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S.B. NO. 1042

A Bill for an Act Relating to Covered Offender Registration.

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

SECTION 1. The Hawaii supreme court, in its ruling in *Doe v. Connors*, 145 Haw. 469, 454 P. 3d 410 (2019), held that Doe, who was required to register as a sex offender in the State of Washington, was not required to register as a covered sex offender under Hawaii law. Doe had been convicted in Washington for communication with a minor for an immoral purpose. The Hawaii supreme court held that the offense did not match any of Hawaii's covered offenses, including solicitation to engage in sexual conduct with a minor who is less than fourteen years old.

As a result of the *Doe* decision, a person who visits Hawaii for more than ten days or visits Hawaii for an aggregate period exceeding thirty days per year

does not need to register as a covered offender in Hawaii if the person's out-of-state conviction does not correspond to a covered offense under Hawaii law.

The purpose of this Act is to require those persons who have been designated as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in another state or jurisdiction, and were, as a result, subject to registration in that state or jurisdiction, or would be if residing in that state or jurisdiction, to be subject to registration requirements in Hawaii.

SECTION 2. Section 846E-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person who establishes or maintains a residence in this State or who remains in this State for more than ten days or for an aggregate period exceeding thirty days in one calendar year, and who has not been designated as a covered offender by a court of this State but who has been designated as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in another state or jurisdiction and was, as a result of [such] the designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a covered offender, shall register in the manner provided in this section [and shall be subject to community and public notification as provided in section 846E-3]. A person who meets the criteria of this subsection is subject to the requirements of this chapter for covered offenders and penalty provisions of section 846E-9 until the person successfully petitions [the attorney general for termination of registration requirements by]:

- (1) [Providing] The attorney general for termination of registration requirements by providing an order issued by the court that designated the person as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in the state or jurisdiction in which the order was issued, which states that [such] the designation has been removed or demonstrates to the attorney general that [such] the designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and [such] the person does not meet the criteria for registration as a covered offender under the laws of this State; or; provided that if the person is not satisfied with the decision of the attorney general on the request for termination of registration requirements, the person may appeal the decision pursuant to chapter 91; or
- (2) [Demonstrating that the out-of-state convictions upon which the sexual offender designation was established are not covered offenses under section 846E-1, thereby showing that such person does not meet the criteria for registration as a covered offender under the laws of this State.] The court for termination of registration requirements pursuant to section 846E-10.

[If the covered offender is not satisfied with the decision of the attorney general on the request for termination of registration requirements, the covered offender may appeal the decision pursuant to chapter 91.]”

SECTION 3. Section 846E-10, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-10 Termination of registration requirements.** (a) Tier 3 offenses. A covered offender whose covered offense is any of the following offenses shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements:

- (1) Any offense set forth in section 707-730(1)(a), (b), (d), or (e); 707-731(1)(a) or (b); 707-732(1)(a), (b), or (f); or 707-733.6;
- (2) An offense set forth in section 707-720; provided that the offense involves kidnapping of a minor by someone other than a parent;
- (3) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1) or (2);
- (4) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), or (3); or
- (5) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), or (3).

(b) A repeat covered offender shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements.

(c) Tier 2 offenses. A covered offender who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202, or 712-1203(1)(b), as section 712-1203(1)(b) read [~~prior to~~] before its amendment pursuant to section 9 of Act 147, Session Laws of Hawaii 2008;
- (2) An offense set forth in section 707-720; provided that 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 offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

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

- (1) Any offense set forth in section 707-732(1)(d) or (e), 707-733(1)(a), 707-752, 707-759, 711-1110.9, 712-1203(1), or 712-1209.1;
- (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;

- (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
  - (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
  - (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4);
  - (6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
  - (7) Any other covered offense that is not specified in subsection (a) or (c) or paragraph (1), (2), (3), (4), (5), or (6).
- (e) Notwithstanding any other provisions in this section, any covered offender, forty years after the covered offender's date of release or sentencing, whichever is later, for the covered offender's most recent covered offense, may petition the court, in a civil proceeding, for termination of registration requirements.

(f) In the civil proceeding for termination of registration requirements, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the State to represent the State. For covered offenders who have never been convicted of a covered offense within the State [of Hawaii], the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

- (1) The covered offender has met the statutory requirements of eligibility to petition for termination;
- (2) The covered offender has substantially complied with registration requirements;
- (3) The covered offender is very unlikely to commit a covered offense ever again; and
- (4) Registration by the covered offender will not assist in protecting the safety of the public or any member thereof.

~~[(g) 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.]~~

(g) A person who does not meet the criteria for registration as a covered offender under the laws of this State, but is subject to registration pursuant to section 846E-2(b), may petition the court, in a civil proceeding, for termination of registration requirements; provided that the person has maintained a clean record for the previous ten years, excluding any time the person was in custody or civilly committed; has substantially complied with the registration requirements of this chapter for the previous ten years; and was not designated a repeat covered offender in any state or jurisdiction. The attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the person resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

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

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

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

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

(h) 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 most recent denial.”

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

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2021.)