

# S.B. NO. 2665

JAN 25 2010

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## A BILL FOR AN ACT

RELATING TO VIOLATION OF PRIVACY.

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

1           SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (1) to read as follows:  
3           "(1) Notwithstanding section 706-669 and any other law to  
4 the contrary, any person convicted of murder in the second  
5 degree, any class A felony, any class B felony, or any of the  
6 following class C felonies: section 188-23 relating to  
7 possession or use of explosives, electrofishing devices, and  
8 poisonous substances in state waters; section 386-98(d) (1)  
9 relating to fraud violations and penalties; section  
10 431:2-403(b) (2) relating to insurance fraud; section 707-703  
11 relating to negligent homicide in the second degree; section  
12 707-711 relating to assault in the second degree; section 707-  
13 713 relating to reckless endangering in the first degree;  
14 section 707-716 relating to terroristic threatening in the first  
15 degree; section 707-721 relating to unlawful imprisonment in the  
16 first degree; section 707-732 relating to sexual assault or rape  
17 in the third degree; section 707-752 relating to promoting child  
18 abuse in the third degree; section 707-757 relating to

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1 electronic enticement of a child in the second degree; section  
2 707-766 relating to extortion in the second degree; section 708-  
3 811 relating to burglary in the second degree; section 708-821  
4 relating to criminal property damage in the second degree;  
5 section 708-831 relating to theft in the first degree as amended  
6 by Act 68, Session Laws of Hawaii 1981; section 708-831 relating  
7 to theft in the second degree; section 708-835.5 relating to  
8 theft of livestock; section 708-836 relating to unauthorized  
9 control of propelled vehicle; section 708-839.8 relating to  
10 identity theft in the third degree; section 708-839.55 relating  
11 to unauthorized possession of confidential personal information;  
12 section 708-852 relating to forgery in the second degree;  
13 section 708-854 relating to criminal possession of a forgery  
14 device; section 708-875 relating to trademark counterfeiting;  
15 section 710-1071 relating to intimidating a witness; section  
16 711-1103 relating to riot; section 711-1110.9 relating to  
17 violation of privacy in the first degree; section 712-1203  
18 relating to promoting prostitution in the second degree; section  
19 712-1221 relating to gambling in the first degree; section 712-  
20 1224 relating to possession of gambling records in the first  
21 degree; section 712-1243 relating to promoting a dangerous drug  
22 in the third degree; section 712-1247 relating to promoting a

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1 detrimental drug in the first degree; section 846E-9 relating to  
2 failure to comply with covered offender registration  
3 requirements; section 134-7 relating to ownership or possession  
4 of firearms or ammunition by persons convicted of certain  
5 crimes; section 134-8 relating to ownership, etc., of prohibited  
6 weapons; section 134-9 relating to permits to carry, or who is  
7 convicted of attempting to commit murder in the second degree,  
8 any class A felony, any class B felony, or any of the class C  
9 felony offenses enumerated above and who has a prior conviction  
10 or prior convictions for the following felonies, including an  
11 attempt to commit the same: murder, murder in the first or  
12 second degree, a class A felony, a class B felony, any of the  
13 class C felony offenses enumerated above, or any felony  
14 conviction of another jurisdiction, shall be sentenced to a  
15 mandatory minimum period of imprisonment without possibility of  
16 parole during such period as follows:

17 (a) One prior felony conviction:

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

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

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

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

5 SECTION 2. Section 711-1111, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of violation of privacy  
8 in the second degree if, except in the execution of a public  
9 duty or as authorized by law, the person intentionally:

10 (a) Trespasses on property for the purpose of subjecting  
11 anyone to eavesdropping or other surveillance in a  
12 private place;

13 (b) Peers or peeps into a window or other opening of a  
14 dwelling or other structure adapted for sojourn or  
15 overnight accommodations for the purpose of spying on  
16 the occupant thereof or invading the privacy of  
17 another person with a lewd or unlawful purpose, under  
18 circumstances in which a reasonable person in the  
19 dwelling or other structure would not expect to be  
20 observed;

21 (c) Trespasses on property for the sexual gratification of  
22 the actor;

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- 1 (d) Installs or uses, or both, in any private place,  
2 without consent of the person or persons entitled to  
3 privacy therein, any means or device for observing,  
4 recording, amplifying, or broadcasting sounds or  
5 events in that place, [~~including~~] other than another  
6 person in a stage of undress or sexual activity;
- 7 (e) Installs or uses outside a private place any device  
8 for hearing, recording, amplifying, or broadcasting  
9 sounds originating in that place which would not  
10 ordinarily be audible or comprehensible outside,  
11 without the consent of the person or persons entitled  
12 to privacy therein;
- 13 (f) Covertly records or broadcasts an image of another  
14 person's intimate area underneath clothing, by use of  
15 any device, and that image is taken while that person  
16 is in a public place and without that person's  
17 consent;
- 18 (g) Intercepts, without the consent of the sender or  
19 receiver, a message or photographic image by  
20 telephone, telegraph, letter, electronic transmission,  
21 or other means of communicating privately; but this  
22 paragraph does not apply to:

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1 (i) Overhearing of messages through a regularly  
2 installed instrument on a telephone party line or  
3 an extension; or

4 (ii) Interception by the telephone company, electronic  
5 mail account provider, or telephone or electronic  
6 mail subscriber incident to enforcement of  
7 regulations limiting use of the facilities or  
8 incident to other operation and use;

9 (h) Divulges, without the consent of the sender or the  
10 receiver, the existence or contents of any message or  
11 photographic image by telephone, telegraph, letter,  
12 electronic transmission, or other means of  
13 communicating privately, if the accused knows that the  
14 message or photographic image was unlawfully  
15 intercepted or if the accused learned of the message  
16 or photographic image in the course of employment with  
17 an agency engaged in transmitting it; or

18 (i) Knowingly possesses materials created under  
19 circumstances prohibited in section 711-1110.9."

20 SECTION 3. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 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.

4  
5 INTRODUCED BY: \_\_\_\_\_

6 BY REQUEST



**Report Title:**

Privacy; Violation of

**Description:**

Amends the offense of violation of privacy in the second degree to remove any potential conflict with the offense of violation of privacy in the first degree, and adds violation of privacy in the first degree to the repeat offender law.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO VIOLATION OF PRIVACY.

PURPOSE: To remove any potential conflict between the misdemeanor offense of violation of privacy in the second degree and the class C felony offense of violation of privacy in the first degree; and to add the offense of violation of privacy in the first degree to the repeat offender law.

MEANS: Amend sections 706-606.5(1) and 711-1111(1), Hawaii Revised Statutes.

JUSTIFICATION: Section 711-1111(1)(d), Hawaii Revised Statutes, was amended in section 48 of Act 230, Session Laws of Hawaii 2006, to include the event of "another person in a stage of undress or sexual activity," although the statute had specifically excluded that event because it is covered by section 711-1110.9, violation of privacy in the first degree. To clarify any potential conflict with section 711-1110.9, section 711-1111(1)(d) must be amended to specifically exclude that event.

This bill adds section 711-1110.9 to section 706-606.5, thereby making the offense of violation of privacy in the first degree subject to repeat offender sentencing. This amendment will confirm the seriousness of the offense and the importance of protecting the expected privacy of individuals during stages of undress or sexual activity.

Impact on the public: This bill will clarify that the prohibited conduct of the offense of violation of privacy in the first degree is a class C felony offense, and not a misdemeanor. It will also confirm the seriousness of such an offense.

Impact on the department and other agencies:

This bill will clarify that the prohibited conduct of the offense of violation of privacy in the first degree is a class C felony offense, and not a misdemeanor.

Repeat offenders will be sentenced to mandatory minimum terms of incarceration.

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.