



[SF 84](#) – Sexual Exploitation of a Minor, Penalties (LSB1440XS.1)
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Fiscal Note Version – As amended by House amendment [S-3118](#)

Description

[Senate File 84](#) as amended by House amendment [S-3118](#) relates to the offense of sexual exploitation of a minor, undercover law enforcement officers or agents posing as minors, and the offense of stalking.

Division I — Sexual Exploitation of a Minor

Description

Division I expands the offenses of enticement of a minor under Iowa Code section [710.10](#), sexual exploitation of a minor under Iowa Code section [728.12](#)(1), and telephone dissemination of obscene material to minors under Iowa Code section [728.15](#) to include a law enforcement officer or agent posing as a minor.

Division I enhances the penalties for sexual exploitation of a minor under Iowa Code section 728.12 by one offense class and provides that a court is not permitted to defer judgment for this offense.

Division I creates a 50.0% to 70.0% mandatory minimum sentence for a person convicted of sexual exploitation of a minor under Iowa Code section 728.12(1). At the time of sentencing, the court will determine the mandatory minimum sentence based upon all pertinent information including the person's criminal record, a validated risk assessment, and the negative impact the offense has had on the victim or other persons.

Division I increases the time under supervision as part of the special sentence from 10 years to life for individuals convicted of sexual exploitation of a minor under Iowa Code section 728.12(2) or a second offense under Iowa Code section 728.12(3).

Division I requires the court to order restitution when the offender is convicted of certain categories of sexual exploitation of a minor and details the minimum amount.

Background

Iowa Code section 710.10 provides penalties for enticement of a minor, ranging from an aggravated misdemeanor to a Class C felony, depending on the circumstances of the offense.

Under Iowa Code section 728.12, the penalties for sexual exploitation of a minor range from an aggravated misdemeanor to a Class C felony, depending on the circumstances of the offense, as follows:

- Iowa Code section 728.12(1): A Class C felony for causing or attempting to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act, with the knowledge or intent that the act may be photographed, filmed, or otherwise preserved in a visual depiction.

- Iowa Code section 728.12(2): A Class D felony for knowingly promoting any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act.
- Iowa Code section 728.12(3): An aggravated misdemeanor for a first offense of knowingly purchasing or possessing a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act.
- Iowa Code section 728.12(3): A Class D felony for a second or subsequent offense of knowingly purchasing or possessing a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act.

Iowa Code section 728.15 prohibits a person from knowingly disseminating obscene material by the use of telephones to a minor. The penalty is an aggravated misdemeanor for a first offense and a Class D felony for a second or subsequent offense.

According to Iowa Code chapter [903B](#), individuals convicted of sexual exploitation of a minor under Iowa Code section 728.12(1) are sentenced to supervision under the special sentence for life. All other individuals convicted of sexual exploitation of a minor are sentenced to supervision under the special sentence for 10 years. A special sentence is defined as a punishment in addition to the punishment for the underlying criminal offense and consists of committing the individual to the custody of the Department of Corrections (DOC). An individual serving a special sentence begins the sentence in the same manner as if the individual were on parole or part of a work release program. The special sentence is subject to revocation for up to two years for a first revocation and up to five years for a second or any subsequent revocation.

An aggravated misdemeanor is punishable by confinement for up to two years and a fine of at least \$855 but not more than \$8,540. A Class D felony is punishable by confinement for up to five years and a fine of at least \$1,025 but not more than \$10,245. A Class C felony is punishable by confinement for up to ten years and a fine of at least \$1,370 but not more than \$13,660. A Class B felony is punishable by confinement for no more than 25 years.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- The marginal cost per day in prison is \$23.42.
- Prison admissions include only individuals admitted to prison whose most serious offense is sexual exploitation of a minor.

Correctional Impact

Division I increases the penalties for sexual exploitation of a minor and is estimated to increase the LOS for individuals admitted to prison for this offense. In FY 2022, 14 individuals were admitted to prison for sexual exploitation of a minor. **Table 1** shows the estimated increase in LOS under Division I for those annually admitted to prison for this offense.

Table 1 — Increase in LOS Under Division I of SF 84

Code Section	Annual Admissions	Increase in LOS (Months)
728.12(1)	3	119.5
728.12(2)	2	39.4
728.12(3) 1st Offense	9	13.0
728.12(3) 2nd or Subsequent Offense	0	39.4

Division I is also estimated to increase the length of time for supervision under the special sentence for some individuals, as more individuals would be supervised under the special sentence for life.

Additionally, Division I expands the definition of existing offenses to include a law enforcement officer or agent posing as a minor. The correctional impact cannot be determined because the number of additional convictions that will result from this expansion is unknown. **Table 2** shows estimates for sentencing to State prison, parole, probation, or Community-Based Corrections (CBC) residential facilities; LOS in months under those supervisions; and supervision marginal costs per day for all convictions of Class B felonies, Class C felonies, Class D felonies, and aggravated misdemeanors. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 20, 2023, for information related to the correctional system.

Table 2 — Sentencing Estimates and LOS

Conviction Offense Class	Percent Ordered to State Prison	FY 22 Avg LOS in Prison in Months (All Releases)	FY 22 Marginal Cost Per Day Prison	Percent Ordered to Probation	FY 22 Avg LOS on Probation in Months	FY 22 Avg Cost Per Day Probation	Percent Sentenced to CBC Residential Facility	FY 22 Marginal Cost Per Day CBC	Percent Ordered to County Jail	Marginal Cost Per Day Jail	FY 22 Avg LOS on Parole in Months	FY 22 Marginal Cost Per Day Parole
B Felony (Sex)	100.0%	184.5	\$23.42	8.0%	53.9	\$7.27	1.3%	\$20.67	42.7%	\$50.00	16.1	\$7.27
C Felony (Persons)	89.8%	50.1	\$23.42	27.6%	39.0	\$7.27	3.6%	\$20.67	43.2%	\$50.00	19.5	\$7.27
D Felony (Persons)	79.6%	19.7	\$23.42	59.0%	33.2	\$7.27	8.6%	\$20.67	26.3%	\$50.00	14.4	\$7.27
D Felony (Non-Persons)	83.9%	13.9	\$23.42	68.0%	33.5	\$7.27	13.3%	\$20.67	31.4%	\$50.00	15.5	\$7.27
Aggravated Misdemeanor (Persons)	45.5%	9.7	\$23.42	64.9%	--	\$7.27	3.8%	\$20.67	55.6%	\$50.00	7.0	\$7.27
Aggravated Misdemeanor (Non-Persons)	31.4%	7.5	\$23.42	45.6%	20.7	\$7.27	3.3%	\$20.67	72.2%	\$50.00	8.2	\$7.27

Note: Enticement of a minor is a persons offense. Sexual exploitation of a minor is a sex offense. Telephone dissemination of obscene material to minors is a non-persons offense.

Minority Impact

Division I increases the penalties for sexual exploitation of a minor and may disproportionately impact African American individuals if trends remain constant. Of the 193 convictions of sexual exploitation of a minor in FY 2022, 89.5% of offenders were Caucasian, 7.7% were African American, and 2.8% were other races. Iowa’s population is 84.5% Caucasian, 3.6% African American, and 11.9% other races.

Division I also expands the definition of existing offenses to include a law enforcement officer or agent posing as a minor. The minority impact of this expansion cannot be estimated. However, of the 177 convictions for offenses under Iowa Code sections 710.10, 728.12, and 728.15 in FY 2022, 87.4% involved Caucasian individuals, 9.0% involved African American individuals, and 3.6% involved individuals of other races. Iowa's population is 84.5% Caucasian, 3.6% African American, and 11.9% other races. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

Fiscal Impact

Division I is estimated to increase costs to the DOC by approximately \$395,000 per group of individuals admitted to prison each year for sexual exploitation of a minor, as shown in **Table 3**. This cost is incurred across the entire LOS. **Table 3** represents the cost of all individuals admitted to prison for this offense in one year. This cost would recur for each yearly group of admissions.

Table 3 — Increase in Cost Under Division I of SF 84

Code Section	Penalty	Annual Admissions	Cost Per Day	LOS (Days)	Total Cost
Current Penalties					
728.12(1)	Class C Felony	3	\$23.42	1,976	\$138,834
728.12(2)	Class D Felony	2	\$23.42	778	36,442
728.12(3) 1st Offense	Aggravated Misdemeanor	9	\$23.42	383	80,729
728.12(3) 2nd Offense	Class D Felony	0	\$23.42	778	0
Total		<u>14</u>			<u>\$256,005</u>
Penalties Under SF 84					
728.12(1)	Class B Felony	3	\$23.42	5,609	\$394,088
728.12(2)	Class C Felony	2	\$23.42	1,976	92,556
728.12(3) 1st Offense	Class D Felony	9	\$23.42	778	163,987
728.12(3) 2nd Offense	Class C Felony	0	\$23.42	1,976	0
Total		<u>14</u>			<u>\$650,631</u>

Additionally, Division I may result in more admissions to prison for sexual exploitation of a minor due to the increased penalties. This would lead to additional costs to the DOC, but the extent of this increase in costs cannot be estimated. The fiscal impact to the DOC due to increasing the length of the special sentence for some individuals cannot be estimated.

Division I also expands the definition of existing offenses to include a law enforcement officer or agent posing as a minor. The fiscal impact cannot be determined because the number of additional convictions resulting from this expansion cannot be estimated. **Table 4** shows the average State cost per offense for a Class B felony, Class C felony, Class D felony, and aggravated misdemeanor. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the DOC. The costs would be incurred across multiple fiscal years for prison and parole supervision.

Table 4 — Average State Cost Per Offense

Offense Class	Average Cost
Class B Felony	\$14,200 to \$46,300
Class C Felony	\$12,100 to \$25,100
Class D Felony	\$9,500 to \$17,400
Aggravated Misdemeanor	\$5,000 to \$9,600

Division II — Stalking Utilizing a Technological Device

Description

Division II increases existing penalties for stalking under Iowa Code section [708.11](#) and establishes the penalty for stalking while utilizing a technological device as a Class C felony.

Division II increases the penalty for stalking from a Class D felony to a Class C felony under the following circumstances:

- When the person commits stalking while subject to restrictions contained in a criminal or civil protection order.
- When the person commits stalking while in possession of a dangerous weapon.
- When the person commits stalking by directing a course of conduct at a specific person who is under 18 years of age.

Under Division II, the penalty for stalking without any of the above circumstances is an aggravated misdemeanor for a first offense, a Class D felony for a second offense, and a Class C felony for a third or subsequent offense.

Background

Iowa Code section 708.11 contains the penalties for stalking. Stalking is a Class C felony for a third or subsequent offense. Stalking is a Class D felony under the following circumstances:

- When the person commits stalking while subject to restrictions contained in a criminal or civil protective order or injunction, under Iowa Code section 708.11(3)(b)(1).
- When the person commits stalking while in possession of a dangerous weapon, under Iowa Code section 708.11(3)(b)(2).
- When the person commits stalking by directing a course of conduct at a specific person who is under 18 years of age, under Iowa Code section 708.11(3)(b)(3).
- When the offense is a second offense, under Iowa Code section 708.11(3)(b)(4).

Stalking is an aggravated misdemeanor if the offense is a first offense and is not included under the circumstances that classify the offense as a Class D felony.

A Class C felony is punishable by confinement for up to 10 years and a fine of at least \$1,370 but not more than \$13,660. A Class D felony is punishable by confinement for up to five years and a fine of at least \$1,025 but not more than \$10,245. An aggravated misdemeanor is punishable by confinement for up to two years and a fine of at least \$855 but not more than \$8,540.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner LOS; revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- The marginal cost per day in prison is \$23.42. The marginal cost per day on probation and parole is \$7.27.
- Admissions include only individuals admitted to prison or CBC whose most serious offense is stalking.

Correctional Impact

In FY 2022, 17 individuals were admitted to prison and 22 individuals were admitted to CBC for stalking while subject to a protective order under Iowa Code section 708.11(3)(b)(1). No individuals were admitted to prison or CBC for stalking while in possession of a dangerous weapon under Iowa Code section 708.11(3)(b)(2) or stalking someone under 18 years of age under Iowa Code section 708.11(3)(b)(3).

By increasing the penalty for these offenses, 20 individuals who would annually be admitted to CBC under current law may instead be admitted to prison. Additionally, the estimated LOS for individuals admitted to prison for stalking while subject to a protective order under Iowa Code section 708.11(3)(b)(1) would increase from 19.7 months to 50.1 months. As a result, the prison population is estimated to increase under Division II.

Division II establishes the penalty for stalking while utilizing a technological device as a Class C felony. The correctional impact of this portion of Division II cannot be estimated due to a lack of existing conviction data. Refer to the LSA memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 20, 2023, for information related to the correctional system.

Minority Impact

Division II may disproportionately impact African American individuals if trends remain constant. Of the 39 individuals who entered DOC supervision for stalking while subject to a protective order under Iowa Code section 708.11(3)(b)(1) in FY 2022, 82.1% were Caucasian, 12.8% were African American, and 5.1% were other races. Iowa's population is 84.5% Caucasian, 3.6% African American, and 11.9% other races. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

Fiscal Impact

Division II is estimated to increase costs to the DOC by approximately \$976,000 per group of individuals who enter DOC supervision each year for stalking while subject to a protective order under Iowa Code section 708.11(3)(b)(1). This cost is incurred across the entire LOS. In FY 2022, 39 individuals entered DOC supervision for this offense. **Table 5** shows the estimated fiscal impact to the DOC if all 39 admissions entered as a Class C felony instead of a Class D felony.

Table 5 — Change in Cost Under Division II of SF 84

Supervision Status	Annual Admissions	Cost Per Day	LOS (Days)	Total Cost
Current Penalty — Class D Felony				
Prison	17	\$23.42	599	\$238,486
CBC	22	\$7.27	724	115,797
Total	<u>39</u>			<u>\$354,282</u>
Penalty Under SF 84 — Class C Felony				
Prison	37	\$23.42	1,523	\$1,319,740
CBC	2	\$7.27	724	10,527
Total	<u>39</u>			<u>\$1,330,267</u>

Establishing a Class C felony for stalking while utilizing a technological device may increase costs to the DOC, but the fiscal impact of this portion of Division II cannot be estimated.

Sources

Department of Corrections
 Department of Human Rights, Division of Criminal and Juvenile Justice Planning
 Legislative Services Agency

 /s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
