changes any of the covered offender's  
15 registration information, the covered offender shall  
16 notify the attorney general of the new registration  
17 information in writing within three working days;

18 (4) Inform the covered offender that, if at any time the  
19 covered offender changes residence to another state,  
20 the covered offender shall register the new address  
21 with the attorney general and also with a designated  
22 law enforcement agency in the new state, if the new  
23 state has a registration requirement, within the

- 1 period of time mandated by the new state's sex
- 2 offender registration laws;
- 3 (5) Obtain and verify fingerprints and a photograph of the
- 4 covered offender, if these have not already been
- 5 obtained or verified in connection with the offense
- 6 that triggers the registration;
- 7 (6) Require the covered offender to sign a statement
- 8 indicating that the duty to register has been
- 9 explained to the covered offender; and
- 10 (7) Give one copy of the signed statement and one copy of
- 11 the registration information to the covered offender."

12 SECTION 6. Section 846E-5, Hawaii Revised Statutes, is  
13 amended by amending subsection (c) to read as follows:

14 "(c) The periodic verification provisions of this section  
15 shall not apply to covered offenders who are incarcerated, or  
16 committed, or involuntarily hospitalized, or have registered  
17 with a designated law enforcement agency after establishing  
18 residence in another state."

19 SECTION 7. Section 846E-12, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+] **§846E-12** [+] **Tolling.** The time periods provided for in  
22 this chapter shall be tolled during any period of time the  
23 covered offender is committed or recommitted to prison or

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1 confined to a halfway house, or an equivalent facility, pursuant  
2 to a parole or probation violation[?] or committed or  
3 involuntarily hospitalized to a psychiatric facility."

4 SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect upon its approval.

7

8 INTRODUCED BY: Mu N. H. H.

9

BY REQUEST

10

**Report Title:**

Covered Offender Registration

**Description:**

Requires registration of defendants who have had covered offenses dismissed due to mental or physical disease, disorder, or defect or have been involuntarily hospitalized in lieu of prosecution; clarifies and that criminal justice agencies may access registration information.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO COVERED OFFENDER REGISTRATION.

PURPOSE: To provide uniformity by adding language relating to covered offender registration requirements when the defendant is charged with a covered offense and subject to involuntary hospitalization under section 706-607, Hawaii Revised Statutes (HRS), or the charges are dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS, including federal and out-of-state comparable dispositions.

Additionally, the bill clarifies that persons required to register pursuant to section 846E-2(b) HRS, will be considered either a "sex offender" or an "offender against minors".

Lastly, the bill clarifies that criminal justice agencies charged with administering the covered offender registration program are authorized to access confidential registration information.

MEANS: Amend sections 846E-1, 846E-2(b), (d), (e), (g), and (h), 846E-3(a), (b), (e), and (k), 846E-4(a), 846E-5(c), and 846E-12, Hawaii Revised Statutes.

JUSTIFICATION: When a defendant is charged with a covered offense and is acquitted by reason of physical or mental disease, disorder, or defect under chapter 704, HRS, the defendant is required to register as a covered offender. This bill adds those who are charged with a covered offense and are dismissed by reason of physical or mental



disease, disorder, or defect pursuant to chapter 704, HRS, and those who are involuntarily committed pursuant to section 706-607, HRS, to be required to register, thereby providing consistency in situations where the defendant is found to have diminished mental capacities.

Currently, certain offenders are required to register pursuant to 846E-2(b) without regard as to whether the offender otherwise meets the criteria of a covered offender. However, certain offenders are not considered to be a "sex offender" or an "offender against minors" and cannot be added to either the registry or public website.

Lastly, the current statute only allows law enforcement agencies, which is a subset of criminal justice agencies, to access confidential registration information. Agencies such as Hawaii Paroling Authority, Correctional Division, Adult Client Services Branch are not currently authorized to receive the confidential registration information.

Impact on the public: The public will benefit from this bill as it will require registration of those that should be registered as covered offenders.

Impact on the department and other agencies: There should be minimal impact to the Department of the Attorney General, which manages the covered offender registration program, and to the agencies that need to give notice to those needing to register.

Criminal justice agencies will have access to confidential registration information to ensure its clients under supervision and inmates being released are compliant with chapter 846E, HRS.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: ATG-231/BC.

OTHER AFFECTED  
AGENCIES: Agencies that give notice to those needing  
to register.

EFFECTIVE DATE: Upon approval.