



## HAWAII STATE LAW ON SEXTING **[§712-1215.6]**

### **[§712-1215.6] Promoting minor-produced sexual images in the second degree. (1) A minor commits the offense of promoting minor-produced sexual images in the second degree if the minor:**

(a) Knowingly uses a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person a nude photograph or video of a minor or the minor's self; or

(b) Intentionally or knowingly commands, requests, or encourages another minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor or the minor's self.

(2) A person, of any age, commits the offense of promoting minor-produced sexual images in the second degree if the person knowingly possesses a nude photograph or video of a minor transmitted or distributed in violation of subsection (1). It is an affirmative defense under this subsection that the person took reasonable steps to destroy or eliminate the nude photograph or video of a minor.

(3) For purposes of this section, a "minor" means any person under eighteen years of age.

(4) Promoting minor-produced sexual images in the second degree is a petty misdemeanor.

**[L 2012, c 213, pt of §1]**

### **COMMENTARY ON §§712-1215.5 AND 712-1215.6**

**Act 213, Session Laws 2012, added §§712-1215.5 and 712-1215.6 to address the problem of "sexting", which involved minors taking nude pictures and videos of themselves or other minors, and transmitting the nude images to others by use of a cell phone or other form of electronic communication.** Specifically, Act 213 prohibited: (1) adults from soliciting minors to electronically transmit nude images of minors by making such conduct a misdemeanor [(§712-1215.5)]; (2) minors from electronically transmitting nude images of themselves or other minors, or soliciting other minors to do so by making such conduct a petty misdemeanor [(§712-1215.6)]; and (3) a person from possessing a nude image transmitted by a minor, but making it an affirmative defense that the recipient made reasonable efforts to destroy the transmitted nude image [(§712-1215.6)]. The legislature found that the electronic transmission of youth-produced sexual pictures and videos was a growing problem, particularly because the images can be shared with many people almost instantaneously. Once transmitted, the original transmitter had very limited ability to control or prevent further dissemination. The legislature further found that the images may be used as a commodity for exchange, and the threatened dissemination of these images may be used as leverage against the subject to force the subject to engage in behaviors that may cause embarrassment, at minimum, and possible mental or emotional harm. Conference Committee Report No. 25-12.