

State of Hawaii
Department of the Attorney General



Report of the
Adam Walsh Act Compliance Working Group

Pursuant to
Act 80, Session Laws of Hawaii 2008

Submitted to
The Twenty-Fifth State Legislature
Regular Session of 2009

I. INTRODUCTION

Section 12 of Act 80, Session Laws of Hawaii 2008, states:

The federal Sex Offender Registration and Notification Act is Title I of the Adam Walsh Child Protection and Public Safety Act of 2006, Public Law No. 248-109, (Adam Walsh Act). The Adam Walsh Act requires the fifty states, the District of Columbia, the five principal United States territories, and federally recognized Indian tribes that function as sex offender registration jurisdictions to conform their laws by July 29, 2009, to guidelines for sex offender registration adopted by the Department of Justice. If a jurisdiction fails to substantially comply with the guidelines, the jurisdiction faces the loss of ten per cent of any federal funds it may receive pursuant to the Edward Byrne Memorial Justice Assistance Grant program.

Section 13 of Act 80 establishes the Adam Walsh Act Compliance Working Group and provides that the working group shall:

- (1) Determine which Hawaii laws, including chapter 846E, Hawaii Revised Statutes, need to be amended and whether any new laws need to be enacted to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it; including provisions on:
 - (A) Registration of juveniles;
 - (B) Lifetime registration;
 - (C) More frequent periodic in-person verification; and
 - (D) Classification of most serious covered offenses and duration of registration requirements for tier 1 offenses;
- (2) Identify what resources are necessary for the State to implement any new or amended laws to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it;
- (3) Identify all sources of funding, including federal grants and legislative appropriations, that may be available to implement programs necessary for compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it;
- (4) Consider whether the additional costs that may be incurred to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it outweigh the Edward Byrne Memorial Justice Assistance Grant funds that would be retained by compliance and any other benefits attributable to compliance;
- (5) Review the provisions of Part II of this Act, as those measures pertain to the sex offender registry laws; and

- (6) Draft proposed legislation necessary to bring the State into compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it.

Section 13 of Act 80 provides that the working group shall be composed of the following:

- (1) The attorney general;
- (2) The director of public safety;
- (3) The director of the office of youth services;
- (4) The state public defender;
- (5) The administrative director of the courts;
- (6) The chief of police of the city and county of Honolulu;
- (7) A member of the Hawaii Prosecuting Attorneys Association;
- (8) A representative of a victim advocacy program who is not employed with an agency or entity otherwise represented on the working group and who shall be selected by the attorney general;
- (9) A representative of the American Civil Liberties Union; and
- (10) A representative of the Hawaii Criminal Defense Attorneys Association.

The Prosecuting Attorney of the County of Maui served as the representative of the Hawaii Prosecuting Attorneys Association. The Attorney General selected Adrianna Ramelli, Executive Director of the Sex Abuse Treatment Center, to serve as the representative of a victim advocacy program who is not employed with an agency or entity otherwise represented on the working group. Daniel Gluck, Senior Staff Attorney, served as the representative of the American Civil Liberties Union. The President of the Hawaii Criminal Defense Attorneys Association, Myles Breiner, served as the representative of the Association.

Professor Virginia E. Hench of the William S. Richardson School of Law, University of Hawaii – Manoa, served as the Reporter of the Working Group.

This report is the result of a collaborative effort of Working Group members representing a broad spectrum of views. To the extent that individual members of the Working Group had additional comments or wished to make different recommendations, the Working Group agreed that these materials would be attached as appendices. The Concurrence by the American Civil Liberties Union is attached to this report. (Appendix 1)

II. ACTIVITIES OF THE ADAM WALSH ACT COMPLIANCE WORKING GROUP

- A. Determine which Hawaii laws need to be amended and whether any new laws need to be enacted to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it; including provisions on registration of juveniles, lifetime registration, more frequent periodic in-person verification, and classification of most serious covered offenses and duration of registration requirements for tier 1 offenses.**

1. Registration of covered offenders

A subgroup of the Working Group examined the issue of legislation to amend Hawaii laws regarding registration of covered offenders. The subgroup was composed of Mark Bennett, Attorney General (chair); Daniel Gluck, Senior Staff Attorney, American Civil Liberties Union; Myles Breiner, President, Hawaii Criminal Defense Attorneys Association; Susan Arnett, Supervisor, Felony Department, Office of the Public Defender; Lance Goto, Deputy Attorney General; Kimberly Guidry, Deputy Solicitor General; and Liane Moriyama, Administrator, Hawaii Criminal Justice Data Center.

The Department of the Attorney General prepared a summary of areas where Hawaii's sex offender registration program (chapter 846E, Hawaii Revised Statutes, as amended by Act 80) differs from the requirements of the Sex Offender Registration and Notification Act (SORNA), as interpreted by the United States Department of Justice National Guidelines for Sex Offender Registration and Notification, effective July 2, 2008. The summary is attached to this report. (Appendix 2)

The subgroup examined the differences between federal and Hawaii registration laws, as well as other concerns, including registration requirements for temporary registrants, for offenders who have relocated to another state and are confirmed to be compliant with that state's registration law, and for offenders who were convicted long ago of offenses that are no longer crimes and who have had no subsequent offenses. After considering a wide array of possible changes to the law, the subgroup recommended that no changes be made to Hawaii's registration laws at this time.

2. Registration of juveniles

Under SORNA, juveniles 14 and older who are adjudicated in Family Court for certain violent sexual offenses categorized as "aggravated sexual abuse" are subject to registration requirements, but under current Hawaii law, juveniles adjudicated in Family Court for sexual offenses are not subject to registration requirements. A subgroup of the Working Group examined the issue of registration of juveniles. The subgroup was composed of Martha Torney, Director of the Office of Youth Services (chair); John Tonaki, Public Defender; Benjamin Acob, Prosecuting Attorney, County of Maui; Adrianna Ramelli, Executive Director, Sex Abuse Treatment Center; Myles Breiner,

President, Hawaii Criminal Defense Attorneys Association; Christine Miwa-Mendoza, Program Specialist, Family Court of the First Circuit; Stuart Okumura, Administrator, Juvenile Justice Information System; Laureen Uwaine, Assistant Administrator, Hawaii Criminal Justice Data Center; and Robert Wetzel, Ph.D.

In its discussions, the subgroup considered the philosophy of the juvenile justice system, adolescent development, and public safety issues. The subgroup provided the following information:

Philosophy of Juvenile Justice System

The first juvenile court was established in 1899 in Cook County, Illinois, based on the British doctrine of *parens patriae* (the state as parent), which allowed the state to have the inherent power and responsibility to act in the best interest of the child. As such, when a juvenile offender is before the juvenile court, the court can consider extralegal factors, such as social and family background, as well as legal factors when determining how to respond to criminal and status offending behavior. Dispositions are crafted to promote rehabilitation and reduce reoffending behavior.

In 1909, Hawaii established its juvenile court system based on the same philosophy. Chapter 571, Hawaii Revised Statutes, states in part that its purpose is to “. . . foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce delinquency.” For youth adjudicated as responsible for criminal behavior, it further states that “. . . no such adjudication shall impose any civil disability ordinarily resulting from conviction” This state mandate may raise questions as to its applicability concerning requirements of the Adam Walsh Act.

Adolescent Development

According to a January 2004 American Bar Association article on the subject of adolescent brain development, “As a society, we recognize the limitations of adolescents and, therefore, restrict their privileges to vote, serve on a jury, consume alcohol, marry, enter into contracts, and even watch movies with mature content.” Adolescence is a period of gradual maturation. Roughly defined as the period between the onset of puberty and maturity, adolescence may last from age 10 to age 25. Extensive research into adolescent brain development shows that adolescents and young adults are not fully mature in their judgment, emotional development, and problem-solving and decision-making capacities. Some adolescents, due to immaturity, may not recognize the distress they cause in their victims. It is also known that a high percentage of juvenile sex offenders have significant learning disabilities such as Acute Deficit and Hyperactivity Disorder (ADHD) and Asperger’s Syndrome (a form of Autism) which impair problem-solving abilities. As a result, juveniles

may act impulsively and may not always associate consequences with their behavior.

An April 2007 article from the Coalition for Juvenile Justice states:

In 2005, the U.S. Supreme Court's ruling in *Roper v. Simmons* outlawed the juvenile death penalty. In authoring the majority opinion that the death penalty is not appropriate for youth under age 18, Justice Anthony Kennedy noted that "juveniles are more vulnerable or susceptible [than adults] to negative influences and outside pressures, including peer pressure This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment." Justice Kennedy further cited scientific and sociological studies on the "undeveloped sense of responsibility found in youth."

According to a fact sheet by the Campaign for Youth Justice, youth who are charged with sex offenses are amenable to treatment for various reasons: youth are in a transitional and developmental stage in their lives and their sexual offending behavior is not fixed, so juvenile-specific treatment is very promising; the Association for the Treatment of Sexual Offenders (ATSO) reports that the significantly lower incidence of sexual aggression, fantasy, and compulsivity among youth than among adult offenders suggests that sexual behavior problems displayed by juveniles have a better chance of improving with intervention; and ATSO thus recommends that youth sex offenders be treated through high-quality, juvenile-specific, community-based treatment as an alternative to the adult criminal justice system whenever possible. Hawaii has well-established juvenile sex offender treatment programs that provide the level of treatment proscribed by ATSO.

Public Safety

A primary goal of the juvenile justice system is to protect the public from harm at the hands of juvenile offenders. The National Center on Sexual Behavior of Youth reports that only 5 percent to 14 percent of juvenile sex offenders re-offend (compared to approximately 40 percent of adults, as reported by the United States Bureau of Justice Statistics). The re-offense rate for sex offenses is substantially lower than are the recidivism rates for other adolescent delinquent behavior, which range from 8 percent to 58 percent. For the purposes of this report, the Department of the Attorney General reviewed ten years of Family Court data (1997-2006) and identified 34 juveniles adjudicated for SORNA-eligible offenses. The determination of SORNA eligibility was made with the assistance of police reports associated with the Family Court cases. Further review was conducted to determine if

these youth recidivated in general and specifically with a new sexual offense. Both juvenile and adult records were reviewed in making the recidivism determination. Of the 34, while 13 did commit new crimes as a juvenile or an adult, only one recidivated with a new sexual offense.

When a juvenile is accused of a SORNA-eligible sexual offense, Hawaii law allows for the juvenile to be waived to the adult court for criminal prosecution. The waiver process is designed to protect the public from serious and violent juvenile offenders. Those waived are treated as adults, and are thereby eligible for sex offender registration under current Hawaii law.

Based on the statistics and information above, the subgroup found that Hawaii already has mechanisms in place to address the most serious and violent juvenile sex offenders, and that there is no evidence to show that the current legal system is not functioning adequately. Therefore, the subgroup recommended that Hawaii not amend its registration laws to include juvenile adjudications at this time.

B. Identify what resources are necessary for the State to implement any new or amended laws to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it.

A subgroup of the Working Group examined the issues of resources, funding sources, and costs and benefits of compliance. The subgroup was composed of Liane Moriyama, Administrator, Hawaii Criminal Justice Data Center (chair); Julie Ebato, Program Specialist, Crime Prevention and Justice Assistance Division, Department of the Attorney General; Tom Read, Offender Management Program Officer, Department of Public Safety; Jennifer Sablan, Supervisor, Sex Offender Registration Unit, Hawaii Criminal Justice Data Center; Debora Tandal, Assistant Chief, Honolulu Police Department; Norma Ueno, Supervisor, Criminal History Record Check Unit, Hawaii Criminal Justice Data Center; and Laureen Uwayne, Assistant Administrator, Hawaii Criminal Justice Data Center.

The subgroup considered the potential fiscal impact if Hawaii were to comply fully with SORNA. Areas identified as having the greatest potential fiscal impact include the SORNA requirements of frequent in-person verification and in-person reporting of changes in registration information. At present, under Hawaii law, in-person verification is required every five years. Starting on July 1, 2009, in-person verification will be required every year. While this annual in-person reporting will significantly increase the burden on law enforcement agencies, the required frequency of reporting under SORNA is even greater. For certain classes of offenders, SORNA requires in-person reporting every three or six months. The Honolulu Police Department does not have officers assigned specifically to handle registration, which is done at the main station by the Records Division. While clerks are usually able to process registrants in as little as fifteen minutes, registrants are not always cooperative and sometimes hinder the process; for example, by writing illegibly or not

cooperating during the photograph process. Thus, if compliance depends entirely on law enforcement agencies, it may be difficult to comply with the new annual in-person verification requirement.

A compliance cost worksheet is attached to this report. (Appendix 3) The subgroup noted that the frequent SORNA in-person reporting requirements could result in more violations, which in turn might require the allocation of more resources for enforcement, prosecution, probation, and parole, in addition to increased indirect costs.

C. Identify all sources of funding, including federal grants and legislative appropriations, that may be available to implement programs necessary for compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it.

Federal funding sources for sex offender registration are becoming very limited. Possible funding sources continue to be SMART (Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking) grants, SOMA (Sex Offender Management and Assessment) grants, or state legislative appropriations.

D. Consider whether the additional costs that may be incurred to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it outweigh the Edward Byrne Memorial Justice Assistance Grant funds that would be retained by compliance and any other benefits attributable to compliance.

All of the potential additional costs of compliance, including those listed in the attached cost compliance worksheet, would be weighed against a possible penalty for noncompliance amounting to a ten percent decrease in federal Byrne Grant funds for 2010, estimated to be between \$43,000 and \$140,000 based on Byrne Grant funding to fiscal years 2006-2007 and 2007-2008. This amount would be deducted from the total Byrne Grant funds that Hawaii would otherwise expect to receive. The Department of Justice considers many factors, including good faith effort, in determining compliance.

E. Review the provisions of Part II of the Adam Walsh Act, as those measures pertain to the sex offender registry laws.

The Working Group reviewed the provisions of Part II of Act 80 related to sex offender registry laws. The Department of the Attorney General will notify registered covered offenders by mail regarding the changes that affect the responsibilities of covered offenders. Additionally, the Department of the Attorney General will post this information on the Hawaii sex offender website.

The Working Group considered the materials currently provided to offenders regarding the process to petition for termination or modification of registration requirements. At the time of this report, four petitions had been filed and ruled on, with three resulting in termination of registration, and one resulting in termination of public access. Two other petitions had been withdrawn, and one was still being researched. The Department of the Attorney General will revise the materials provided to covered offenders to conform to the changes under Act 80 that will take effect on January 1, 2009, and will notify registered covered offenders regarding these changes. Additionally, the Department of the Attorney General will post information regarding the petition process on the Hawaii sex offender website.

F. Draft proposed legislation necessary to bring the State into compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it.

Although the Working Group recommends that no changes be made to the present Hawaii registration laws, proposed legislation drafted pursuant to section 13(b)(6) of Act 80 is attached to this report. (Appendix 4)

III. RECOMMENDATION

The Working Group recommends that no changes be made to the present Hawaii registration laws. After comprehensive review, analysis, and discussion, it is clear that the statutes now in effect meet Hawaii's present needs concerning registration. The Working Group undertook a thorough analysis of the potential fiscal effects of this recommendation, and although the fiscal analysis supports the Working Group's recommendation, the recommendation is not based on fiscal considerations. Rather, the Working Group recommends that the Hawaii laws not be changed.

Appendix 1



Final Report of the Act 80, S.L.H. 2008, Adam Walsh Act Compliance Working Group

Concurrence by American Civil Liberties Union of Hawaii

As we have testified in the past, the American Civil Liberties Union of Hawaii (“ACLU”) believes that the sex offender registry should be eliminated altogether: sex offender registries, in general, are counterproductive and possibly unconstitutional.

Nevertheless, the Legislature has not asked the Adam Walsh Act Compliance Working Group whether the sex offender registry should be eliminated, but whether specific changes should be made to Hawaii’s program to conform to federal guidelines. The ACLU agrees with the other members of this Working Group that the answer to this question is “no,” and we are pleased that we were able to reach consensus on this narrow question.

Respectfully submitted,

Daniel M. Gluck
Senior Staff Attorney

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Appendix 2

Summary of areas where chapter 846E, Hawaii Revised Statutes, as amended by Act 80, SLH 2008, differs from the requirements of the Sex Offender Registration and Notification Act, as interpreted by the National Guidelines for Sex Offender Registration and Notification

1. Juvenile Registration.

Section 111(8) of the Sex Offender Registration and Notification Act (SORNA) requires registration of juveniles, if the offender is fourteen years of age or older at the time of the offense and the offense adjudicated is comparable to or more severe than aggravated sexual abuse. Given the definition of the federal offense of “aggravated sexual abuse” referenced in section 111(8), “comparable” offenses are those that include:

- (a) engaging in a sexual act with another by force or the threat of serious violence (see 18 U.S.C. 2241(a)); or
- (b) engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (see 18 U.S.C. 2241(b)).

“Sexual act” for this purpose should be understood to include any of the following:

- (a) oral-genital or oral-anal contact, or
- (b) any degree of genital or anal penetration.

See the U.S. Department of Justice National Guidelines for Sex Offender Registration and Notification, effective July 2, 2008 (Guidelines), at p. 16.

In contrast, chapter 846E, HRS, does not provide for the registration of juvenile offenders.

2. Duration of Registration.

Section 115 of SORNA generally requires that tier I sex offenders remain registered for fifteen years, tier II sex offenders for twenty-five years, and tier III sex offenders for life, excluding time in custody or civil commitment. As to sex offenders who are sentenced to incarceration for a registration offense, the required registration period begins to run upon release from custody. As to sex offenders who receive a nonincarcerative sentence for a registration offense, the required registration period begins to run at the time of sentencing. See Guidelines at p. 57.

Subsection 115(b) of SORNA provides that the registration period shall be reduced by five years for tier I sex offenders who have maintained a “clean record” for ten years, and provides that registration shall be terminated for tier III sex offenders who were required to

register on the basis of a juvenile adjudication, if they have maintained a "clean record" for twenty-five years.

Hawaii duration requirements differ from SORNA duration requirements in that section 846E-2, HRS, requires lifetime registration of all covered offenders, but section 846E-10, HRS, allows offenders to petition for termination of registration requirements after a certain period of time, depending on their tier classification. See Act 80 at p. 38.

Hawaii tier 3 offenders and repeat covered offenders may petition for termination of registration requirements after forty years (see Act 80 at p. 43, line 6) instead of the SORNA-mandated lifetime registration.

Hawaii tier 2 offenders who have maintained a "clean record" for the previous twenty-five years, and who have substantially complied with registration requirements during that period, may petition for termination.

Hawaii tier 1 offenders who have maintained a "clean record" for the previous ten years, and who have substantially complied with registration requirements during that period, may petition for termination. In contrast, SORNA mandates a fifteen-year period before tier I offenders may petition for termination; however, SORNA allows tier I offenders a five-year reduction in the registration period if they have maintained a "clean record" for ten years. Thus, in effect, the duration requirements for tier 1 offenders under Hawaii law and SORNA are very close. But it should be noted that the SORNA and HRS definitions of "clean record" are not the same. Under section 846E-1, HRS, offenders can maintain a "clean record" while having one revocation of parole or probation. See Act 80 at p. 8, and section 115(b) of SORNA.

3. Duration of Public Access.

Section 118(a) of SORNA requires public Internet access to the public information for each covered offender while the offender is subject to sex offender registration. SORNA contains no early termination provisions for public Internet access.

Section 846E-3(g), HRS, also requires public Internet access to the public information for each offender while the offender is subject to registration requirements, but additionally provides that a covered offender may petition for termination of public access after forty years. See Act 80 at p. 30. Thus, under SORNA, a tier III offender is subject to public access for life, whereas public access in the case of a Hawaii tier 3 offender could be terminated after forty years. It should be noted that, under chapter 846E, a Hawaii offender could be granted termination of public access after forty years, but still be subject to registration requirements.

4. Hawaii Misdemeanor Exception to Public Access.

SORNA allows states to exempt a tier I offender convicted of an offense other than a "specified offense against a minor" from public Internet access requirements (see section 118(c)(1) of SORNA). Hawaii law exempts offenders who have been convicted of only one

misdemeanor covered offense from public Internet access requirements (see section 846E-3(h), HRS, as amended by Act 80 at p. 32).

SORNA may require public access for certain Hawaii misdemeanor offenses that are presently exempted from public access under chapter 846E. Because Unlawful Imprisonment in the Second Degree (section 707-722, HRS) is a covered offense under chapter 846E when it involves a victim who is a minor, it may be a “specified offense against a minor” under SORNA, and therefore could not be exempted from public access requirements. Sexual Assault in the Fourth Degree (section 707-733(1)(a), HRS) and Indecent Electronic Display to a Child (Act 80 at page 1), to the extent that these offenses involve minors as victims, may also fall within the SORNA class of “specified offense against a minor” that cannot be exempted from public access.

5. In-Person Verification.

Section 116 of SORNA requires in-person verification of registration information by offenders every three months for tier III offenders, every six months for tier II offenders, and at least once per year for tier I offenders.

In contrast, section 846E-2(g), HRS, as amended by Act 80 at page 22, requires all offenders to report to police for in-person verification of registration information once each year, starting on July 1, 2009.

6. In-Person Reporting of Changes in Information.

Section 113(c) of SORNA requires covered offenders to appear in person to report changes in name, residence, employment, or student status within three business days of the change. The Guidelines, at page 54, confirm that this SORNA requirement only applies to those four types of registration information. Jurisdictions have the discretion to determine how offenders will be required to report changes to other types of information.

In contrast, Act 80 does not require in-person reporting of changes to registration information. Section 846E-6(a), HRS, requires covered offenders to report in writing any changes in registration information to the Attorney General within three business days of the change.

7. Scope of Covered Sex Offenses.

Based on the definitions of "sex offense" and "criminal offense" in subsections 111(5) and (6), SORNA requires registration of offenders convicted of sexual offenses under both foreign and tribal law. A foreign conviction is a sex offense for purposes of SORNA only if the conviction was "obtained with sufficient safeguards for fundamental fairness and due process for the accused" The Guidelines, at pages 16-17, clarify the requirement regarding foreign convictions.

In contrast, chapter 846E does not include provisions regarding foreign or tribal convictions.

8. Temporary Lodging.

Section 114(a)(7) of SORNA authorizes the U.S. Attorney General to require additional registration information that is not specified in SORNA. Based on this authority, the Guidelines, at page 29, require a covered offender to provide information regarding any place where the offender stays for seven or more days, including identifying the place and the period of time during which the offender will stay there.

In contrast, section 846E-2(d)(3), HRS, as amended by Act 80 at page 16, requires an offender to provide information regarding any place where the offender stays for more than ten days, including the place, period of time, and telephone number.

9. Public Information Regarding Employment.

Section 118 of SORNA sets out, in general terms, what registration information must be available to the public on the Internet. The Guidelines, at page 36, set out an "exhaustive list" of the "eight core types of information" that must be disclosed to the public. One of the eight types is the actual address of any place where an offender is an employee or will be an employee. Based on the mandatory exemptions under section 118(b) of SORNA, or the discretionary authority of the U.S. Attorney General under section 118(c)(4), information other than the eight core types is not required to be disclosed to the public.

In contrast, section 846E-3(b)(7), HRS, as amended by Act 80 at page 25, requires disclosure only of the street name and zip code of the covered offender's employment.

10. Public Information Regarding Vehicles.

The Guidelines, at page 36, include the following as one of the "eight core types of information" that must be disclosed to the public: "The license plate number and a description of any vehicle owned or operated by the sex offender." The Guidelines do not exclude work vehicles operated by the offender.

In contrast, section 846E-3(b)(11), HRS, as amended by Act 80 at page 26, excludes from public registration information any "vehicles operated exclusively for purposes of work."

Appendix 3

AWA COMPLIANCE COST WORKSHEET
10/6/08

Honolulu PD (3)	Personnel:	\$120,000
	Rental Space:	\$ 18,000
	Equipment	<u>\$ 9,000</u>
	Total	\$147,000

MPD/HCPD/KPD (2.25)	Personnel:	\$ 90,000
	Equipment:	<u>\$ 7,000</u>
	Total:	\$ 97,000
	(Space:	\$ 13,500)
	(Total:	\$110,500)

AG Inv (1)	Personnel:	\$ 64,000
	Equipment:	<u>\$ 3,000</u>
	Total:	\$ 67,000

Deputy AG (1)	Personnel:	\$ 98,000
	Equipment:	<u>\$ 3,000</u>
	Total:	\$101,000

HCJDC	Consultant:	\$ 50,000
-------	-------------	-----------

Total Personnel Cost:	\$372,000	(7.25)
Total Equipment Cost:	\$ 22,000	(7.25)
Total Rental Space Cost:	\$ 18,000	(3.00)
Total Consultant Cost:	<u>\$ 50,000</u>	
Total Startup Cost:	\$462,000	

On-going Cost:	Personnel:	\$372,000
	Rental Space:	<u>\$ 18,000</u>
	Total:	\$390,000

Appendix 4

____.B. NO.____

Report Title:

REGISTRATION OF SEX OFFENDERS AND OTHER COVERED OFFENDERS.

Description:

Revises Hawaii's sex offender registry laws to comply with Title I of the Adam Walsh Child Protection and Safety Act of 2006.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO REGISTRATION OF SEX OFFENDERS AND OTHER COVERED
OFFENDERS.

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

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

4 "§846E- Juvenile records and information.

5 Notwithstanding any law to the contrary, records and information
6 regarding juvenile adjudications that qualify for covered
7 offender registration under chapter 846E shall be disclosed,
8 disseminated, used, and made available for registration and
9 public access purposes to the extent required to comply with
10 chapter 846E."

11 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is
12 amended by amending the definitions of "clean record,"
13 "conviction," "crime against minors," and "sexual offense" to
14 read as follows:

15 ""Clean record" means no conviction for a felony [~~or~~],
16 covered offense, or any other sexual offense, and if placed on
17 probation or parole, completion of probation or parole without

____.B. NO. _____

1 ~~[more than one]~~ any revocation, and, for sex offenders,
2 successful completion of an appropriate sex offender treatment
3 program~~[, if such program was ordered.]~~ certified by the State.

4 "Conviction" means a judgment on the verdict, or a finding
5 of guilt after a plea of guilty or nolo contendere, ~~[excluding]~~
6 or the adjudication of a minor[-] who is fourteen years of age
7 or older at the time of the offense and the offense adjudicated
8 includes engaging in a sexual act with another by force or the
9 threat of serious violence, or engaging in a sexual act with
10 another who is mentally incapacitated or physically helpless,
11 provided that the sexual act involves oral-genital or oral-anal
12 contact or any degree of genital or anal penetration.

13 "Crime against minors" excludes "sexual offenses" as
14 defined in this section and means a criminal offense that
15 consists of:

- 16 (1) Kidnapping of a minor, by someone other than a parent;
17 (2) Unlawful imprisonment in the first or second degree
18 that involves the unlawful imprisonment of a minor by
19 someone other than a parent;
20 (3) An act, as described in chapter 705, that is an
21 attempt, criminal solicitation, or criminal conspiracy

_____.B. NO. _____

1 to commit one of the offenses designated in paragraph
2 (1) or (2); or

3 (4) A criminal offense that is comparable to or which
4 exceeds one of the offenses designated in paragraphs
5 (1) through (3) or any federal, tribal, foreign,
6 military, or out-of-state conviction for any offense
7 that, under the laws of this State would be a crime
8 against minors as designated in paragraphs (1) through
9 (3) [-], except that foreign convictions are excluded
10 if they were not obtained with sufficient safeguards
11 for fundamental fairness and due process for the
12 accused under guidelines or regulations adopted by the
13 United States Attorney General.

14 "Sexual offense" means an offense that is:

15 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),
16 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),
17 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-
18 732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-
19 732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6,
20 712-1202(1)(b), or 712-1203(1)(b), but excludes
21 conduct that is criminal only because of the age of
22 the victim, as provided in section 707-730(1)(b), or

____.B. NO. _____

- 1 section 707-732(1)(b) if the perpetrator is under the
2 age of eighteen;
- 3 (2) An act defined in section 707-720 if the charging
4 document for the offense for which there has been a
5 conviction alleged intent to subject the victim to a
6 sexual offense;
- 7 (3) An act that consists of:
- 8 (A) Criminal sexual conduct toward a minor, including
9 but not limited to an offense set forth in
10 section 707-759;
- 11 (B) Solicitation of a minor who is less than fourteen
12 years old to engage in sexual conduct;
- 13 (C) Use of a minor in a sexual performance;
- 14 (D) Production, distribution, or possession of child
15 pornography chargeable as a felony under section
16 707-750, 707-751, or 707-752;
- 17 (E) Electronic enticement of a child chargeable under
18 section 707-756[~~7~~] or 707-757[~~7~~, ~~or 707-759~~] if
19 the offense was committed with the intent to
20 promote or facilitate the commission of another
21 covered offense as defined in section 846E-1; or
22 (F) Solicitation of a minor to practice prostitution;

____.B. NO. _____

- 1 (4) A criminal offense that is comparable to or that
2 exceeds a sexual offense as defined in paragraphs (1)
3 through (3) or any federal, tribal, foreign, military,
4 or out-of-state conviction for any offense that under
5 the laws of this State would be a sexual offense as
6 defined in paragraphs (1) through (3) [↗], except that
7 foreign convictions are excluded if they were not
8 obtained with sufficient safeguards for fundamental
9 fairness and due process for the accused under
10 guidelines or regulations adopted by the United States
11 Attorney General; or
- 12 (5) An act, as described in chapter 705, that is an
13 attempt, criminal solicitation, or criminal conspiracy
14 to commit one of the offenses designated in paragraphs
15 (1) through (4)."

16 SECTION 3. Section 846E-2, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) Registration information for each covered offender
19 shall include a signed statement by the covered offender
20 containing:

- 21 (1) The name, all prior names, nicknames, and pseudonyms,
22 and all aliases used by the covered offender or under

____.B. NO. _____

1 which the covered offender has been known and other
2 identifying information, including date of birth and
3 any alias date of birth, social security number and
4 any alias social security number, sex, race, height,
5 weight, and hair and eye color;

6 (2) The actual address and telephone number of the covered
7 offender's residence or any current, temporary address
8 where the covered offender resides, or if an address
9 is not available, a description of the place or area
10 in which the covered offender resides for at least
11 thirty nonconsecutive days within a sixty-day period,
12 and for each address or place where the covered
13 offender resides, how long the covered offender has
14 resided there;

15 (3) The actual address or description of the place or
16 area, the actual length of time of the stay, and
17 telephone number where the covered offender is staying
18 for a period of seven or more [~~than ten~~] days, if
19 other than the stated residence;

20 (4) If known, the future address and telephone number
21 where the covered offender is planning to reside, if
22 other than the stated residence;

____.B. NO. _____

- 1 (5) Any electronic mail address, any instant message name,
2 any Internet designation or moniker, and any Internet
3 address used for routing or self-identification;
- 4 (6) Any cell phone number and other designations used for
5 routing or self-identification in telephonic
6 communications;
- 7 (7) Names and, if known, actual business addresses of
8 current and known future employers, including
9 information for any place where the covered offender
10 works as a volunteer or otherwise works without
11 remuneration, and the starting and ending dates of any
12 such employment;
- 13 (8) For covered offenders who may not have a fixed place
14 of employment, a description of the places where such
15 a covered offender works, such as information about
16 normal travel routes or the general area or areas in
17 which the covered offender works;
- 18 (9) Professional licenses held by the covered offender;
- 19 (10) Names and actual addresses of current and known future
20 educational institutions with which the covered
21 offender is affiliated in any way, whether or not
22 compensated, including but not limited to affiliation

____.B. NO. _____

- 1 as a faculty member, an employee, or a student, and
2 the starting and ending dates of any such affiliation;
- 3 (11) The year, make, model, color, and license or
4 registration or other identifying number of all
5 vehicles, including automobiles, watercrafts, and
6 aircrafts, currently owned or operated by the covered
7 offender and the address or description of the place
8 or places where the covered offender's vehicle or
9 vehicles are habitually parked, docked, or otherwise
10 kept;
- 11 (12) Passports and information about the passports, if the
12 covered offender has passports, and documents
13 establishing immigration status and information about
14 these documents, if the covered offender is an alien;
- 15 (13) A statement listing all covered offenses for which the
16 covered offender has been convicted or found unfit to
17 proceed or acquitted pursuant to chapter 704;
- 18 (14) A statement indicating whether the covered offender
19 has received or is currently receiving treatment
20 ordered by a court of competent jurisdiction or by the
21 Hawaii paroling authority;

____.B. NO. _____

(15) A statement indicating whether the covered offender is
a United States citizen; and

(16) Any additional identifying information about the
covered offender."

SECTION 4. Section 846E-2, Hawaii Revised Statutes, is
amended by amending subsection (g) to read as follows:

"(g) In addition to the requirement under subsection (a)
to register with the attorney general and comply with the
provisions of this chapter until a court relieves the covered
offender of the registration requirements of this chapter, each
covered offender shall also register in person with the chief of
police where the covered offender resides or is present.

Registration under this subsection is for the purpose of
providing the covered offender's photograph, fingerprints, and
registration information. Registration under this subsection is
required whenever the covered offender, whether or not a
resident of this State, remains in this State for seven or more
~~[than ten]~~ days or for an aggregate period exceeding thirty days
in one calendar year. Covered offenders required to register in
person with the chief of police under this subsection shall
register no later than three working days after the earliest of:

(1) Arrival in this State;

____.B. NO. _____

- 1 (2) Release from incarceration;
- 2 (3) Release from commitment;
- 3 (4) Release on furlough;
- 4 (5) Conviction for a covered offense, unless incarcerated;
- 5 (6) Release on probation;
- 6 (7) Placement on parole; or
- 7 (8) Arrival in a county in which the covered offender
- 8 resides or expects to be present for a period
- 9 ~~[exceeding ten]~~ of seven or more days.

10 In addition to any other requirement to register under this
 11 subsection or subsection (a), each covered offender shall report
 12 in person every five years until June 30, 2009, and beginning on
 13 July 1, 2009, ~~[every year, within the thirty-day period~~
 14 ~~following the offender's date of birth,]~~ with a frequency
 15 dependent on the tier classification of the covered offender's
 16 most serious covered offense as provided in section 846E-10, to
 17 the chief of police where the covered offender resides, or to
 18 such other department or agency that may be designated by the
 19 attorney general in rules adopted pursuant to chapter 91 for
 20 purposes of the administration of this subsection, and shall
 21 review the existing information in the registry that is within
 22 the offender's knowledge, correct any information that has

_____.B. NO. _____

1 changed or is inaccurate, provide any new information that may
2 be required, and allow the police and such other department or
3 agency designated by the attorney general to take a current
4 photograph of the offender. Beginning on July 1, 2009, covered
5 offenders shall report in person as follows:

6 (1) Tier 1 offenders shall report every year, within the
7 thirty-day period following the offender's date of
8 birth;

9 (2) Tier 2 offenders shall report every six months, during
10 the sixth month of each period, with the initial
11 period starting with the offender's date of birth; and

12 (3) Tier 3 offenders shall report every three months,
13 during the third month of each period, with the
14 initial period starting with the offender's
15 date of birth."

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

18 "(b) For purposes of this section, "public information"
19 means:

20 (1) Name, prior names, nicknames and pseudonyms, and all
21 aliases used by the covered offender or under which
22 the covered offender has been known;

____.B. NO. _____

- 1 (2) The year of the covered offender's date of birth and
2 the year of the covered offender's alias dates of
3 birth;
- 4 (3) A physical description of the covered offender,
5 including a description of particular identifying
6 characteristics such as scars or tattoos;
- 7 (4) The actual address where the covered offender resides
8 or any current, temporary address where the covered
9 offender resides or, if an address is not available, a
10 description of any place or area in which the covered
11 offender resides for at least thirty nonconsecutive
12 days within a sixty-day period, and, for each address
13 or place where the covered offender resides, how long
14 the covered offender has resided there;
- 15 (5) The actual address or description of the place or area
16 where the covered offender is staying for seven or
17 more [~~than ten~~] days, if other than the stated
18 residence, and the actual length of time of the stay;
- 19 (6) The future actual address, if known, where the covered
20 offender is planning to reside, if other than the
21 stated residence;

____.B. NO. _____

(7) The [~~street name and zip code~~] actual address of the covered offender's current and future locations of employment, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration;

(8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works;

(9) Professional licenses held by the covered offender;

(10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;

(11) The year, make, model, color, and license number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender[, ~~excluding vehicles operated exclusively for purposes of work~~];

(12) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;

_____.B. NO. _____

(13) Judgment of conviction, judgment of acquittal, or
judicial determination of unfitness to proceed
documenting the criminal offense or offenses for which
the covered offender is registered;

(14) The text, or an electronic link to the text, of the
provision of law defining the criminal offense or
offenses for which the covered offender is registered;
and

(15) A recent photograph of the covered offender.

The identity of any victim of a sexual offense shall not be
disclosed and any documentation containing such information
shall be redacted to prevent disclosure."

SECTION 6. Section 846E-3, Hawaii Revised Statutes, is
amended by amending subsections (g) and (h) to read as follows:

"(g) Public access to the public information for each
covered offender shall be permitted while the covered offender
is subject to sex offender registration[, except that after
forty years have elapsed after release or sentencing, whichever
is later, a covered offender may petition the court in a civil
proceeding to terminate public access. In the civil proceeding
to terminate public access, the State shall be represented by
the attorney general, provided that the attorney general, with

_____.B. NO. _____

1 ~~the prosecuting agency's consent, may designate the prosecuting~~
2 ~~agency that prosecuted the covered offender for the most recent~~
3 ~~covered offense within the State to represent the State. For~~
4 ~~covered offenders who have never been convicted of a covered~~
5 ~~offense within the State of Hawaii, the attorney general shall~~
6 ~~represent the State, provided that the attorney general, with~~
7 ~~the prosecuting agency's consent, may designate the prosecuting~~
8 ~~agency for the county in which the covered offender resides to~~
9 ~~represent the State. The court may order this termination upon~~
10 ~~substantial evidence and more than proof by a preponderance of~~
11 ~~the evidence that:~~

12 ~~(1) The covered offender has had no new convictions for~~
13 ~~covered offenses;~~

14 ~~(2) The covered offender is very unlikely to commit a~~
15 ~~covered offense ever again; and~~

16 ~~(3) Public access to the covered offender's public~~
17 ~~information will not assist in protecting the safety~~
18 ~~of the public or any member thereof;~~

19 ~~provided that a denial by the court for relief pursuant to a~~
20 ~~petition under this section shall preclude the filing of another~~
21 ~~petition for five years from the date of the last denial].~~

_____.B. NO. _____

1 (h) If a covered offender has been convicted of only one
2 covered offense and that covered offense is a misdemeanor[7]
3 that does not involve an offense against a minor, the covered
4 offender shall not be subject to the public access requirements
5 set forth in this section."

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

8 "(e) The chief of police shall transmit any covered
9 offender registration information required by this chapter to
10 the attorney general, by entering the information into a
11 statewide record system, if the information has not previously
12 been entered into the system, and also shall provide the
13 attorney general with a photograph and fingerprints of the
14 covered offender, taken at the time the covered offender
15 registers with the chief of police. The covered offender shall
16 report in person every five years until June 30, 2009, and
17 beginning on July 1, 2009, ~~[every year, within the thirty day~~
18 ~~period following the offender's date of birth,]~~ with a frequency
19 dependent on the tier classification of the covered offender's
20 most serious covered offense as provided in section 846E-10, to
21 the chief of police where the covered offender's residence is
22 located, or to such other department or agency that may be

_____.B. NO. _____

1 designated by the attorney general in rules adopted pursuant to
2 chapter 91 for purposes of the administration of this
3 subsection, and shall review the existing information in the
4 registry that is within the offender's knowledge, correct any
5 information that has changed or is inaccurate, provide any new
6 information that may be required, and allow the police and such
7 other department or agency designated by the attorney general to
8 take a current photograph of the offender. Beginning on July 1,
9 2009, covered offenders shall report in person as follows:

- 10 (1) Tier 1 offenders shall report every year, within the
11 thirty-day period following the offender's date of
12 birth;
- 13 (2) Tier 2 offenders shall report every six months, during
14 the sixth month of each period, with the initial
15 period starting with the offender's date of birth; and
- 16 (3) Tier 3 offenders shall report every three months,
17 during the third month of each period, with the
18 initial period starting with the offender's
19 date of birth."

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

____.B. NO. ____

1 "(a) A covered offender required to register under this
2 chapter, who changes any of the covered offender's registration
3 information, other than name, residence, employment, or student
4 status, after an initial registration with the attorney general,
5 shall notify the attorney general of the new registration
6 information in writing within three working days of the change.
7 A covered offender who changes registration information
8 regarding name, residence, employment, or student status shall
9 report in person to the chief of police where the covered
10 offender resides, or to such other department or agency that may
11 be designated by the attorney general in rules adopted pursuant
12 to chapter 91 for purposes of the administration of this
13 subsection, within three working days of the change, and shall
14 provide the new information. For purposes of this section, a
15 person shall be deemed to have established a new residence
16 during any period in which the person is absent from the
17 person's registered residence for ten or more days. If, at any
18 time, a covered offender required to register under this chapter
19 is absent from the person's registered residence for ten or more
20 days and fails to establish a new residence within the ten days
21 that the covered offender is absent from their registered
22 residence, the covered offender, in addition to ~~[notifying the~~

_____.B. NO. _____

1 ~~attorney general in writing within three working days that the~~
2 ~~covered offender no longer resides at the covered offender's~~
3 ~~registered residence,]~~ reporting in person as required above,
4 shall also report to any police station in the State by the last
5 day of every month for verification of identity by photograph
6 and fingerprint impression until the covered offender
7 establishes a new residence and ~~[notifies the attorney general~~
8 ~~in writing of the actual address of]~~ reports in person as
9 required above regarding the new residence[-] information. Each
10 time the covered offender reports to a police station, the
11 covered offender shall disclose every location where the covered
12 offender has slept in the previous month. If the new residence
13 is in another state that has a registration requirement, the
14 person shall register with the designated law enforcement agency
15 in the state to which the person moves, within the period of
16 time mandated by the new state's sex offender registration
17 laws."

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

20 "(a) A person commits the offense of failure to comply
21 with covered offender registration requirements if the person is

____.B. NO. ____

1 required to register under this chapter and the person

2 intentionally, knowingly, or recklessly:

3 (1) Fails to register with the attorney general by
4 providing to the attorney general or the Hawaii
5 criminal justice data center the person's registration
6 information;

7 (2) Fails to report in person [~~every five years until June~~
8 ~~30, 2009, and beginning on July 1, 2009, once every~~
9 ~~year, during the thirty-day period following the~~
10 ~~offender's date of birth,~~] to the chief of police
11 where the covered offender's residence is located, or
12 to such other department or agency designated by the
13 attorney general[+] every five years until June 30,
14 2009, and beginning on July 1, 2009, as follows:

15 (A) Tier 1 offenders: Every year, within the thirty-
16 day period following the offender's date of
17 birth;

18 (B) Tier 2 offenders: Every six months, during the
19 sixth month of each period, with the initial
20 period starting with the offender's date
21 of birth; and

22 (C) Tier 3 offenders: Every three months, during the

____.B. NO. _____

third month of each period, with the initial
period starting with the offender's date of
birth;

(3) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to correct information in the registry within the offender's knowledge that has changed or is inaccurate regarding information required by section 846E-2(d)(1) through (12);

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

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

(6) Fails to register in person with the chief of police having jurisdiction of the area where the covered offender resides or is present within three working

_____.B. NO. _____

- 1 days whenever the provisions of section 846E-2(g)
- 2 require the person to do so;
- 3 (7) Fails to notify the attorney general or the Hawaii
- 4 criminal justice data center of a change of any of the
- 5 covered offender's registration information, other
- 6 than name, residence, employment, or student status,
- 7 in writing within three working days of the change; or
- 8 fails to report in person to the chief of police where
- 9 the covered offender resides, or to such other
- 10 department or agency that may be designated by the
- 11 attorney general, within three working days of the
- 12 change of name, residence, employment, or student
- 13 status, and provide the new information;
- 14 (8) Provides false registration information to the
- 15 attorney general, the Hawaii criminal justice data
- 16 center, or a chief of police;
- 17 (9) Signs a statement verifying that all of the
- 18 registration information is accurate and current when
- 19 any of the registration information is not
- 20 substantially accurate and current;
- 21 (10) Having failed to establish a new residence within the
- 22 ten days while absent from the person's registered

____.B. NO. _____

1 residence for ten or more days:

2 (A) Fails to ~~[notify the attorney general in writing~~
3 ~~within three working days that the person no~~
4 ~~longer resides at the person's registered~~
5 ~~residence;]~~ report in person to the chief of
6 police where the covered offender resides, or to
7 such other department or agency that may be
8 designated by the attorney general, within three
9 working days of the change of name, residence,
10 employment, or student status, and provide the
11 new information; or

12 (B) Fails to report to a police station in the State
13 by the last day of every month; or

14 (11) Fails to mail or deliver the periodic verification of
15 registration information form to the attorney general
16 within ten days of receipt, as required by section
17 846E-5; provided that it shall be an affirmative
18 defense that the periodic verification form mailed to
19 the covered offender was delivered when the covered
20 offender was absent from the registered address and
21 the covered offender had previously notified the
22 Hawaii criminal justice data center that the covered

_____.B. NO. _____

1 offender would be absent during the period that the
2 periodic verification form was delivered."

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

5 "**§846E-10 Termination of registration requirements.**

6 (a) Tier 3 offenses. A covered offender whose covered offense
7 is any of the following offenses shall register for life and~~[,~~
8 ~~except as provided in subsection (e),~~] may not petition the
9 court, in a civil proceeding, for termination of registration
10 requirements:

11 (1) Any offense set forth in section 707-730(1)(a), (b),
12 (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b),
13 or (f), or 707-733.6;

14 (2) An offense set forth in section 707-720; provided that
15 the offense involves kidnapping of a minor by someone
16 other than a parent;

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

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

____.B. NO. _____

1 (5) Any federal, military, or out-of-state offense that is
2 comparable to one of the offenses in paragraph (1),
3 (2), or (3).

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

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

19 (1) Any offense set forth in section 707-730(1)(c), 707-
20 731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-
21 1202(1)(b), or 712-1203(1)(b);

_____.B. NO. _____

1 (2) An offense set forth in section 707-720; provided that
2 the charging document for the offense for which there
3 has been a conviction alleged intent to subject the
4 victim to a sexual offense;

5 (3) An offense set forth in section 707-756 that includes
6 an intent to promote or facilitate the commission of
7 another felony covered offense as defined in section
8 846E-1;

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

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

14 (6) Any federal, military, or out-of-state offense that is
15 comparable to one of the offenses in paragraph (1),
16 (2), (3), or (4).

17 (d) Tier 1 offenses. A covered offender who has
18 maintained a clean record for the previous ten years, excluding
19 any time the offender was in custody or civilly committed, and
20 who has substantially complied with the registration
21 requirements of this chapter for the previous ten years, or for
22 the portion of that ten years that this chapter has been

____.B. NO. _____

1 applicable, and who is not a repeat covered offender may
2 petition the court, in a civil proceeding, for termination of
3 registration requirements; provided that the covered offender's
4 most serious covered offense is one of the following:

5 (1) Any offense set forth in section 707-732(1)(d) or (e),
6 707-733(1)(a), 707-752, or 707-759[-];

7 (2) An offense set forth in section 707-721 or 707-722;
8 provided that the offense involves unlawful
9 imprisonment of a minor by someone other than a
10 parent;

11 (3) An offense set forth in section 707-757 that includes
12 an intent to promote or facilitate the commission of
13 another covered offense as defined in section 846E-1;

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

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

19 (6) Any federal, military, or out-of-state offense that is
20 comparable to one of the offenses in paragraph (1),
21 (2), (3), or (4).

_____.B. NO. _____

1 ~~[(e) Notwithstanding any other provisions in this section,~~
2 ~~any covered offender, forty years after the covered offender's~~
3 ~~date of release or sentencing, whichever is later, for the~~
4 ~~covered offender's most recent covered offense, may petition the~~
5 ~~court, in a civil proceeding, for termination of registration~~
6 ~~requirements.~~

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

____.B. NO. _____

1 (1) The covered offender has met the statutory
2 requirements of eligibility to petition for
3 termination;

4 (2) The covered offender has substantially complied with
5 registration requirements;

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

8 (4) Registration by the covered offender will not assist
9 in protecting the safety of the public or any member
10 thereof.

11 ~~[(g)]~~ (f) A denial by the court for relief pursuant to a
12 petition under this section shall preclude the filing of another
13 petition for five years from the date of the last denial."

14 SECTION 11. Except for section 9 of this Act, this Act
15 shall apply to any acts committed prior to, on, or after the
16 effective date of this Act.

17 SECTION 12. Section 9 of this Act does not affect rights
18 and duties that matured, penalties that were incurred, and
19 proceedings that were begun, before the effective date of this
20 Act.

21 SECTION 13. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

____.B. NO. ____

1 SECTION 14. This Act shall take effect upon its approval.

2

3

INTRODUCED BY: _____

4

BY REQUEST

5