

JAN 26 2011

S.B. NO. 1234

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# 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) (relating to  
13 penalties for failure to comply with requirements of sections  
14 132D-7, 132D-10, and 132D-16); section 134-24 (place to keep  
15 unloaded firearms other than pistols and revolvers); section  
16 134-7(a) and (b) (ownership or possession prohibited); section  
17 134-8 (ownership, etc., of automatic firearms, silencers, etc.,  
18 prohibited; penalties); section 134-9 (licenses to carry);  
19 section 134-17(a) (relating to false information or evidence  
20 concerning psychiatric or criminal history); section 134-51  
21 (deadly weapons); section 134-52 (switchblade knives); section  
22 134-53 (butterfly knives); section 188-23 (possession or use of

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

1 exemptions); section 485A-402 (agent registration requirement  
2 and exemptions); section 485A-403 (investment advisor  
3 registration requirement and exemptions); section 485A-404  
4 (investment advisor representative registration requirement and  
5 exemptions); section 485A-405 (federal covered investment  
6 advisor notice filing requirement); section 485A-501 (general  
7 fraud); section 485A-502 (prohibited conduct in providing  
8 investment advice); section 707-703 (negligent homicide in the  
9 second degree); section 707-705 (negligent injury in the first  
10 degree); section 707-711 (assault in the second degree); section  
11 707-713 (reckless endangering in the first degree); section 707-  
12 721 (unlawful imprisonment in the first degree); section 707-726  
13 (custodial interference in the first degree); section 707-752  
14 (promoting child abuse in the third degree); section 707-757  
15 (electronic enticement of a child in the second degree); section  
16 707-766 (extortion in the second degree); section 708-811  
17 (burglary in the second degree); section 708-812.6 (unauthorized  
18 entry in a dwelling); section 708-821 (criminal property damage  
19 in the second degree); section 708-831 (theft in the second  
20 degree); section 708-833.5 (shoplifting); section 708-835.5  
21 (theft of livestock); section 708-836 (unauthorized control of  
22 propelled vehicle); section 708-836.5 (unauthorized entry into

1 motor vehicle in the first degree); section 708-839.5 (theft of  
2 utility services); section 708-839.55 (unauthorized possession  
3 of confidential personal information); section 708-839.8  
4 (identity theft in the third degree); section 708-852 (forgery  
5 in the second degree); section 708-854 (criminal possession of a  
6 forgery device); section 708-858 (suppressing a testamentary or  
7 recordable instrument); section 708-875 (trademark  
8 counterfeiting); section 708-891.5 (computer fraud in the second  
9 degree); section 708-892.5 (computer damage in the second  
10 degree); section 708-895.6 (unauthorized computer access in the  
11 second degree); section 708-8100 (fraudulent use of a credit  
12 card); section 708-8102 (theft, forgery, etc., of credit cards);  
13 section 708-8103 (credit card fraud by a provider of goods or  
14 services); section 708-8104 (possession of unauthorized credit  
15 card machinery or incomplete cards); section 708-8200 (cable  
16 television service fraud in the first degree); section 708-8202  
17 (telecommunication service fraud in the first degree); section  
18 709-903.5 (endangering the welfare of a minor in the first  
19 degree); section 709-906 (abuse of family or household members);  
20 section 710-1016.3 (obtaining a government-issued identification  
21 document under false pretenses in the first degree); section  
22 710-1016.6 (impersonating a law enforcement officer in the first

1 degree); section 710-1017.5 (sale or manufacture of deceptive  
2 identification document); section 710-1018 (securing the  
3 proceeds of an offense); section 710-1021 (escape in the second  
4 degree); section 710-1023 (promoting prison contraband in the  
5 second degree); section 710-1024 (bail jumping in the first  
6 degree); section 710-1029 (hindering prosecution in the first  
7 degree); section 710-1060 (perjury); section 710-1072.5  
8 (obstruction of justice); section 711-1103 (riot); section 711-  
9 1109.3 (cruelty to animals; fighting dogs); section 711-1110.9  
10 (violation of privacy in the first degree); section 711-1112  
11 (interference with the operator of a public transit vehicle);  
12 section 712-1221 (promoting gambling in the first degree);  
13 section 712-1222.5 (promoting gambling aboard ships); section  
14 712-1224 (possession of gambling records in the first degree);  
15 section 712-1243 (promoting a dangerous drug in the third  
16 degree); section 712-1246 (promoting a harmful drug in the third  
17 degree); section 712-1247 (promoting a detrimental drug in the  
18 first degree); section 712-1249.6 (promoting a controlled  
19 substance in, on, or near schools, school vehicles, or public  
20 parks); section 803-42 (interception, access, and disclosure of  
21 wire, oral, or electronic communications, use of pen register,  
22 trap and trace device, and mobile tracking device prohibited);



**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.