

JAN 27 2021

A BILL FOR AN ACT

RELATING TO COVERED OFFENDER REGISTRATION.

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

1 SECTION 1. The Hawaii Supreme Court, in its ruling in
2 Doe v. Connors, 145 Hawaii 469, 454 P. 3d 410 (2019), held
3 that Doe, who was required to register as a sex offender in the
4 State of Washington, was not required to register as a covered
5 sex offender under Hawaii law. Doe had been convicted in
6 Washington of the offense of "communication with a minor for
7 immoral purpose of a sexual nature." The Court held that the
8 offense did not precisely match any of Hawaii's covered
9 offenses, including the offense of "solicitation to engage in
10 sexual conduct with a minor who is less than 14 years old."

11 As a result of the Doe decision, a person who resides or
12 maintains a residence in Hawaii, visits Hawaii for ten or
13 more days, or visits Hawaii for thirty or more days a year,
14 does not need to register as a covered offender in Hawaii if
15 the person's out-of-state conviction does not precisely match
16 up with a Hawaii covered offense.

17 The purpose of this Act is to comply with the purpose and
18 intent of the sex offender registration laws of Hawaii by

1 requiring those persons who have been designated as a covered
2 offender, sex offender, offender against minors, repeat covered
3 offender, sexually violent predator, or any other sexual
4 offender designation in another state, and were, as a result,
5 subject to registration in that state, or would be if residing
6 in that state, to be subject to registration requirements in the
7 State of Hawaii.

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

10 "(b) A person who establishes or maintains a residence
11 in this State or who remains in this State for more than ten days
12 or for an aggregate period exceeding thirty days in one calendar
13 year, and who has not been designated as a covered offender by
14 a court of this State but who has been designated as a
15 covered offender, sex offender, offender against minors,
16 repeat covered offender, sexually violent predator, or any
17 other sexual offender designation in another state or
18 jurisdiction and was, as a result of such designation,
19 subjected to registration or community or public
20 notification, or both, or would be if the person was a
21 resident of that state or jurisdiction, without regard to
22 whether the person otherwise meets the criteria for

1 registration as a covered offender, shall register in the
2 manner provided in this section [~~and shall be subject to~~
3 ~~community and public notification as provided in section~~
4 ~~846E-3~~]. A person who meets the criteria of this subsection
5 is subject to the requirements of this chapter for covered
6 offenders and penalty provisions of section 846E-9 until the
7 person successfully petitions [~~the attorney general for~~
8 ~~termination of registration requirements by~~]:

9 (1) [~~Providing~~] The attorney general for termination
10 of registration requirements by providing an
11 order issued by the court that designated the
12 person as a covered offender, sex offender,
13 offender against minors, repeat covered offender,
14 sexually violent predator, or any other sexual
15 offender designation in the state or jurisdiction
16 in which the order was issued, which states that
17 such designation has been removed or demonstrates
18 to the attorney general that such designation, if
19 not imposed by a court, has been removed by
20 operation of law or court order in the state or
21 jurisdiction in which the designation was made,
22 and such person does not meet the criteria for

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1 registration as a covered offender under the laws of
2 this State[; or]. If the person is not satisfied
3 with the decision of the attorney general on the
4 request for termination of registration
5 requirements, the person may appeal the decision
6 pursuant to chapter 91; or

7 (2) [~~Demonstrating that the out-of-state convictions~~
8 ~~upon which the sexual offender designation was~~
9 ~~established are not covered offenses under section~~
10 ~~846E-1, thereby showing that such person does not~~
11 ~~meet the criteria for registration as a covered~~
12 ~~offender under the laws of this State.] The court
13 for termination of registration requirements pursuant
14 to section 846E-10.~~

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

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

21

1 **"§846E-10 Termination of registration requirements.** (a)

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

7 (1) Any offense set forth in section 707-730(1)(a), (b),
8 (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b),
9 or (f), or 707-733.6;

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

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

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

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

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

1 requirements.

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

13 (1) Any offense set forth in section 707-730(1)(c), 707-
14 731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202,
15 or 712-1203(1)(b), as section 712-1203(1)(b) read
16 prior to its amendment pursuant to section 9 of Act
17 147, Session Laws of Hawaii 2008;

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

22 (3) An offense set forth in section 707-756 that includes
23 an intent to promote or facilitate the commission of

1 another felony covered offense as defined in section
2 846E-1;

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

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

8 (6) Any federal, military, out-of-state, tribal, or
9 foreign offense that is comparable to one of the
10 offenses in paragraph (1), (2), (3), or (4).

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

21 (1) Any offense set forth in section 707-732(1)(d) or (e),
22 707-733(1)(a), 707-752, 707-759, 711-1110.9, 712-
23 1203(1), or 712-1209.1;

- 1 (2) An offense set forth in section 707-721 or 707-722;
2 provided that the offense involves unlawful
3 imprisonment of a minor by someone other than a
4 parent;
- 5 (3) An offense set forth in section 707-757 that includes
6 an intent to promote or facilitate the commission of
7 another covered offense as defined in section 846E-1;
- 8 (4) An offense that is an attempt, criminal solicitation,
9 or criminal conspiracy to commit any of the offenses
10 in paragraph (1), (2), or (3);
- 11 (5) Any criminal offense that is comparable to one of the
12 offenses in paragraph (1), (2), (3), or (4);
- 13 (6) Any federal, military, out-of-state, tribal, or
14 foreign offense that is comparable to one of the
15 offenses in paragraph (1), (2), (3), or (4); or
- 16 (7) Any other covered offense that is not specified in
17 subsection (a) or (c) or paragraph (1), (2), (3), (4),
18 (5), or (6).
- 19 (e) Notwithstanding any other provisions in this section,
20 any covered offender, forty years after the covered offender's
21 date of release or sentencing, whichever is later, for the
22 covered offender's most recent covered offense, may petition the
23 court, in a civil proceeding, for termination of registration

1 requirements.

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

- 16 (1) The covered offender has met the statutory
17 requirements of eligibility to petition for
18 termination;
- 19 (2) The covered offender has substantially complied with
20 registration requirements;
- 21 (3) The covered offender is very unlikely to commit a
22 covered offense ever again; and

23

1 (4) Registration by the covered offender will not assist
2 in protecting the safety of the public or any member
3 thereof.

4 ~~[(g) A denial by the court for relief pursuant to a
5 petition under this section shall preclude the filing of another
6 petition for five years from the date of the last denial.]~~

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

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- 1 (1) The person has met the statutory requirements of
2 eligibility to petition for termination;
- 3 (2) The person has substantially complied with
4 registration requirements;
- 5 (3) The person is very unlikely to commit a covered
6 offense; and
- 7 (4) Registration by the person will not assist in
8 protecting the safety of the public or any member
9 thereof.
- 10 (h) A denial by the court for relief pursuant to a
11 petition under this section shall preclude the filing of another
12 petition for five years from the date of the last denial."

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

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

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INTRODUCED BY: 

18

BY REQUEST

Report Title:

Covered Offender Registration; Out-of-State Covered Offender Designations

Description:

Repeals provision that allows persons designated as covered offenders in another state or jurisdiction to petition the Attorney General for termination of registration requirements upon demonstrating that the out of state convictions are not covered offenses in the State of Hawaii; requires certain long term visitors to Hawaii with out-of-state convictions to register pursuant to section 846E-2(b); and clarifies how persons required to register pursuant to section 846E-2(b) can petition to terminate registration.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO COVERED OFFENDER REGISTRATION

PURPOSE: The purpose of this Act is to comply with the purpose and intent of the sex offender registration laws of Hawaii by requiring 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, and were, as a result, subject to registration in that state, or would be if residing in that state, to be subject to registration requirements in the State of Hawaii. It also clarifies how those persons can petition to terminate registration.

MEANS: Amend sections 846E-2(b) and 846E-10, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Based on the Hawaii Supreme Court's ruling in Doe v. Connors, 145 Hawaii 469, 454 P.3d 410 (2019), a person who resides or maintains a residence in Hawaii, visits Hawaii for ten or more days, or visits Hawaii for thirty or more days in a year, does not need to register as a covered offender in Hawaii if the person's out-of-state conviction does not precisely match up with a Hawaii covered offense.

This bill addresses the problem identified in Doe, by making amendments that are consistent with the purpose and intent of Hawaii sex offender registration laws. This bill requires residents, visitors to Hawaii for more than ten days, and visitors to Hawaii for more than thirty days in a year to register in Hawaii if they were designated as covered offenders in another state, even if their offenses do not precisely match a Hawaii covered offense.

This bill also clarifies how these registrants can petition to terminate registration.

Impact on the public: The public will benefit from the registration of sex offenders convicted in other jurisdictions.

Impact on the department and other agencies: There should be minimal impact to the Department of the Attorney General, which manages the covered offender registration program, and to the agencies that need to give notice to those needing to register.

Criminal justice agencies will have access to confidential registration information to ensure that their clients under supervision and inmates being released are compliant with chapter 846E, HRS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

OTHER AFFECTED
AGENCIES: Agencies that give notice to those needing to register.

EFFECTIVE DATE: Upon approval.