
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 purposes of this Act are to:

- 2 (1) Amend chapter 846E, Hawaii Revised Statutes, the
3 covered offender registration law, to require
4 defendants charged with a covered offense to register
5 whether they were subsequently involuntarily
6 hospitalized; found unfit to proceed; had charges
7 dismissed by reason of physical or mental disease,
8 disorder, or defect; or were acquitted by reason of
9 physical or mental disease, disorder, or defect;
- 10 (2) Clarify that persons required to register pursuant to
11 section 846E-2(b), Hawaii Revised Statutes, are
12 covered offenders; and
- 13 (3) Clarify that criminal justice agencies that are
14 responsible for administering the covered offender
15 registration program are authorized to access
16 confidential registration information necessary to
17 facilitate the required registration and verification
18 provisions of chapter 846E.

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1 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is
2 amended by amending the definitions of "offender against
3 minors", "release", "repeat covered offender", and "sex
4 offender" to read as follows:

5 "Offender against minors" means a person who is not a "sex
6 offender", as defined in this section, and ~~[is or]~~ has been:

7 (1) Convicted at any time, whether before or after May 9,
8 2005, of a "crime against minors" as defined in this
9 section; or

10 (2) Charged at any time, whether before or after May 9,
11 2005, with a "crime against minors" as defined in this
12 section and who is found unfit to proceed ~~[and is~~
13 ~~released into the community or who is]~~, acquitted, or
14 had the charge dismissed due to a physical or mental
15 disease, disorder, or defect pursuant to chapter 704
16 ~~[and is released into the community.]~~ or a comparable
17 federal, military, out-of-state, tribal, or foreign
18 law; or

19 (3) Charged at any time, whether before or after May 9,
20 2005, with a "crime against minors" and who is
21 involuntarily hospitalized and granted a dismissal of
22 prosecution pursuant to section 706-607 or a

1 comparable federal, military, out-of-state, tribal, or
2 foreign law.

3 "Release" means release from:

- 4 (1) Imprisonment;
- 5 (2) Imprisonment and placed on parole;
- 6 (3) Imprisonment and placed on furlough;
- 7 (4) Any form of commitment, custody, or confinement
- 8 resulting from an order made pursuant to chapter
- 9 704 [7], section 334-60.2 or 706-607; or

10 (5) A halfway house or other equivalent facility,
11 whichever is later.

12 "Repeat covered offender" means:

- 13 (1) A person who is or has been convicted at any time,
- 14 whether before or after May 9, 2005, of more than one
- 15 covered offense as defined in this section, except
- 16 that a conviction for multiple counts within a single
- 17 charging document that allege covered offenses against
- 18 the same victim and that allege the same date of the
- 19 covered offense against that single victim shall be
- 20 considered, for the purposes of this definition, a
- 21 single covered offense; or

22 (2) A person who is or has been charged at any time,
23 whether before or after May 9, 2005, with more than

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1 one covered offense as defined in this section and who
2 has been [~~, more than once, either:~~] subject to more
3 than one of the following dispositions:

4 (A) Convicted [~~7~~] of a covered offense;
5 (B) Found unfit to proceed, acquitted, or granted a
6 dismissal of charges due to a physical or mental
7 disease, disorder, or defect pursuant to chapter
8 704 [~~7~~] or a comparable federal, military, out-of-
9 state, tribal, or foreign law; or

10 (C) [~~Acquitted due to a physical or mental disease,~~
11 ~~disorder, or defect pursuant to chapter 704.]~~
12 Involuntarily hospitalized and granted a
13 dismissal of prosecution pursuant to section 706-
14 607 or a comparable federal, military, out-of-
15 state, tribal, or foreign law.

16 "Sex offender" means:

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

20 (2) A person who is or has been charged at any time,
21 whether before or after May 9, 2005, with a "sexual
22 offense" and [~~is or~~] has been found unfit to proceed
23 [~~and is or has been released into the community or who~~

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1 ~~is~~], acquitted, or had the charge dismissed due to a
2 physical or mental disease, disorder, or defect
3 pursuant to chapter 704 [~~and is released into the~~
4 ~~community.~~] or a comparable federal, military, out-of-
5 state, tribal, or foreign law; or

6 (3) A person who has been charged, at any time, whether
7 before or after May 9, 2005, with a "sexual offense"
8 and has been involuntarily hospitalized and granted a
9 dismissal of prosecution pursuant to section 706-607
10 or a comparable federal, military, out-of-state,
11 tribal, or foreign law."

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

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

15 "(b) A person who establishes or maintains a residence in
16 this State and who has not been designated as a covered offender
17 by a court of this State but who has been designated as a
18 covered offender, sex offender, offender against minors, repeat
19 covered offender, sexually violent predator, or any other sexual
20 offender designation in another state or jurisdiction and was,
21 as a result of such designation, subjected to registration or
22 community or public notification, or both, or would be if the
23 person was a resident of that state or jurisdiction, without

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

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

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1 (2) Demonstrating that the out-of-state convictions upon
2 which the sexual offender designation was established
3 are not covered offenses under section 846E-1, thereby
4 showing that such person does not meet the criteria
5 for registration as a covered offender under the laws
6 of this State.

7 If the covered offender is not satisfied with the decision of
8 the attorney general on the request for termination of
9 registration requirements, the covered offender may appeal the
10 decision pursuant to chapter 91."

11 (2) By amending subsections (d) and (e) to read as
12 follows:

13 "(d) Registration information for each covered offender
14 shall include a signed statement by the covered offender
15 containing:

16 (1) The name, all prior names, nicknames and pseudonyms,
17 and all aliases used by the covered offender or under
18 which the covered offender has been known and other
19 identifying information, including date of birth and
20 any alias date of birth, social security number and
21 any alias social security number, sex, race, height,
22 weight, and hair and eye color;

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- 1 (2) The actual address and telephone number of the covered
2 offender's permanent residence or the address of the
3 covered offender's current temporary residence, or if
4 an address is not available, a description of the
5 place or area in which the covered offender resides
6 for at least thirty nonconsecutive days within a
7 sixty-day period, and for each address or place where
8 the covered offender resides, how long the covered
9 offender has resided there;
- 10 (3) The actual address or description of the place or
11 area, the actual length of time of the stay, and
12 telephone number where the covered offender is staying
13 for a period of more than ten days, if other than the
14 stated residence;
- 15 (4) If known, the future address and telephone number of
16 the place where the covered offender is planning to
17 reside, if other than the stated residence;
- 18 (5) Any electronic mail address, any instant message name,
19 any internet designation or moniker, and any internet
20 address used for routing or self-identification;
- 21 (6) Any cell phone number and other designations used for
22 routing or self-identification in telephonic
23 communications;

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- 1 (7) Names and, if known, actual business addresses of
2 current and known future employers, including
3 information for any place where the covered offender
4 works as a volunteer or otherwise works without
5 remuneration, and the starting and ending dates of any
6 such employment;
- 7 (8) For covered offenders who may not have a fixed place
8 of employment, a description of the places where such
9 a covered offender works, such as information about
10 normal travel routes or the general area or areas in
11 which the covered offender works;
- 12 (9) Professional licenses held by the covered offender;
- 13 (10) Names and actual addresses of current and known future
14 educational institutions with which the covered
15 offender is affiliated in any way, whether or not
16 compensated, including but not limited to affiliation
17 as a faculty member, an employee, or a student, and
18 the starting and ending dates of any such affiliation;
- 19 (11) The year, make, model, color, and license or
20 registration or other identifying number of all
21 vehicles, including automobiles, watercrafts, and
22 aircrafts, currently owned or operated by the covered
23 offender and the address or description of the place

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1 or places where the covered offender's vehicle or
2 vehicles are habitually parked, docked, or otherwise
3 kept;

4 (12) Passports and information about the passports, if the
5 covered offender has passports, and documents
6 establishing immigration status and information about
7 these documents, if the covered offender is an alien;

8 (13) A statement listing all covered offenses for which the
9 covered offender [~~has been convicted or found unfit to~~
10 ~~proceed or acquitted pursuant to chapter 704;~~] is
11 required to register;

12 (14) A statement indicating whether the covered offender
13 has received or is currently receiving treatment
14 ordered by a court of competent jurisdiction or by the
15 Hawaii paroling authority;

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

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

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

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

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- 1 (2) A physical description of the covered offender,
2 including a description of particular identifying
3 characteristics such as scars or tattoos;
- 4 (3) Confirmation that the covered offender has provided
5 digitized fingerprints and palm prints of the covered
6 offender;
- 7 (4) Judgment of conviction, judgment of acquittal, [~~or~~]
8 judicial determination of unfitness to proceed, or
9 order of dismissal documenting the criminal offense or
10 offenses for which the covered offender is registered;
- 11 (5) The text, or an electronic link to the text, of the
12 provision of law defining the criminal offense or
13 offenses for which the covered offender is registered;
- 14 (6) The criminal history of the covered offender, or an
15 electronic link to the criminal history, including the
16 date of all arrests and convictions, the status of
17 parole, probation, or supervised release, registration
18 status, and the existence of any outstanding arrest
19 warrants for the covered offender;
- 20 (7) Confirmation that the covered offender has provided a
21 DNA buccal swab sample as required by chapter 844D;

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

4 (9) Digitized copies of passports and documents
5 establishing immigration status, or an electronic link
6 to such records."

7 (3) By amending subsections (g) and (h) to read as
8 follows:

9 "(g) In addition to the requirement under subsection (a)
10 to register with the attorney general and comply with the
11 provisions of this chapter until a court relieves the covered
12 offender of the registration requirements of this chapter, each
13 covered offender shall also register in person with the chief of
14 police where the covered offender resides or is present.
15 Registration under this subsection is for the purpose of
16 providing the covered offender's photograph, fingerprints, and
17 registration information. Registration under this subsection is
18 required whenever the covered offender, whether or not a
19 resident of this State, remains in this State for more than ten
20 days or for an aggregate period exceeding thirty days in one
21 calendar year. Covered offenders required to register in person
22 with the chief of police under this subsection shall register no
23 later than three working days after the earliest of:

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

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

1 and allow the police and such other department or agency
2 designated by the attorney general to take a current photograph
3 of the offender.

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

- 6 (1) The date of the covered offender's conviction;
- 7 (2) The date of finding, pursuant to chapter 704 [7] or a
8 comparable federal, military, out-of-state, tribal, or
9 foreign law, of the covered offender's unfitness to
10 proceed; [~~or~~]
- 11 (3) The date of the covered offender's acquittal or
12 dismissal due to a physical or mental disease,
13 disorder, or defect, pursuant to chapter 704 [-] or
14 a comparable federal, military, out-of-state, tribal,
15 or foreign law; or
- 16 (4) The date of the covered offender's involuntary
17 hospitalization and order of dismissal pursuant to
18 section 706-607 or a comparable federal, military,
19 out-of-state, tribal, or foreign law."

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

- 22 (1) By amending subsections (a) and (b) to read as
23 follows:

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1 "(a) Registration information shall be disclosed as
2 follows:

3 (1) The information shall be disclosed to [~~law enforcement~~
4 ~~agencies for law enforcement~~] criminal justice
5 agencies, as defined in section 846-1, for
6 administration of criminal justice and covered
7 offender registration purposes;

8 (2) The information shall be disclosed to government
9 agencies conducting confidential background checks;
10 and

11 (3) The attorney general and any county police department
12 shall release public information as provided in
13 subsection (b) concerning a specific person required
14 to register under this chapter; provided that the
15 identity of a victim of an offense that requires
16 registration under this chapter shall not be released.

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

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

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- 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 more than
17 ten days, if other than the stated residence, and the
18 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;
- 22 (7) The street name and zip code of the covered offender's
23 current locations of employment, including information

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- 1 for any place where the covered offender works as a
2 volunteer or otherwise works without remuneration;
- 3 (8) For covered offenders who may not have a fixed place
4 of employment, a description of the places where such
5 a covered offender works;
- 6 (9) Professional licenses held by the covered offender;
- 7 (10) Names and actual addresses of current and known future
8 educational institutions with which the covered
9 offender is affiliated as a faculty member, an
10 employee, or a student, and the starting and ending
11 dates of any such affiliation;
- 12 (11) The year, make, model, color, and license number of
13 all vehicles, including automobiles, watercrafts, and
14 aircrafts, currently owned or operated by the covered
15 offender, excluding vehicles operated exclusively for
16 purposes of work;
- 17 (12) A statement listing all covered offenses for which the
18 covered offender has been convicted or found unfit to
19 proceed or acquitted pursuant to chapter 704;
- 20 (13) Judgment of conviction, judgment of acquittal, [~~or~~]
21 judicial determination of unfitness to proceed, or
22 order of dismissal documenting the criminal offense or
23 offenses for which the covered offender is registered;

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

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

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

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

10 "(e) Public access to a covered offender's public
11 information shall be permitted with regard to each covered
12 offender beginning the next working day following the filing of
13 a judgment of conviction, a finding of unfitness to proceed, or
14 a dismissal or an acquittal due to a physical or mental disease,
15 disorder, or defect, for a covered offense, or as soon
16 thereafter as practical. When a notice of appeal has been
17 filed, the public information shall note that the covered
18 offender has filed a notice of appeal. The public information
19 shall be removed upon reversal of the covered offender's
20 conviction or granting of a pardon to the covered offender."

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

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

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- 1 (1) A judgment on the verdict, or a finding of guilt after
2 a plea of guilty or nolo contendere, excluding the
3 adjudication of a minor;
- 4 (2) A finding of unfitness to proceed [~~resulting in the~~
5 ~~release of a covered offender into the community~~],
6 excluding such finding as to a minor; [~~e~~]
- 7 (3) An acquittal or dismissal due to a physical or mental
8 disease, disorder, or defect pursuant to chapter 704
9 [~~resulting in the release of the covered offender into~~
10 ~~the community,~~] or a comparable federal, military,
11 out-of-state, tribal, or foreign law, excluding such
12 acquittal or dismissal as to a minor[-]; or
- 13 (4) An order of involuntary hospitalization and dismissal
14 of charges pursuant to section 706-607 or a comparable
15 federal, military, out-of-state, tribal, or foreign
16 law."

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

19 "(a) Each person, or that person's designee, in charge of
20 a jail, prison, hospital, school, or other institution to which
21 a covered offender has been committed pursuant to a conviction,
22 or an acquittal, dismissal, or finding of unfitness to proceed
23 pursuant to chapter 704, or involuntarily hospitalization

1 pursuant to section 706-607 for a covered offense, and each
2 judge, or that judge's designee, who continues bail for or
3 releases a covered offender following sentencing and the entry
4 of a judgment of conviction, who releases a covered offender on
5 probation or who discharges a covered offender upon payment of a
6 fine, and each agency having jurisdiction, shall, prior to the
7 discharge, parole, or release of the covered offender:

- 8 (1) Explain to the covered offender the duty to register
9 and the consequences of failing to register under this
10 chapter;
- 11 (2) Obtain from the covered offender all of the
12 registration information required by this chapter;
- 13 (3) Inform the covered offender that, if at any time the
14 covered offender changes any of the covered offender's
15 registration information, the covered offender shall
16 notify the attorney general of the new registration
17 information in writing within three working days;
- 18 (4) Inform the covered offender that, if at any time the
19 covered offender changes residence to another state,
20 the covered offender shall register the new address
21 with the attorney general and also with a designated
22 law enforcement agency in the new state, if the new
23 state has a registration requirement, within the

- 1 period of time mandated by the new state's sex
2 offender registration laws;
- 3 (5) Obtain and verify fingerprints and a photograph of the
4 covered offender, if these have not already been
5 obtained or verified in connection with the offense
6 that triggers the registration;
- 7 (6) Require the covered offender to sign a statement
8 indicating that the duty to register has been
9 explained to the covered offender; and
- 10 (7) Give one copy of the signed statement and one copy of
11 the registration information to the covered offender."

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

14 "(c) The periodic verification provisions of this section
15 shall not apply to covered offenders who are incarcerated, or
16 committed, or involuntarily hospitalized, or have registered
17 with a designated law enforcement agency after establishing
18 residence in another state."

19 SECTION 7. Section 846E-12, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[~~f~~] ~~§846E-12~~ [~~f~~] **Tolling.** The time periods provided for in
22 this chapter shall be tolled during any period of time the
23 covered offender is committed or recommitted to prison or

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Report Title:

Covered Offender Registration

Description:

Requires registration of defendants who have had covered offenses dismissed due to mental or physical disease, disorder, or defect or have been involuntarily hospitalized in lieu of prosecution; clarifies and that criminal justice agencies may access registration information.

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: 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, Hawaii Revised Statutes (HRS), or the charges are dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS, including federal and out-of-state comparable dispositions.

Additionally, the bill clarifies that persons required to register pursuant to section 846E-2(b) HRS, will be considered either a "sex offender" or an "offender against minors".

Lastly, the bill clarifies that criminal justice agencies charged with administering the covered offender registration program are authorized to access confidential registration information.

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

JUSTIFICATION: 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

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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.

Currently, certain offenders are required to register pursuant to 846E-2(b) without regard as to whether the offender otherwise meets the criteria of a covered offender. However, certain offenders are not considered to be a "sex offender" or an "offender against minors" and cannot be added to either the registry or public website.

Lastly, the current statute only allows law enforcement agencies, which is a subset of criminal justice agencies, to access confidential registration information. Agencies such as Hawaii Paroling Authority, Correctional Division, Adult Client Services Branch are not currently authorized to receive the confidential registration information.

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.

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

GENERAL FUND:

None.

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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.