

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

APPELLATE DIVISION
TEL. No. (808) 586-2080

DISTRICT COURT DIVISION
TEL. No. (808) 586-2100

FAMILY COURT DIVISION
TEL. No. (808) 586-2300

FELONY DIVISION
TEL. No. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y.C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAII 96720
TEL. No. (808) 974-4571
FAX No. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. No. (808) 327-4650
FAX No. (808) 327-4651

KAUAI OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAII 96766
TEL. No. (808) 241-7128
FAX No. (808) 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. No. (808) 984-5018
FAX No. (808) 984-5022

Testimony of the Office of the Public Defender to the House Committee on Human Services and Homelessness re: H.B. 384: RELATING TO SEXUAL OFFENSES AGAINST MINORS

Chair Lisa Marten, Vice-Chair Ikaika Olds and Members of the Committee:

The Office of the Public Defender respectfully **opposes specific parts of HB 384.**

HB 384 proposes to:

Amend HRS section 701-108 (6)(c) (Statute of Limitations) by adding that said statute does not run for offenses covered by HRS sections 712 part I and part II while the victim is alive and under eighteen years of age. The OPD takes no position on this part of HB 384.

Amend HRS 712-1215.5 (3) (Promoting Minor-Produced Sexual Images), to elevate from a misdemeanor to a class C felony any minor produced sexual images in the first degree wherein the defendant is "three years older than the minor" and adds subsection (4) to read in part that if the defendant is "less than three years older than the minor" the same alleged conduct is a misdemeanor. Please note that this offense can only be perpetrated by someone who is already 18 years of age. Thus, if the defendant is 18, and the minor is 15 such a crime is a class C felony, and if the defendant is 18, and the minor is 16 it is a misdemeanor. The OPD respectfully opposes this change to HRS 712-1215.5 as its arbitrary nature serves no viable purpose. Leaving the current language of the statute would make all offenses subject to prosecution as a misdemeanor. If the concern is that a much older adult would be committing this offense, in the hope of committing far more serious crimes, then perhaps the statute could be amended to include language that said offense is a class C felony if it is part of a greater scheme or plan to commit

further crimes of a similar nature. However, as currently proposed it is too arbitrary to be effective for any purpose and could lead to an abusive prosecution. For example, an 18-year-old person could receive a photograph from a willing person that is 15 years old, and be subjected to a felony conviction, and under the next section of this proposed bill be labeled a sex offender.

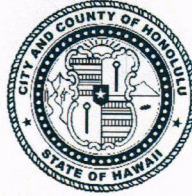
Amend HRS 846E-1 (Registration of Sex Offenders) to include those that are convicted of violating HRS 712-1215 (Promoting Pornography for Minors) and HRS 712-1215.5 (3) (Promoting minor-produced sexual images in the First Degree) to register as sex offenders. The OPD respectfully opposes this part of HB 384. The language in HRS 712-1215 along with the definitions contained in HRS 712-1210 defines material that is considered “pornographic for Minors”. However, this same material could be disseminated to minors by parents of said minors, legal guardians, siblings or librarians or their staff and not be a crime. Therefore, under certain circumstances, this material can be considered to have redeeming value, and the crime is only committed when an unauthorized person disseminates it. Yet, HB 384 proposes to make said unauthorized person a sex offender and require said person to register as such. The mere dissemination of material does not a sex offender make.

Regarding the addition of those convicted of HRS 712-1215.5 (3) to the sex offender registry. The OPD respectfully opposes this language as well. The violation of this statute does not presuppose that said person is a “sex offender”, and that the community need be made aware of said person’s transgression. Someone could violate this statute merely by having a willing companion provide them with material that is prohibited under the statute without any intent of sexual exploitation. Without any other findings of possible sexual criminality or danger to the public it would be highly detrimental to label such a person a sex offender and require registry.

Thank you for the opportunity to comment on this measure.

HONOLULU POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • WEBSITE: www.honoluluupd.org



RICK BLANGIARDI
MAYOR
MEIA

ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE VL-BT

February 11, 2025

The Honorable Lisa Marten, Chair
and Members
Committee on Human Services and
Homelessness
House of Representatives
415 South Beretania Street, Room 329
Honolulu, Hawaii 96813

Dear Chair Marten and Members:

SUBJECT: House Bill No. 384, Relating to Sexual Offenses Against Minors

I am Vince Legaspi, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 384, Relating to Sexual Offenses Against Minors.


The rise of digital platforms has made the distribution of minor-produced images more prevalent. A felony penalty could help deter the spread of these images. A stronger penalty highlights the importance of accountability for those who promote or distribute explicit content involving minors.

The HPD urges you to support House Bill No. 384, Relating to Sexual Offenses Against Minors.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Vince Legaspi, Captain
Criminal Investigation Division

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515 • WEBSITE: www.honoluluProsecutor.org

STEVEN S. ALM
PROSECUTING ATTORNEY
LOIO HO'OPI'I



THOMAS J. BRADY
FIRST DEPUTY PROSECUTING ATTORNEY
HOPE MUA LOIO HO'OPI'I

**THE HONORABLE LISA MARTEN, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

February 10, 2025

RE: H.B. 384; RELATING TO SEXUAL OFFENSES AGAINST MINORS.

Chair Marten, Vice Chair Olds, and members of the House Committee on Human Services and Homelessness, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong support** of H.B. 384.

H.B. 384 amends the offense of promoting minor-produced images in the first degree to make it a Class C felony when the adult and minor are more than three years apart in age. Current law makes it a misdemeanor for an adult of any age to encourage or persuade a minor to send nude photographs of the minor.

Sextortion schemes have increasingly targeted Hawai'i children and teens.¹ Posing as someone of a similar age, online predators contact naïve minors and feign romantic interest. After convincing the minor to send compromising photographs, the predator then threatens to distribute the pictures unless further demands are met.

If the predator demands money, a prosecution for extortion can proceed.² But in some cases, the only motive appears to be the sexual gratification of the predator. These cases cannot be prosecuted under the child-pornography statute.³ By the *Modica* rule, where two crimes have exactly the same elements, but different sentences, the more lenient penalty applies.⁴

¹ See, e.g., Peter Boylan, *Sextortion of Children Rising in Hawaii and Nation*, *Authorities Say*, HAWAII TRIBUNE HERALD (Mar. 3, 2024), available at <https://www.hawaiitribune-herald.com/2024/03/25/hawaii-news/sextortion-of-children-rising-in-hawaii-and-nation-authorities-say/>

² HRS §§ 707-764 through 707-769.

³ Producing child pornography is a Class A felony. HRS § 707-750.

⁴ *State v. Sasai*, 143 Hawai'i 285, 295, 429 P.3d 1214, 1224 (2018) ("A defendant may not be convicted of an offense that carries a harsher penalty than another offense containing the same elements[.]"); *State v. Modica*, 58 Haw. 249, 250-51, 567 P.2d 420, 421-22 (1977).

H.B. 384 also extends the probationary term for felony obscenity offenses involving minors from four years to five years, in keeping with other sexual offenses against minors. This provision only applies to felony offenses such as promoting pornography for minors. Exposing children to pornography is a common grooming tool used by child molesters.

H.B. 384 adds these offenses, as well as promoting minor-produced images in the first degree, to the category of covered offenses requiring sex offender registration. Sexual abuse of children is a crime that occurs in secrecy. Many predators are skilled at hiding their crime—avoiding detection for years and accountability for even longer. Sex offender registration is an important tool for keeping the community safe from sexual predators.

The Department strongly encourages passage of H.B. 384.

Thank you for the opportunity to testify.



Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.

To: House Committee on Human Services and Homelessness
Re: HB 384 Relating to sexual offenses against minors

Hawai'i State Capitol, Conference Room 329 & Via Videoconference
February 11, 2025 9:45AM

Dear Chair Marten, Vice Chair Olds, and Committee Members,

On behalf of HCANSpeaks!, I am writing in support of HB 384. This bill increases the penalty for promoting minor-produced sexual images to a felony if the person is more than three years older than the minor; extends the probationary term for felony obscenity offenses; tolls the statute of limitations for obscenity offenses during a victim's minority; and requires sex offender registration for felony obscenity offenses involving minors.

This bill reinforces the need for transparency and accountability in cases of sexual assault against minors. Any conviction for sexual assault involving a child should be publicly accessible, regardless of the child's age or the severity of the offense—these crimes have lasting impacts and should not be hidden. Additionally, strengthening sex offender registration laws to include offenses committed against minors by individuals in professional roles is essential for safeguarding children.

Thank you for the opportunity to submit testimony in **support of HB 384.**

Sincerely,
Noreen Kohl, Ph.D.
Policy Researcher and Advocate

HB-384

Submitted on: 2/6/2025 2:10:39 PM

Testimony for HSH on 2/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Master Shelby Billionaire	Kingdom of The Hawaiian Islands	Support	Remotely Via Zoom

Comments:

Subject: Strong Support for H.B. No. 384 - Enhancing Protections Against Sexual Exploitation of Minors

Dear Members of the Hawaii State Legislature,

I am writing to express my support for House Bill No. 384, which seeks to strengthen our legal framework against sexual offenses involving minors. This bill represents a crucial step towards safeguarding our youth by adjusting penalties, extending probation periods, and ensuring accountability through sex offender registration. Below are detailed points supporting this legislation, along with some suggestions for enhancement:

Support for H.B. No. 384:

- **Increased Penalties for Exploitation:**
 - Upgrading the offense of promoting minor-produced sexual images to a Class C felony when there's a significant age difference is vital. According to the National Center for Missing & Exploited Children, reports of online enticement increased by 97.5% from 2019 to 2020, underscoring the urgency for deterrents.
- **Statute of Limitations Tolling:**
 - By tolling the statute of limitations during the victim's minority, this bill recognizes the psychological barriers to reporting sexual crimes. Studies show that only about 30% of child sexual abuse cases are disclosed during childhood, with many victims reporting years later, if at all.
- **Extended Probation for Serious Offenses:**
 - Extending probation for felony obscenity offenses involving minors provides a longer period for rehabilitation and monitoring. Research by the Council of State

Governments Justice Center indicates that long-term supervision can reduce recidivism by 20% when combined with treatment programs.

- **Mandatory Sex Offender Registration:**
 - Including these offenses in the registry requirements is a preventive measure. A 2016 study by the U.S. Department of Justice revealed that sex offenders have a recidivism rate of 5.3% over three years for new sex crimes, suggesting that registration can aid in prevention.

Areas for Improvement:

- **Clarification on Age Differences:**
 - To prevent overreach, consider detailed criteria where the age difference impacts the severity of the charge. For instance, a 2018 report by the Juvenile Law Center recommends nuanced laws that distinguish between predatory behavior and consensual acts among teenagers.
- **Focus on Rehabilitation:**
 - Incorporate mandatory rehabilitative programs during probation. Data from the National Institute of Justice shows that treatment can reduce recidivism by up to 40% for sex offenders. Programs should be tailored to address specific risks and needs.
- **Tiered Registration System:**
 - Implement a system where not all offenders are subject to lifelong registration. A study from the California Sex Offender Management Board suggests that tiered systems can reduce the burden on low-risk offenders while focusing resources on high-risk individuals.
- **Public Education Initiatives:**
 - Public education could decrease the incidence of such crimes. According to the Crimes Against Children Research Center, education reduces sexting by 17%, which could be extended to broader issues of consent and digital responsibility.
- **Judicial Discretion:**
 - Allow for judicial discretion in sentencing. A 2017 analysis from the Vera Institute of Justice argues that discretion allows for more equitable outcomes, particularly in nuanced cases involving younger individuals.
- **Support Systems for Victims:**
 - Enhance support for victims, as only 12% of child sexual abuse victims receive mental health treatment (National Child Traumatic Stress Network). Robust support systems could encourage more victims to come forward.
- **Resource Planning:**
 - With the bill's implementation, ensure adequate resources are allocated. The Bureau of Justice Statistics notes that increased caseloads without corresponding resources can lead to inefficiencies in the justice system.

I strongly urge you to support H.B. No. 384 with these enhancements to create a balanced approach that protects our youth while fostering a path for rehabilitation and societal reintegration where appropriate. Thank you for your commitment to this vital issue.

Sincerely,

Master Shelby Billionaire, HRM

Kingdom of The Hawaiian Islands, H.I.

HB-384

Submitted on: 2/6/2025 3:54:04 PM

Testimony for HSH on 2/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael	Individual	Support	Written Testimony Only

Comments:

As a former survivor of sexual assault, Im in support of this bill, however, on page 2, Line 13, I humbly ask that you add another two more years to the priison sentence. As a survivor, it has taken me many years to get my life back to normal. Please add 2 more years to the punishment.

Thank You for your consideration.