

JAN 25 2012

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**A BILL FOR AN ACT**

RELATING TO SEXUAL IMAGES PRODUCED BY MINORS.

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

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

4           "§712-A Promoting minor-produced sexual images in the  
5 first degree. (1) A person, eighteen years of age or older,  
6 commits the offense of promoting minor-produced sexual images in  
7 the first degree if the person intentionally or knowingly  
8 commands, requests, or encourages a minor to use a computer,  
9 cell phone, or any other device capable of electronic data  
10 transmission or distribution, to transmit to any person a nude  
11 photograph or video of a minor.

12           (2) For purposes of this section, a "minor" means any  
13 person under eighteen years of age.

14           (3) Promoting minor-produced sexual images in the first  
15 degree is a class C felony.

16           §712-B Promoting minor-produced sexual images in the  
17 second degree. (1) A minor commits the offense of promoting  
18 minor-produced sexual images in the second degree if the minor:

1        (a) Knowingly uses a computer, cell phone, or any other  
2        device capable of electronic data transmission or  
3        distribution, to transmit or distribute to another  
4        person a nude photograph or video of a minor; or

5        (b) Intentionally or knowingly commands, requests, or  
6        encourages another minor to use a computer, cell  
7        phone, or any other device capable of electronic data  
8        transmission or distribution, to transmit to any  
9        person a nude photograph or video of a minor.

10       (2) A person, of any age, commits the offense of promoting  
11 minor-produced sexual images in the second degree if the person  
12 knowingly possesses a nude photograph or video of a minor  
13 transmitted or distributed in violation of subsection (1).

14       (3) For purposes of this section, a "minor" means any  
15 person under eighteen years of age.

16       (4) It is an affirmative defense to a charge under  
17 subsection (2) that the person took reasonable steps to destroy  
18 or eliminate the nude photograph or video of a minor.

19       (5) Promoting minor-produced sexual images in the second  
20 degree is a misdemeanor."

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1 SECTION 2. 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 3. In codifying the new sections added to part II  
5 of chapter 712, Hawaii Revised Statutes, by section 1 of this  
6 Act, the revisor of statutes shall substitute appropriate  
7 section numbers for the letters used in the designations of  
8 those new sections.

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

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

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INTRODUCED BY: 

15

BY REQUEST

# S.B. NO. 2734

**Report Title:**

Sexual Images Produced by Minors

**Description:**

Prohibits adults from soliciting minors to electronically transmit nude images of minors; prohibits minors from electronically transmitting nude images of themselves or other minors, or soliciting other minors to do so; prohibits persons from possessing a nude image transmitted by a minor; and makes it an affirmative defense that the recipient made reasonable efforts to destroy the transmitted nude image.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO SEXUAL IMAGES PRODUCED BY MINORS.

PURPOSE: To address the problem of "sexting," which involves minors taking nude pictures and videos of themselves or other minors and transmitting the nude images to others by use of a cell phone or other form of electronic communication, this bill prohibits adults from soliciting minors to electronically transmit nude images of minors, prohibits minors from electronically transmitting nude images of themselves or other minors, or soliciting other minors to do so; prohibits minors and adults from possessing a nude image transmitted by a minor; and makes it an affirmative defense that the recipient made reasonable efforts to destroy the transmitted nude image.

MEANS: Add two new sections to part II of chapter 712, Hawaii Revised Statutes.

JUSTIFICATION: The electronic transmission of youth-produced sexual pictures and videos, frequently referred to as "sexting," is a growing problem with our children, especially because the images, once transmitted electronically, can be shared with many people almost instantaneously. Once transmitted, the original transmitter has very limited ability to control or prevent further dissemination.

Often, the images are intended for the minor's "significant other." Sometimes, the images are being transmitted to an adult who has convinced the minor to make the images and send them to the adult. But regardless of the reason the images were created, or to whom they were sent to originally, the

images frequently get disseminated to others, especially after the relationship has deteriorated, or a cell phone is lost, misplaced, stolen, or improperly accessed. The threatened dissemination of such images may also be used as leverage against the subject to make the subject engage in certain conduct.

In this age of electronic connectivity, the images can instantaneously be shared with many people and can cause great embarrassment to the subjects of the images. The unwanted dissemination has resulted in suicides in other states.

Our current State laws do not specifically prohibit "sexting" conduct. While our laws prohibit the dissemination of child pornography, the nude images transmitted through "sexting" behavior often do not qualify as pornography.

Impact on the public: This bill will address concerns of parents and school officials and make it clear to minors that the dissemination of nude images of themselves and other minors is harmful and inappropriate behavior that will not be tolerated.

Impact on the department and other agencies: The bill will assist parents and school officials in addressing the problem with minors. It will also be a tool for law enforcement agencies to use to try to stop the harmful and inappropriate behavior.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.

OTHER AFFECTED

AGENCIES:

County police, prosecutors, and Judiciary.

EFFECTIVE DATE:

Upon approval.