

ACT 62

H.B. NO. 562

A Bill for an Act Relating to Sexual Assault.

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

PART I

SECTION 1. Act 1, Second Special Session Laws of Hawaii 2001, is amended by amending section 7 to read as follows:

~~“SECTION 7. This Act shall take effect upon its approval [and shall be repealed on June 30, 2003; provided that sections 707-730(1) and 707-732(1), Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act].¹”~~

SECTION 2. Act 1, Second Special Session Laws of Hawaii 2001, is amended by amending section 5 to read as follows:

“SECTION 5. The attorney general shall convene a task force to engage in a comprehensive review of the effectiveness and impact of this Act, based partly on data provided by the department of the prosecuting attorney of the city and county of Honolulu. The attorney general shall request the Coalition for the Prevention of Sex Assault to assist in the development and work of the task force. In addition to its review of this Act, the task force [shall] also shall review differing viewpoints concerning the age of consent for consensual sex conduct, particularly as it relates to minors in sexual relationships with adult partners.

Findings should provide the legislature with factual information, the national experience, and “best practices” for the purpose of assisting the legislature in developing social policy on the issue of “age of consent”, which shall specifically include but is not limited to:

- (1) A compilation of relevant state statutes;
- (2) A compilation of sentencing practices in other jurisdictions;
- (3) An evaluation of statutes and sentencing practices and their impacts on adolescents; and
- (4) Hawaii data on incidents of adolescent sexual activity.

The composition of the task force shall be as follows, but not limited to:

- (1) Each county chief of police, or designate;
- (2) Each county prosecutor, or designate;
- (3) A representative from the judiciary;
- (4) A department of public safety representative;
- (5) A department of health representative;
- (6) A Sex Abuse Treatment Center representative;
- (7) A Sex Assault Coalition representative;
- (8) A Catholic Charities-Child Sex Abuse Treatment Program representative;
- (9) A Children’s Advocacy Center representative;
- (10) An office of youth services representative;
- (11) An immigrant service provider representative;
- (12) The chair of the house committee on judiciary and Hawaiian affairs, or designate;
- (13) The chair of the senate committee on judiciary, or designate;
- (14) A Hawaii Family Forum representative;
- (15) A Sisters Offering Support representative;
- (16) A League of Women Voters representative;
- (17) A Hawaii state commission on the status of women representative; and
- (18) A military community representative.

The task force shall report its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2003. The attorney general shall collect and coordinate data generated as a result of the task force’s recommendations, from the department of education, the department of health, the University of Hawaii, and service providers, and report its findings to the legislature no later than twenty days before the convening of the regular session of 2004.”

PART II

SECTION 3. Section 846E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Registration information” means the information specified in section 846E-2(b).”

SECTION 4. Section 846E-2, Hawaii Revised Statutes, is amended to read as follows:

“§846E-2 Registration requirements. (a) A sex offender shall register with the attorney general and comply with the provisions of this chapter for life.

(b) Registration information for each sex offender shall consist of a recent photograph, verified fingerprints, and ~~[a signed statement by the sex offender containing:]~~ the following information:

- (1) 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;
- (2) The legal address and telephone number of the sex offender’s residence or mailing address, or any current, temporary address where the sex offender resides, and for each address how long the sex offender has resided there;
- (3) The legal address and telephone number where the sex offender is staying for a period of more than ten days, if other than the stated residence;
- (4) The future address and telephone number where the sex offender is planning to reside, if other than the stated residence;
- (5) Names and legal addresses of current and known future employers and the starting and ending dates of any such employment;
- (6) Names and legal addresses of current and known future educational institutions with which the sex 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) The year, make, model, color, and license number of all vehicles currently owned or operated by the sex offender;
- (8) 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;
- (9) A statement indicating whether the sex offender has received or is currently receiving treatment for mental abnormality or personality disorder;
- (10) A statement indicating whether the sex offender is a United States citizen; and
- (11) Any additional identifying information about the sex offender.

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

(d) Each sex offender, whether or not a resident of this state, who remains in the state for more than ten days or for an aggregate period exceeding thirty days in one calendar year, shall register within three working days upon:

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

Each sex offender shall register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present.”

SECTION 5. Section 846E-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Prior to public release of a sex offender’s relevant information under subsection (f), the State shall petition the court, in a civil proceeding, for an order permitting its release. The petition shall be filed with the court in which the offense was prosecuted, or, in the case where the offense did not occur in the State, in the circuit of the sex offender’s residence with the court for which jurisdiction would be proper had the offense occurred in this State. The State shall be represented by the prosecuting attorney for the county where the hearing is held. The State shall have the burden of proving, by a preponderance of the evidence, that the sex offender is required to register under this chapter. Proof by the State shall give rise to a presumption that public release of relevant information is necessary to protect the public. The sex offender shall be given the opportunity to present evidence to rebut the presumption and to show that the offender does not represent a threat to the community and that public release of relevant information is not necessary.

If the court determines that public release of relevant information is necessary to protect the public, the court shall issue an order for the release. The order shall set the time duration of public release of relevant information, which shall be for a minimum period of ten years, unless any [~~one or more of the factors~~] factor listed in paragraph (2), (4), (5), or (6) applies. If any [~~one or more~~] of these factors apply, then the time duration of the public release shall be for the life of the sex offender[~~]. Upon petition by the sex offender, the court may reconsider its determination of lifetime public release; provided that the sex offender may petition the court once every ten years. The court may relieve the sex offender from the determination of lifetime public release upon written findings that the offender does not present a threat to the community and that public release is no longer necessary.~~]; provided that upon petition by the sex offender, the court may modify its order for lifetime public release upon a showing, by clear and convincing evidence, that the sex offender suffers an extraordinary physical disability that prevents the offender from committing future sexual offenses.

The court in making its determination shall consider the following factors:

- (1) The offense involved the death or serious bodily injury of another person;
- (2) The offense resulted in sentencing under the terms of section 706-606.5, 706-660.2, or 706-661;
- (3) The offender has inexcusably failed to comply with terms and conditions of probation or parole;
- (4) The victim was twelve years of age or younger at the time of the offense;
- (5) The offender either prior to or subsequent to the offense requiring registration under this chapter, has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual offense or an offense against children, including all offenses occurring in other jurisdictions;
- (6) The offender has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual assault as defined in section 707-730(1)(a) or an offense that is comparable in another jurisdiction;
- (7) The offender [~~who~~] has inexcusably failed to register as a sex offender or [~~who~~] is otherwise not in compliance with this chapter; and

- (8) The offender has been convicted of any crime since the conviction requiring the offender's registration."

SECTION 6. 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 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 continues bail for or releases a sex offender following a guilty verdict or a plea of guilty or nolo contendere, who releases a sex offender on probation or who discharges a sex offender upon payment of a fine, and each agency having jurisdiction, shall, prior to the discharge, parole, or release of the sex offender:

- (1) Explain to the sex offender the duty to register and the consequences of failing to register under this chapter;
- (2) Obtain from the sex offender all of the registration information required by this chapter;
- (3) Inform the sex offender that if at any time the sex offender changes ~~[name, employment, vehicle, or residence address;]~~ any of the sex offender's registration information, the sex offender shall notify the attorney general of the new registration information in writing within three working days;
- (4) Inform the sex offender that, if at any time 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;] within the period of time mandated by the new state's sex offender registration laws;
- (5) Obtain and verify fingerprints and a photograph of the sex offender, if these have not already been obtained or verified in connection with the offense that triggers the registration;
- (6) Require the sex offender to sign a statement indicating that the duty to register has been explained to the sex offender; and
- (7) Give one copy of the signed statement and one copy of the registration information to the sex offender."

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

"(e) ~~[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 ten 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 and fingerprints 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."

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SECTION 8. Section 846E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A sex offender required to register under this chapter, who changes ~~[name, employment, vehicle, or residence address]~~ any of the sex offender’s registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person resides at a different address for not less than ten days. If the new residence is in another state that has a registration requirement, the person shall register with [a] the 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.]~~ within the period of time mandated by the new state’s sex offender registration laws.”

SECTION 9. 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 10. Statutory material to be repealed is bracketed and ~~stricken~~. New statutory material is underscored.

SECTION 11. This Act shall take effect on June 29, 2003.

(Approved May 19, 2003.)

Note

1. Does not include amendment made by L 2002, c 36.