

JAN 23 2008

---

---

# A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Chapter 712, Hawaii Revised Statutes, is  
2 amended by adding a new section to part II to be appropriately  
3 designated and to read as follows:

4 "§712-A Possession or control of matter produced using and  
5 depicting a minor engaged in sexual conduct. (1) A person  
6 commits the offense of possession or control of matter produced  
7 using and depicting a minor engaged in sexual conduct if:

8 (a) The person knowingly possesses or controls any matter,  
9 representation of information, data, or image,  
10 including but not limited to any film, filmstrip,  
11 photograph, negative, slide, photocopy, laser or ink-  
12 jet print, videotape, video laser disc, compact disc,  
13 digital video disc, digital versatile disc, computer  
14 floppy disc or other computer read storage media, data  
15 storage media, computer hardware, computer software,  
16 or computer-generated image that contains or



1 incorporates in any manner any moving or still image  
2 that depicts or was produced using a minor; and

3 (b) The person knows that the matter depicts a minor  
4 personally engaging in or simulating sexual conduct as  
5 defined in section 712-1210.

6 (2) It shall not be necessary to prove that the matter is  
7 pornographic as defined in section 712-1210.

8 (3) This section shall not apply to drawings, figurines,  
9 statues, or any film rated by the Motion Picture Association of  
10 America.

11 (4) Possession or control of matter produced using and  
12 depicting a minor engaged in sexual conduct is a class C  
13 felony."

14 SECTION 2. Chapter 846E, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 "**§846E-A Covered offenders; prohibitions.** Notwithstanding  
18 any other provision of law to the contrary, a covered offender  
19 shall not:

20 (1) During the period of any parole, reside in any single-  
21 family dwelling with any other covered offender unless  
22 those persons are related by blood, marriage, or



1           adoption. For purposes of this paragraph, "single-  
2           family dwelling" shall not include a residential  
3           facility that serves six or fewer persons; or  
4           (2) Reside within two thousand feet of any school or  
5           public park. For purposes of this paragraph, "school"  
6           means any public or private preschool, kindergarten,  
7           elementary, intermediate, middle secondary, or high  
8           school."

9           SECTION 3. Section 704-406, Hawaii Revised Statutes, is  
10          amended to read as follows:

11           **"§704-406 Effect of finding of unfitness to proceed. (1)**  
12          If the court determines that the defendant lacks fitness to  
13          proceed, the proceeding against the defendant shall be  
14          suspended, except as provided in section 704-407, and the court  
15          shall commit the defendant to the custody of the director of  
16          health to be placed in an appropriate institution for detention,  
17          care, and treatment. If the court is satisfied that the  
18          defendant may be released on condition without danger to the  
19          defendant or to the person or property of others, the court  
20          shall order the defendant's release, which shall continue at the  
21          discretion of the court on conditions the court determines  
22          necessary. A copy of the report filed pursuant to section



1 704-404 shall be attached to the order of commitment or order of  
2 release on conditions.

3 (2) When the court, on its own motion or upon the  
4 application of the director of health, the prosecuting attorney,  
5 or the defendant, determines, after a hearing if a hearing is  
6 requested, that the defendant has regained fitness to proceed,  
7 the penal proceeding shall be resumed. If, however, the court  
8 is of the view that so much time has elapsed since the  
9 commitment or release on conditions of the defendant that it  
10 would be unjust to resume the proceeding, the court may dismiss  
11 the charge and:

12 (a) Order the defendant to be discharged;

13 (b) Subject to the law governing the involuntary civil  
14 commitment of persons affected by physical or mental  
15 disease, disorder, or defect, order the defendant to  
16 be committed to the custody of the director of health  
17 to be placed in an appropriate institution for  
18 detention, care, and treatment; or

19 (c) Subject to the law governing involuntary outpatient  
20 treatment, order the defendant to be released on  
21 conditions the court determines necessary.



1           (3) Within a reasonable time following any commitment  
2 under subsection (1), the director of health shall report to the  
3 court on whether the defendant presents a substantial likelihood  
4 of becoming fit to proceed in the future. The court, in  
5 addition, may appoint a panel of three qualified examiners in  
6 felony cases or one qualified examiner in nonfelony cases to  
7 make a report. If, following a report, the court determines  
8 that the defendant probably will remain unfit to proceed, the  
9 court may dismiss the charge and:

10           (a) Release the defendant; or

11           (b) Subject to the law governing involuntary civil  
12 commitment, order the defendant to be committed to the  
13 custody of the director of health to be placed in an  
14 appropriate institution for detention, care, and  
15 treatment.

16           (4) Within a reasonable time following any release under  
17 subsection (1), the court shall appoint a panel of three  
18 qualified examiners in felony cases or one qualified examiner in  
19 nonfelony cases to report to the court on whether the defendant  
20 presents a substantial likelihood of becoming fit to proceed in  
21 the future. If, following the report, the court determines that



1 the defendant probably will remain unfit to proceed, the court  
2 may dismiss the charge and:

3 (a) Release the defendant; or

4 (b) Subject to the law governing involuntary civil  
5 commitment, order the defendant to be committed to the  
6 custody of the director of health to be placed in an  
7 appropriate institution for detention, care, and  
8 treatment.

9 (5) Whenever a person who is a sexually violent predator,  
10 as defined by section 846E-1, is released on condition pursuant  
11 to this section, the person shall be subject to electronic  
12 monitoring of the person's whereabouts by means of a global  
13 positioning system tracking device, or other similar device, at  
14 all times while the person is released on conditions."

15 SECTION 4. Section 704-407, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§704-407 Special hearing following commitment or release**  
18 **on conditions.** (1) At any time after commitment as provided in  
19 section 704-406, the defendant or the defendant's counsel or the  
20 director of health may apply for a special post-commitment or  
21 post-release hearing. If the application is made by or on  
22 behalf of a defendant not represented by counsel, the defendant



1 shall be afforded a reasonable opportunity to obtain counsel,  
2 and if the defendant lacks funds to do so, counsel shall be  
3 assigned by the court. The application shall be granted only if  
4 the counsel for the defendant satisfies the court by affidavit  
5 or otherwise that, as an attorney, the counsel has reasonable  
6 grounds for a good faith belief that the counsel's client has an  
7 objection based upon legal grounds to the charge.

8 (2) If the motion for a special post-commitment or  
9 post-release hearing is granted, the hearing shall be by the  
10 court without a jury. No evidence shall be offered at the  
11 hearing by either party on the issue of physical or mental  
12 disease, disorder, or defect as a defense to, or in mitigation  
13 of, the offense charged.

14 (3) After the hearing, the court shall rule on any legal  
15 objection raised by the application and, in an appropriate case,  
16 may quash the indictment or other charge, find it to be  
17 defective or insufficient, or otherwise terminate the  
18 proceedings on the law. In any such case, unless all defects in  
19 the proceedings are promptly cured, the court shall terminate  
20 the commitment or release ordered under section 704-406 and:

21 (a) Order the defendant to be discharged;



1 (b) Subject to the law governing involuntary civil  
2 commitment of persons affected by a physical or mental  
3 disease, disorder, or defect, order the defendant to  
4 be committed to the custody of the director of health  
5 to be placed in an appropriate institution for  
6 detention, care, and treatment; or

7 (c) Subject to the law governing involuntary outpatient  
8 treatment, order the defendant to be released on such  
9 conditions as the court deems necessary.

10 (4) Whenever a person who is a sexually violent predator,  
11 as defined by section 846E-1, is released on condition pursuant  
12 to this section, the person shall be subject to electronic  
13 monitoring of the person's whereabouts by means of a global  
14 positioning system tracking device, or other similar device, at  
15 all times while the person is released on conditions."

16 SECTION 5. Section 704-411, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§704-411 Legal effect of acquittal on the ground of**  
19 **physical or mental disease, disorder, or defect excluding**  
20 **responsibility; commitment; conditional release; discharge;**  
21 **procedure for separate post-acquittal hearing. (1) When a**  
22 defendant is acquitted on the ground of physical or mental





1 disease, disorder, or defect excluding responsibility, the  
2 court, on the basis of the report made pursuant to section 704-  
3 404, if uncontested, or the medical or psychological evidence  
4 given at the trial or at a separate hearing, shall make an order  
5 as follows:

6 (a) The court shall order the defendant to be committed to  
7 the custody of the director of health to be placed in  
8 an appropriate institution for custody, care, and  
9 treatment if the court finds that the defendant:

10 (i) Is affected by a physical or mental disease,  
11 disorder, or defect;

12 (ii) Presents a risk of danger to self or others; and

13 (iii) Is not a proper subject for conditional release;

14 provided that the director of health shall place  
15 defendants charged with misdemeanors or felonies not  
16 involving violence or attempted violence in the least  
17 restrictive environment appropriate in light of the  
18 defendant's treatment needs and the need to prevent  
19 harm to the person confined and others;

20 (b) The court shall order the defendant to be released on  
21 such conditions as the court deems necessary if the  
22 court finds that the defendant is affected by physical



1 or mental disease, disorder, or defect and that the  
2 defendant presents a danger to self or others, but  
3 that the defendant can be controlled adequately and  
4 given proper care, supervision, and treatment if the  
5 defendant is released on condition; or

6 (c) The court shall order the defendant discharged if the  
7 court finds that the defendant is no longer affected  
8 by physical or mental disease, disorder, or defect or,  
9 if so affected, that the defendant no longer presents  
10 a danger to self or others and is not in need of care,  
11 supervision, or treatment.

12 (2) The court, upon its own motion or on the motion of the  
13 prosecuting attorney or the defendant, shall order a separate  
14 post-acquittal hearing for the purpose of taking evidence on the  
15 issue of physical or mental disease, disorder, or defect and the  
16 risk of danger that the defendant presents to self or others.

17 (3) When ordering a hearing pursuant to subsection (2):

18 (a) In nonfelony cases, the court shall appoint a  
19 qualified examiner to examine and report upon the  
20 physical and mental condition of the defendant. The  
21 court may appoint either a psychiatrist or a licensed  
22 psychologist. The examiner may be designated by the



1 director of health from within the department of  
2 health. The examiner shall be appointed from a list  
3 of certified examiners as determined by the department  
4 of health. The court, in appropriate circumstances,  
5 may appoint an additional examiner or examiners; and

6 (b) In felony cases, the court shall appoint three  
7 qualified examiners to examine and report upon the  
8 physical and mental condition of the defendant. In  
9 each case, the court shall appoint at least one  
10 psychiatrist and at least one licensed psychologist.  
11 The third member may be a psychiatrist, a licensed  
12 psychologist, or a qualified physician. One of the  
13 three shall be a psychiatrist or licensed psychologist  
14 designated by the director of health from within the  
15 department of health. The three examiners shall be  
16 appointed from a list of certified examiners as  
17 determined by the department of health.

18 To facilitate the examination and the proceedings thereon, the  
19 court may cause the defendant, if not then confined; to be  
20 committed to a hospital or other suitable facility for the  
21 purpose of examination for a period not exceeding thirty days or  
22 such longer period as the court determines to be necessary for



1 the purpose upon written findings for good cause shown. The  
2 court may direct that qualified physicians or psychologists  
3 retained by the defendant be permitted to witness the  
4 examination. The examination and report and the compensation of  
5 persons making or assisting in the examination shall be in  
6 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),  
7 and (9). As used in this section, the term "licensed  
8 psychologist" includes psychologists exempted from licensure by  
9 section 465-3(a)(3).

10 (4) Whether the court's order under subsection (1) is made  
11 on the basis of the medical or psychological evidence given at  
12 the trial, or on the basis of the report made pursuant to  
13 section 704-404, or the medical or psychological evidence given  
14 at a separate hearing, the burden shall be upon the State to  
15 prove, by a preponderance of the evidence, that the defendant is  
16 affected by a physical or mental disease, disorder, or defect  
17 and may not safely be discharged and that the defendant should  
18 be either committed or conditionally released as provided in  
19 subsection (1).

20 (5) In any proceeding governed by this section, the  
21 defendant's fitness shall not be an issue.



1        (6) Whenever a person who is a sexually violent predator,  
2 as defined by section 846E-1, is released on condition pursuant  
3 to this section, the person shall be subject to electronic  
4 monitoring of the person's whereabouts by means of a global  
5 positioning system tracking device, or other similar device, at  
6 all times while the person is released on conditions."

7        SECTION 6. Section 704-412, Hawaii Revised Statutes, is  
8 amended to read as follows:

9        **"§704-412 Committed person; application for conditional**  
10 **release or discharge; by the director of health; by the person.**

11 (1) After the expiration of at least ninety days following the  
12 order of commitment pursuant to section 704-411, if the director  
13 of health is of the opinion that the person committed to the  
14 director's custody is still affected by a physical or mental  
15 disease, disorder, or defect and may be released on condition or  
16 discharged without danger to self or to the person or property  
17 of others or that the person is no longer affected by a physical  
18 or mental disease, disorder, or defect, the director shall make  
19 application for the discharge or conditional release of the  
20 person in a report to the court from which the person was  
21 committed and shall transmit a copy of the application and  
22 report to the prosecuting attorney of the county from which the



1 person was committed. The person shall be given notice of such  
2 application.

3 (2) After the expiration of ninety days from the date of  
4 the order of commitment pursuant to section 704-411, the person  
5 committed may apply to the court from which the person was  
6 committed for an order of discharge upon the ground that the  
7 person is no longer affected by a physical or mental disease,  
8 disorder, or defect. The person committed may apply for  
9 discharge or conditional release upon the ground that, though  
10 still affected by a physical or mental disease, disorder, or  
11 defect, the person may be released without danger to self or to  
12 the person or property of others. A copy of the application  
13 shall be transmitted to the prosecuting attorney of the county  
14 from which the defendant was committed. If the determination of  
15 the court is adverse to the application, the person shall not be  
16 permitted to file a further application until one year has  
17 elapsed from the date of any preceding hearing on an application  
18 for the person's discharge or conditional release.

19 (3) Whenever a person who is a sexually violent predator,  
20 as defined by section 846E-1, is released on condition pursuant  
21 to this section, the person shall be subject to electronic  
22 monitoring of the person's whereabouts by means of a global



1 positioning system tracking device, or other similar device, at  
2 all times while the person is released on conditions."

3 SECTION 7. Section 704-413, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§704-413 Conditional release; application for**  
6 **modification or discharge; termination of conditional release**  
7 **and commitment.** (1) Any person released pursuant to section  
8 704-411 shall continue to receive mental health or other  
9 treatment and care deemed appropriate by the director of health  
10 until discharged from conditional release. The person shall  
11 follow all prescribed treatments and take all prescribed  
12 medications according to the instructions of the person's  
13 treating mental health professional. If any mental health  
14 professional treating any conditionally released person believes  
15 either the person is not complying with the requirements of this  
16 section or there is other evidence that hospitalization is  
17 appropriate, the mental health professional shall report the  
18 matter to the probation officer of the conditionally released  
19 person. The probation officer may order the conditionally  
20 released person to be hospitalized for a period not to exceed  
21 seventy-two hours if the probation officer has probable cause to  
22 believe the person has violated the requirements of this



1 subsection. No person shall be hospitalized beyond the seventy-  
2 two hour period, as computed pursuant to section 1-29, unless a  
3 hearing has been held pursuant to subsection (3).

4 (2) Any person released pursuant to section 704-411 may  
5 apply to the court ordering the conditional release for  
6 discharge from, or modification of, the order granting  
7 conditional release on the ground that the person is no longer  
8 affected by a physical or mental disease, disorder, or defect  
9 and may be discharged, or the order may be modified, without  
10 danger to the person or to others. The application shall be  
11 accompanied by a letter from or supporting affidavit of a  
12 qualified physician or licensed psychologist. A copy of the  
13 application and letter or affidavit shall be transmitted to the  
14 prosecuting attorney of the circuit from which the order issued  
15 and to any persons supervising the release, and the hearing on  
16 the application shall be held following notice to such persons.  
17 If the determination of the court is adverse to the application,  
18 the person shall not be permitted to file further application  
19 until one year has elapsed from the date of any preceding  
20 hearing on an application for modification of conditions of  
21 release or for discharge.





1 (3) If, at any time after the order pursuant to section  
2 704-411 granting conditional release, the court determines,  
3 after hearing evidence, that:

4 (a) The person is still affected by a physical or mental  
5 disease, disorder, or defect, and the conditions of  
6 release have not been fulfilled; or

7 (b) For the safety of the person or others, the person's  
8 conditional release should be revoked,  
9 the court may forthwith modify the conditions of release or  
10 order the person to be committed to the custody of the director  
11 of health, subject to discharge or release only in accordance  
12 with the procedure prescribed in section 704-412.

13 (4) Whenever a person who is a sexually violent predator,  
14 as defined by section 846E-1, is released on condition pursuant  
15 to this section, the person shall be subject to electronic  
16 monitoring of the person's whereabouts by means of a global  
17 positioning system tracking device, or other similar device, at  
18 all times while the person is released on conditions."

19 SECTION 8. Section 704-415, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§704-415 Disposition of application for discharge,**  
22 **conditional release, or modification of conditions of release.**



1 (1) If the court is satisfied from the report filed pursuant to  
2 section 704-414, and such testimony of the reporting examiners  
3 as the court deems necessary, that:

4 (a) The person is affected by a physical or mental  
5 disease, disorder, or defect and the discharge,  
6 conditional release, or modification of conditions of  
7 release applied for may be granted without danger to  
8 the committed or conditionally released person or to  
9 the person or property of others; or

10 (b) The person is no longer affected by a physical or  
11 mental disease, disorder, or defect,  
12 the court shall grant the application and order the relief. If  
13 the court is not so satisfied, it shall promptly order a  
14 hearing.

15 (2) Any such hearing shall be deemed a civil proceeding  
16 and the burden shall be upon the applicant to prove that the  
17 person is no longer affected by a physical or mental disease,  
18 disorder, or defect or may safely be either released on the  
19 conditions applied for or discharged. According to the  
20 determination of the court upon the hearing, the person shall  
21 be:

22 (a) Discharged;



1 (b) Released on such conditions as the court determines to  
2 be necessary; or

3 (c) Recommitted to the custody of the director of health,  
4 subject to discharge or release only in accordance  
5 with the procedure prescribed in section 704-412.

6 (3) Whenever a person who is a sexually violent predator,  
7 as defined by section 846E-1, is released on condition pursuant  
8 to this section, the person shall be subject to electronic  
9 monitoring of the person's whereabouts by means of a global  
10 positioning system tracking device, or other similar device, at  
11 all times while the person is released on conditions."

12 SECTION 9. Section 704-416.5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 **"§704-416.5 Supervision of person on conditional release.**

15 (1) Any person hospitalized under this chapter who is  
16 subsequently placed on conditional release shall be subject to  
17 the supervision of a probation officer until such time as that  
18 supervision is terminated by order of the court.

19 (2) The probation officer shall report, as the court may  
20 order, whether the conditionally released person is complying  
21 with the conditions of the release.



1       (3) Whenever a person who is a sexually violent predator,  
2 as defined by section 846E-1, is released on condition pursuant  
3 to this section, the person shall be subject to electronic  
4 monitoring of the person's whereabouts by means of a global  
5 positioning system tracking device, or other similar device, at  
6 all times while the person is released on conditions."

7       SECTION 10. Section 707-730, Hawaii Revised Statutes, is  
8 amended by amending subsection (2) to read as follows:

9       "(2) Sexual assault in the first degree is a class A  
10 felony[-]; provided that, notwithstanding section 706-659, the  
11 defendant shall be sentenced to a mandatory term of twenty-five  
12 years imprisonment without possibility of parole if the person  
13 with whom the defendant engaged in sexual penetration was less  
14 than eleven years of age."

15       SECTION 11. Section 707-756, Hawaii Revised Statutes, is  
16 amended to read as follows:

17       "**§707-756 Electronic enticement of a child in the first**  
18 **degree.** (1) Any person who, using a computer or any other  
19 electronic device:

20       (a) Intentionally or knowingly communicates:

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



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

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

7           (b) With the intent to promote or facilitate the  
8                   commission of a felony:

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

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

11                  (iii) That is an offense defined in section 846E-1;

12                   agrees to meet with the minor, or with another person  
13                   who represents that person to be a minor under the age  
14                   of eighteen years; and

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

17 is guilty of electronic enticement of a child in the first  
18 degree.

19           (2) For purposes of this section, "communicates" means  
20 direct or indirect communication or contact by the person, or by  
21 another person on the person's behalf.



1           [~~(2)~~] (3) Electronic enticement of a child in the first  
 2 degree is [~~a class B felony.~~] a felony of the same class as the  
 3 felony the person intended to promote or facilitate.

4 Notwithstanding any law to the contrary, if a person sentenced  
 5 under this section is sentenced to probation rather than an  
 6 indeterminate term of imprisonment, the terms and conditions of  
 7 probation shall include, but not be limited to, a term of  
 8 imprisonment of one year."

9           SECTION 12. Section 707-757, Hawaii Revised Statutes, is  
 10 amended to read as follows:

11           "**§707-757 Electronic enticement of a child in the second**  
 12 **degree.** (1) Any person who, using a computer or any other  
 13 electronic device:

14           (a) Intentionally or knowingly communicates:

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

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

21                   (iii) With another person who represents that person to  
 22 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; and

5 (c) Intentionally or knowingly travels to the agreed upon  
 6 meeting place at the agreed upon meeting time;  
 7 is guilty of electronic enticement of a child in the second  
 8 degree.

9 (2) For purposes of this section, "communicates" means  
 10 direct or indirect communication or contact by the person, or by  
 11 another person on the person's behalf.

12 ~~[(+2)]~~ (3) Electronic enticement of a child in the second  
 13 degree is [a class C felony.] a felony one class less than the  
 14 felony the person intended to promote or facilitate; provided  
 15 that where the felony the person intended to promote or  
 16 facilitate is a class C felony, the offense shall also be a  
 17 class C felony. Notwithstanding any law to the contrary, if a  
 18 person sentenced under this section is sentenced to probation  
 19 rather than an indeterminate term of imprisonment, the terms and  
 20 conditions of probation shall include, but not be limited to, a  
 21 term of imprisonment of one year."



1 SECTION 13. Section 846E-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§846E-2 Registration requirements.** (a) A covered  
4 offender shall register with the attorney general and comply  
5 with the provisions of this chapter for life or for a shorter  
6 period of time as provided in this chapter. A covered offender  
7 who is not:

8 (1) An aggravated sex offender;

9 (2) A repeat covered offender; and

10 (3) A sexually violent predator,

11 shall be eligible to petition the court in a civil proceeding  
12 for an order that the covered offender's registration  
13 requirements under this chapter be terminated, as provided in  
14 section 846E-10.

15 (b) Each provision of this chapter applicable to sex  
16 offenders shall also be applicable to offenders against minors,  
17 unless offenders against minors are specifically excluded.

18 Whenever a covered offender's public information is made  
19 publicly accessible, separate registries shall be maintained  
20 for:

21 (1) Sex offenders; and

22 (2) Offenders against minors.





1 (c) Registration information for each covered offender  
2 shall consist of a recent photograph, verified fingerprints, and  
3 a signed statement by the covered offender containing:

4 (1) The name, all prior names, and all aliases used by the  
5 covered offender or under which the covered offender  
6 has been known and other identifying information,  
7 including date of birth, social security number, sex,  
8 race, height, weight, and hair and eye color;

9 (2) The actual address and telephone number of the covered  
10 offender's residence or mailing address, or any  
11 current, temporary address where the covered offender  
12 resides, and for each address how long the covered  
13 offender has resided there;

14 (3) The actual address and telephone number where the  
15 covered offender is staying for a period of more than  
16 ten days, if other than the stated residence;

17 (4) If known, the future address and telephone number  
18 where the covered offender is planning to reside, if  
19 other than the stated residence;

20 (5) Names and, if known, actual business addresses of  
21 current and known future employers and the starting  
22 and ending dates of any such employment;



- 1           (6) Names and actual addresses of current and known future  
2           educational institutions with which the covered  
3           offender is affiliated in any way, whether or not  
4           compensated, including but not limited to affiliation  
5           as a faculty member, an employee, or a student, and  
6           the starting and ending dates of any such affiliation;
- 7           (7) The year, make, model, color, and license number of  
8           all vehicles currently owned or operated by the  
9           covered offender;
- 10          (8) A statement listing all covered offenses for which the  
11          covered offender has been convicted or found unfit to  
12          proceed or acquitted pursuant to chapter 704;
- 13          (9) A statement indicating whether the covered offender  
14          has received or is currently receiving treatment  
15          ordered by a court of competent jurisdiction or by the  
16          Hawaii paroling authority;
- 17          (10) A statement indicating whether the covered offender is  
18          a United States citizen; and
- 19          (11) Any additional identifying information about the  
20          covered offender.
- 21          (d) Whenever a covered offender provides registration  
22 information, during initial registration as a covered offender



1 or when providing notice of a change in registration  
2 information, the covered offender also shall sign a statement  
3 verifying that all of the registration information is accurate  
4 and current.

5 (e) In addition to the requirement under subsection (a) to  
6 register with the attorney general and comply with the  
7 provisions of this chapter until a court relieves the covered  
8 offender of the registration requirements of this chapter, each  
9 covered offender shall also register in person with the chief of  
10 police where the covered offender resides or is present.

11 Registration under this subsection is for the purpose of  
12 providing the covered offender's photograph, fingerprints, and  
13 registration information. Registration under this subsection is  
14 required whenever the covered offender, whether or not a  
15 resident of this State, remains in this State for more than ten  
16 days or for an aggregate period exceeding thirty days in one  
17 calendar year. Covered offenders required to register in person  
18 with the chief of police under this subsection shall register no  
19 later than three working days after the earliest of:

- 20 (1) Arrival in this State;
- 21 (2) Release from incarceration;
- 22 (3) Release from commitment;



- 1 (4) Release on furlough;
- 2 (5) Conviction for a covered offense, unless incarcerated;
- 3 (6) Release on probation;
- 4 (7) Placement on parole; or
- 5 (8) Arrival in a county in which the covered offender
- 6 resides or expects to be present for a period
- 7 exceeding ten days.

8 In addition to any other requirement to register under this

9 subsection or subsection (a), each covered offender shall report

10 in person every five years to the chief of police where the

11 covered offender resides for purposes of having a new photograph

12 taken.

13 (f) The attorney general, in consultation with the chief

14 of police where the offender resides, shall require the offender

15 to submit to electronic monitoring of the offender's whereabouts

16 by means of a global positioning system tracking device, or

17 other similar device, at all times while the person is subject

18 to the requirements of this chapter.

19 [~~f~~] (g) The registration provisions of this section

20 shall apply to all covered offenders without regard to:

21 (1) The date of the covered offender's conviction;



1           (2) The date of finding, pursuant to chapter 704, of the  
2           covered offender's unfitness to proceed; or

3           (3) The date of the covered offender's acquittal due to  
4           mental disease, disorder, or defect, pursuant to  
5           chapter 704."

6           SECTION 14. Section 846E-9, Hawaii Revised Statutes, is  
7           amended by amending subsection (a) to read as follows:

8           "(a) A person commits the offense of failure to comply  
9           with covered offender registration requirements if the person is  
10          required to register under this chapter and the person  
11          intentionally, knowingly, or recklessly:

12          (1) Fails to register with the attorney general by  
13          providing to the attorney general or the Hawaii  
14          criminal justice data center the person's registration  
15          information;

16          (2) Fails to report in person to the chief of police where  
17          the covered offender's residence is located, for  
18          purposes of having a new photograph taken within five  
19          years after the previous photograph was taken;

20          (3) Fails to register in person with the chief of police  
21          having jurisdiction of the area where the covered  
22          offender resides or is present within three working



- 1           days whenever the provisions of section 846E-2(e)  
2           require the person to do so;
- 3           (4) Fails to notify the attorney general or the Hawaii  
4           criminal justice data center of a change of any of the  
5           covered offender's registration information in writing  
6           within three working days of the change;
- 7           (5) Provides false registration information to the  
8           attorney general, the Hawaii criminal justice data  
9           center, or a chief of police;
- 10          (6) Signs a statement verifying that all of the  
11          registration information is accurate and current when  
12          any of the registration information is not  
13          substantially accurate and current;
- 14          (7) Having failed to establish a new residence within the  
15          ten days while absent from the person's registered  
16          residence for ten or more days:
- 17                (A) Fails to notify the attorney general in writing  
18                within three working days that the person no  
19                longer resides at the person's registered  
20                residence; or
- 21                (B) Fails to report to a police station in the State  
22                by the last day of every month; [e]



1 (8) Fails to mail or deliver the periodic verification of  
 2 registration information form to the attorney general  
 3 within ten days of receipt, as required by section  
 4 846E-5; provided that it shall be an affirmative  
 5 defense that the periodic verification form mailed to  
 6 the covered offender was delivered when the covered  
 7 offender was absent from the registered address and  
 8 the covered offender had previously notified the  
 9 Hawaii criminal justice data center that the covered  
 10 offender would be absent during the period that the  
 11 periodic verification form was delivered[-]; or

12 (9) Violates section 846E-A."

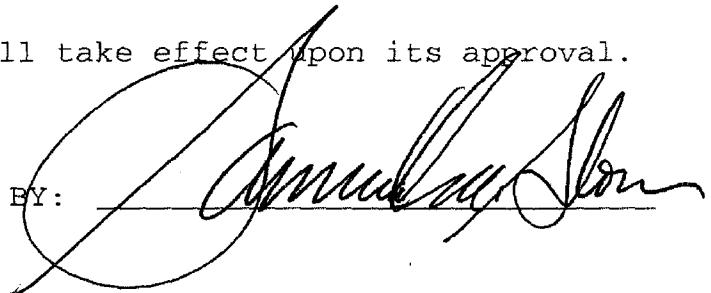
13 SECTION 15. This Act does not affect rights and duties  
 14 that matured, penalties that were incurred, and proceedings that  
 15 were begun before its effective date.

16 SECTION 16. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 17. This Act shall take effect upon its approval.

19

INTRODUCED BY: \_\_\_\_\_




**Report Title:**

Sex Offenders; Offenses Against Minors

**Description:**

Makes it a class C felony to possess or control any matter produced using and depicting a minor engaged in or simulating sexual conduct if the person depicted or used is known to be a minor. Prohibits a person who is required to register under sex offender registration law from living, while on parole, with another person required to register, unless related to that person by blood, marriage, or adoption. Prohibits person required to register from residing within 2,000 feet of a school or public park. Requires use of global positioning system to monitor sexually violent predators on conditional release. Adds definition of "communicates" to the offense of electronic enticement of a child and amends penalty provisions to make the offense commensurate with underlying crime. Requires use of global positioning system to monitor the whereabouts of registered sex offenders.

