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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. This Act shall be known as the "Child and Adult  
2 Protection and Safety Act of 2008."

3 SECTION 2. Chapter 707, Hawaii Revised Statutes, is  
4 amended by adding to part VI two new sections to be  
5 appropriately designated and to read as follows:

6 "§707-A Electronic enticement of a child in the third  
7 degree. (1) Any person who knowingly uses a computer online  
8 service, internet service, or any other device capable of  
9 electronic data storage or transmission to solicit, lure, or  
10 entice, or attempt to solicit, lure, or entice:

11 (a) A minor known by the person to be under the age of  
12 eighteen years;

13 (b) Another person, in reckless disregard of the risk that  
14 the other person is under the age of eighteen years,  
15 and the other person is under the age of eighteen  
16 years; or

17 (c) Another person who represents that person to be under  
18 the age of eighteen years,



1 to engage in sexual conduct with intent to promote or facilitate  
2 the commission of another covered offense, as defined in section  
3 846E-1, and who agrees to meet with the minor, or with another  
4 person who represents that person to be a minor under the age of  
5 eighteen years, is guilty of electronic enticement of a child in  
6 the third degree.

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

9 (3) Each separate use of a computer online service,  
10 internet service, or any other device capable of electronic data  
11 storage or transmission wherein an offense described in this  
12 section is committed may be charged as a separate offense.

13 (4) As used in this section, "sexual conduct" means acts  
14 of sexual penetration, sexual contact, or masturbation.

15 **§707-B Indecent electronic display to a child.** (1) Any  
16 person who intentionally masturbates or intentionally exposes  
17 the genitals in a lewd or lascivious manner live over a computer  
18 online service, internet service, or local bulletin board  
19 service and who knows or should know or has reason to believe  
20 that the transmission is viewed on a computer or other  
21 electronic device by:



- 1        (a) A minor known by the person to be under the age of
- 2                eighteen years;
- 3        (b) Another person, in reckless disregard of the risk that
- 4                the other person is under the age of eighteen years,
- 5                and the other person is under the age of eighteen
- 6                years; or
- 7        (c) Another person who represents that person to be under
- 8                the age of eighteen years,

9 is guilty of indecent electronic display to a child.

10        (2) Indecent electronic display to a child is a class C  
11 felony."

12        SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is  
13 amended by amending subsection (1) to read as follows:

14        "(1) Notwithstanding section 706-669 and any other law to  
15 the contrary, any person convicted of murder in the second  
16 degree, any class A felony, any class B felony, or any of the  
17 following class C felonies: section 188-23 relating to  
18 possession or use of explosives, electrofishing devices, and  
19 poisonous substances in state waters; section 386-98(d)(1)  
20 relating to fraud violations and penalties; section  
21 431:10A-131(b)(2) relating to insurance fraud; section  
22 431:10C-307.7(b)(2) relating to insurance fraud; section

1 432:1-106(b) (2) relating to insurance fraud; section  
2 432D-18.5(b) (2) relating to insurance fraud; section 707-703  
3 relating to negligent homicide in the second degree; section  
4 707-711 relating to assault in the second degree; section  
5 707-713 relating to reckless endangering in the first degree;  
6 section 707-716 relating to terroristic threatening in the first  
7 degree; section 707-721 relating to unlawful imprisonment in the  
8 first degree; section 707-732 relating to sexual assault or rape  
9 in the third degree; section 707-752 relating to promoting child  
10 abuse in the third degree; section 707-757 relating to  
11 electronic enticement of a child in the second degree; section  
12 707-B relating to indecent electronic display to a child;  
13 section 707-766 relating to extortion in the second degree;  
14 section 708-811 relating to burglary in the second degree;  
15 section 708-821 relating to criminal property damage in the  
16 second degree; section 708-831 relating to theft in the first  
17 degree as amended by Act 68, Session Laws of Hawaii 1981;  
18 section 708-831 relating to theft in the second degree; section  
19 708-835.5 relating to theft of livestock; section 708-836  
20 relating to unauthorized control of propelled vehicle; section  
21 708-839.8 relating to identity theft in the third degree;  
22 section 708-839.55 relating to unauthorized possession of



1 confidential personal information; section 708-852 relating to  
2 forgery in the second degree; section 708-854 relating to  
3 criminal possession of a forgery device; section 708-875  
4 relating to trademark counterfeiting; section 710-1071 relating  
5 to intimidating a witness; section 711-1103 relating to riot;  
6 section 712-1203 relating to promoting prostitution in the  
7 second degree; section 712-1221 relating to gambling in the  
8 first degree; section 712-1224 relating to possession of  
9 gambling records in the first degree; section 712-1243 relating  
10 to promoting a dangerous drug in the third degree; section  
11 712-1247 relating to promoting a detrimental drug in the first  
12 degree; section 846E-9 relating to failure to comply with  
13 covered offender registration requirements; section 134-7  
14 relating to ownership or possession of firearms or ammunition by  
15 persons convicted of certain crimes; section 134-8 relating to  
16 ownership, etc., of prohibited weapons; section 134-9 relating  
17 to permits to carry, or who is convicted of attempting to commit  
18 murder in the second degree, any class A felony, any class B  
19 felony, or any of the class C felony offenses enumerated above  
20 and who has a prior conviction or prior convictions for the  
21 following felonies, including an attempt to commit the same:  
22 murder, murder in the first or second degree, a class A felony,



1 a class B felony, any of the class C felony offenses enumerated  
2 above, or any felony conviction of another jurisdiction, shall  
3 be sentenced to a mandatory minimum period of imprisonment  
4 without possibility of parole during such period as follows:

5 (a) One prior felony conviction:

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

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

11 (iii) Where the instant conviction is for a class B  
12 felony--three years, four months;

13 (iv) Where the instant conviction is for a class C  
14 felony offense enumerated above--one year, eight  
15 months;

16 (b) Two prior felony convictions:

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

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



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

3 (iv) Where the instant conviction is for a class C  
4 felony offense enumerated above--three years,  
5 four months;

6 (c) Three or more 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--thirty years;

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

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

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

16 SECTION 4. Section 707-751, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§707-751 Promoting child abuse in the second degree. (1)

19 A person commits the offense of promoting child abuse in the  
20 second degree if, knowing or having reason to know its character  
21 and content, the person:

22 (a) Disseminates child pornography;



- 1 (b) Reproduces child pornography with intent to  
2 disseminate;
- 3 (c) Disseminates any book, magazine, periodical, film,  
4 videotape, computer disk, or any other material that  
5 contains an image of child pornography; [~~or~~]
- 6 (d) Disseminates any pornographic material [~~which~~] that  
7 employs, uses, or otherwise contains a minor engaging  
8 in or assisting others to engage in sexual conduct [~~-~~];  
9 or
- 10 (e) Possesses ten or more images of any form of child  
11 pornography, and the content of at least one image  
12 contains one or more of the following:
  - 13 (i) A minor who is younger than the age of twelve;
  - 14 (ii) Sadomasochistic abuse of a minor;
  - 15 (iii) Sexual penetration of a minor; or
  - 16 (iv) Bestiality involving a minor.

17 (2) As used in this section:

18 "Child pornography" means any pornographic visual  
19 representation, including any photograph, film, video, picture,  
20 or computer or computer-generated image or picture, whether made  
21 or produced by electronic, mechanical, or other means, of sexual  
22 conduct, if:





1 (a) The pornographic production of such visual  
2 representation involves the use of a minor engaging in  
3 sexual conduct; or

4 (b) The pornographic visual representation has been  
5 created, adapted, or modified to appear that an  
6 identifiable minor is engaging in sexual conduct.

7 "Community standards" means the standards of the State.

8 "Computer" shall have the same meaning as in section  
9 708-890.

10 "Disseminate" means to publish, sell, distribute, transmit,  
11 exhibit, present material, mail, ship, or transport by any  
12 means, including by computer, or to offer or agree to do the  
13 same.

14 "Lascivious" means tending to incite lust, to deprave the  
15 morals in respect to sexual relations, or to produce voluptuous  
16 or lewd emotions in the average person, applying contemporary  
17 community standards.

18 "Material" means any printed matter, visual representation,  
19 or sound recording and includes, but is not limited to, books,  
20 magazines, motion picture films, pamphlets, newspapers,  
21 pictures, photographs, and tape or wire recordings.

22 "Minor" means any person less than eighteen years old.



1 "Pornographic" shall have the same meaning as in section  
2 712-1210.

3 "Sadomasochistic abuse" means flagellation or torture by or  
4 upon a person as an act of sexual stimulation or gratification.

5 "Sexual conduct" means acts of masturbation, homosexuality,  
6 lesbianism, bestiality, sexual penetration, deviate sexual  
7 intercourse, sadomasochistic abuse, or lascivious exhibition of  
8 the genital or pubic area of a minor.

9 "Visual representation" refers to, but is not limited to,  
10 undeveloped film and videotape, and data stored on computer disk  
11 or by electronic means that are capable of conversion into a  
12 visual image.

13 (3) The fact that a person engaged in the conduct  
14 specified by this section is prima facie evidence that the  
15 person engaged in that conduct with knowledge of the character  
16 and content of the material. The fact that the person who was  
17 employed, used, or otherwise contained in the pornographic  
18 material was at that time, a minor, is prima facie evidence that  
19 the defendant knew the person to be a minor.

20 (4) Promoting child abuse in the second degree is a  
21 class B felony.



1        (5) Notwithstanding any law to the contrary, a person  
 2 convicted of promoting child abuse in the second degree shall be  
 3 sentenced to an indeterminate term of imprisonment as provided  
 4 by law with a mandatory minimum term of imprisonment of five  
 5 years, unless a greater mandatory minimum term is authorized by  
 6 law."

7        SECTION 5. Section 707-752, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9        "[~~+~~]**§707-752**[~~+~~] **Promoting child abuse in the third degree.**

10        (1) A person commits the offense of promoting child abuse in  
 11 the third degree if, knowing or having reason to know its  
 12 character and content, the person possesses:

- 13        (a) Child pornography;
- 14        (b) Any book, magazine, periodical, film, videotape,  
 15 computer disk, electronically stored data, or any  
 16 other material that contains an image of child  
 17 pornography; or
- 18        (c) Any pornographic material that employs, uses, or  
 19 otherwise contains a minor engaging in or assisting  
 20 others to engage in sexual conduct.

21        (2) As used in this section:



1 "Child pornography" means any pornographic visual  
2 representation, including any photograph, film, video, picture,  
3 or computer or computer-generated image or picture, whether made  
4 or produced by electronic, mechanical, or other means, of sexual  
5 conduct, if:

6 (a) The pornographic production of the visual  
7 representation involves the use of a minor engaging in  
8 sexual conduct; or

9 (b) The pornographic visual representation has been  
10 created, adapted, or modified to appear that an  
11 identifiable minor is engaging in sexual conduct.

12 "Community standards" means the standards of the State.

13 "Computer" shall have the same meaning as in section  
14 708-890.

15 "Lascivious" means tending to incite lust, to deprave the  
16 morals with respect to sexual relations, or to produce  
17 voluptuous or lewd emotions in the average person, applying  
18 contemporary community standards.

19 "Material" means any printed matter, visual representation,  
20 or sound recording and includes, but is not limited to, books,  
21 magazines, motion picture films, pamphlets, newspapers,  
22 pictures, photographs, and tape or wire recordings.



1 "Minor" means any person less than eighteen years old.

2 "Pornographic" shall have the same meaning as in section  
3 712-1210.

4 "Sadomasochistic abuse" means flagellation or torture by or  
5 upon a person as an act of sexual stimulation or gratification.

6 "Sexual conduct" means acts of masturbation, homosexuality,  
7 lesbianism, bestiality, sexual penetration, deviate sexual  
8 intercourse, sadomasochistic abuse, or lascivious exhibition of  
9 the genital or pubic area of a minor.

10 "Visual representation" includes but is not limited to  
11 undeveloped film and videotape and data stored on computer disk  
12 or by electronic means that are capable of conversion into a  
13 visual image.

14 (3) The fact that a person engaged in the conduct  
15 specified by this section is prima facie evidence that the  
16 person engaged in that conduct with knowledge of the character  
17 and content of the material. The fact that the person who was  
18 employed, used, or otherwise contained in the pornographic  
19 material was, at that time, a minor is prima facie evidence that  
20 the defendant knew the person to be a minor.

21 (4) Promoting child abuse in the third degree is a class C  
22 felony.



1        (5) Notwithstanding any law to the contrary, if a person  
2 convicted of promoting child abuse in the third degree is  
3 sentenced to probation rather than an indeterminate term of  
4 imprisonment, the terms and conditions of probation shall  
5 include, but not be limited to, a term of imprisonment of one  
6 year."

7        SECTION 6. Section 707-756, Hawaii Revised Statutes, is  
8 amended to read as follows:

9        **"§707-756 Electronic enticement of a child in the first**  
10 **degree.** (1) Any person who, using a computer or any other  
11 electronic device:

12        (a) Intentionally or knowingly communicates:

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

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

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

21        (b) With the intent to promote or facilitate the  
22        commission of a felony:



1 (i) That is a murder in the first or second degree;

2 (ii) That is a class A felony; or

3 (iii) That is ~~[an]~~ another covered offense as defined  
4 in section 846E-1~~[7]~~1

5 agrees to meet with the minor, or with another person  
6 who represents that person to be a minor under the age  
7 of eighteen years; and

8 (c) Intentionally or knowingly travels to the agreed upon  
9 meeting place at the agreed upon meeting time~~[7]~~1

10 is guilty of electronic enticement of a child in the first  
11 degree.

12 (2) Electronic enticement of a child in the first degree  
13 is a class B felony. Notwithstanding any law to the contrary,  
14 ~~[if a person sentenced under this section is sentenced to~~  
15 ~~probation rather than]~~ a person convicted of electronic  
16 enticement of a child in the first degree shall be sentenced to  
17 an indeterminate term of imprisonment~~[, the terms and conditions~~  
18 ~~of probation shall include, but not be limited to, a term of~~  
19 ~~imprisonment of one year.]~~ as provided by law."

20 SECTION 7. Section 707-757, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§707-757   Electronic enticement of a child in the second  
2 degree.   (1) Any person who, using a computer or any other  
3 electronic device:

4           (a) Intentionally or knowingly communicates:

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

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

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

13           (b) With the intent to promote or facilitate the  
14                         commission of a felony[7] or another covered offense  
15                         as defined in section 846E-1, agrees to meet with the  
16                         minor, or with another person who represents that  
17                         person to be a minor under the age of eighteen years;  
18                         and

19           (c) Intentionally or knowingly travels to the agreed upon  
20                         meeting place at the agreed upon meeting time;

21 is guilty of electronic enticement of a child in the second  
22 degree.





1           (2) Electronic enticement of a child in the second degree  
2 is a class C 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 8. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun, before its effective date.

10          SECTION 9. In codifying the new sections added by  
11 section 2 of this Act, the revisor of statutes shall substitute  
12 appropriate section numbers for the letters used in designating  
13 the new sections in this Act.

14          SECTION 10. If any provision of this Act, or the  
15 application thereof to any person or circumstance is held  
16 invalid, the invalidity does not affect other provisions or  
17 applications of the Act, which can be given effect without the  
18 invalid provision or application, and to this end the provisions  
19 of this Act are severable.

20          SECTION 11. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22          SECTION 12. This Act shall take effect on July 1, 2050.



**Report Title:**

Electronic Enticement; Electronic Display; Children

**Description:**

Creates two new offenses involving sexual predation of minors; amends existing offenses to expand conduct covered and impose mandatory sentences. Eff. 7/1/2050. (SD1)

