

1. Judiciary 2/23 Do Pass 3/21 (p. 1147)

Senate File 2278

Judiciary and Law Enforcement: Johnson of Howard, Chair; Jay and Sturgeon.

FILED MAR 15 1982

SENATE FILE 2278

BY COMMITTEE ON JUDICIARY

Approved (p. 747)

Passed Senate, Date 3-18-82 (p. 813) Passed House, Date 4-8-82 (p. 1330)

Vote: Ayes 44 Nays 0 Vote: Ayes 93 Nays 0

Approved April 23, 1982

### A BILL FOR

1 An Act relating to obscenity offenses and providing penalties.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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9.2278

1 Section 1. Section 728.4, Code 1981, is amended to read  
2 as follows:

3 728.4 SALE OF HARD CORE PORNOGRAPHY. Any person who  
4 knowingly sells or offers for sale material depicting a sex  
5 act involving sadomasochistic abuse, excretory functions,  
6 a child, or bestiality, which the average adult taking the  
7 material as a whole in applying contemporary community  
8 standards would find ~~that-it~~ appeals to the prurient interest  
9 and is patently offensive; and ~~the~~ which material, taken as  
10 a whole, lacks serious literary, scientific, political, or  
11 artistic value shall, upon conviction be guilty of a ~~simple~~  
12 an aggravated misdemeanor. Charges under this section may  
13 only be brought by a county attorney or by the attorney  
14 general.

15 Sec. 2. Chapter 728, Code 1981, is amended by adding the  
16 following new section:

17 NEW SECTION. FORFEITURE. Everything of value that is  
18 furnished or intended to be furnished in exchange for material  
19 in violation of sections 728.2 or 728.4, all proceeds traceable  
20 to such an exchange, and all property, moneys, negotiable  
21 instruments, and securities used or intended to be used to  
22 facilitate a violation of those sections, is subject to  
23 forfeiture. However, property shall not be forfeited under  
24 this paragraph, to the extent of the interest of an owner,  
25 if the owner did not have knowledge of or did not consent  
26 to the violation of the chapter. The burden of proof is upon  
27 claimants of the property to rebut this presumption.

28 Sec. 3. Section 809.1, subsection 4, Code 1981, is amended  
29 to read as follows:

30 4. Property subject to forfeiture except such property  
31 described in chapters 127 and 204 and except property subject  
32 to forfeiture pursuant to section 2 of this Act.

33 Sec. 4. Section 809.6, Code 1981, is amended by adding  
34 the following new subsection:

35 NEW SUBSECTION. If the seized property is of the type

1 described in section 2 of this Act, and the court determines  
2 that it is forfeited as provided in section 2 of this Act,  
3 or a claimant's right to possession is not established under  
4 subsection 2 of section 809.5, the court shall order the  
5 property or the proceeds of its sale to be paid to the  
6 treasurer of state for deposit in the general fund. However,  
7 if the property is material which is in violation of chapter  
8 728 or material which would be in violation of chapter 728  
9 if sold to a minor, the materials shall be destroyed.

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EXPLANATION

11 This bill raises the penalty for violation of section 728.4  
12 (the sale of hard core pornography) from a simple to an aggra-  
13 vated misdemeanor.

14 Sections 2 through 4 also provide for forfeiture of property  
15 exchanged for material in violation of section 728.2 (sales  
16 to minors) or section 728.4 (sale of hard core pornography)  
17 and property used to facilitate a violation of those sections.

18 This bill would take effect July 1 following its enactment.

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SENATE FILE 2278

AN ACT

RELATING TO OBSCENITY OFFENSES AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 728.4, Code 1981, is amended to read as follows:

728.4 SALE OF HARD CORE PORNOGRAPHY. Any person who knowingly sells or offers for sale material depicting a sex act involving sadomasochistic abuse, excretory functions, a child, or bestiality, which the average adult taking the material as a whole in applying contemporary community standards would find ~~that~~ appeals to the prurient interest

and is patently offensive; and the which material, taken as a whole, lacks serious literary, scientific, political, or artistic value shall, upon conviction be guilty of ~~a simple~~ an aggravated misdemeanor. Charges under this section may only be brought by a county attorney or by the attorney general.

Sec. 2. Chapter 728, Code 1981, is amended by adding the following new section:

NEW SECTION. FORFEITURE. Everything of value that is furnished or intended to be furnished in exchange for material in violation of sections 728.2 or 728.4, all proceeds traceable to such an exchange, and all property, moneys, negotiable instruments, and securities used or intended to be used to facilitate a violation of those sections, is subject to forfeiture. However, property shall not be forfeited under this paragraph, to the extent of the interest of an owner, if the owner did not have knowledge of or did not consent to the violation of the chapter. The burden of proof is upon claimants of the property to rebut this presumption.

Sec. 3. Section 809.1, subsection 4, Code 1981, is amended to read as follows:

4. Property subject to forfeiture except such property described in chapters 137 and 204 and except property subject to forfeiture pursuant to section 2 of this Act.

Sec. 4. Section 809.6, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. If the seized property is of the type described in section 2 of this Act, and the court determines that it is forfeited as provided in section 2 of this Act, or a claimant's right to possession is not established under subsection 2 of section 809.5, the court shall order the property or the proceeds of its sale to be paid to the treasurer of state for deposit in the general fund. However, if the property is material which is in violation of chapter

728 or material which would be in violation of chapter 728 if sold to a minor, the materials shall be destroyed.

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TERRY E. BRANSTAD  
President of the Senate

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DELWYN STROMER  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2278, Sixty-ninth General Assembly.

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K. MARIE THAYER  
Secretary of the Senate

Approved 4/23, 1982

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ROBERT D. RAY  
Governor