

may consist of fines, restrictions for damages, attendance at treatment programs, or community service work or any combination of these. A person appearing before the peer review court may also be required to serve as a juror on the court as a part of the person's sentence.

3. Subject to the agreement of the chief judge of the judicial district, the supreme court shall designate two judicial districts in which to locate a peer review court pilot project. The chief judge of the district shall appoint a peer review court advisory board. The advisory board shall adopt rules for the peer review court advisory program, shall appoint persons to serve on the peer review court, and shall supervise the expenditure of funds appropriated to the program.

Approved May 31, 1989

CHAPTER 263

OBSCENITY LAW

H.F. 740

AN ACT relating to obscenity law, providing penalties, and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 728.1, subsection 8, Code 1989, is amended to read as follows:

8. ~~Prohibited~~ Unless otherwise provided, "prohibited sexual act" means any of the following:
- a. A sex act as defined in section 702.17;
 - b. An act of bestiality involving a ~~child;~~ minor.
 - c. Fondling or touching the pubes or genitals of a ~~child;~~ minor.
 - d. Fondling or touching the pubes or genitals of a person by a ~~child;~~ minor.
 - e. Sadomasochistic abuse of a ~~child~~ minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse;
 - f. Sadomasochistic abuse of a person by a ~~child~~ minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse; ~~or.~~
 - g. Nudity of a ~~child~~ minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude ~~child~~ minor.

Sec. 2. Section 728.4, Code 1989, is amended to read as follows:

728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

A person who knowingly rents, sells, or offers for rental or sale material depicting a sex act involving sadomasochistic abuse, excretory functions, patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or lewd exhibition of the genitals, which the average adult taking the material as a whole in applying statewide contemporary community standards would find appeals to the prurient interest and is patently offensive; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value, upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent violations of this section by a person who has been previously convicted of violating this section are class "D" felonies. Charges under this section may only be brought by a county attorney or by the attorney general.

Sec. 3. Section 728.12, Code 1989, is amended to read as follows:

728.12 SEXUAL EXPLOITATION OF ~~CHILDREN~~ A MINOR.

1. A person commits a class "C" felony when the person employs, uses, persuades, induces, entices, coerces, knowingly permits, or otherwise causes a ~~child~~ minor to engage in a prohibited

sexual act or in the simulation of a prohibited sexual act if the person knows, has reason to know, or intends that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. A person commits a class "D" felony when the person knowingly promotes any material visually depicting a live performance of a child minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. A person who knowingly purchases any or possesses a negative, slide, book, magazine, or other print or visual medium depicting a child minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act commits a serious misdemeanor.

However, this section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

Sec. 4. NEW SECTION. 728.14 COMMERCIAL FILM AND PHOTOGRAPHIC PRINT PROCESSOR REPORTS OF DEPICTIONS OF MINORS ENGAGED IN PROHIBITED SEXUAL ACTS.

1. A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, or slide which depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the depiction to the county attorney immediately or as soon as possible as required in this section. The processor shall not report to the county attorney depictions involving mere nudity of the minor, but shall report depictions involving a prohibited sexual act. This section shall not be construed to require a processor to review all films, photographs, video tapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.

For purposes of this section, "prohibited sexual act" means any of the following:

- a. A sex act as defined in section 702.17.
- b. An act of bestiality involving a minor.
- c. Fondling or touching the pubes or genitals of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.
- d. Fondling or touching the pubes or genitals of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.
- e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
- f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

2. A person who violates this section is guilty of a simple misdemeanor.

Sec. 5. NEW SECTION. 728.15 TELEPHONE DISSEMINATION OF OBSCENE MATERIAL TO MINORS.

1. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor. A person who violates this subsection upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent offenses of this subsection by a person who has been previously convicted of violating this subsection are class "D" felonies. As used in this subsection, a "person" excludes any information-access service provider that merely provides transmission capacity without control over the content of the transmission.

2. It shall be a defense in any prosecution for a violation of subsection 1 by a person who knowingly disseminates obscene material by the use of telephones or telephone facilities to a minor that the defendant has taken either of the following measures to restrict access to the obscene material:

a. Required the person receiving the obscene material to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene material begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was eighteen years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of eighteen years or that the code is no longer desired.

b. Required payment by credit card before transmission of the obscene material.

3. Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subsection 2 is confidential and shall not be sold or otherwise disseminated except upon order of the court.

Sec. 6. If any provision of this Act or the application thereof to any person is invalid, the invalidity shall not affect the provisions or application of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Approved May 31, 1989

CHAPTER 264

AUDITS

H.F. 451

AN ACT relating to audits, amending provisions governing audits of governmental subdivisions and revising the powers and duties of the auditor of state with respect to such audits, providing for payment to the auditor of state for certain advisory and consultative services, providing for filing fees, providing properly related matters, and providing for the applicability of the Act.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 11.6, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

11.6 EXAMINATION OF GOVERNMENTAL SUBDIVISIONS – CONSULTATIVE SERVICES – ASSOCIATION OF COUNTIES.

1. The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of activity funds.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph "c", examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.