

S.B. NO. 2741

JAN 24 2018

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 purpose of this bill is to specifically
2 include section 707-733(1)(b), Hawaii Revised Statutes, as a
3 tier 1 covered sexual offense when the offense is committed
4 toward a minor, and to provide uniformity by adding wording
5 relating to covered offender registration requirements when the
6 defendant is charged with a covered offense and subject to
7 involuntary hospitalization under section 706-607, Hawaii
8 Revised Statutes, or the charges are dismissed by reason of
9 physical or mental disease, disorder, or defect pursuant to
10 chapter 704, Hawaii Revised Statutes, to the existing
11 requirements of when the defendant charged with a covered
12 offense and is acquitted by reason of physical or mental
13 disease, disorder, or defect pursuant to chapter 704.

14 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is
15 amended by amending the definitions of "offender against
16 minors", "release", "repeat covered offender", "sexual
17 offender", and "sexual offenses" to read as follows:

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1 "Offender against minors" means a person who is not a "sex
2 offender", as defined in this section, and ~~[is or]~~ has been~~[+]~~
3 charged, at any time, with a "crime against minors" as defined
4 in this section and:

5 (1) ~~Convicted [at any time, whether before or after May 9,~~
6 ~~2005, of a "crime against minors" as defined in this~~
7 ~~section; or];~~

8 (2) ~~[Charged at any time, whether before or after May 9,~~
9 ~~2005, with a "crime against minors" as defined in this~~
10 ~~section and who is found] Found unfit to proceed [and~~
11 ~~is released into the community or who is], or~~
12 ~~acquitted~~ or charges were dismissed due to a physical
13 or mental disease, disorder, or defect pursuant to
14 chapter 704 ~~[and is released into the community.];~~ or

15 (3) Involuntarily hospitalized pursuant to section 706-
16 607.

17 "Release" means release from:

18 (1) Imprisonment;

19 (2) Imprisonment and placed on parole;

20 (3) Imprisonment and placed on furlough;

21 (4) Any form of commitment, custody, or confinement

22 resulting from an order made pursuant to chapter

23 704~~[+]~~ or section 706-607 or section 334-60.2; or

1 (5) A halfway house or other equivalent facility,
2 whichever is later.

3 "Repeat covered offender" means:

4 (1) A person who [~~is or~~] has been convicted at any time [~~7~~
5 ~~whether before or after May 9, 2005,~~] of more than one
6 covered offense as defined in this section, except
7 that a conviction for multiple counts within a single
8 charging document that allege covered offenses against
9 the same victim and that allege the same date of the
10 covered offense against that single victim shall be
11 considered, for the purposes of this definition, a
12 single covered offense; or

13 (2) A person who is or has been charged at any time [~~7~~
14 ~~whether before or after May 9, 2005,~~] with more than
15 one covered offense as defined in this section and who
16 has been, more than once, either:

17 (A) Convicted;

18 (B) Found unfit to proceed pursuant to chapter 704;
19 [~~or~~]

20 (C) Acquitted or charges were dismissed due to a
21 physical or mental disease, disorder, or defect
22 pursuant to chapter 704 [~~-~~]; or

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1 (D) Involuntarily hospitalized pursuant to section
2 706-607.

3 "Sex offender" means ~~[+]~~ a person who has been charged at
4 any time with a "sexual offense" as defined in this section and:

5 (1) ~~[A person who is or has been convicted at any time,~~
6 ~~whether before or after May 9, 2005, of a "sexual~~
7 ~~offense"; or] Convicted;~~

8 (2) ~~[A person who is or has been charged at any time,~~
9 ~~whether before or after May 9, 2005, with a "sexual~~
10 ~~offense" and is or has been found] Found unfit to
11 ~~proceed [and is or has been released into the~~
12 ~~community or who is], or acquitted or the charges were~~
13 ~~dismissed due to a physical or mental disease,~~
14 ~~disorder, or defect pursuant to chapter 704 [and is~~
15 ~~released into the community.]; or~~~~

16 (3) Involuntarily hospitalized pursuant to section 706-
17 607.

18 "Sexual offense" means an offense that is:

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

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- 1 section 707-730(1)(b), or section 707-732(1)(b) if the
2 perpetrator is under the 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[+] and an offense set forth in
11 section 707-733(1)(b) that is committed toward a
12 minor;
- 13 (B) Solicitation of a minor who is less than fourteen
14 years old to engage in sexual conduct;
- 15 (C) Use of a minor in a sexual performance;
- 16 (D) Production, distribution, or possession of child
17 pornography chargeable as a felony under section
18 707-750, 707-751, or 707-752;
- 19 (E) Electronic enticement of a child chargeable under
20 section 707-756 or 707-757 if the offense was
21 committed with the intent to promote or
22 facilitate the commission of another covered
23 offense as defined in this section; or

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- 1 (F) Solicitation of a minor for prostitution in
2 violation of section 712-1209.1;
- 3 (4) A violation of privacy under section 711-1110.9;
- 4 (5) An act, as described in chapter 705, that is an
5 attempt, criminal solicitation, or criminal conspiracy
6 to commit one of the offenses designated in paragraphs
7 (1) through (4);
- 8 (6) A criminal offense that is comparable to or that
9 exceeds a sexual offense as defined in paragraphs (1)
10 through (5); or
- 11 (7) Any federal, military, out-of-state, tribal, or
12 foreign conviction for any offense that under the laws
13 of this State would be a sexual offense as defined in
14 paragraphs (1) through (6)."

15 SECTION 3. Section 846E-2, Hawaii Revised Statutes, is
16 amended as follows:

17 (1) By amending subsections (d) and (e) to read as
18 follows:

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

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

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 permanent residence or the address of the
8 covered offender's current temporary residence, or if
9 an address is not available, a description of the
10 place or area in which the covered offender resides
11 for at least thirty nonconsecutive days within a
12 sixty-day period, and for each address or place where
13 the covered offender resides, how long the covered
14 offender has 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 more than ten days, if other than the
19 stated residence;

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

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- 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

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- 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;~~] is
18 required to register;
- 19 (14) A statement indicating whether the covered offender
20 has received or is currently receiving treatment
21 ordered by a court of competent jurisdiction or by the
22 Hawaii paroling authority;

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

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

5 (e) The following information shall also be included in
6 the registry for each covered offender:

7 (1) A current photograph of the covered offender;

8 (2) A physical description of the covered offender,
9 including a description of particular identifying
10 characteristics such as scars or tattoos;

11 (3) Confirmation that the covered offender has provided
12 digitized fingerprints and palm prints of the covered
13 offender;

14 (4) Judgment of conviction, judgment of acquittal, [~~or~~]
15 judicial determination of unfitness to proceed, order
16 of dismissal, or order for involuntary hospitalization
17 documenting the criminal offense or offenses for which
18 the covered offender is registered;

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

22 (6) The criminal history of the covered offender, or an
23 electronic link to the criminal history, including the

1 date of all arrests and convictions, the status of
2 parole, probation, or supervised release, registration
3 status, and the existence of any outstanding arrest
4 warrants for the covered offender;

5 (7) Confirmation that the covered offender has provided a
6 DNA buccal swab sample as required by chapter 844D;

7 (8) Digitized copies of a valid driver's license or
8 identification card issued to the covered offender, or
9 an electronic link to such records; and

10 (9) Digitized copies of passports and documents
11 establishing immigration status, or an electronic link
12 to such records."

13 (2) By amending subsections (g) and (h) to read as
14 follows:

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

21 Registration under this subsection is for the purpose of
22 providing the covered offender's photograph, fingerprints, and
23 registration information. Registration under this subsection is

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1 required whenever the covered offender, whether or not a
2 resident of this State, remains in this State for more than ten
3 days or for an aggregate period exceeding thirty days in one
4 calendar year. Covered offenders required to register in person
5 with the chief of police under this subsection shall register no
6 later than three working days after the earliest of:

- 7 (1) Arrival in this State;
- 8 (2) Release from incarceration;
- 9 (3) Release from commitment [7] or involuntary
10 hospitalization;
- 11 (4) Release on furlough;
- 12 (5) Conviction for a covered offense, unless incarcerated;
- 13 (6) Release on probation;
- 14 (7) Placement on parole; or
- 15 (8) Arrival in a county in which the covered offender
16 resides or expects to be present for a period
17 exceeding ten days.

18 In addition to any other requirement to register under this
19 subsection or subsection (a), each covered offender shall report
20 in person [~~every five years until June 30, 2009, and beginning~~
21 ~~on July 1, 2009,~~] every year, within the thirty-day period
22 following the offender's date of birth, to the chief of police
23 where the covered offender resides, or to such other department

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

10 (h) The registration provisions of this section shall
11 apply to all covered offenders without regard to:

- 12 (1) The date of the covered offender's conviction;
13 (2) The date of finding, pursuant to chapter 704, of the
14 covered offender's unfitness to proceed; or
15 (3) The date of the covered offender's acquittal or
16 dismissal due to a physical or mental disease,
17 disorder, or defect, pursuant to chapter 704 [-]; or
18 (4) The date of the covered offender's order for
19 involuntary hospitalization pursuant to section 706-
20 607."

21 SECTION 4. Section 846E-3, Hawaii Revised Statutes, is
22 amended as follows:

- 23 (1) By amending subsection (b) to read as follows:

1 "(b) For purposes of this section, "public information"

2 means:

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

6 (2) The year of the covered offender's date of birth and
7 the year of the covered offender's alias dates of
8 birth;

9 (3) A physical description of the covered offender,
10 including a description of particular identifying
11 characteristics such as scars or tattoos;

12 (4) The actual address where the covered offender resides
13 or any current, temporary address where the covered
14 offender resides or, if an address is not available, a
15 description of any place or area in which the covered
16 offender resides for at least thirty nonconsecutive
17 days within a sixty-day period, and, for each address
18 or place where the covered offender resides, how long
19 the covered offender has resided there;

20 (5) The actual address or description of the place or area
21 where the covered offender is staying for more than
22 ten days, if other than the stated residence, and the
23 actual length of time of the stay;

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- 1 (6) The future actual address, if known, where the covered
2 offender is planning to reside, if other than the
3 stated residence;
- 4 (7) The street name and zip code of the covered offender's
5 current locations of employment, including information
6 for any place where the covered offender works as a
7 volunteer or otherwise works without remuneration;
- 8 (8) For covered offenders who may not have a fixed place
9 of employment, a description of the places where such
10 a covered offender works;
- 11 (9) Professional licenses held by the covered offender;
- 12 (10) Names and actual addresses of current and known future
13 educational institutions with which the covered
14 offender is affiliated as a faculty member, an
15 employee, or a student, and the starting and ending
16 dates of any such affiliation;
- 17 (11) The year, make, model, color, and license number of
18 all vehicles, including automobiles, watercrafts, and
19 aircrafts, currently owned or operated by the covered
20 offender, excluding vehicles operated exclusively for
21 purposes of work;

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

4 (13) Judgment of conviction, judgment of acquittal, [or]
5 judicial determination of unfitness to proceed, order
6 of dismissal, or order for involuntary hospitalization
7 documenting the criminal offense or offenses for which
8 the covered offender is registered;

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

13 (15) A recent photograph of the covered offender.

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

17 (2) By amending subsection (e) to read as follows:

18 "(e) Public access to a covered offender's public
19 information shall be permitted with regard to each covered
20 offender beginning the next working day following the filing of
21 a judgment of conviction, a finding of unfitness to proceed, or
22 a dismissal or an acquittal due to a physical or mental disease,
23 disorder, or defect, for a covered offense, or as soon

1 thereafter as is practical. When a notice of appeal has been
2 filed, the public information shall note that the covered
3 offender has filed a notice of appeal. The public information
4 shall be removed upon the reversal of the covered offender's
5 conviction or the granting of a pardon to the covered offender."

6 (3) By amending subsection (k) to read as follows:

7 "(k) "Conviction" as used in this section means:

8 (1) A judgment on the verdict, or a finding of guilt after
9 a plea of guilty or nolo contendere, excluding the
10 adjudication of a minor;

11 (2) A finding of unfitness to proceed resulting in the
12 release of the covered offender into the community,
13 excluding such a finding as to a minor; [~~or~~]

14 (3) An acquittal or dismissal due to a physical or mental
15 disease, disorder, or defect pursuant to chapter 704
16 resulting in the release of the covered offender into
17 the community, excluding such acquittal as to a
18 minor[-]; or

19 (4) An order of involuntary hospitalization pursuant to
20 section 706-607."

21 SECTION 5. Section 846E-4, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:

1 "(a) Each person, or that person's designee, in charge of
2 a jail, prison, hospital, school, or other institution to which
3 a covered offender has been committed pursuant to a conviction,
4 or an acquittal, dismissal, or finding of unfitness to proceed
5 pursuant to chapter 704, or involuntarily hospitalized pursuant
6 to section 706-607 for a covered offense, and each judge, or
7 that judge's designee, who continues bail for or releases a
8 covered offender following sentencing and the entry of a
9 judgment of conviction, who releases a covered offender on
10 probation or who discharges a covered offender upon payment of a
11 fine, and each agency having jurisdiction, shall, prior to the
12 discharge, parole, or release of the covered offender:

- 13 (1) Explain to the covered offender the duty to register
14 and the consequences of failing to register under this
15 chapter;
- 16 (2) Obtain from the covered offender all of the
17 registration information required by this chapter;
- 18 (3) Inform the covered offender that, if at any time the
19 covered offender changes any of the covered offender's
20 registration information, the covered offender shall
21 notify the attorney general of the new registration
22 information in writing within three working days;

1 (4) Inform the covered offender that, if at any time the
2 covered offender changes residence to another state,
3 the covered offender shall register the new address
4 with the attorney general and also with a designated
5 law enforcement agency in the new state, if the new
6 state has a registration requirement, within the
7 period of time mandated by the new state's sex
8 offender registration laws;

9 (5) Obtain and verify fingerprints and a photograph of the
10 covered offender, if these have not already been
11 obtained or verified in connection with the offense
12 that triggers the registration;

13 (6) Require the covered offender to sign a statement
14 indicating that the duty to register has been
15 explained to the covered offender; and

16 (7) Give one copy of the signed statement and one copy of
17 the registration information to the covered offender."

18 SECTION 6. Section 846E-5, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) The periodic verification provisions of this section
21 shall not apply to covered offenders who are incarcerated, or
22 committed, or involuntarily hospitalized, or have registered

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1 with a designated law enforcement agency after establishing
2 residence in another state."

3 SECTION 7. Section 846E-10, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

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

- 15 (1) Any offense set forth in section 707-732(1)(d) or (e),
16 707-733(1)(a), 707-752, 707-759, 711-1110.9, 712-
17 1203(1), or 712-1209.1;
- 18 (2) An offense set forth in section 707-721 or 707-722;
19 provided that the offense involves unlawful
20 imprisonment of a minor by someone other than a
21 parent;

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

4 (4) An offense set forth in section 707-733(1)(b) that is
5 committed toward a minor;

6 [~~4~~] (5) An offense that is an attempt, criminal
7 solicitation, or criminal conspiracy to commit any of
8 the offenses in paragraph (1), (2), [~~3~~] (3) [~~+~~], or
9 (4);

10 [~~5~~] (6) Any criminal offense that is comparable to one
11 of the offenses in paragraph (1), (2), (3), [~~3~~]
12 (4) [~~+~~], or (5);

13 [~~6~~] (7) 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), [~~3~~] (4) [~~+~~], or
16 (5); or

17 [~~7~~] (8) Any other covered offense that is not specified
18 in subsection (a) or (c) or paragraph (1), (2), (3),
19 (4), (5), [~~3~~] (6) [~~-~~], or (7)."

20 SECTION 8. Section 846E-12, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "[~~+~~]§846E-12[+] **Tolling.** The time periods provided for in
23 this chapter shall be tolled during any period of time the

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1 covered offender is committed or recommitted to prison or
2 confined to a halfway house, or an equivalent facility, pursuant
3 to a parole or probation violation[-] or committed or
4 involuntarily hospitalized to a psychiatric facility."

5 SECTION 9. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 10. This Act shall take effect upon its approval.

8

9

INTRODUCED BY: _____



10

11

BY REQUEST

Report Title:

Covered Offender Registration

Description:

Adds section 707-733(1)(b), Hawaii Revised Statutes, as a covered offense when committed towards a minor, and provides uniformity to the requirements for defendants that are involuntarily hospitalized pursuant to section 706-607, Hawaii Revised Statutes, or have charges dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, Hawaii Revised Statutes.

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

SB. NO. 2741

DEPARTMENT: Attorney General

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

PURPOSE: To include section 707-733(1)(b), Hawaii Revised Statutes (HRS), as a Tier 1 covered sexual offense when the offense is committed toward a minor, and to provide uniformity by adding language relating to covered offender registration requirements when the defendant is charged with a covered offense and subject to involuntary hospitalization under section 706-607, HRS, or the charges are dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS.

MEANS: Amend sections 846E-1, 846E-2(d), (e), (g), and (h), 846E-3(b), (e), and (k), 846E-4(a), 846E-5(c), 846E-10(d), and 846E-12, HRS.

JUSTIFICATION: Although covered in the broad definition of "sexual conduct toward a minor", section 707-733(1)(b), HRS, is not explicitly listed as a covered offense requiring registration. As such, this is being added to the definitions in section 846E-1, HRS.

In addition, when a defendant is charged with a covered offense and is acquitted by reason of physical or mental disease, disorder or defect under chapter 704, HRS, the defendant is required to register as a covered offender. This bill adds those who are charged with a covered offense and are dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS, and those who are involuntarily committed pursuant to section 706-607, HRS, to be required to register, thereby providing consistency in situations where the defendant is found to have diminished mental capacities.

Impact on the public: The public will benefit from this bill as it will require registration of those that should be registered as covered offenders.

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.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG-231/BC

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

EFFECTIVE DATE: Upon approval.