

## ACT 200

H.B. NO. 2426

A Bill for an Act Relating to Crimes Against Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding four new sections to Part VI to be appropriately designated and to read as follows:

**“§707- Electronic enticement of a child in the first degree.** (1) Any person who, using a computer or any other electronic device:

- (a) Intentionally or knowingly communicates:
  - (i) With a minor known by the person to be under the age of eighteen years;
  - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

- (iii) With another person who represents that person to be under the age of eighteen years; and
  - (b) With the intent to promote or facilitate the commission of a felony:
    - (i) That is a murder in the first or second degree;
    - (ii) That is a class A felony; or
    - (iii) That is an offense defined in section 846E-1; agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and
  - (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time;
- is guilty of electronic enticement of a child in the first degree.
- (2) Electronic enticement of a child in the first degree is a class B felony.

**§707- Electronic enticement of a child in the second degree.** (1) Any person who, using a computer or any other electronic device:

- (a) Intentionally or knowingly communicates:
    - (i) With a minor known by the person to be under the age of eighteen years;
    - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
    - (iii) With another person who represents that person to be under the age of eighteen years; and
  - (b) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and
  - (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time;
- is guilty of electronic enticement of a child in the second degree.
- (2) Electronic enticement of a child in the second degree is a class C felony.

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

- (a) Child pornography;
  - (b) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or
  - (c) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.
- (2) As used in this section:
- “Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

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

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Lascivious” means tending to incite lust, to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

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

“Minor” means any person less than eighteen years old.

“Pornographic” shall have the same meaning as in section 712-1210.

“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

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

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

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

**§707- Affirmative defense to promoting child abuse.** It shall be an affirmative defense to a charge of promoting child abuse in the third degree that the defendant:

- (a) Possessed less than three images of child pornography; and
- (b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:
  - (i) Took reasonable steps to destroy each such image; or
  - (ii) Reported the matter to a law enforcement agency and afforded that agency access to each such image.”

SECTION 2. Section 707-750, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

“(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person [produces,]:

- (a) Produces [directs,] or participates in the preparation of child pornography;
- (b) Produces or participates in the preparation of pornographic material [or engages] that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or
- (c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

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

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

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Lascivious” means tending to [excite] incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

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

“Minor” means any person less than [sixteen] eighteen years old.

“Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.

“Pornographic” shall have the same meaning as [defined] in section 712-1210.

“Produces” means to produce, direct, manufacture, issue, publish, or advertise.

“Somasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, somasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

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

SECTION 3. Section 707-751, Hawaii Revised Statutes, is amended to read as follows:

**“§707-751 Promoting child abuse in the second degree.** (1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person [~~possesses or disseminates~~]:

- (a) Disseminates child pornography;
- (b) Reproduces child pornography with intent to disseminate;
- (c) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or
- (d) Disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

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

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, [ø] present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording[.] and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than [~~sixteen~~] eighteen years old.

“Pornographic” shall have the same meaning as [defined] in section 712-1210.

“Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sodomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

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

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

(4) Promoting child abuse in the second degree is a class [C] B felony.”

SECTION 4. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“**§712A-4 Covered offenses.** Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, [ø] commercial promotion of marijuana, promoting child abuse, or electronic enticement of a child which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.