

CHAPTER 25.01
SOLICITATION OF CHILDREN AND CHILD PORNOGRAPHY

SOURCE: This entire Chapter was enacted by P.L. 29-063:1 (Apr. 4, 2008).

- § 25.01.00. Legislative Findings and Intent.
- § 25.01.10. Indecent Electronic Display to a Child.
- § 25.01.20. Electronic Enticement of a Child as a Third Degree Felony.
- § 25.01.30. Electronic Enticement of a Child as a Second Degree Felony.
- § 25.01.40. Electronic Enticement of a Child as a First Degree Felony.

§ 25.01.00. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that there is a critical need to clearly and explicitly define material that is obscene, material that is pornographic for minors and child pornography, as well as to update Guam's laws to protect children from internet predators. The internet is arguably the most important learning tool of the Twenty-first (21st) Century. Unfortunately, the same internet also poses one of the greatest threats to child safety.

It is the intent of *I Liheslatura* to ensure that our laws are strong enough to adequately protect Guam's children from online predators and child pornography and to severely punish the offenders.

§ 25.01.10. Indecent Electronic Display to a Child.

(a) Any person who intentionally masturbates *or* intentionally exposes the genitals of him *or* herself, *or* of another, in a lewd *or* lascivious manner live over a computer online service, internet service, *or* local bulletin board service, and who knows *or* should know *or* has reason to believe that the transmission is viewed on a computer *or* other device capable of electronic data storage *or* transmission, by:

- (1) a minor known by the person to be under the age of eighteen (18) years;
- (2) another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; *or*
- (3) another person who represents him *or* herself to be under the age of eighteen (18) years is guilty of indecent electronic display to a child.

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(b) Indecent electronic display to a child is a Third Degree Felony.

(c) It *shall not* constitute a defense against any charge *or* violation of this Section that a law enforcement officer, peace officer, *or* other person working at the direction of law enforcement was involved in the detection *or* investigation of a violation of this Section.

§ 25.01.20. Electronic Enticement of a Child as a Third Degree Felony.

(a) Any person who knowingly uses a computer online service, internet service, *or* any other device capable of electronic data storage *or* transmission to solicit, lure, *or* entice, *or* attempt to solicit, lure, *or* entice:

(1) a minor known by the person to be under the age of eighteen (18) years;

(2) another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; *or*

(3) another person who represents him *or* herself to be under the age of eighteen (18) years, with the intent to promote *or* facilitate the commission of another criminal offense as set forth in Title 9 GCA Chapter 89, Section 89.01, is guilty of electronic enticement of a child as a Third Degree Felony.

(b) Electronic enticement of a child under this Section is a Third Degree Felony.

(c) Each separate use of a computer online service, Internet service, *or* any other device capable of electronic data storage *or* transmission wherein an offense described in this Section is committed may be charged as a separate offense.

(d) It *shall not* constitute a defense against any charge *or* violation of this Section that a law enforcement officer, peace officer, *or* other person working at the direction of law enforcement was involved in the detection *or* investigation of a violation of this Section.

§ 25.01.30. Electronic Enticement of a Child as a Second Degree Felony.

(a) Any person who, using a computer online service, Internet

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service, *or* any other device capable of electronic data storage *or* transmission intentionally *or* knowingly communicates:

(1) with a minor known by the person to be under the age of eighteen (18) years;

(2) with another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; or

(3) with another person who represents him *or* herself to be under the age of eighteen (18) years; and with the intent to promote *or* facilitate the commission of a felony, *or* another criminal offense as set forth in Title 9 GCA Chapter 89, §89.01, agrees to meet with the minor, *or* with another person who represents him *or* herself to be a minor under the age of eighteen (18) years, is guilty of electronic enticement of a child as a Second Degree Felony.

(b) Electronic enticement of a child under this Section is a Second Degree Felony.

§ 25.01.40. Electronic Enticement of a Child as a First Degree Felony.

(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission intentionally or knowingly communicates:

(1) with a minor known by the person to be under the age of eighteen (18) years;

(2) with another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; or

(3) with another person who represents him or herself to be under the age of eighteen (18) years;

(4) with the intent to promote or facilitate the commission of a felony:

(A) that is murder or aggravated murder as defined in Title 9 GCA Chapter 16;

(B) that is a first degree felony; or

(C) that is another criminal offense as set forth in Title 9

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GCA Chapter 89, §89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and

(5) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a First Degree Felony.

(b) Electronic enticement of a child under this Section is a First Degree Felony.

PART II
CHILD PORNOGRAPHY

§ 25.01.50. Definitions.

§ 25.01.60. Possession of Child Pornography.

§ 25.01.70. Dissemination of Child Pornography.

§ 25.01.50. Definitions.

As used in this Chapter:

(a) *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*:

(1) the pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; *or*

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

(b) *Community standards* means the standards of Guam.

(c) *Computer* means any electronic, magnetic, optical, electrochemical, *or* other high-speed data processing device performing logical, arithmetic, *or* storage functions, and includes, all computer equipment connected *or* related to such a device in a computer system *or* computer network, but *shall not* include an automated typewriter *or* typesetter, a portable hand-held calculator, *or* other similar device.

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(d) *Computer equipment* means any equipment *or* devices, including all input, output, processing, storage, software, *or* communications facilities, intended to interface with the computer.

(e) *Computer network* means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

(f) *Computer program or software* means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

(g) *Computer services* includes, but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

(h) *Computer system* means a set of interconnected computer equipment intended to operate as a cohesive system.

(i) *Data* means information, facts, concepts, software, *or* instructions prepared for use in a computer, computer system, *or* computer network.

(j) *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.

(k) *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.

(l) *Minor* means any person less than eighteen (18) years old.

(m) *Pornographic shall* have the same meaning as in Title 9 GCA Chapter 28, Article 2.

(n) *Sadomasochistic abuse* means flagellation *or* torture by *or* upon a person as an act of sexual stimulation *or* gratification.

(o) *Sexual conduct* means acts of sexual penetration, sexual contact, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, *or* lascivious exhibition of the genital *or* pubic area of a minor.

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(p) *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.

(q) *Disseminate* means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, *or* transport by any means, including by computer, *or* to offer *or* agree to do the same.

§ 25.01.60. Possession of Child Pornography.

(a) A person commits the offense of possession of child pornography *if*, knowing *or* having reason to know its character and content, the person possesses:

(1) child pornography;

(2) any book, magazine, periodical, film, videotape, computer disk, electronically stored data, *or* any other material that contains an image of child pornography; *or*

(3) any pornographic material that employs, uses, *or* otherwise contains a minor engaging in *or* assisting others to engage in sexual conduct.

(b) The fact that a person engaged in the conduct specified by this Section is *prima facie* evidence that the defendant had 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.

(c) Possession of child pornography under this Section is a Second Degree Felony.

§ 25.01.70. Dissemination of Child Pornography.

(a) A person commits the offense of dissemination of child pornography *if*, knowing *or* having reason to know its character and content, the person:

(1) disseminates child pornography;

(2) reproduces child pornography with intent to disseminate;

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(3) disseminates any book, magazine, periodical, film, videotape, computer disk, electronically stored data, *or* any other material that contains an image of child pornography;

(4) disseminates any pornographic material that employs, uses, *or* otherwise contains a minor engaging in *or* assisting others to engage in sexual conduct; *or*

(5) possesses ten (10) *or more* images of any form of child pornography regardless of content, and the content of at least one (1) image contains one (1) *or more* of the following:

- (A) a minor who is younger than the age of fourteen (14);
- (B) sadomasochistic abuse of a minor;
- (C) sexual penetration of a minor; *or*
- (D) bestiality involving a minor.

(b) The fact that a person engaged in the conduct specified by this Section is *prima facie* evidence that the defendant had 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.

(c) Dissemination of child pornography under this Section is a First Degree Felony.
