

## ACT 316

H.B. NO. 108

A Bill for an Act Relating to Crime.

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

SECTION 1. The legislature finds that sex offenders who use physical violence, sex offenders who prey upon children, and repeat sex offenders present an extreme threat to the public safety. These sex offenders commit far more offenses than they are prosecuted for and victimize far more individuals than ever report the crimes. For too long, the interests of justice have been heavily weighted on concern for the offenders' rights, and there is a need to balance the scales of justice between the rights of offenders and the rights of victims.

In particular, victims of sex offenders suffer devastating and long-term consequences that too often are felt by succeeding generations. Because of the continuing stigma associated with such crimes, victims often fail to seek or receive adequate treatment and counseling and, as a result, exhibit characteristics such as continuing fear and intimidation, inadequate social skills and job preparedness, sexual anxiety, difficulty relating to others, immaturity or arrested psychological development, and repeated patterns of child or sexual abuse of others. Clearly, the cost to individuals and to society at large, while incalculable, is exorbitant.

Therefore, the legislature finds that it has a compelling interest in protecting the public from sex offenders and in protecting children from predatory sexual activity by requiring strict registration requirements of sex offenders and public notification of the presence of sex offenders in a particular community.

Furthermore, the legislature notes that section 170101 (the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. §14071) established registration requirements for certain sex offenders. Failure to comply with these requirements by September 1997, will result in a ten per cent reduction in the State's Byrne Formula Grant funding (section 506 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3756). On May 17, 1996, section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, was amended by Megan's Law (P.L. 104-145) to require release by a designated state agency of relevant information that is necessary to protect the public, concerning registered sex offenders residing in the community. In the fall of 1996, section 170101 was substantially amended by the Pam Lynchner Sexual Offender Tracking and Identification Act of 1996 (P.L. 104-236, October 3, 1996), again, with similar financial incentives for state compliance by October 1999.

The legislature is cognizant of the rising concern in the community and among law enforcement officials with crime in our society. Moreover, the legislature is painfully aware of the State's worsening economic condition and the competing demands for the limited funding available among so many critical needs. The legislature finds that immediate action is necessary to ensure that the federal funds desperately needed by law enforcement agencies are not lost. Accordingly, the legislature finds and declares that, in view of the State's current economic crisis and the ever present concern over crime, it is in the interest of the public health, safety, and welfare to adopt more stringent registration requirements for sex offenders and

to provide some measure of protection to the public by ensuring the release of relevant information concerning the presence of sex offenders in the community.

The purpose of this Act is to require strict registration requirements of sex offenders and ensure the release of relevant information concerning the presence of a sex offender necessary to protect the public.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 37 to be appropriately designated and to read as follows:

**“CHAPTER  
SEX OFFENDER REGISTRATION AND NOTIFICATION**

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Agency having jurisdiction” means that agency with the authority to direct the release of a person serving a sentence or term of confinement or place a person on probation, supervised release, or parole and includes the department of public safety, the Hawaii paroling authority, the office of youth services, the courts, and the department of health.

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

- (a) Kidnapping of a minor, except by a parent;
- (b) Unlawful imprisonment in the first degree of a minor, except by a parent;
- (c) Criminal sexual conduct toward a minor;
- (d) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
- (e) Use of a minor in a sexual performance;
- (f) Solicitation of a minor to practice prostitution;
- (g) Any conduct that by its nature is a sexual offense against a minor, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b) or section 707-732(1)(b), if the perpetrator is eighteen years of age or younger; or
- (h) Any state, federal, or military law similar to paragraphs (a) through (g).

“Sex offender” means:

- (a) Any person convicted of a “sexually violent offense” or a “criminal offense against a victim who is a minor”; or
- (b) Any person who is charged with a “sexually violent offense” or a “criminal offense against a victim who is a minor” and is found unfit to proceed or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.

“Sexually violent offense” means an act committed on, before, or after July 1, 1997, that is:

- (a) An act defined in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(a), 707-731(1)(b), 707-732(1)(a), 707-732(1)(e), and 707-733(1)(a);
- (b) A criminal offense that is comparable to a sexually violent offense as defined in paragraph (a) or any federal or out-of-state conviction, for any offense that under the laws of this State would be a sexually violent offense as defined in paragraph (a); or
- (c) 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 (a) or (b).

§ **-2 Registration requirements.** (1) A sex offender shall register with the attorney general and comply with the provisions of this chapter for life.

(2) Registration information for each sex offender shall consist of a recent photograph that shall be provided by the sex offender, verified fingerprints, a sample of saliva, and two samples of blood for the purpose of secretor status, blood type, and DNA analysis, if not obtained from the person previously, and a signed statement by the sex offender containing:

- (a) Name and all aliases used by the sex offender or under which the sex offender has been known and other identifying information, including date of birth, social security number, sex, race, height, weight, and hair and eye color;
- (b) The address and telephone number of the sex offender's legal address and that of any current, temporary address where the sex offender resides and how long the sex offender has resided there;
- (c) The address and telephone number where the sex offender is staying for a period of more than ten days, if other than the stated residence;
- (d) The future address and telephone number where the sex offender is planning to reside, if other than the stated residence;
- (e) Names of employers and date and current locations of employment;
- (f) Vehicle registration information of all vehicles currently owned or operated by the sex offender; and
- (g) A summary of the criminal offenses against victims who were minors and sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704.

§ **-3 Access to registration information.** (1) Registration information shall be disclosed as follows:

- (a) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
- (b) The information shall be disclosed to government agencies conducting confidential background checks;
- (c) The attorney general and any county police department shall release relevant information that is necessary to protect the public 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;
- (2) For purposes of this section, "relevant information that is necessary to protect the public" means:
  - (a) Name and all aliases used by the sex offender or under which the sex offender has been known;
  - (b) The street name and zip code where the sex offender resides and how long the sex offender has resided there;
  - (c) The street name and zip code where the sex offender is staying for more than ten days, if other than the stated residence;
  - (d) The future address and telephone number, if known, where the sex offender is planning to reside, if other than the stated residence;
  - (e) The street name and zip code of the sex offender's current locations of employment;
  - (f) Vehicle registration information of all vehicles currently owned or operated by the sex offender;
  - (g) A brief summary of the criminal offenses against victims who were minors and the sexually violent offenses for which the sex offender has

been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and

(h) A recent photograph of the sex offender.

(3) Relevant information that is necessary to protect the public shall be collected for purposes of making it available to the general public, and a sex offender shall have a diminished expectation of privacy in the information.

(4) The release of relevant information that is necessary to protect the public shall be accomplished by public access to a file containing the relevant information on each registered sex offender, a copy of which shall be provided for inspection upon request at the Hawaii criminal justice data center and at one or more designated police stations in each county, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays excluding holidays. The chief of police and the attorney general shall provide the relevant information on sex offenders upon payment of reasonable fees. Relevant information on each registered sex offender may also be released from an electronic data base maintained by the respective law enforcement agencies that is accessible to users through an interactive computer-based system.

**§ -4 Duties upon discharge, parole, or release of sex offender.** (1) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a sex offender has been committed pursuant to a conviction, or an acquittal or finding of unfitness to proceed pursuant to chapter 704, for a sexually violent offense or a criminal offense against a victim who is a minor, and each judge, or that judge's designee, who releases a sex offender on probation or who discharges a sex offender upon payment of a fine, prior to the discharge, parole, or release of the sex offender, and each agency having jurisdiction, shall:

- (a) Explain to the sex offender the duty to register and the consequences of failing to register under this chapter;
- (b) Obtain from the sex offender all of the registration information required by this chapter;
- (c) Inform the sex offender that if the sex offender changes residence address, the sex offender shall notify the attorney general of the new address in writing within three working days;
- (d) Inform the sex offender that, if the sex offender changes residence to another state, the sex offender shall register the new address with the attorney general and also with a designated law enforcement agency in the new state, if the new state has a registration requirement, not later than ten days after establishing residence in the new state;
- (e) Obtain and verify fingerprints, samples of saliva and blood, a photograph of the sex offender, if these have not already been obtained or verified in connection with the offense that triggers the registration. Blood shall be withdrawn pursuant to this paragraph only by a person authorized to withdraw blood under section 286-152. The agency having jurisdiction shall arrange for the sample to be collected and analyzed. The results shall be recorded, preserved, and disseminated in a manner established by the Hawaii criminal justice data center and consistent with the requirements of chapter 846. For the purposes of this paragraph, the person may be remanded to any available clinic or hospital, intake service center, community correctional center, state or county health department facility, or police department crime laboratory.
- (f) Require the sex offender to sign a statement indicating that the duty to register has been explained to the sex offender;
- (g) Give one copy of the signed statement and one copy of the registration information to the sex offender.

(h) The agency having jurisdiction over the sex offender shall also note any additional physical identifying factors of the sex offender.

(2) No sex offender required to register under this chapter shall be discharged, released from any confinement, or placed on parole or probation unless the requirements of subsection (1) have been satisfied and all registration information required under section -2 has been obtained.

(3) The agency having jurisdiction over the sex offender shall obtain documentation of any treatment the sex offender received for mental abnormality or personality disorder and shall include the documentation, if any, and any additional identifying factors of the sex offender with the registration information. Notwithstanding any law to the contrary, the agency having jurisdiction shall transmit a copy of the signed statement and one copy of the registration information to the attorney general within three working days.

(4) Following receipt of the information from the agency having jurisdiction over the sex offender, the attorney general immediately shall enter the information into a statewide record system, unless the information has been previously entered into a statewide record system, and notify the county police department or appropriate law enforcement agency having jurisdiction where the sex offender expects to reside. The attorney general immediately shall transmit the conviction data and verified fingerprints to the Federal Bureau of Investigation, unless the items have been previously transmitted to the Federal Bureau of Investigation.

(5) Each sex offender, within three working days after release from incarceration, release from commitment, release on furlough, placement on parole, or placement on probation, or within three working days after arrival in a county in which the sex offender resides or expects to be present for a period exceeding thirty days, shall register in person with the county chief of police having jurisdiction of the area in which the sex offender resides or is present. The chief of police shall transmit any sex 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 of the sex offender, taken at the time the sex offender registers with the chief of police. The sex offender shall report in person every five years to the county chief of police of the county where the sex offender's residence is located for purposes of having a new photograph taken.

**§ -5 Periodic verification of registration information.** Unless the sex offender is incarcerated or has registered with a designated law enforcement agency after establishing residence in another state, on the first day of every ninety-day period following the sex offender's initial registration date:

- (a) The attorney general shall mail a nonforwardable verification form to the last reported address of the sex offender;
- (b) The sex offender shall sign the verification form and state that the sex offender still resides at the address last reported to the attorney general and that no other registration information has changed or shall provide the new information;
- (c) The sex offender shall mail the signed and completed verification form to the attorney general within ten days after receipt of the form; and
- (d) If the sex offender fails to mail the verification form to the attorney general within ten days after receipt of the form, the sex offender shall be in violation of this chapter, unless the sex offender proves that the sex offender has not changed the residence address.

This section shall become effective on July 1, 1998.

**§ -6 Requirement to register a change of address; verification by the attorney general.** (1) A sex offender required to register under this chapter, who changes address after an initial registration with the attorney general, shall notify the attorney general of the new residence address in writing within three days of changing residence. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person resides at a different address for not less than ten days. If the new residence is in another state that has a registration requirement, the person shall register the new address with a designated law enforcement agency in the state to which the person moves, not later than ten days after the person establishes residence in that state.

(2) If the attorney general receives notice from the Federal Bureau of Investigation that a sex offender required to be registered under this chapter or under any federal law has entered the State, the attorney general shall notify the Federal Bureau of Investigation of the offender's new residence.

(3) If the attorney general cannot verify the address of or locate a sex offender required to be registered under this chapter or under federal law, the attorney general immediately shall notify the Federal Bureau of Investigation.

**§ -7 Notification by the attorney general of changes in address.** Immediately, and in no event, not later than ten days after receiving notice of a change of address, the attorney general shall report the change of address by a sex offender required to register under this chapter to the county police department where the sex offender is residing and to the Federal Bureau of Investigation. If the person changes residence to another state, the attorney general also shall notify the law enforcement agency with which the person must register in the new state, if the new state has a registration requirement.

**§ -8 Good faith immunity.** Law enforcement agencies, employees of law enforcement agencies, and state and county officials shall be immune from liability for good faith conduct under this chapter.

**§ -9 Penalty.** (1) For a first offense:

- (a) Any person required to register under this chapter who recklessly fails to comply with any of the requirements of this chapter shall be guilty of a misdemeanor; and
- (b) Any person required to register under this chapter who intentionally or knowingly fails to comply with any requirements of this chapter shall be guilty of a class C felony.

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

SECTION 3. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§353- DNA testing of committed persons convicted of sex crimes against minors.** (a) Prior to the discharge or parole of any committed person who has been convicted of an offense involving a minor, including attempts, under section 707-730, 707-731, 707-732, 707-733, 707-741, 707-750, or 707-751, the committed person shall provide a sample of saliva and two samples of blood for the purpose of secretor status, blood type, and DNA analysis unless the person has previously provided such samples under section 706-603. Blood shall be withdrawn only by a person authorized to withdraw blood under section 286-152. The department shall arrange for the sample to be collected and analyzed. The director shall

establish a chain-of-custody procedure that includes a tracking form documenting the handling and storage of the specimen from collection to final disposition of the samples. The results shall be recorded, preserved, and disseminated in a manner established by the Hawaii criminal justice data center in a manner consistent with the requirements of chapter 846.

(b) For the purposes of this section, the committed person may be remanded to any available clinic or hospital, intake service center, community correctional center, state or county health department facility, or police department crime laboratory.”

SECTION 4. Section 707-743, Hawaii Revised Statutes, is repealed.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii, the sum of \$300,000, or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$300,000 or so much thereof as may be necessary for fiscal year 1998-1999 for ongoing operational costs of the sex offender registration and notification program required under this Act, including the hiring of necessary staff. The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 6. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act shall apply to any acts committed prior to, on, or after its effective date.

SECTION 8. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 1997.

(Approved June 30, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.