

## CHAPTER 74

### SEXUAL EXPLOITATION OF A MINOR AND UTILIZING A TECHNOLOGICAL DEVICE WHILE STALKING

S.F. 84

**AN ACT** relating to the criminal offenses of sexual exploitation of a minor and stalking committed while utilizing a technological device, the enticement and sexual exploitation of minors and the dissemination of obscene material to minors and the utilization of undercover law enforcement officers or agents posing as minors, and providing penalties.

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

#### DIVISION I SEXUAL EXPLOITATION OF A MINOR

Section 1. [Section 710.10, subsections 1, 2, 3, and 4](#), Code 2023, are amended to read as follows:

1. A person commits a class “C” felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen including a law enforcement officer or agent posing as a minor under the age of thirteen.

2. A person commits a class “D” felony when, without authority and with the intent to commit an illegal sex act upon or sexual exploitation of a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen.

3. A person commits a class “D” felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen.

4. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen. A person convicted under [this subsection](#) shall not be subject to the registration requirements under [chapter 692A](#) unless the finder of fact determines that the illegal act was sexually motivated.

Sec. 2. [Section 728.12, subsections 1, 2, and 3](#), Code 2023, are amended to read as follows:

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor or a law enforcement officer or agent posing as a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a visual depiction. A person who commits a violation of [this subsection](#) commits a class “C” “B” felony. 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. It shall be unlawful to knowingly promote 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. A person who commits a violation of [this subsection](#) commits a class “D” “C” felony. 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. It shall be unlawful to knowingly purchase or possess a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A visual depiction containing pictorial representations of different minors shall be prosecuted and punished as separate offenses for each pictorial representation of a different minor in the

visual depiction. However, violations of [this subsection](#) involving multiple visual depictions of the same minor shall be prosecuted and punished as one offense. A person who commits a violation of [this subsection](#) commits ~~an aggravated misdemeanor~~ a class “D” felony for a first offense and a class “D” “C” felony for a second or subsequent offense. For purposes of [this subsection](#), an offense is considered a second or subsequent offense if, prior to the person’s having been convicted under [this subsection](#), ~~any of the following apply: the person has a prior conviction or deferred judgment under this subsection or has a prior conviction or deferred judgment in another jurisdiction for a substantially similar offense.~~ The court shall judicially notice the statutes of other states that define offenses substantially similar to the offenses defined in [this subsection](#) and that therefore can be considered corresponding statutes.

~~a. The person has a prior conviction or deferred judgment under [this subsection](#).~~

~~b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in [this subsection](#). The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in [this subsection](#) and that therefore can be considered corresponding statutes.~~

Sec. 3. [Section 728.15, subsection 1](#), paragraph b, Code 2023, is amended to read as follows:

b. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor or a law enforcement officer or agent posing as a minor.

Sec. 4. [Section 901.11](#), Code 2023, is amended by adding the following new subsection:

**NEW SUBSECTION.** 6. At the time of sentencing, the court shall determine when a person convicted of sexual exploitation of a minor as described in [section 902.12, subsection 6](#), shall first become eligible for parole or work release within the parameters specified in [section 902.12, subsection 6](#), 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.

Sec. 5. [Section 902.12](#), Code 2023, is amended by adding the following new subsection:

**NEW SUBSECTION.** 6. A person serving a sentence for a conviction of sexual exploitation of a minor in violation of [section 728.12, subsection 1](#), shall be denied parole or work release until the person has served between one-half and seven-tenths of the maximum term of the person’s sentence as determined under [section 901.11, subsection 6](#).

Sec. 6. [Section 903B.1](#), Code 2023, is amended to read as follows:

**903B.1 Special sentence — class “B” or class “C” felonies.**

A person convicted of a class “C” felony or greater offense under [chapter 709](#) or [section 728.12](#), or a class “B” felony under [section 713.3, subsection 1](#), paragraph “d”, ~~or a class “C” felony under [section 728.12](#)~~, shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person’s life, with eligibility for parole as provided in [chapter 906](#). The board of parole shall determine whether the person should be released on parole or placed in a work release program. The special sentence imposed under [this section](#) shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole or work release. The person shall be placed on the corrections continuum in [chapter 901B](#), and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in [chapters 901B, 905, 906](#), and [908](#), and rules adopted under those chapters for persons on parole or work release. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category “A” sentence for purposes of calculating earned time under [section 903A.2](#).

Sec. 7. [Section 907.3, subsection 1](#), paragraph a, Code 2023, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (15) The offense is a violation of [section 728.12](#).

Sec. 8. [Section 915.100, subsection 2](#), Code 2023, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. In cases where the offender was convicted of sexual exploitation of a minor in violation of [section 728.12, subsection 1 or 2](#), the court shall order restitution under [this section](#) in an amount to be determined by the court as follows:

(1) The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the sexual exploitation of the victim, but in no case shall such amount be less than three thousand dollars.

(2) After completing the determination required under subparagraph (1), the court shall order pecuniary damages in an amount that reflects the offender's relative role in the causal process that underlies the victim's losses, but in no case shall such amount be less than three thousand dollars.

(3) For purposes of this paragraph, in addition to the definition of victim provided in [section 915.10, subsection 3](#), "victim" means the individual harmed as a result of a commission of a crime under [section 728.12](#). The legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim's rights under this paragraph, but in no event shall the offender be named as a representative or guardian.

## DIVISION II STALKING UTILIZING A TECHNOLOGICAL DEVICE

Sec. 9. [Section 692A.102, subsection 1](#), paragraph a, subparagraph (6), subparagraph division (b), Code 2023, is amended to read as follows:

(b) Stalking in violation of [section 708.11](#), if a determination is made that the offense was sexually motivated pursuant to [section 692A.126](#), except a violation of [section 708.11, subsection 3](#), paragraph "b" "a", subparagraph (3), shall be classified a tier II offense as provided in paragraph "b".

Sec. 10. [Section 692A.102, subsection 1](#), paragraph b, subparagraph (8), Code 2023, is amended to read as follows:

(8) Stalking in violation of [section 708.11, subsection 3](#), paragraph "b" "a", subparagraph (3), if a determination is made that the offense was sexually motivated pursuant to [section 692A.126](#).

Sec. 11. [Section 708.11, subsection 1](#), paragraph b, Code 2023, is amended to read as follows:

b. "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose, repeatedly utilizing a technological device to locate, listen to, or watch a person without authorization or legitimate purpose, or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person.

Sec. 12. [Section 708.11, subsection 1](#), Code 2023, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. "Technological device" means any computer, cellular phone, smartphone, digital camera, video camera, audio recording device, global positioning device, or other electronic device that can be used for creating, storing, or transmitting information in the form of electronic data.

Sec. 13. [Section 708.11, subsection 3](#), Code 2023, is amended to read as follows:

3. a. A person who commits stalking in violation of [this section](#) commits a class "C" felony for a third or subsequent offense. if any of the following apply:

(1) The person commits stalking while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and another person against whom the person has committed a public offense.

(2) The person commits stalking while in possession of a dangerous weapon, as defined in [section 702.7](#).

(3) The person commits stalking by directing a course of conduct at a specific person who is under eighteen years of age.

(4) The person utilizes a technological device while committing stalking.

(5) For a third or subsequent offense.

b. A person who commits stalking in violation of [this section](#) commits a class “D” felony if any of the following apply:

(1) The person commits stalking while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in a criminal or civil protective order or injunction or other court order which prohibits contact between the person and another person against whom the person has committed a public offense.

(2) The person commits stalking while in possession of a dangerous weapon, as defined in [section 702.7](#).

(3) The person commits stalking by directing a course of conduct at a specific person who is under eighteen years of age.

(4) The offense is a second offense.

b. A person who commits stalking in violation of [this section](#) commits a class “D” felony if the offense is a second offense which is not included in paragraph “a”.

c. A person who commits stalking in violation of [this section](#) commits an aggravated misdemeanor if the offense is a first offense which is not included in paragraph “b” “a”.

Approved May 11, 2023