

# HAWAII STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

## HRS

### HRS § 712-1210. Definitions of terms in this part.

- In this part, unless a different meaning is required:
  - "Age verification records of sexually exploited individuals" means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:
    - (1) Each sexually exploited individual's name and date of birth, as ascertained by an examination of the individual's valid driver's license, official state identification card, or passport;
    - (2) A certified copy of each sexually exploited individual's driver's license, official state identification card, or passport; and
    - (3) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names.
  - "Age verification records of sexual performers" means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:
    - (1) Each performer's name and date of birth, as ascertained by the producer's personal examination of a performer's valid driver's license, official state identification card, or passport;
    - (2) A certified copy of each performer's valid driver's license, official state identification card, or passport; and
    - (3) Any name ever used by each performer including, but not limited to, maiden name, alias, nickname, stage name, or professional name.
  - "Community standards" means the standards of the State.
  - "Disseminate" means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present material or to offer or agree to do the same.
  - "Erotic or nude massager" means a nude person providing massage services with or without a license.
  - "Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing.
  - "Intent to profit" means the intent to obtain monetary gain.
  - "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, drawings, sculptures, and tape or wire recordings.
  - "Minor" means any person less than sixteen years old.
  - "Nude" means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola.
  - "Performance" means any play, motion picture film, dance, or other exhibition performed before an audience.

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- "Pornographic." Any material or performance is "pornographic" if all of the following coalesce:
  - **(a)** The average person, applying contemporary community standards would find that, taken as a whole, it appeals to the prurient interest.
  - **(b)** It depicts or describes sexual conduct in a patently offensive way.
  - **(c)** Taken as a whole, it lacks serious literary, artistic, political, or scientific merit.
- "Pornographic for minors." Any material or performance is "pornographic for minors" if:
  - **(1)** It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:
    - **(a)** It is presented in such a manner that the average person applying contemporary community standards, would find that, taken as a whole, it appeals to a minor's prurient interest; and
    - **(b)** Taken as a whole, it lacks serious literary, artistic, political, or scientific value; or
  - **(2)** It contains any photograph, drawing, or similar visual representation of any person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:
    - **(a)** It is presented in such a manner that the average person, applying contemporary community standards, would find that, taken as a whole, it appeals to a minor's prurient interest; and
    - **(b)** Taken as a whole, it lacks serious literary, artistic, political, or scientific value.
- "Produces" means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.
- "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 intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.
- "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
- "Sexually exploited individuals" means erotic or nude massagers and exotic or nude dancers.
- "Sexual performer" includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct.
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## § 712-1211. Displaying indecent matter.

- **(1)** A person commits the offense of displaying indecent matter if the person knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk, a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:
  - **(a)** Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sadomasochistic abuse; and
  - **(b)** Which is presented in such a manner as to exploit lust; and
  - **(c)** Which lacks serious literary, artistic, political, or scientific value.
- **(2)** Displaying indecent material is a petty misdemeanor.

## § 712-1213. Displaying indecent material; prima facie evidence.

The fact that a person engaged in the conduct specified by section 712-1211 is prima facie evidence that the person engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material which is displayed.

## § 712-1214. Promoting pornography.

- **(1)** A person commits the offense of promoting pornography if, knowing its content and character, the person:
  - **(a)** Disseminates for monetary consideration any pornographic material; or
  - **(b)** Produces, presents, or directs pornographic performances for monetary consideration; or
  - **(c)** Participates for monetary consideration in that portion of a performance which makes it pornographic.
- **(2)** Promoting pornography is a misdemeanor.

## § 712-1215. Promoting pornography for minors.

- **(1)** A person commits the offense of promoting pornography for minors if:
  - **(a)** Knowing its character and content, the person disseminates to a minor material which is pornographic for minors; or
  - **(b)** Knowing the character and content of a motion picture film or other performance which, in whole or in part, is pornographic for minors, the person:
    - **(i)** Exhibits such motion picture film or other performance to a minor; or
    - **(ii)** Sells to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture film or other performance; or
    - **(iii)** Admits a minor to premises where there is exhibited or to be exhibited such motion picture film or other performance.

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- **(2)** Subsection (1) does not apply to a parent, guardian, or other person in loco parentis to the minor or to a sibling of the minor, or to a person who commits any act specified therein in the person's capacity and within the scope of the person's employment as a member of the staff of any public library.
- **(3)** Promoting pornography for minors is a class C felony.

## § 712-1216. Promoting pornography; prima facie evidence.

- **(1)** The fact that a person engaged in the conduct specified by sections 712-1214 or 712-1215 is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.
- **(2)** In a prosecution under section 712-1215, the fact that the person:
  - **(a)** To whom material pornographic for minors was disseminated, or
  - **(b)** To whom a performance pornographic for minors was exhibited, or
  - **(c)** To whom an admission ticket or pass was sold to premises where there was or was to have been exhibited such performance, or
  - **(d)** Who was admitted to premises where there was or was to have been such performance,
  - was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

## § 712-1217. Open lewdness.

- **(1)** A person commits the offense of open lewdness if in a public place the person does any lewd act which is likely to be observed by others who would be affronted or alarmed.
- **(2)** Open lewdness is a petty misdemeanor.

## § 712-1218. Failure to maintain age verification records of sexual performers.

- **(1)** A person commits the offense of failure to maintain age verification records of sexual performers if the person knowingly produces any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depictions made after June 30, 2002, of sexual conduct and:
  - **(a)** Knowingly fails to create and maintain age verification records for each sexual performer;
  - **(b)** Knowingly makes or causes to be made any false entry into the age verification records of sexual performers required by this section; or
  - **(c)** Knowingly fails to produce the age verification records of sexual performers required by this section, upon request by a law enforcement officer for the purpose of verifying the age of a sexual performer.
- **(2)** Failure to maintain age verification records of sexual performers is a class C felony.

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## **§ 712-1218.5. Failure to maintain age verification records of sexually exploited individuals.**

- **(1)** A person commits the offense of failure to maintain age verification records of sexually exploited individuals if, with the intent to profit therefrom, the person knowingly provides sexually exploited individuals to patrons or customers of a public establishment or provides sexually exploited individuals to a private club or event, and the person:
  - **(a)** Knowingly fails to create and maintain age verification records for each sexually exploited individual;
  - **(b)** Knowingly makes or causes to be made any false entry into the age verification records of sexually exploited individuals required by this section; or
  - **(c)** Knowingly fails to produce the age verification records of sexually exploited individuals required by this section upon request by a law enforcement officer for the purpose of verifying the age of a sexually exploited individual.
- **(2)** Failure to maintain age verification records of sexually exploited individuals is a class C felony.

## **§ 712-1219. Failure to affix information disclosing location of age verification records of sexual performers.**

- **(1)** A person commits the offense of failure to affix information disclosing location of age verification records of sexual performers if the person knowingly produces any pornographic book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depictions made after June 30, 2002, of sexual conduct and fails to affix to each copy a statement describing where any records required by section 712-1218 with respect to all performers depicted in that copy of the matter may be located, including the current address and telephone number of the custodian of those records.
- **(2)** If the person to whom any recordkeeping requirement of section 712-1218 applies is an organization, the affixed information required under subsection (1) shall include the name, title, and business address of the individual employed by the organization who is responsible for maintaining the records required by section 712-1218.
- **(3)** Failure to affix information disclosing the location of age verification records of sexual performers is a class C felony.

## **§ 712-1219.5. Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers.**

- **(1)** A person commits the offense of disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers if the person knowingly disseminates, sells, or otherwise transfers, or offers for sale or transfer, any book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more visual depictions made after June 30, 2002, of sexual conduct, and that does not have affixed thereto a statement describing where the age verification records required by section 712-1218 may be located; provided that this section shall not be construed to impose a duty upon any

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persons to determine the accuracy of the contents of the affixed statement or of the records required to be kept at that location.

- **(2)** Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers is a misdemeanor.