

---

---

# A BILL FOR AN ACT

RELATING TO COVERED OFFENDER REGISTRATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that sex offenders  
2 present an extreme threat to public safety due to high rates of  
3 sexual recidivism. To mitigate this threat, the State  
4 established covered offender registration laws to require the  
5 public release of relevant information concerning the presence  
6 of convicted sex offenders in the community.

7           The legislature further finds that there are certain gaps  
8 under the current registration laws for sexual offenses,  
9 including offenses committed against minors. For example, the  
10 public disclosure of registration information is not required  
11 for an offender who, while acting in a professional capacity,  
12 commits the offense of sexual assault in the fourth degree  
13 against a minor who is at least sixteen years of age. This  
14 omission would allow these sex offenders, who abused their  
15 position of trust, power, authority, or supervision to engage in  
16 sexual contact with a minor, to evade public detection and  
17 continue to prey upon children in the community.



1           Accordingly, the purpose of this Act is to amend the  
2 covered offender registration laws to:

3           (1) Include offenders who commit the offense of:

4           (A) Sexual assault in the fourth degree by exposing  
5           the offender's genitals to another person under  
6           circumstances in which the offender's conduct is  
7           likely to alarm the other person or put the other  
8           person in fear of bodily injury;

9           (B) Sexual assault in the fourth degree against a  
10          minor who is at least sixteen years old while the  
11          offender is acting in a professional capacity;

12          (C) Incest;

13          (D) Sexual assault of an animal; or

14          (E) Use a computer in the commission of a separate  
15          crime, wherein the separate crime is a covered  
16          offense subject to covered offender registration  
17          laws;

18          (2) Require public disclosure for covered offenses that  
19          are committed against minors, regardless of whether  
20          the conviction was for a first-time misdemeanor  
21          offense;



- 1 (3) Require a person who is required to report every year
- 2 under the covered offender registration requirements
- 3 to report during the thirty-day period following the
- 4 offender's birthday, rather than date of birth; and
- 5 (4) Specify how certain covered offenses are to be tiered
- 6 for purposes of seeking termination of registration
- 7 requirements.

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

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

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



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

3 (3) An act that consists of:

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

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

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

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

13 (E) Electronic enticement of a child chargeable under  
14 section 707-756 or 707-757 if the offense was  
15 committed with the intent to promote or  
16 facilitate the commission of another covered  
17 offense as defined in this section; or

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

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



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

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

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

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

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

18       "(h) If a covered offender has been convicted of only one  
19       covered offense and that covered offense is a misdemeanor~~[7]~~ and  
20       was not committed against a minor, the covered offender shall



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

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

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

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

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

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



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

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

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

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

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



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



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

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

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

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



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



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

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



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

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

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

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

19 (1) Any offense set forth in section 707-732(1)(d), (e),  
20 or (f); 707-733(1)(a) [~~7~~], (b), or (d); 707-741;



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



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

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

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



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

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

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

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

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

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



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

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

12 (2) The person has substantially complied with  
13 registration requirements;

14 (3) The person is very unlikely to commit a covered  
15 offense; and

16 (4) Registration by the person will not assist in  
17 protecting the safety of the public or any member  
18 thereof.

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



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

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

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

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



**Report Title:**

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

**Description:**

Amends covered offender registration laws by expanding the definition of "sexual offense" to include additional sexual offenses from the Penal Code. Provides that the exception to covered offender registry public access requirements for a first-time misdemeanor offense does not apply when the covered offense was committed against a minor. Clarifies that a person who is required to report their location of residence in person every year under the covered offender registration requirements shall report during the thirty-day period following the offender's birthday, rather than from the offender's actual date of birth. Specifies how certain covered offenses are to be tiered for purposes of seeking termination of registration requirements. Effective 7/1/3000. (SD2)

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

