

# H.B. NO. 2302

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## A BILL FOR AN ACT

RELATING TO CRIMES AGAINST MINORS.

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

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SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding to part VI, a new section to be appropriately designated and to read as follows:

"§707- Electronic enticement of a child in the third degree. (1) Any person who, using a computer or any other electronic device:

(a) Intentionally or knowingly communicates:

(i) With a minor known by the person to be under the age of eighteen years;

(ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

(iii) With another person who represents that person to be under the age of eighteen years; and

1           **(b)** With the intent to promote or facilitate the  
2                   commission of a felony, agrees to meet with the minor,  
3                   or with another person who represents that person to  
4                   be a minor under the age of eighteen years,  
5 is guilty of electronic enticement of a child in the third  
6 degree.

7           **(2)** Electronic enticement of a child in the third degree  
8 is a misdemeanor."

9           SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (1) to read as follows:

11           "(1) Notwithstanding section 706-669 and any other law to  
12 the contrary, any person convicted of murder in the second  
13 degree, any class A felony, any class B felony, or any of the  
14 following class C felonies: section 188-23 relating to  
15 possession or use of explosives, electrofishing devices, and  
16 poisonous substances in state waters; section 707-703 relating  
17 to negligent homicide in the first degree; section 707-711  
18 relating to assault in the second degree; section 707-713  
19 relating to reckless endangering in the first degree; section  
20 707-716 relating to terroristic threatening in the first degree;  
21 section 707-721 relating to unlawful imprisonment in the first  
22 degree; section 707-732 relating to sexual assault or rape in

1 the third degree; section 707-735 relating to sodomy in the  
2 third degree; section 707-736 relating to sexual abuse in the  
3 first degree; [~~707-751~~] section 707-752 relating to promoting  
4 child abuse in the [~~second~~] third degree; section 707-757  
5 relating to electronic enticement of a child in the second  
6 degree; section 707-766 relating to extortion in the second  
7 degree; section 708-811 relating to burglary in the second  
8 degree; section 708-821 relating to criminal property damage in  
9 the second degree; section 708-831 relating to theft in the  
10 first degree as amended by Act 68, Session Laws of Hawaii 1981;  
11 section 708-831 relating to theft in the second degree; section  
12 708-835.5 relating to theft of livestock; section 708-836  
13 relating to unauthorized control of propelled vehicle; section  
14 708-852 relating to forgery in the second degree; section 708-  
15 854 relating to criminal possession of a forgery device; section  
16 708-875 relating to trademark counterfeiting; section 710-1071  
17 relating to intimidating a witness; section 711-1103 relating to  
18 riot; section 712-1203 relating to promoting prostitution in the  
19 second degree; section 712-1221 relating to gambling in the  
20 first degree; section 712-1224 relating to possession of  
21 gambling records in the first degree; section 712-1243 relating  
22 to promoting a dangerous drug in the third degree; section 712-

1 1247 relating to promoting a detrimental drug in the first  
2 degree; section 134-7 relating to ownership or possession of  
3 firearms or ammunition by persons convicted of certain crimes;  
4 section 134-8 relating to ownership, etc., of prohibited  
5 weapons; section 134-9 relating to permits to carry, or who is  
6 convicted of attempting to commit murder in the second degree,  
7 any class A felony, any class B felony, or any of the class C  
8 felony offenses enumerated above and who has a prior conviction  
9 or prior convictions for the following felonies, including an  
10 attempt to commit the same: murder, murder in the first or  
11 second degree, a class A felony, a class B felony, any of the  
12 class C felony offenses enumerated above, or any felony  
13 conviction of another jurisdiction shall be sentenced to a  
14 mandatory minimum period of imprisonment without possibility of  
15 parole during such period as follows:

16 (a) One prior felony conviction:

17 (i) Where the instant conviction is for murder in the  
18 second degree or attempted murder in the second  
19 degree--ten years;

20 (ii) Where the instant conviction is for a class A  
21 felony--six years, eight months;

- 1 (iii) Where the instant conviction is for a class B  
2 felony--three years, four months;
- 3 (iv) Where the instant conviction is for a class C  
4 felony offense enumerated above--one year, eight  
5 months;
- 6 (b) Two prior felony convictions:
- 7 (i) Where the instant conviction is for murder in the  
8 second degree or attempted murder in the second  
9 degree--twenty years;
- 10 (ii) Where the instant conviction is for a class A  
11 felony--thirteen years, four months;
- 12 (iii) Where the instant conviction is for a class B  
13 felony--six years, eight months;
- 14 (iv) Where the instant conviction is for a class C  
15 felony offense enumerated above--three years,  
16 four months;
- 17 (c) Three or more prior felony convictions:
- 18 (i) Where the instant conviction is for murder in the  
19 second degree or attempted murder in the second  
20 degree--thirty years;
- 21 (ii) Where the instant conviction is for a class A  
22 felony--twenty years;

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1 (iii) Where the instant conviction is for a class B  
2 felony--ten years;

3 (iv) Where the instant conviction is for a class C  
4 felony offense enumerated above--five years."

5 SECTION 3. Section 707-751, Hawaii Revised Statutes, is  
6 amended by amending subsection (4) to read as follows:

7 "(4) Promoting child abuse in the second degree is a class  
8 B felony. Notwithstanding any law to the contrary, if a person  
9 sentenced under this section is sentenced to probation rather  
10 than an indeterminate term of imprisonment, the terms and  
11 conditions of probation shall include, but not be limited to, a  
12 term of imprisonment of one year."

13 SECTION 4. Section 707-752, Hawaii Revised Statutes, is  
14 amended by amending subsection (4) to read as follows:

15 "(4) Promoting child abuse in the third degree is a class  
16 C felony. Notwithstanding any law to the contrary, if a person  
17 sentenced under this section is sentenced to probation rather  
18 than an indeterminate term of imprisonment, the terms and  
19 conditions of probation shall include, but not be limited to, a  
20 term of imprisonment of one year."

21 SECTION 5. Section 707-756, Hawaii Revised Statutes, is  
22 amended by amending subsection (2) to read as follows:

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1           "(2) Electronic enticement of a child in the first degree  
2 is a class B felony. Notwithstanding any law to the contrary,  
3 if a person sentenced under this section is sentenced to  
4 probation rather than an indeterminate term of imprisonment, the  
5 terms and conditions of probation shall include, but not be  
6 limited to, a term of imprisonment of one year."

7           SECTION 6. Section 707-757, Hawaii Revised Statutes, is  
8 amended by amending subsection (2) to read as follows:

9           "(2) Electronic enticement of a child in the second degree  
10 is a class C felony. Notwithstanding any law to the contrary,  
11 if a person sentenced under this section is sentenced to  
12 probation rather than an indeterminate term of imprisonment, the  
13 terms and conditions of probation shall include, but not be  
14 limited to, a term of imprisonment of one year."

15           SECTION 7. Section 853-4, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           "**§853-4 Chapter not applicable; when.** This chapter shall  
18 not apply when:

19           (1) The offense charged involves the intentional, knowing,  
20           reckless, or negligent killing of another person;

21           (2) The offense charged is:

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- 1 (A) A felony that involves the intentional, knowing,  
2 or reckless bodily injury, substantial bodily  
3 injury, or serious bodily injury of another  
4 person; or
- 5 (B) A misdemeanor or petty misdemeanor that carries a  
6 mandatory minimum sentence and that involves the  
7 intentional, knowing, or reckless bodily injury,  
8 substantial bodily injury, or serious bodily  
9 injury of another person;
- 10 (3) The offense charged involves a conspiracy or  
11 solicitation to intentionally, knowingly, or  
12 recklessly kill another person or to cause serious  
13 bodily injury to another person;
- 14 (4) The offense charged is a class A felony;
- 15 (5) The offense charged is nonprobationable;
- 16 (6) The defendant has been convicted of any offense  
17 defined as a felony by the Hawaii Penal Code or has  
18 been convicted for any conduct that if perpetrated in  
19 this State would be punishable as a felony;
- 20 (7) The defendant is found to be a law violator or  
21 delinquent child for the commission of any offense  
22 defined as a felony by the Hawaii Penal Code or for



- 1 any conduct that if perpetrated in this State would  
2 constitute a felony;
- 3 (8) The defendant has a prior conviction for a felony  
4 committed in any state, federal, or foreign  
5 jurisdiction;
- 6 (9) A firearm was used in the commission of the offense  
7 charged;
- 8 (10) The defendant is charged with the distribution of a  
9 dangerous, harmful, or detrimental drug to a minor;
- 10 (11) The defendant has been charged with a felony offense  
11 and has been previously granted deferred acceptance of  
12 guilty plea status for a prior offense, regardless of  
13 whether the period of deferral has already expired;
- 14 (12) The defendant has been charged with a misdemeanor  
15 offense and has been previously granted deferred  
16 acceptance of guilty plea status for a prior felony,  
17 misdemeanor, or petty misdemeanor for which the period  
18 of deferral has not yet expired;
- 19 (13) The offense charged is:
- 20 (A) Escape in the first degree;
- 21 (B) Escape in the second degree;
- 22 (C) Promoting prison contraband in the first degree;

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- 1 (D) Promoting prison contraband in the second degree;
- 2 (E) Bail jumping in the first degree;
- 3 (F) Bail jumping in the second degree;
- 4 (G) Bribery;
- 5 (H) Bribery of a witness;
- 6 (I) Intimidating a witness;
- 7 (J) Bribery of or by a juror;
- 8 (K) Intimidating a juror;
- 9 (L) Jury tampering;
- 10 (M) Promoting prostitution in the first degree;
- 11 (N) Promoting prostitution in the second degree;
- 12 (O) Promoting prostitution in the third degree;
- 13 (P) Abuse of family or household members;
- 14 (Q) Sexual assault in the second degree;
- 15 (R) Sexual assault in the third degree; [øx]
- 16 (S) A violation of an order issued pursuant to
- 17 chapter 586; [øx]
- 18 (T) Promoting child abuse in the second degree;
- 19 (U) Promoting child abuse in the third degree;
- 20 (V) Electronic enticement of a child in the first
- 21 degree;

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1            (W) Electronic enticement of a child in the second  
2            degree;

3            (X) Electronic enticement of a child in the third  
4            degree; or

5            (14) The defendant has been charged with:

6            (A) Knowingly or intentionally falsifying any report  
7            required under chapter 11, subpart B of part XII,  
8            with the intent to circumvent the law or deceive  
9            the campaign spending commission; or

10           (B) Violating section 11-201 or 11-202.

11           The court may adopt by rule other criteria in this area."

12           SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14           SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. By  
BY REQUEST

JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIMES AGAINST MINORS.

PURPOSE: (1) To add electronic enticement of a child to the list of class C felonies subject to repeat offender sentencing; (2) to mandate at least one year incarceration for defendants convicted of promoting child abuse or convicted of electronic enticement of a child; (3) to eliminate the possibility of a deferred plea for those who enter a plea to the crime of promoting child abuse or the crime of electronic enticement of a child; and (4) to add the new misdemeanor of electronic enticement of a child in the third degree to chapter 707.

MEANS: Add a new section to part VI of chapter 707 and amend sections 707-606.5(1), 707-751(4), 707-752(4), 707-756(2), 707-757(2), and 853-4, Hawaii Revised Statutes.

JUSTIFICATION: Those who prey on children by participating in child pornography and by using computers to entice children into becoming crime victims or crime perpetrators should always be sentenced to at least one year of incarceration and should never be allowed to enter into a deferred plea. These are heinous crimes and the public should be confident that whoever perpetrates such a crime will go to jail and will have a permanent record related to the crime. Currently, such criminals can be sentenced to probation with no incarceration and can have their records expunged. This bill would end that. Electronic enticement of a child in the third degree would be a lesser-included offense of electronic enticement of a child in the second degree. The third degree would include all of the elements of the second degree offense except for the element of traveling to a location to meet

the child. This new misdemeanor would be allow prosecution and conviction of those offenders who have committed the offense in every way except for the absence of evidence to prove beyond a reasonable doubt that the offender traveled to a location to meet a child.

Impact on the public: This bill will be beneficial to the public interest because those criminals who prey on children by pornography or electronic enticement will be sentenced to at least one year of incarceration, they will all be subject to mandatory minimum sentencing for repeat offenses, and they will not be allowed to have the record of their crimes expunged, due to having been allowed to enter a deferred plea. Therefore, children will be safer, due to the fact that more offenders will be incarcerated, and parents will be more informed, due to the fact that the convictions will stay on the offenders' records.

Impact on the department and other agencies: This bill will help the department and other agencies because the enhanced possibility of appropriate sentences and permanent records for those convicted of promoting child abuse and convicted of electronic enticement of a child.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	County police, county prosecutors, and the Office of the Public Defender.
EFFECTIVE DATE:	Upon approval.