

PROPOSED

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 2265
S.D. 1

A BILL FOR AN ACT

RELATING TO CRIMES AGAINST MINORS.

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

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

4 "§707- Electronic enticement of a child in the third
5 degree. (1) A person commits the offense of electronic
6 enticement of a child in the third degree if, using a computer
7 or any other electronic device, a person:

8 (a) Intentionally or knowingly communicates:

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

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

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

17 (b) With the intent to promote or facilitate the
18 commission of a felony, agrees to meet with the minor,



1 or with another person who represents that person to
2 be a minor under the age of eighteen years,
3 is guilty of electronic enticement of a child in the third
4 degree.

5 (2) Electronic enticement of a child in the third degree
6 is a misdemeanor."

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

9 "(1) Notwithstanding section 706-669 and any other law to
10 the contrary, any person convicted of murder in the second
11 degree, any class A felony, any class B felony, or any of the
12 following class C felonies: section 188-23 relating to
13 possession or use of explosives, electrofishing devices, and
14 poisonous substances in state waters; section 707-703 relating
15 to negligent homicide in the first degree; section 707-711
16 relating to assault in the second degree; section 707-713
17 relating to reckless endangering in the first degree; section
18 707-716 relating to terroristic threatening in the first degree;
19 section 707-721 relating to unlawful imprisonment in the first
20 degree; section 707-732 relating to sexual assault or rape in
21 the third degree; section 707-735 relating to sodomy in the
22 third degree; section 707-736 relating to sexual abuse in the

1 first degree; [~~707-751~~] section 707-752 relating to promoting
2 child abuse in the [~~second~~] third degree; section 707-757
3 relating to electronic enticement of a child in the second
4 degree; section 707-766 relating to extortion in the second
5 degree; section 708-811 relating to burglary in the second
6 degree; section 708-821 relating to criminal property damage in
7 the second degree; section 708-831 relating to theft in the
8 first degree as amended by Act 68, Session Laws of Hawaii 1981;
9 section 708-831 relating to theft in the second degree; section
10 708-835.5 relating to theft of livestock; section 708-836
11 relating to unauthorized control of propelled vehicle; section
12 708-852 relating to forgery in the second degree; section
13 708-854 relating to criminal possession of a forgery device;
14 section 708-875 relating to trademark counterfeiting; section
15 710-1071 relating to intimidating a witness; section 711-1103
16 relating to riot; section 712-1203 relating to promoting
17 prostitution in the second degree; section 712-1221 relating to
18 gambling in the first degree; section 712-1224 relating to
19 possession of gambling records in the first degree; section
20 712-1243 relating to promoting a dangerous drug in the third
21 degree; section 712-1247 relating to promoting a detrimental
22 drug in the first degree; section 134-7 relating to ownership or

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

- 14 (a) One prior felony conviction:
 - 15 (i) Where the instant conviction is for murder in the
 - 16 second degree or attempted murder in the second
 - 17 degree--ten years;
 - 18 (ii) Where the instant conviction is for a class A
 - 19 felony--six years, eight months;
 - 20 (iii) Where the instant conviction is for a class B
 - 21 felony--three years, four months;

1 (iv) Where the instant conviction is for a class C
2 felony offense enumerated above--one year, eight
3 months;

4 (b) Two prior felony convictions:

5 (i) Where the instant conviction is for murder in the
6 second degree or attempted murder in the second
7 degree--twenty years;

8 (ii) Where the instant conviction is for a class A
9 felony--thirteen years, four months;

10 (iii) Where the instant conviction is for a class B
11 felony--six years, eight months;

12 (iv) Where the instant conviction is for a class C
13 felony offense enumerated above--three years,
14 four months;

15 (c) Three or more prior felony convictions:

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

19 (ii) Where the instant conviction is for a class A
20 felony--twenty years;

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

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

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

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

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

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

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

21 "(2) Electronic enticement of a child in the first degree
22 is a class B felony. Notwithstanding any law to the contrary,

1 if a person sentenced under this section is sentenced to
2 probation rather than an indeterminate term of imprisonment, the
3 terms and conditions of probation shall include, but not be
4 limited to, a term of imprisonment of one year."

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

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

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

15 "~~§853-4 Chapter not applicable; when.~~ This chapter shall
16 not apply when:

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

19 (2) The offense charged is:

20 (A) A felony that involves the intentional, knowing,
21 or reckless bodily injury, substantial bodily

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1 injury, or serious bodily injury of another
2 person; or

3 (B) A misdemeanor or petty misdemeanor that carries a
4 mandatory minimum sentence and that involves the
5 intentional, knowing, or reckless bodily injury,
6 substantial bodily injury, or serious bodily
7 injury of another person;

8 (3) The offense charged involves a conspiracy or
9 solicitation to intentionally, knowingly, or
10 recklessly kill another person or to cause serious
11 bodily injury to another person;

12 (4) The offense charged is a class A felony;

13 (5) The offense charged is nonprobationable;

14 (6) The defendant has been convicted of any offense
15 defined as a felony by the Hawaii Penal Code or has
16 been convicted for any conduct that if perpetrated in
17 this State would be punishable as a felony;

18 (7) The defendant is found to be a law violator or
19 delinquent child for the commission of any offense
20 defined as a felony by the Hawaii Penal Code or for
21 any conduct that if perpetrated in this State would
22 constitute a felony;



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

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

1 (X) Electronic enticement of a child in the third
2 degree; or

3 (14) The defendant has been charged with:

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

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

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

10 SECTION 8. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

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Report Title:

Minors; New Felonies & Misdemeanors

Description:

Add electronic enticement of a child to the list of class C felonies subject to repeat offender sentencing. Mandates at least 1 year incarceration for defendants convicted of promoting child abuse or convicted of electronic enticement of a child. Eliminates 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. Adds a new misdemeanor of electronic enticement of a child in the third degree. (SD1)

