

ACT 45

S.B. NO. 708

A Bill for an Act Relating to Chapter 846E.

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

SECTION 1. Chapter 846E, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§846E-A Termination of registration requirements. (a) 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.

(b) A covered offender whose most serious covered offense is a class B felony or its non-Hawaii equivalent, who has substantially complied with the

registration requirements of this chapter for the previous fifteen 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.

(c) 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 substantially complied with the registration requirements of this chapter for the previous ten 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.

(d) 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.

§846E-B Presumptions; civil proceeding. (a) For any civil proceeding required or permitted by this chapter, the following presumptions shall apply:

- (1) For a covered offender who is a sexually violent predator, an aggravated sex offender, or a repeat covered offender, there shall be a presumption that the covered offender's registration requirement and public access shall continue;
- (2) For a covered offender convicted of a class C felony or a misdemeanor who is not a sexually violent predator, an aggravated sex offender, or a repeat covered offender, there shall be a presumption that the covered offender's registration requirement and public access shall end; and
- (3) For all other covered offenders, there shall be no presumption concerning the covered offender's registration requirement and public access.

(b) The presumptions created in this section shall not apply to criminal proceedings initiated pursuant to section 846E-9.

§846E-C Tolling. The time periods provided for in this chapter shall be tolled during any period of time the covered offender is committed or recommitted to prison or confined to a halfway house, or an equivalent facility, pursuant to a parole or probation violation.

§846E-D Determination of whether a sex offender is a sexually violent predator. Whenever a petition for termination of registration requirements is filed pursuant to section 846E-A, or upon petition by the State at any time after a determination of guilt, a court, in a civil proceeding, shall make a determination as to whether a sex offender is a sexually violent predator. The determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board, appointed by the chief justice of the supreme court, composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. The State and the sex offender may, at their discretion and expense, select additional experts in the field of psychiatry or psychology to conduct additional evaluations of the covered offender. The court shall make a determination as to whether or not the sex offender is a sexually violent predator for purposes of this chapter."

SECTION 2. Chapter 846E, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“[H]CHAPTER 846E[H]
[SEX OFFENDER] REGISTRATION OF SEX OFFENDERS AND
OTHER COVERED OFFENDERS AND [NOTIFICATION] PUBLIC
ACCESS TO REGISTRATION INFORMATION”**

SECTION 3. Section 846E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding fifteen new definitions to be appropriately inserted and to read: ““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 707-733.5, 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).

“Conviction” means a judgment on the verdict, or a finding of guilt after a plea of guilty or nolo contendere, excluding the adjudication of a minor.

“Covered offender” means a “sex offender” or an “offender against minors,” as defined in this section.

“Covered offense” means a criminal offense that is:

- (1) A crime within the definition of “crimes against minors” in this section; or
- (2) A crime within the definition of “sexual offense” in this section.

“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 a parent;
- (2) Unlawful imprisonment in the first degree of a minor, except by 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).

“Mental abnormality” means a condition involving a disposition to commit criminal sexual offenses with a frequency that makes the person a menace to others.

“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 the effective date of this Act, of a “crime against minors” as defined in this section; or
- (2) Charged at any time, whether before or after the effective date of this Act 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 due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.

“Parent” means a parent, legal guardian, or a person who has a substantial familial or hanai relationship with the minor.

“Personality disorder” shall have the same meaning as the term is used in the Diagnostic and Statistical Manual of Mental Health Disorders: DSM-IV, American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

“Predatory” means an act directed at:

- (1) A stranger; or
- (2) A person with whom a relationship has been established or promoted for the primary purpose of victimization.

“Release” means release from:

- (1) Imprisonment;
- (2) Imprisonment and placed on parole;
- (3) Imprisonment and placed on furlough;
- (4) Any form of commitment, custody, or confinement resulting from an order made pursuant to chapter 704; or
- (5) A halfway house or other equivalent facility,

whichever is later.

“Repeat covered offender” means:

- (1) A person who is or has been convicted at any time, whether before or after the effective date of this Act of more than one covered offense as defined in this section; or
- (2) A person who is or has been charged at any time, whether before or after the effective date of this Act with more than one covered offense as defined in this section and who has been, more than once, either:
 - (A) Convicted;
 - (B) Found unfit to proceed pursuant to chapter 704; or
 - (C) Acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.

“Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-731(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), 707-733.5, or 712-1202(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;
 - (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, if the act involves:
- (i) Sexual conduct;
 - (ii) Attempted sexual conduct; or
 - (iii) A proposal to engage in sexual conduct;
- 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).

“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.”

2. By amending the definitions of “agency having jurisdiction” and “sex offender” to read:

““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,¹ and the department of health.

“Sex offender” means:

- (1) [~~Any~~] A person [en~~vi~~cted of a “sexually violent offense” or a “criminal offense against a victim who is a minor”]; who is or has been convicted at any time, whether before or after the effective date of this Act of a “sexual offense”; or
- (2) [~~Any~~] A person who is [ch~~ar~~ged with a “sexually violent offense” or a “criminal offense against a victim who is a minor”] or has been charged at any time, whether before or after the effective date of this Act with a “sexual offense” and is or has been found unfit to proceed and is or has been released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704[.] and is released into the community.”

3. By deleting the definitions of “criminal offense against a victim who is a minor” and “sexually violent offense”.

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

- (1) ~~Kidnapping of a minor, except by a parent;~~
- (2) ~~Unlawful imprisonment in the first degree of a minor, except by a parent;~~
- (3) ~~Criminal sexual conduct toward a minor;~~
- (4) ~~Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;~~
- (5) ~~Use of a minor in a sexual performance, or any crime defined in part VI of chapter 707 involving:~~
 - (A) ~~Sexual conduct;~~

- ~~(B) Attempted sexual conduct; or~~
 - ~~(C) A proposal to engage in sexual conduct;~~
 - (6) Solicitation of a minor to practice prostitution;
 - (7) 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;
 - (8) 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 (7); or
 - (9) Any state, federal, or military law similar to paragraphs (1) through (8).
- “Sexually violent offense” means an act committed on, before, or after July 1, 1997, that is:
- (1) 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);
 - (2) A criminal offense that is comparable to a sexually violent offense as defined in paragraph (1) 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 (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 paragraph (1) or (2).”]

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

“§846E-2 Registration requirements. (a) A [sex] covered² 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-A.

(b) 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.

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

- (1) [Name] The name, all prior names, and all aliases used by the [sex] covered offender or under which the [sex] covered 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] actual address and telephone number of the [sex] covered offender’s residence or mailing address, or any current, temporary address where the [sex] covered offender resides, and for each address how long the [sex] covered offender has resided there;

- (3) The ~~[legal]~~ actual address and telephone number where the ~~[sex]~~ covered offender is staying for a period of more than ten days, if other than the stated residence;
- (4) ~~[The]~~ If known, the future address and telephone number where the ~~[sex]~~ covered offender is planning to reside, if other than the stated residence;
- (5) Names and ~~[legal addresses]~~, if known, actual business addresses of current and known future employers and the starting and ending dates of any such employment;
- (6) Names and ~~[legal addresses]~~ actual addresses of current and known future educational institutions with which the ~~[sex]~~ 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) The year, make, model, color, and license number of all vehicles currently owned or operated by the ~~[sex]~~ covered offender;
- (8) ~~[A summary of the criminal offenses against victims who were minors and sexually violent offenses]~~ A statement listing all covered offenses for which the ~~[sex]~~ covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- (9) A statement indicating whether the ~~[sex]~~ covered offender has received or is currently receiving treatment ~~[for mental abnormality or personality disorder;]~~ ordered by a court of competent jurisdiction or by the Hawaii paroling authority;
- (10) A statement indicating whether the ~~[sex]~~ covered offender is a United States citizen; and
- (11) Any additional identifying information about the ~~[sex]~~ covered offender.

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

~~[(d)]~~ (e) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter ~~[for life,]~~ until a court relieves the covered offender of the registration requirements of this chapter, each ~~[sex]~~ covered offender shall also register in person with the ~~[county]~~ chief of police ~~[having jurisdiction of the area]~~ where the ~~[sex]~~ covered offender resides or is present. Registration under this subsection is for the purpose of providing the ~~[sex]~~ covered offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the ~~[sex]~~ 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. ~~[Sex]~~ Covered offenders required to register in person with the ~~[county]~~ chief of police under this subsection shall register ~~[within]~~ no later than three working days ~~[upon:]~~ after:

- (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]~~ 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 ~~[sex]~~ covered 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] covered offender resides for purposes of having a new photograph taken.

(f) 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 5. 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;
- (3) The attorney general and any county police department shall release [relevant information that is necessary to protect the] 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, [~~"relevant information that is necessary to protect the public"~~] "public information" means:

- (1) Name,³ prior names, and all aliases used by the [sex] covered offender or under which the [sex] covered offender has been known;
- (2) The actual address where the [sex] covered offender resides and how long the [sex] covered offender has resided there;
- (3) The actual address where the [sex] covered offender is staying for more than ten days, if other than the stated residence;
- (4) The future actual address, if known, where the [sex] covered offender is planning to reside, if other than the stated residence;
- (5) The [actual addresses] street name and zip code of the [sex] covered offender's current locations of employment;
- (6) Names and [~~legal~~] actual addresses of current and known future educational institutions with which the [sex] covered offender is affiliated 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] covered offender[;], excluding vehicles operated exclusively for purposes of work;
- (8) [A brief summary of the criminal offenses against victims who were minors and the sexually violent] A statement listing all covered offenses for which the [sex] covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and
- (9) A recent photograph of the [sex] covered offender.

~~[(c) 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.]~~

~~[(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 factor listed in paragraph (2), (4), (5), or (6) applies. If any of these factors apply, then the time duration of the public release shall be for the life of the sex offender; 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 has inexcusably failed to register as a sex offender or 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.

(e) Subsections (d) and (f) shall not apply to offenders who have been convicted of a single misdemeanor sexual offense. Offenders convicted of multiple sexual offenses shall be subject to subsections (d) and (f).

(f) 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 database maintained by the respective law enforcement agencies that is accessible to users through an interactive computer-based system.]

(c) 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 sections 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 sections 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) 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 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 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. The court may order this termination upon proof by a preponderance of the evidence that the covered offender:

- (1) Has had no new convictions for covered offenses;
- (2) 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) 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) The following message shall be posted at both the site of 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) The public access provisions of this section shall apply to all covered offenders without regard to the date of conviction.

(i) "Conviction" as used in this section means:

- (1) A judgment on the verdict, or a finding of guilt after a plea of guilt 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 6. Section 846E-4, Hawaii Revised Statutes, is amended to read as follows:

"§846E-4 Duties upon discharge, parole, or release of [sex] covered offender. (a) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a [sex] covered 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,] covered offense, and each judge, or that judge's designee, who continues bail for or releases a [sex] covered offender following a guilty verdict or a plea of guilty or nolo contendere, who releases a [sex] covered offender on probation or who discharges a [sex] covered offender upon payment of a fine, and each agency having jurisdiction, shall, prior to the discharge, parole, or release of the [sex] covered offender:

- (1) Explain to the [sex] covered offender the duty to register and the consequences of failing to register under this chapter;
- (2) Obtain from the [sex] covered offender all of the registration information required by this chapter;
- (3) Inform the [sex] covered offender that if at any time the [sex] covered offender changes any of the [sex] covered offender's registration information, the [sex] covered offender shall notify the attorney general of the new registration information in writing within three working days;

- (4) Inform the [sex] covered offender that, if at any time the [sex] covered offender changes residence to another state, the [sex] covered 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, 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] covered offender, if these have not already been obtained or verified in connection with the offense that triggers the registration;
- (6) Require the [sex] covered offender to sign a statement indicating that the duty to register has been explained to the [sex] covered offender; and
- (7) Give one copy of the signed statement and one copy of the registration information to the [sex] covered offender.

(b) No [sex] covered 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 (a) have been satisfied and all registration information required under section 846E-2 has been obtained.

(c) Notwithstanding any law to the contrary, a copy of the signed statement and one copy of the registration information shall be transmitted to the attorney general within three working days.

(d) Following receipt of the information from the agency having jurisdiction over the [sex] covered 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] covered 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.

(e) The chief of police shall transmit any [sex] 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 [sex] covered offender, taken at the time the [sex] covered offender registers with the chief of police. The [sex] covered offender shall report in person every five years to the [county] chief of police [of the county] where the [sex] covered offender's residence is located for purposes of having a new photograph taken."

SECTION 7. Section 846E-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§]846E-5~~ **Periodic verification of registration information.** Unless the [sex] covered 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] covered offender's initial registration date:

- (1) The attorney general shall mail a nonforwardable verification form to the last reported address of the [sex] covered offender;
- (2) The [sex] covered offender shall sign the verification form and state that the [sex] covered 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;

- (3) The [sex] covered offender shall mail the signed and completed verification form to the attorney general within ten days after receipt of the form; and
- (4) If the [sex] covered offender fails to mail the verification form to the attorney general within ten days after receipt of the form, the [sex] covered offender shall be in violation of this chapter, unless the [sex] covered offender proves that the [sex] covered offender has not changed the residence address.

This section shall become effective on July 1, 1998.’’

SECTION 8. Section 846E-6, Hawaii Revised Statutes, is amended to read as follows:

“§846E-6 Requirement to register a change of registration information; verification by the attorney general. (a) A [sex] covered offender required to register under this chapter, who changes any of the [sex] covered 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 is absent from the person’s registered residence for ten or more days. If the new residence is in another state that has a registration requirement, the person shall register with the designated law enforcement agency in the state to which the person moves, within the period of time mandated by the new state’s sex offender registration laws.

(b) If the attorney general receives notice from the Federal Bureau of Investigation that a [sex] covered 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.

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

SECTION 9. Section 846E-7, Hawaii Revised Statutes, is amended to read as follows:

“§846E-7 Notification by the attorney general of changes in registration information. Immediately, and in no event, not later than ten days after receiving notice of a change of registration information, the attorney general shall report the change of registration information by a [sex] covered offender required to register under this chapter to the county police department where the [sex] covered offender is residing and, in the event the [sex] covered offender changes address to another county or state, shall report such change of address 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.’’

SECTION 10. Section 846E-9, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§846E-9 Failure to comply with [sex] covered offender registration requirements. (a) A person commits the offense of failure to comply with [sex] 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 to the [eounty] chief of police [of the county] where the [sex] covered offender's residence is located, for purposes of having a new photograph taken within five years after the previous photograph was taken;
- (3) Fails to register in person with the [eounty] chief of police having jurisdiction of the area where the [sex] covered offender resides or is present within three working days whenever the provisions of section [846E-2(d)] 846E-2(e) require the person to do so;
- (4) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the [sex] covered offender's registration information in writing within three working days of the change;
- (5) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- (6) 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; or
- ~~(7) Fails to comply with any other requirement of this chapter.~~⁴
- (7) 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."

SECTION 11. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. This Act shall have retroactive application.

SECTION 13. 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 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁵

SECTION 15. This Act shall take effect upon its approval.

(Approved May 9, 2005.)

Notes

1. "The courts," should not be underscored.
2. "Covered" should be underscored.
3. Comma should be underscored.
4. Period should be bracketed and stricken.
5. Edited pursuant to HRS §23G-16.5.