

S.B. NO. 2662

JAN 25 2010

A BILL FOR AN ACT

RELATING TO PORNOGRAPHY OFFENSES AGAINST CHILDREN.

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

1 SECTION 1. Section 712-1215, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of promoting pornography
4 for minors if:

5 (a) Knowing its character and content, the person
6 disseminates [~~to a minor~~] material which is
7 pornographic for minors[+] to:

8 (i) A minor known by the person to be under the age
9 of eighteen years; or

10 (ii) Another person who represents that person to be
11 under the age of eighteen years; or

12 (b) Knowing the character and content of a motion
13 picture film or other performance which, in whole or
14 in part, is pornographic for minors, the person:

15 (i) Exhibits such motion picture film or other
16 performance to a minor; or

17 (ii) Sells to a minor an admission ticket or pass

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1 to premises where there is exhibited or to be
2 exhibited such motion picture film or other
3 performance; or

4 (iii) Admits a minor to premises where there is
5 exhibited or to be exhibited such motion picture
6 film or other performance."

7 SECTION 2. Section 806-83, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Criminal charges may be instituted by written
10 information for a felony when the charge is a class C felony
11 under section 19-3.5 (voter fraud); section 128D-10 (knowing
12 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for
13 failure to comply with requirements of sections 132D-7, 132D-10,
14 and 132D-16); section 134-24 (place to keep unloaded firearms
15 other than pistols and revolvers); section 134-7(a) and (b)
16 (ownership or possession prohibited); section 134-8 (prohibited
17 ownership); section 134-9 (licenses to carry); section 134-17(a)
18 (relating to false information or evidence concerning
19 psychiatric or criminal history); section 134-51 (deadly
20 weapons); section 134-52 (switchblade knives); section 134-53
21 (butterfly knives); section 188-23 (possession or use of
22 explosives, electrofishing devices, and poisonous substances in

1 state waters prohibited); section 231-34 (attempt to evade or
2 defeat tax); section 231-36 (false and fraudulent statements);
3 section 245-37 (sale or purchase of packages of cigarettes
4 without stamps); section 245-38 (vending unstamped cigarettes);
5 section 245-51 (sale of export cigarettes prohibited); section
6 245-52 (alteration of packaging prohibited); section 291C-12.5
7 (accidents involving substantial bodily injury); section
8 291E-61.5 (habitually operating a vehicle under the influence of
9 an intoxicant); section 329-41 (prohibited acts B); section
10 329-42 (prohibited acts C); section 329-43.5 (prohibited acts
11 related to drug paraphernalia); section 329C-2 (manufacture,
12 distribution, or possession with intent to distribute an
13 imitation controlled substance to a person under eighteen years
14 of age); section 346-34(d)(2) and (e) (fraud involving food
15 stamps or coupons with a value exceeding \$300); section 346-43.5
16 (medical assistance fraud); section 383-141 (falsely obtaining
17 benefits); section 431:2-C(b)(2) (insurance fraud); section
18 482D-7 (violation of fineness standards and stamping
19 requirements); section 485A-301 (registration of securities);
20 section 485A-401 (registration of broker-dealers); section
21 485A-402 (registration of agents); section 485A-403
22 (registration of investment advisors); section 485A-404

1 (registration of investment advisor representatives); section
2 485A-405 (registration of federal covered investment advisors);
3 section 485A-501 (general fraud); section 485A-502 (prohibited
4 conduct in providing investment advice); section 707-703
5 (negligent homicide in the second degree); section 707-705
6 (negligent injury in the first degree); section 707-711 (assault
7 in the second degree); section 707-713 (reckless endangering in
8 the first degree); section 707-721 (unlawful imprisonment in the
9 first degree); section 707-726 (custodial interference in the
10 first degree); section 707-752 (promoting child abuse in the
11 third degree); section 707-757 (electronic enticement of a child
12 in the second degree); section 707-766 (extortion in the second
13 degree); section 708-811 (burglary in the second degree);
14 section 708-821 (criminal property damage in the second degree);
15 section 708-831 (theft in the second degree); section 708-833.5
16 (shoplifting); section 708-835.5 (theft of livestock); section
17 708-836 (unauthorized control of propelled vehicle); section
18 708-836.5 (unauthorized entry into motor vehicle); section
19 708-839.5 (theft of utility services); section 708-839.8
20 (identity theft in the third degree); section 708-852 (forgery
21 in the second degree); section 708-854 (criminal possession of a
22 forgery device); section 708-858 (suppressing a testamentary or

1 recordable instrument); section 708-875 (trademark
2 counterfeiting); section 708-891.5 (computer fraud in the second
3 degree); section 708-892.5 (computer damage in the second
4 degree); section 708-895.6 (unauthorized computer access in the
5 second degree); section 708-8100 (fraudulent use of a credit
6 card); section 708-8102 (theft/forgery of credit cards); section
7 708-8103 (credit card fraud by a provider of goods or services);
8 section 708-8104 (possession of unauthorized credit card
9 machinery or incomplete cards); section 708-8200 (cable
10 television service fraud in the first degree); section 708-8202
11 (telecommunication service fraud in the first degree); section
12 709-903.5 (endangering the welfare of a minor in the first
13 degree); section 709-906 (abuse of family or household members);
14 section 710-1016.3 (obtaining a government-issued identification
15 document under false pretenses in the first degree); section
16 710-1016.6 (impersonating a law enforcement officer in the first
17 degree); section 710-1017.5 (sale or manufacture of deceptive
18 identification document); section 710-1018 (securing the
19 proceeds of an offense); section 710-1021 (escape in the second
20 degree); section 710-1023 (promoting prison contraband in the
21 second degree); section 710-1024 (bail jumping in the first
22 degree); section 710-1029 (hindering prosecution in the first

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1 degree); section 710-1060 (perjury); section 710-1072.5
2 (obstruction of justice); section 711-1103 (riot); section 711-
3 1109.3 (cruelty to animals/fighting dogs); section 711-1110.9
4 (violation of privacy in the first degree); section 711-1112
5 (interference with the operator of a public transit vehicle);
6 section 712-1221 (promoting gambling in the first degree);
7 section 712-1222.5 (promoting gambling aboard ships); section
8 712-1224 (possession of gambling records in the first degree);
9 section 712-1243 (promoting a dangerous drug in the third
10 degree); section 712-1246 (promoting a harmful drug in the third
11 degree); section 712-1247 (promoting a detrimental drug in the
12 first degree); section 712-1249.6 (promoting a controlled
13 substance in, on, or near schools or school vehicles); section
14 803-42 (interception, access, and disclosure of wire, oral, or
15 electronic communications, use of pen register, trap and trace
16 device, and mobile tracking device prohibited); or section 846E-
17 9(b) (failure to comply with covered offender registration
18 requirements)."

19 SECTION 3. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before the effective date of this Act.

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1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

~~_____~~
BY REQUEST

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Report Title:

Pornography Offenses Against Children

Description:

Amends the offense of promoting pornography to minors to extend the prohibition against disseminating pornographic material to minors to include disseminating pornographic material to another person who represents that person to be a minor; and adds the offense of promoting child abuse in the third degree to the information charging law.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PORNOGRAPHY OFFENSES AGAINST CHILDREN.

PURPOSE: To extend the prohibition against disseminating pornographic material to minors to include disseminating pornographic material to another person who represents that person to be a minor; and to add the offense of promoting child abuse in the third degree to the information charging law.

MEANS: Amend sections 712-1215(1) and 806-83(a), Hawaii Revised Statutes.

JUSTIFICATION: This bill is intended to provide greater protection to children in this age of electronic communication and the Internet. Predators meet children over the Internet and entice them to engage in sexual offenses. Grooming children is a key aspect of this predatory behavior. It usually involves conduct to gain the children's trust, develop the relationship, make the children feel comfortable with the offender and the idea of engaging in sexual acts, and ultimately make the children more willing to engage in sexual acts with the offender. Predators engaged in the electronic enticement of children often send their victims pornographic images as part of a scheme to groom child victims for sexual acts.

Law enforcement officers pose as children online while investigating Internet crimes against children. Predators, believing they are communicating with children, send pornographic images to the officers. This bill allows for the prosecution of child predators who disseminate pornography to officers while attempting to groom children.

This bill also adds the offense of promoting child abuse in the third degree to the list of offenses that may be initiated by information charging for purposes of efficiency. The ability to use the information charging process for this offense will save judicial, prosecutorial, and police resources. Witnesses will be spared from coming to court to testify at probable cause hearings, officers and investigators will be able to stay on the job protecting and serving the community, and the State will benefit from financial savings while still protecting and preserving suspects' rights.

Impact on the public: This bill will provide greater protection to children from sexual offenders and predators.

Impact on the department and other agencies: This bill will allow state and county law enforcement officers to make cases of promoting pornography to minors against predators while the officers are posing as children online.

This bill will allow prosecutors to initiate cases of promoting child abuse in the third degree via information and thereby conserve judicial, prosecutorial, and law enforcement resources.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.