

JAN 26 2009

A BILL FOR AN ACT

RELATING TO CHILD ABUSE.

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

1 SECTION 1. Section 707-751, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§707-751 Promoting child abuse in the second degree.**

4 (1) A person commits the offense of promoting child abuse in
5 the second degree if, knowing or having reason to know its
6 character and content, the person:

7 (a) Disseminates child pornography;

8 (b) Reproduces child pornography with intent to
9 disseminate;

10 (c) Disseminates any book, magazine, periodical, film,
11 videotape, computer disk, or any other material that
12 contains an image of child pornography; [~~or~~]

13 (d) Disseminates any pornographic material [~~which~~] that
14 employs, uses, or otherwise contains a minor engaging
15 in or assisting others to engage in sexual conduct[-];
16 or

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- 1 (e) Possesses ten or more images of any form of child
- 2 pornography, and the content of at least one image
- 3 contains one or more of the following:
- 4 (i) A minor who is younger than the age of twelve;
- 5 (ii) Sadomasochistic abuse of a minor;
- 6 (iii) Sexual penetration of a minor; or
- 7 (iv) Bestiality involving a minor.

8 (2) As used in this section:

9 "Child pornography" means any pornographic visual
10 representation, including any photograph, film, video, picture,
11 or computer or computer-generated image or picture, whether made
12 or produced by electronic, mechanical, or other means, of sexual
13 conduct, if:

- 14 (a) The pornographic production of such visual
- 15 representation involves the use of a minor engaging in
- 16 sexual conduct; or
- 17 (b) The pornographic visual representation has been
- 18 created, adapted, or modified to appear that an
- 19 identifiable minor is engaging in sexual conduct.

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

21 "Computer" shall have the same meaning as in section 708-
22 890.

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1 "Disseminate" means to publish, sell, distribute, transmit,
2 exhibit, present material, mail, ship, or transport by any
3 means, including by computer, or to offer or agree to do the
4 same.

5 "Lascivious" means tending to incite lust, to deprave the
6 morals in respect to sexual relations, or to produce voluptuous
7 or lewd emotions in the average person, applying contemporary
8 community standards.

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

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

14 "Pornographic" shall have the same meaning as in section
15 712-1210.

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

18 "Sexual conduct" means acts of masturbation, homosexuality,
19 lesbianism, bestiality, sexual penetration, deviate sexual
20 intercourse, sadomasochistic abuse, or lascivious exhibition of
21 the genital or pubic area of a minor.

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

5 (3) The fact that a person engaged in the conduct
6 specified by this section is prima facie evidence that the
7 person engaged in that conduct with knowledge of the character
8 and content of the material. The fact that the person who was
9 employed, used, or otherwise contained in the pornographic
10 material was at that time, a minor, is prima facie evidence that
11 the defendant knew the person to be a minor.

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

14 (5) Notwithstanding any law to the contrary, a person
15 convicted of promoting child abuse in the second degree shall be
16 sentenced to an indeterminate term of imprisonment as provided
17 by law with a mandatory minimum term of imprisonment of five
18 years, unless a greater mandatory minimum term is authorized by
19 law."

20 SECTION 2. Section 707-752, Hawaii Revised Statutes, is
21 amended to read as follows:

1 " [†]§707-752[†] **Promoting child abuse in the third**
2 **degree.** (1) A person commits the offense of promoting child
3 abuse in the third degree if, knowing or having reason to know
4 its character and content, the person possesses:

- 5 (a) Child pornography;
- 6 (b) Any book, magazine, periodical, film, videotape,
7 computer disk, electronically stored data, or any
8 other material that contains an image of child
9 pornography; or

- 10 (c) Any pornographic material that employs, uses, or
11 otherwise contains a minor engaging in or assisting
12 others to engage in sexual conduct.

13 (2) As used in this section:

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

- 19 (a) The pornographic production of the visual
20 representation involves the use of a minor engaging in
21 sexual conduct; or

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

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

5 "Computer" shall have the same meaning as in section 708-
6 890.

7 "Lascivious" means tending to incite lust, to deprave the
8 morals with respect to sexual relations, or to produce
9 voluptuous or lewd emotions in the average person, applying
10 contemporary community standards.

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

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

16 "Pornographic" shall have the same meaning as in section
17 712-1210.

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

20 "Sexual conduct" means acts of masturbation, homosexuality,
21 lesbianism, bestiality, sexual penetration, deviate sexual

1 intercourse, sadomasochistic abuse, or lascivious exhibition of
2 the genital or pubic area of a minor.

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

7 (3) The fact that a person engaged in the conduct
8 specified by this section is prima facie evidence that the
9 person engaged in that conduct with knowledge of the character
10 and content of the material. The fact that the person who was
11 employed, used, or otherwise contained in the pornographic
12 material was, at that time, a minor is prima facie evidence that
13 the defendant knew the person to be a minor.

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

16 (5) Notwithstanding any law to the contrary, if a person
17 convicted of promoting child abuse in the third degree is
18 sentenced to probation rather than an indeterminate term of
19 imprisonment, the terms and conditions of probation shall
20 include, but not be limited to, a term of imprisonment of one
21 year."

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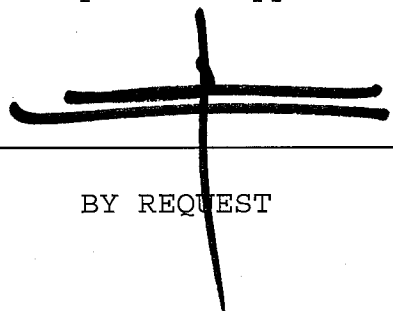
1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before the effective date of this Act.

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

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

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9

INTRODUCED BY: _____

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BY REQUEST

Report Title:

Child Abuse

Description:

To provide greater protection to our children, this bill amends the offense of promoting child abuse in the second degree to include the possession of particularly violent or egregious child pornography, and it adds mandatory sentencing provisions for serious child abuse offenses.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHILD ABUSE.

PURPOSE: To provide greater protection for our children by addressing instances of possession of particularly violent or egregious child pornography, and by adding mandatory sentencing provisions for the offenses of promoting child abuse in the second degree and promoting child abuse in the third degree.

MEANS: Amend sections 707-751 and 707-752, Hawaii Revised Statutes.

JUSTIFICATION: In another effort to provide greater protection to children in this age of electronic communication and sharing of digital information, this bill amends the offense of promoting child abuse in the second degree (section 707-751) to include the possession of particularly violent or egregious child pornography that involves a child under the age of twelve, sadomasochistic abuse of a minor, sexual penetration of a minor, or bestiality involving a minor. This bill also adds mandatory sentencing provisions for serious child abuse offenses. These provisions focus on offenses involving the dissemination or possession of child pornography.

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

Impact on the department and other agencies: The mandatory sentencing provisions could have some impact on the Judiciary and the Department of Public Safety.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, county prosecutors,
Judiciary, Office of the Public Defender,
Department of Public Safety, and Hawaii
Paroling Authority.

EFFECTIVE DATE: Upon approval.