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MAR 22 1989

HOUSE FILE 740

Place On Calendar

BY COMMITTEE ON JUDICIARY AND  
LAW ENFORCEMENT

(SUCCESSOR TO HSB 241)

Passed House, Date 3-31-89 (P.1172) Passed Senate, Date 4-18-89 <sup>(P.1524)</sup>  
Vote: Ayes 91 Nays 0 Vote: Ayes 28 Nays 9  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to obscenity law, providing penalties, and making  
2 penalties applicable.

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

HOUSE FILE 740

H-3715

- 1 Amend House File 740 as follows:
- 2 1. Page 1, by striking lines 6 through 13 and in-
- 3 serting the following:
- 4 "c. Fondling or touching the pubes or genitals of
- 5 a ~~child~~; minor for the purpose of arousing or
- 6 satisfying the sexual desires of a person who may view
- 7 a depiction of the act.
- 8 d. Fondling or touching the pubes or genitals of a
- 9 person by a ~~child~~; minor for the purpose of arousing
- 10 or satisfying the sexual desires of a person who may
- 11 view a depiction of the act.
- 12 e. ~~Sadomasochistic abuse of a child-for-the~~
- 13 ~~purpose-of-arousing-or-satisfying-the-sexual-desires~~
- 14 ~~of-a-person-who-may-view-a-depiction-of-the-abuse;~~
- 15 ~~----f.--Sadomasochistic-abuse-of-a-person-by-a-child~~
- 16 ~~minor for".~~
- 17 2. Page 1, line 16, by striking the letter "g."
- 18 and inserting the following: "g f."
- 19 3. Page 3, line 10, by inserting after the word
- 20 "bestiality," the following: "lewd".

By ROSENBERG of Story

H-3715 FILED MARCH 30, 1989

withdrawn 3-31-89 (P.1172)

3705-

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

37153 8. "Prohibited sexual act" means any of the following:

- 4 a. A sex act as defined in section 702.17.
- 5 b. An act of bestiality involving a child; minor.
- 6 c. Fondling or touching the pubes or genitals of a child;  
7 minor.
- 8 d. Fondling or touching the pubes or genitals of a person  
9 by a child; minor.
- 10 e. Sadomasochistic abuse of a child minor for the purpose  
11 of arousing or satisfying the sexual desires of a person who  
12 may view a depiction of the abuse.
- 13 f. Sadomasochistic abuse of a person by a child minor for  
14 the purpose of arousing or satisfying the sexual desires of a  
15 person who may view a depiction of the abuse; ~~or.~~
- 16 g. Nudity of a child minor for the purpose of arousing or  
17 satisfying the sexual desires of a person who may view a  
18 depiction of the nude child minor.

3705

3705-19 Sec. 2. Section 728.4, Code 1989, is amended to read as  
20 follows:

21 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

22 A person who knowingly rents, sells, or offers for rental  
23 or sale material depicting a sex act involving sadomasochistic  
24 abuse, excretory functions, or bestiality, which the average  
25 adult taking the material as a whole in applying contemporary  
26 community standards would find appeals to the prurient  
27 interest and is patently offensive; and which material, taken  
28 as a whole, lacks serious literary, scientific, political, or  
29 artistic value, upon conviction is guilty of an aggravated  
30 misdemeanor. However, second and subsequent offenses of this  
31 section by a person who has been previously convicted of  
32 violating this section are class "D" felonies. Charges under  
33 this section may only be brought by a county attorney or by  
34 the attorney general.

3705-

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

1 follows:

2 728.12 SEXUAL EXPLOITATION OF CHILDREN A MINOR.

3 1. A person commits a class "C" felony when the person  
4 employs, uses, persuades, induces, entices, coerces, knowingly  
5 permits, or otherwise causes a child minor to engage in a  
6 prohibited sexual act or in the simulation of a prohibited  
7 sexual act if the person knows, has reason to know, or intends  
8 that the act or simulated act may be photographed, filmed, or  
9 otherwise preserved in a negative, slide, book, magazine, or  
10 other print or visual medium. Notwithstanding section 902.9,  
11 the court may assess a fine of not more than fifty thousand  
12 dollars for each offense under this subsection in addition to  
13 imposing any other authorized sentence.

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

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

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

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

34 1. A commercial film and photographic print processor who  
35 has knowledge of or observes, within the scope of the

1 processor's professional capacity or employment, a film,  
2 photograph, video tape, negative, or slide which depicts a  
3 minor whom the processor knows or reasonably should know to be  
4 under the age of eighteen, engaged in a prohibited sexual act  
5 or in the simulation of a prohibited sexual act, shall report  
6 the depiction to a peace officer immediately or as soon as  
7 possible as required in this section. The processor shall not  
8 report to a peace officer depictions involving mere nudity of  
9 the minor, but shall report depictions involving a sex act,  
371510 bestiality, fondling or touching the pubes or genitals, or  
11 sadomasochistic abuse as enumerated under section 728.1,  
12 subsection 8, paragraphs "a" through "f".

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

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

17 1. A person shall not knowingly disseminate obscene  
18 material by the use of telephones or telephone facilities to a  
19 minor. A person who violates this subsection upon conviction  
20 is guilty of an aggravated misdemeanor. However, second and  
21 subsequent offenses of this subsection by a person who has  
22 been previously convicted of violating this subsection are  
23 class "D" felonies.

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

30 a. Required the person receiving the obscene material to  
31 use an authorized access or identification code, as provided  
32 by the information provider, before transmission of the  
33 obscene material begins, where the defendant has previously  
34 issued the code by mailing it to the applicant after taking  
35 reasonable measures to ascertain that the applicant was

1 eighteen years of age or older and has established a procedure  
2 to immediately cancel the code of any person after receiving  
3 notice, in writing or by telephone, that the code has been  
4 lost, stolen, or used by persons under the age of eighteen  
5 years or that the code is no longer desired.

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

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

3705-

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EXPLANATION

14 Section 1 redefines prohibited sexual acts to include acts  
15 with minors. Current language limits its definition to acts  
16 with children.

17 Section 2 prohibits the rental or offering for rental of  
18 material depicting a sex act involving sadomasochistic abuse,  
19 excretory functions, or bestiality, which the average adult  
20 taking the material as a whole in applying contemporary  
21 community standards would find appeals to the prurient  
22 interest and is patently offensive, and which material, taken  
23 as a whole, lacks serious literary, scientific, political, or  
24 artistic value. The Iowa supreme court recently ruled in  
25 State v. Applause Video that the rental or offering to rent  
26 such materials is not proscribed under current Iowa law. A  
27 person, upon conviction, is guilty of an aggravated  
28 misdemeanor. However, section 2 also increases the classifi-  
29 cation for second and subsequent offenses to class "D"  
30 felonies.

31 Section 3 makes it a crime to knowingly purchase or possess  
32 any visual medium depicting or simulating a minor engaging in  
33 a prohibited sexual act. Section 3 also makes it a crime to  
34 knowingly promote any material visually depicting or  
35 simulating a minor engaging in a prohibited sexual act; or to

1 employ, use, persuade, induce, entice, coerce, knowingly  
2 permit, or otherwise cause a minor to engage in a prohibited  
3 sexual act or in the simulation of a prohibited sexual act if  
4 the person knows, or has reason to know, or intends that the  
5 act or simulated act may be photographed, filmed, or otherwise  
6 preserved in a visual medium. A minor is defined in section  
7 728.1 as any person under the age of eighteen regardless of  
8 marital status.

9 Section 4 requires all commercial film and photographic  
10 print processors who have knowledge of or observe, within the  
11 scope of the processor's professional capacity or employment,  
12 any film, photograph, video tape, negative, or slide which  
13 depicts a minor whom the processors know or reasonably should  
14 know to be under the age of eighteen, engaged in a prohibited  
15 sexual act or in the simulation of a prohibited sexual act, to  
16 report the depiction to a peace officer immediately or as soon  
17 as possible. The depictions to be reported are not mere  
18 nudity of the minor, but depictions involving a sex act,  
19 bestiality, fondling or touching the pubes or genitals, or  
20 sadomasochistic abuse. A person who violates this provision  
21 is guilty of a simple misdemeanor.

22 Section 5 makes it a crime for a person to knowingly  
23 disseminate obscene material to a minor by the use of  
24 telephones or telephone facilities. A person, upon  
25 conviction, is guilty of an aggravated misdemeanor. However,  
26 second and subsequent offenses are class "D" felonies. The  
27 section provides that it is a defense in any prosecution of  
28 the section that the defendant has taken certain measures to  
29 restrict access to the obscene material. One measure is to  
30 require the person receiving the obscene material to use an  
31 authorized access or identification code before transmission  
32 of the obscene material begins, taking reasonable measures to  
33 ascertain that the applicant for the code was eighteen years  
34 of age or older, with the defendant also establishing a  
35 procedure to immediately cancel the code of any person after

1 receiving notice that the code has been lost, stolen, used by  
2 persons under age eighteen, or no longer desired. The other  
3 acceptable measure is to require payment by credit card before  
4 transmission of the obscene material. Any list of applicants  
5 or recipients compiled or maintained by an information-access  
6 service provider for purposes of compliance with the  
7 affirmative defense measures is confidential and shall not be  
8 sold or otherwise disseminated except upon order of the court.

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HOUSE FILE 740  
FISCAL NOTE

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A fiscal note for **HOUSE FILE 740** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 740 relates to obscenity. The proposed legislation redefines and clarifies certain criminal code violations, plus assigns sentencing guidelines to the new definitions. House File 740 also increases penalties for subsequent offenses.

The criminal justice data currently available includes statistics by type of crime. However, the data does not include information for activities which are currently not considered criminal. Therefore, it is not possible to project the fiscal impact of House File 740.

**Sources:**

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

(LSB 1353hv, BAL)

LED MARCH 28, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR



## HOUSE FILE 740

H-3705

1 Amend House File 740 as follows:

3745-2 1. Page 1, by inserting before line 1 the  
3 following:

4 "Sec. \_\_\_\_ . Section 728.1, subsection 1, Code 1989,  
5 is amended to read as follows:

6 1. ~~"Obscene material" is any material depicting or~~  
7 ~~describing the genitals, sex acts, masturbation,~~  
8 ~~excretory functions or sadomasochistic abuse which the~~  
9 ~~average person, taking the material as a whole and~~  
10 ~~applying contemporary community standards with respect~~  
11 ~~to what is suitable material for minors, would find~~  
12 ~~appeals to the prurient interest and is patently~~  
13 ~~offensive, and the material, taken as a whole, lacks~~  
14 ~~serious literary, scientific, political or artistic~~  
15 ~~value. "Harmful material" means any material that~~  
16 meets all of the following conditions:

17 a. Taken as a whole, the average person, applying  
18 contemporary community standards, would find the  
19 material to have a tendency to excite lustful or  
20 erotic thoughts in minors or appeal to the prurient  
21 interest of minors in sex.

22 b. (1) Depicts a sex act, excretory functions,  
23 sadomasochistic abuse, or lascivious exhibition of the  
24 genitals, buttocks, or female breast.

25 (2) The depiction is in a way that is patently  
26 offensive to prevailing standards in the adult  
27 community with respect to what is suitable for minors.

28 c. A reasonable person would find, taken as a  
29 whole, the material lacks serious literary, artistic,  
30 political, or scientific value."

31 2. Page 1, by inserting after line 18 the  
32 following:

33 "Sec. \_\_\_\_ . Section 728.1, Code 1989, is amended by  
34 adding the following new subsection:

35 NEW SUBSECTION. 10. "Obscene material" means  
36 material that meets all of the following conditions:

37 a. The average person, applying contemporary adult  
38 community standards, would find that, taken as a  
39 whole, the material appeals to the prurient interest  
40 in sex.

41 b. Depicts any of the following:

42 (1) Patently offensive representations of sex  
43 acts, actual or simulated.

44 (2) Patently offensive representations of  
45 masturbation, excretory functions, sadomasochistic  
46 abuse, or lascivious exhibition of the genitals,  
47 actual or simulated.

48 c. A reasonable person would find, taken as a  
49 whole, the material lacks serious literary, artistic,  
50 political, or scientific value.

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Page 2

1 Sec. \_\_\_\_ . NEW SECTION. 728.1A DETERMINATION OF  
2 MATERIAL DEPICTING LASCIVIOUS EXHIBITION OF THE  
3 GENITALS, BUTTOCKS, OR FEMALE BREAST.

4 In determining whether a depiction constitutes a  
5 "lascivious exhibition of the genitals, buttocks, or  
6 female breast", the trier of fact shall consider all  
7 of the following factors:

8 1. Whether the focal point of the depiction is on  
9 the genitals, buttocks, or female breast.

10 2. Whether the depiction of the setting is  
11 sexually suggestive, such as when the setting is in a  
12 place generally associated with sexual activity.

13 3. Whether the person is depicted in a pose  
14 generally associated with sexual activity.

15 4. Whether the depiction suggests sexual coyness  
16 or a willingness to engage in sexual activity.

17 5. Whether the depiction is intended or designed  
18 to elicit a sexual response.

19 Not all of the factors need be involved for  
20 material to depict "lascivious exhibition of the  
21 genitals, buttocks, or female breast". The  
22 determination shall be made based on the overall  
23 content of the depiction.

24 Sec. \_\_\_\_ . Section 728.2, Code 1989, is amended to  
25 read as follows:

26 728.2 DISSEMINATION AND EXHIBITION OF OBSCENE  
27 HARMFUL MATERIAL TO MINORS A MINOR.

28 Any A person, other than the parent or guardian of  
29 the minor, who knowingly disseminates or exhibits  
30 obscene harmful material to a minor, including the  
31 exhibition of obscene harmful material so that it can  
32 be observed by a minor on or off the premises where it  
33 is displayed, is guilty, ~~of-a-public-offense-and-shall~~  
34 upon conviction, ~~be-guilty~~ of a serious misdemeanor.

35 Sec. \_\_\_\_ . Section 728.3, Code 1989, is amended to  
36 read as follows:

37 728.3 ADMITTING MINORS A MINOR OR A CHILD TO  
38 PREMISES WHERE OBSCENE HARMFUL MATERIAL IS EXHIBITED.

39 1. A person who knowingly sells, gives, delivers,  
40 or provides a minor who is not a child with a pass or  
41 admits the minor to premises where obscene harmful  
42 material is exhibited is guilty, ~~of-a-public-offense~~  
43 and upon conviction, ~~is-guilty~~ of a serious  
44 misdemeanor.

45 2. A person who knowingly sells, gives, delivers,  
46 or provides a child with a pass or admits a child to a  
47 premise where obscene harmful material is exhibited is  
48 guilty, ~~of-a-public-offense-and~~ upon conviction, ~~is~~  
49 guilty of an aggravated misdemeanor."

50 3. Page 1, by striking lines 19 through 34 and

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Page 3

1 inserting the following:

2 "Sec. \_\_\_\_ . Section 728.4, Code 1989, is amended to  
3 read as follows:

4 728.4 RENTAL OR SALE OF HARD-CORE-PORNOGRAPHY  
5 OBSCENE MATERIALS.

6 1. A person who knowingly rents, sells, or offers  
7 for rental or sale obscene material depicting a sex  
8 act involving sadomasochistic abuse, excretory  
9 functions, or bestiality, which the average adult  
10 taking the material as a whole in applying  
11 contemporary community standards would find appeals to  
12 the prurient interest and is patently offensive, and  
13 which material, taken as a whole, lacks serious  
14 literary, scientific, political, or artistic value, is  
15 guilty, upon conviction, is guilty of an aggravated  
16 misdemeanor. However, second and subsequent  
17 violations of this subsection by a person who has  
18 previously been convicted of violating this subsection  
19 are class "D" felonies.

20 2. A person who knowingly imports or causes to be  
21 brought or sent into this state, for purposes of sale  
22 or rental, any obscene material is guilty, upon  
23 conviction, of a class "D" felony.

24 3. Charges under this section may only be brought  
25 by a county attorney or by the attorney general."

26 4. Page 1, by inserting before line 35, the  
27 following:

28 "Sec. \_\_\_\_ . Section 728.6, Code 1989, is amended to  
29 read as follows:

30 728.6 CIVIL SUIT TO DETERMINE OBSCENITY OR THE  
31 SALE OR RENTAL OF MATERIAL HARMFUL TO A MINOR.

32 Whenever if the county attorney of any a county has  
33 reasonable cause to believe that any a person is  
34 engaged or plans to engage in the dissemination or  
35 exhibition of harmful material to a minor or obscene  
36 material within the county attorney's county, to  
37 minors the county attorney may institute a civil  
38 proceeding in the district court of the county to  
39 enjoin the dissemination or exhibition of obscene  
40 harmful material to minors a minor or the sale or  
41 rental of obscene material. Such The application for  
42 injunction is optional and not mandatory and shall not  
43 be construed as a prerequisite to criminal prosecution  
44 for a violation of this chapter.

45 Sec. \_\_\_\_ . Section 728.10, Code 1989, is amended to  
46 read as follows:

47 728.10 AFFIRMATIVE DEFENSE.

48 In any a prosecution for disseminating or  
49 exhibiting obscene harmful material to minors a minor,  
50 it is an affirmative defense that the defendant had

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1 reasonable cause to believe that the minor involved  
2 was eighteen years old or more and the minor exhibited  
3 to the defendant a draft card, driver's license, birth  
4 certificate, or other official or apparently official  
5 document purporting to establish that ~~such~~ the minor  
6 was eighteen years old or more or was accompanied by a  
7 parent or spouse eighteen years of age or more.

8 Sec. \_\_\_\_ . Section 728.11, Code 1989, is amended to  
9 read as follows:

10 728.11 UNIFORM APPLICATION.

11 In order to provide for the uniform application of  
12 the provisions of this chapter relating to obscene  
13 ~~material-applicable-to-minors or harmful material~~  
14 within this state, ~~it-is-intended-that~~ the sole and  
15 only regulation of obscene or harmful material shall  
16 be under ~~the-provisions-of~~ this chapter, and ~~no a~~  
17 municipality, county, or other governmental unit  
18 within this state shall ~~not~~ make ~~any a~~ law, ordinance,  
19 or regulation relating to the availability of obscene  
20 ~~materials or harmful material~~. All such laws,  
21 ordinances, or regulations ~~shall-be-or-become~~ are  
22 void, unenforceable, and of no effect on January 1,  
23 1978. ~~Nothing-in-this~~ This section ~~shall~~ does not  
24 restrict the zoning authority of cities and counties."

375325 5. Page 4, by inserting before line 13, the  
26 following:

27 "Sec. \_\_\_\_ . NEW SECTION. 728.16 MATERIAL HARMFUL  
28 TO INMATES.

29 1. As used in this section, "material harmful to  
30 inmates" means any material that meets all of the  
31 following:

32 a. Taken as a whole, the average person, applying  
33 contemporary community standards, would find the  
34 material to have a tendency to excite lustful or  
35 erotic thoughts in inmates or appeal to the prurient  
36 interest in sex of inmates.

37 b. (1) Depicts a sex act, excretory functions,  
38 sadomasochistic abuse, or exhibition of the genitals,  
39 buttocks, or female breast.

40 (2) The depiction is in a way that is patently  
41 offensive to prevailing standards in the community  
42 with respect to what is suitable for inmates.

43 c. Taken as a whole, the material lacks serious  
44 literary, artistic, political, or scientific value.

45 2. It is the belief of the general assembly that  
46 the availability or possession of material harmful to  
47 inmates represents a potential danger to the community  
48 and to personnel of the Iowa department of  
49 corrections. Material harmful to an inmate shall not  
50 be available or disseminated to an inmate. The Iowa

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Page 5

1 department of corrections shall not provide a room or  
2 facility for the viewing of material which could be  
3 considered harmful to inmates."

By MCKEAN of Jones  
CLARK of Cerro Gordo

H-3705 FILED MARCH 29, 1989

*adopted 3-31-89 (p1172)*

## HOUSE FILE 740

H-3745

1 Amend amendment, H-3705, to House File 740 as  
2 follows:

3 1. By striking page 1, line 2 through page 5,  
4 line 3, and inserting the following:

5 "\_\_\_\_. Page 1, line 3, by striking the word  
6 "Prohibited" and inserting the following: "Prohibited  
7 Unless otherwise provided, "prohibited".

8 \_\_\_\_\_. Page 1, by striking lines 21 through 34 and  
9 inserting the following:

10 "728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

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

32 \_\_\_\_\_. Page 3, line 6, by striking the words "a  
33 peace officer" and inserting the following: "the  
34 county attorney".

35 \_\_\_\_\_. Page 3, line 8, by striking the words "a  
36 peace officer" and inserting the following: "the  
37 county attorney".

38 \_\_\_\_\_. Page 3, line 10, by inserting after the word  
39 "bestiality," the following: "lewd".

40 \_\_\_\_\_. Page 3, line 12, by inserting after the  
41 letter "'f'." the following: "This section shall not  
42 be construed to require a processor to review all  
43 films, photographs, video tapes, negatives, or slides  
44 delivered to the processor within the processor's  
45 professional capacity or employment.

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

- 48 a. A sex act as defined in section 702.17.
- 49 b. An act of bestiality involving a minor.
- 50 c. Fondling or touching the pubes or genitals of a

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1 minor for the purpose of arousing or satisfying the  
2 sexual desires of a person who may view a depiction of  
3 the act.

4 d. Fondling or touching the pubes or genitals of a  
5 person by a minor for the purpose of arousing or  
6 satisfying the sexual desires of a person who may view  
7 a depiction of the act.

8 e. Sadomasochistic abuse of a minor for the  
9 purpose of arousing or satisfying the sexual desires  
10 of a person who may view a depiction of the abuse.

11 f. Sadomasochistic abuse of a person by a minor  
12 for the purpose of arousing or satisfying the sexual  
13 desires of a person who may view a depiction of the  
14 abuse."

15 \_\_\_\_\_. Page 4, by inserting after line 12 the  
16 following:

17 "Sec. \_\_\_\_\_. If any provision of this Act or the  
18 application thereof to any person is invalid, the  
19 invalidity shall not affect the provisions or  
20 application of this Act which can be given effect  
21 without the invalid provisions or application, and to  
22 this end the provisions of this Act are severable."  
23 \_\_\_\_\_. By renumbering as necessary."

By JAY of Appanoose  
ROSENBERG of Story

H-3745 FILED MARCH 31, 1989  
ADOPTED 3-31-89 (p. 1170)

HOUSE FILE 740

H-3753

- 1 Amend amendment H-3705, to House file 740, as
- 2 follows:
- 3 1. By striking page 4, line 25 through page 5,
- 4 line 3.

By CARPENTER of Polk

H-3753 FILED MARCH 31, 1989

ADOPTED, THEN PLACED OUT OF ORDER 331-89 (p1169)



*in Judiciary*

HOUSE FILE 740  
BY COMMITTEE ON JUDICIARY AND  
LAW ENFORCEMENT

(SUCCESSOR TO HSB 241)

(As Amended and Passed by the House March 31, 1989)

*Re* Passed House, Date 5-5-89 (p. 2527) Passed Senate, Date 4-18-89 (p. 1324)  
Vote: Ayes 99 Nays 0 Vote: Ayes 38 Nays 9  
Approved May 31, 1989

**A BILL FOR**

*3703* 1 An Act relating to obscenity law, providing penalties, and making  
2 penalties applicable.

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

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House Amendments \_\_\_\_\_

Conference Committee Appointed 5/5/89  
*Representatives Jay (chair), Hansen, Harbor, Poney, Sargent (p. 2576)*  
*Senators Doyle (chair), Frainy, & Mann (p. 2005)*

Passed per Conference Committee Report  
*House 5/6/89 (p. 2649) 94-0*      *Senate 5/6/89 (p. 2061) 40-9*

3763 amended S.F.  
all  
3585 amended  
3633-

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

3 8. "Prohibited Unless otherwise provided, "prohibited  
4 sexual act" means any of the following:

- 5 a. A sex act as defined in section 702.17.
- 6 b. An act of bestiality involving a child; minor.
- 7 c. Fondling or touching the pubes or genitals of a child;  
8 minor.
- 9 d. Fondling or touching the pubes or genitals of a person  
10 by a child; minor.
- 11 e. Sadomasochistic abuse of a child minor for the purpose  
12 of arousing or satisfying the sexual desires of a person who  
13 may view a depiction of the abuse.
- 14 f. Sadomasochistic abuse of a person by a child minor for  
15 the purpose of arousing or satisfying the sexual desires of a  
16 person who may view a depiction of the abuse; ~~or.~~
- 17 g. Nudity of a child minor for the purpose of arousing or  
18 satisfying the sexual desires of a person who may view a  
19 depiction of the nude child minor.

3633  
36763633-  
3658, 3742

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

22 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

23 A person who knowingly rents, sells, or offers for rental  
24 or sale material depicting a-sex-act-involving-sadomasochistic  
25 abuse; excretory-functions; or describing patently offensive  
26 representations or descriptions of oral, anal, or vaginal  
27 intercourse, actual or simulated, involving humans, or  
28 depicting patently offensive representations or descriptions  
29 of masturbation, excretory functions, or bestiality, or lewd  
30 exhibition of the genitals, which the average adult taking the  
31 material as a whole in applying statewide contemporary  
32 community standards would find appeals to the prurient  
33 interest and-is-patently-offensive; and which material, taken  
34 as a whole, lacks serious literary, scientific, political, or  
35 artistic value, upon conviction is guilty of an aggravated

1 misdemeanor. However, second and subsequent violations of  
2 this section by a person who has been previously convicted of  
3 violating this section are class "D" felonies. Charges under  
4 this section may only be brought by a county attorney or by  
5 the attorney general.

3633

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

8 728.12 SEXUAL EXPLOITATION OF CHILDREN A MINOR.

9 1. A person commits a class "C" felony when the person  
10 employs, uses, persuades, induces, entices, coerces, knowingly  
11 permits, or otherwise causes a child minor to engage in a  
12 prohibited sexual act or in the simulation of a prohibited  
13 sexual act if the person knows, has reason to know, or intends  
14 that the act or simulated act may be photographed, filmed, or  
15 otherwise preserved in a negative, slide, book, magazine, or  
16 other print or visual medium. Notwithstanding section 902.9,  
17 the court may assess a fine of not more than fifty thousand  
18 dollars for each offense under this subsection in addition to  
19 imposing any other authorized sentence.

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

3657-

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

3657

33 However, this section does not apply to law enforcement  
34 officers, court personnel, licensed physicians, licensed  
35 psychologists, or attorneys in the performance of their

1 official duties.

3710-2     Sec. 4. NEW SECTION. 728.14 COMMERCIAL FILM AND  
3 PHOTOGRAPHIC PRINT PROCESSOR REPORTS OF DEPICTIONS OF MINORS  
4 ENGAGED IN PROHIBITED SEXUAL ACTS.

3590-5     1. A commercial film and photographic print processor who  
6 has knowledge of or observes, within the scope of the  
7 processor's professional capacity or employment, a film,  
8 photograph, video tape, negative, or slide which depicts a  
9 minor whom the processor knows or reasonably should know to be  
10 under the age of eighteen, engaged in a prohibited sexual act  
11 or in the simulation of a prohibited sexual act, shall report  
12 the depiction to the county attorney immediately or as soon as  
13 possible as required in this section. The processor shall not  
14 report to the county attorney depictions involving mere nudity  
15 of the minor, but shall report depictions involving a sex act,  
16 bestiality, lewd fondling or touching the pubes or genitals,  
17 or sadomasochistic abuse as enumerated under section 728.1,  
18 subsection 8, paragraphs "a" through "f". This section shall  
19 not be construed to require a processor to review all films,  
20 photographs, video tapes, negatives, or slides delivered to  
21 the processor within the processor's professional capacity or  
22 employment.

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

25     a. A sex act as defined in section 702.17.

26     b. An act of bestiality involving a minor.

27     c. Fondling or touching the pubes or genitals of a minor  
28 for the purpose of arousing or satisfying the sexual desires  
29 of a person who may view a depiction of the act.

30     d. Fondling or touching the pubes or genitals of a person  
31 by a minor for the purpose of arousing or satisfying the  
32 sexual desires of a person who may view a depiction of the  
33 act.

34     e. Sadomasochistic abuse of a minor for the purpose of  
35 arousing or satisfying the sexual desires of a person who may

1 view a depiction of the abuse.

2 f. Sadomasochistic abuse of a person by a minor for the  
3 purpose of arousing or satisfying the sexual desires of a  
4 person who may view a depiction of the abuse.

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

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

9 1. A person shall not knowingly disseminate obscene  
10 material by the use of telephones or telephone facilities to a  
11 minor. A person who violates this subsection upon conviction  
12 is guilty of an aggravated misdemeanor. However, second and  
13 subsequent offenses of this subsection by a person who has  
14 been previously convicted of violating this subsection are  
15 class "D" felonies.

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

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

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

35 3. Any list of applicants or recipients compiled or

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

3734 5 Sec. 6. If any provision of this Act or the application  
6 thereof to any person is invalid, the invalidity shall not  
7 affect the provisions or application of this Act which can be  
8 given effect without the invalid provisions or application,  
9 and to this end the provisions of this Act are severable.

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S-3585

1 Amend House File 740, as amended, passed, and re-  
2 printed by the House, as follows:

3677-3 1. By striking everything after the enacting  
3765-4 clause and inserting the following:

3677-5 "Section 1. Section 728.4, Code 1989, is amended  
6 to read as follows:

7 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

8 A person who knowingly rents, sells, or offers for  
9 rental or sale material depicting a sex act involving  
10 sadomasochistic abuse, excretory functions, or  
11 bestiality, which the average adult taking the

3593-12 material as a whole in applying contemporary community  
13 standards would find appeals to the prurient interest  
14 and is patently offensive; and which material, taken  
15 as a whole, lacks serious literary, scientific,  
16 political, or artistic value, upon conviction is  
17 guilty of an aggravated misdemeanor. Charges under  
18 this section may only be brought by a county attorney  
3677-19 or by the attorney general.

3765, 3677-20 Sec. 2. This Act, being deemed of immediate  
21 importance, takes effect upon its enactment."

22 2. Title page, line 1, by striking the words "  
23 providing penalties,".

3765-24 3. Title page, line 2, by inserting after the  
25 word "applicable" the following: "and providing an  
26 effective date".

By TOM MANN, Jr.

JULIA GENTLEMAN

WALLY E. HORN

LINN FUHRMAN

S-3585 FILED APRIL 6, 1989

*adopted 4-17-89 (p. 1494) motion to re consider 4-17-89 (p. 1504)  
lost 4-18-89 (p. 1523)*

HOUSE FILE 740

S-3590

1 Amend House File 740, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 3, by striking lines 15 through 18 and  
4 inserting the following: "of the minor, but shall  
5 report depictions involving a prohibited sexual act.  
6 This section shall".

By DONALD V. DOYLE

S-3590 FILED APRIL 7, 1989

*out of order 4-18-89 (p. 1524)*

HOUSE FILE 740

S-3593

1 Amend the amendment, S-3585, to House File 740 as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 1, line 12, by inserting after the word  
5 "applying" the following: "statewide".

By TOM MANN, Jr.

S-3593 FILED APRIL 7, 1989

*4-17-89 (p. 1493)*

HOUSE FILE 740

S-3633

1 Amend House File 740, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Sec. \_\_\_\_ . Section 728.1, subsection 1, Code 1989,  
6 is amended to read as follows:

7 1. ~~"Obscene material" is any material depicting or~~  
8 ~~describing the genitals, sex acts, masturbation,~~  
9 ~~excretory functions or sadomasochistic abuse which the~~  
10 ~~average person, taking the material as a whole and~~  
11 ~~applying contemporary community standards with respect~~  
12 ~~to what is suitable material for minors, would find~~  
13 ~~appeals to the prurient interest and is patently~~  
14 ~~offensive, and the material, taken as a whole, lacks~~  
15 ~~serious literary, scientific, political or artistic~~  
16 ~~value. "Harmful material" means any material that~~  
17 meets all of the following conditions:

18 a. Taken as a whole, the average person, applying  
19 contemporary community standards, would find the  
20 material to have a tendency to excite lustful or  
21 erotic thoughts in minors or appeal to the prurient  
22 interest of minors in sex.

23 b. (1) Depicts a sex act, excretory functions,  
24 sadomasochistic abuse, or lascivious exhibition of the  
25 genitals, buttocks, or female breast.

26 (2) The depiction is in a way that is patently  
27 offensive to prevailing standards in the adult  
28 community with respect to what is suitable for minors.

29 c. A reasonable person would find, taken as a  
30 whole, the material lacks serious literary, artistic,  
31 political, or scientific value."

32 2. Page 1, by inserting after line 19 the  
33 following:

34 "Sec. \_\_\_\_ . Section 728.1, Code 1989, is amended by  
35 adding the following new subsection:

36 NEW SUBSECTION. 10. "Obscene material" means  
37 material that meets all of the following conditions:

38 a. The average person, applying contemporary adult  
39 community standards, would find that, taken as a  
40 whole, the material appeals to the prurient interest  
41 in sex.

42 b. Depicts any of the following:

43 (1) Patently offensive representations of sex  
44 acts, actual or simulated.

45 (2) Patently offensive representations of  
46 masturbation, excretory functions, sadomasochistic  
47 abuse, or lascivious exhibition of the genitals,  
48 actual or simulated.

49 c. A reasonable person would find, taken as a  
50 whole, the material lacks serious literary, artistic,



S-3633

Page 2

1 political, or scientific value.

2 Sec. \_\_\_\_ . NEW SECTION. 728.1A DETERMINATION OF  
3 MATERIAL DEPICTING LASCIVIOUS EXHIBITION OF THE  
4 GENITALS, BUTTOCKS, OR FEMALE BREAST.

5 In determining whether a depiction constitutes a  
6 "lascivious exhibition of the genitals, buttocks, or  
7 female breast", the trier of fact shall consider all  
8 of the following factors:

9 1. Whether the focal point of the depiction is on  
10 the genitals, buttocks, or female breast.

11 2. Whether the depiction of the setting is  
12 sexually suggestive, such as when the setting is in a  
13 place generally associated with sexual activity.

14 3. Whether the person is depicted in a pose  
15 generally associated with sexual activity.

16 4. Whether the depiction suggests sexual coyness  
17 or a willingness to engage in sexual activity.

18 5. Whether the depiction is intended or designed  
19 to elicit a sexual response.

20 Not all of the factors need be involved for  
21 material to depict "lascivious exhibition of the  
22 genitals, buttocks, or female breast". The  
23 determination shall be made based on the overall  
24 content of the depiction.

25 Sec. \_\_\_\_ . Section 728.2, Code 1989, is amended to  
26 read as follows:

27 728.2 DISSEMINATION AND EXHIBITION OF OBSCENE  
28 HARMFUL MATERIAL TO MINORS A MINOR.

29 Any A person, other than the parent or guardian of  
30 the minor, who knowingly disseminates or exhibits  
31 obscene harmful material to a minor, including the  
32 exhibition of obscene harmful material so that it can  
33 be observed by a minor on or off the premises where it  
34 is displayed, is guilty, ~~of-a-public-offense-and-shall~~  
35 upon conviction, ~~be-guilty~~ of a serious misdemeanor.

36 Sec. \_\_\_\_ . Section 728.3, Code 1989, is amended to  
37 read as follows:

38 728.3 ADMITTING MINORS A MINOR OR A CHILD TO  
39 PREMISES WHERE OBSCENE HARMFUL MATERIAL IS EXHIBITED.

40 1. A person who knowingly sells, gives, delivers,  
41 or provides a minor who is not a child with a pass or  
42 admits the minor to premises where obscene harmful  
43 material is exhibited is guilty, ~~of-a-public-offense~~  
44 ~~and~~ upon conviction, ~~is-guilty~~ of a serious  
45 misdemeanor.

46 2. A person who knowingly sells, gives, delivers,  
47 or provides a child with a pass or admits a child to a  
48 premise where obscene harmful material is exhibited is  
49 guilty, ~~of-a-public-offense-and~~ upon conviction, ~~is~~  
50 ~~guilty~~ of an aggravated misdemeanor."

S-3633

Page 3

1 3. By striking page 1, line 20, through page 2,  
2 line 5, and inserting the following:

3 "Sec. \_\_\_\_ . Section 728.4, Code 1989, is amended to  
4 read as follows:

5 728.4 RENTAL OR SALE OF HARD-CORE-PORNOGRAPHY  
6 OBSCENE MATERIALS.

7 1. A person who knowingly rents, sells, or offers  
8 for rental or sale obscene material depicting a sex  
9 act involving sadomasochistic abuse, excretory  
10 functions, or bestiality, which the average adult  
11 taking the material as a whole in applying  
12 contemporary community standards would find appeals to  
13 the prurient interest and is patently offensive, and  
14 which material, taken as a whole, lacks serious  
15 literary, scientific, political, or artistic value, is  
16 guilty, upon conviction, is guilty of an aggravated  
17 misdemeanor. However, second and subsequent  
18 violations of this subsection by a person who has  
19 previously been convicted of violating this subsection  
20 are class "D" felonies.

21 2. A person who knowingly imports or causes to be  
22 brought or sent into this state, for purposes of sale  
23 or rental, any obscene material is guilty, upon  
24 conviction, of a class "D" felony.

25 3. Charges under this section may only be brought  
26 by a county attorney or by the attorney general."

27 4. Page 2, by inserting before line 6, the  
28 following:

29 "Sec. \_\_\_\_ . Section 728.6, Code 1989, is amended to  
30 read as follows:

31 728.6 CIVIL SUIT TO DETERMINE OBSCENITY OR THE  
32 SALE OR RENTAL OF MATERIAL HARMFUL TO A MINOR.

33 Whenever if the county attorney of any a county has  
34 reasonable cause to believe that any a person is  
35 engaged or plans to engage in the dissemination or  
36 exhibition of harmful material to a minor or obscene  
37 material within the county attorney's county, to  
38 minors the county attorney may institute a civil  
39 proceeding in the district court of the county to  
40 enjoin the dissemination or exhibition of obscene  
41 harmful material to minors a minor or the sale or  
42 rental of obscene material. Such The application for  
43 injunction is optional and not mandatory and shall not  
44 be construed as a prerequisite to criminal prosecution  
45 for a violation of this chapter.

46 Sec. \_\_\_\_ . Section 728.10, Code 1989, is amended to  
47 read as follows:

48 728.10 AFFIRMATIVE DEFENSE.

49 In any a prosecution for disseminating or  
50 exhibiting obscene harmful material to minors a minor,

S-3633

Page 4

1 it is an affirmative defense that the defendant had  
2 reasonable cause to believe that the minor involved  
3 was eighteen years old or more and the minor exhibited  
4 to the defendant a draft card, driver's license, birth  
5 certificate, or other official or apparently official  
6 document purporting to establish that such the minor  
7 was eighteen years old or more or was accompanied by a  
8 parent or spouse eighteen years of age or more.

9 Sec. \_\_\_\_ . Section 728.11, Code 1989, is amended to  
10 read as follows:

11 728.11 UNIFORM APPLICATION.

12 In order to provide for the uniform application of  
13 the provisions of this chapter relating to obscene  
14 ~~material-applicable-to-minors~~ or harmful material  
15 within this state, ~~it-is-intended-that~~ the sole and  
16 only regulation of obscene or harmful material shall  
17 be under ~~the-provisions-of~~ this chapter, and no a  
18 municipality, county, or other governmental unit  
19 within this state shall not make any a law, ordinance,  
20 or regulation relating to the availability of obscene  
21 materials or harmful material. All such laws,  
22 ordinances, or regulations ~~shall-be-or-become~~ are  
23 void, unenforceable, and of no effect on January 1,  
24 1978. ~~Nothing-in-this~~ This section ~~shall~~ does not  
25 restrict the zoning authority of cities and counties."

By RAY TAYLOR

S-3633 FILED APRIL 11, 1989

*out of order 4-18-89 (p/524)*

## HOUSE FILE 740

S-3676

1 Amend House File 740, as amended, passed, and  
 2 reprinted by the House, as follows:  
 3 1. By striking page 1, line 20, through page 2,  
 4 line 5, and inserting the following:  
 5 "Sec. \_\_\_\_ . Section 728.1, Code 1989, is amended by  
 6 adding the following new subsection:  
 7 NEW SUBSECTION. 10. "Violence" means a graphic  
 8 portrayal of human destruction, dismemberment,  
 9 maiming, wounding, assault, or death by firearms,  
 10 knives, swords, other such instruments, or explosives.  
 11 Sec. \_\_\_\_ . Section 728.4, Code 1989, is amended to  
 12 read as follows:  
 13 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.  
 14 A person who knowingly rents, sells, or offers for  
 15 rental or sale material depicting a sex act involving  
 16 sadomasochistic abuse, excretory functions, or  
 17 bestiality, which the average adult taking the  
 18 material as a whole in applying contemporary community  
 19 standards would find appeals to the prurient interest  
 20 and is patently offensive; and which material, taken  
 21 as a whole, lacks serious literary, scientific,  
 22 political, or artistic value, ~~upon-conviction-is~~  
 23 ~~guilty-of~~ commits an aggravated misdemeanor. A person  
 24 who knowingly rents, sells, or offers for rental or  
 25 sale material depicting violence, which the average  
 26 adult taking the material as a whole in applying  
 27 contemporary community standards would find appeals to  
 28 the violent nature of man and is patently offensive;  
 29 and which material, taken as a whole, lacks serious  
 30 literary, scientific, political, or artistic value  
 31 commits an aggravated misdemeanor.  
 32 PARAGRAPH DIVIDED. Charges under this section may  
 33 only be brought by a county attorney or by the  
 34 attorney general."

By LARRY MURPHY

S-3676 FILED APRIL 12, 1989

*out of order 4-18-89 (p.1524)*

HOUSE FILE 740

S-3677

1 Amend the amendment, S-3585, to House File 740, as  
 2 amended, passed, and reprinted by the House, as  
 3 follows:  
 4 1. Page 1, by striking lines 3 and 4 and in-  
 5 serting the following:  
 6 " \_\_\_\_ . By striking page 1, line 20, through page  
 7 2, line 5, and inserting the following:"  
 8 2. Page 1, line 5, by striking the word and  
 9 figure "Section 1." and inserting the following:  
 10 "Sec. \_\_\_\_ ."  
 11 3. Page 1, line 19, by striking the word  
 12 "general." and inserting the word "general."  
 13 4. Page 1, by striking lines 20 through 26.

By LARRY MURPHY

S-3677 FILED APRIL 12, 1989

*withdrawn 4-17-89 (p.1493)*

HOUSE FILE 740

S-3657

1 Amend House File 740, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 2, line 28, by striking the words "or  
4 possesses".  
5 2. Page 2, by inserting after line 32 the  
6 following:  
7 "4. A person who knowingly possesses a negative,  
8 slide, book, magazine, or other print or visual medium  
9 depicting a minor engaging in a prohibited sexual act  
10 or the simulation of a prohibited sexual act commits a  
11 simple misdemeanor."

By LINN FUHRMAN

S-3657 FILED APRIL 12, 1989

*out of*

HOUSE FILE 740

S-3658

1 Amend House File 740, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. By striking page 1, line 20, through page 2,  
4 line 5, and inserting the following:  
5 "Sec. \_\_\_\_ . Section 728.4, Code 1989, is amended by  
6 striking the section and inserting in lieu thereof the  
7 following:  
8 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.  
9 A person who knowingly rents, sells, or offers for  
10 rental or sale material depicting a sex act involving  
11 sadomasochistic abuse, excretory functions, or  
12 bestiality, commits an aggravated misdemeanor, if the  
13 material meets all of the following conditions:  
14 1. The average adult, applying contemporary  
15 statewide standards, would find that, taken as a  
16 whole, the material appeals to the prurient interest  
17 in sex and is patently offensive.  
18 2. The material, taken as a whole, lacks serious  
19 literary, scientific, political, or artistic value.  
20 Charges under this section may only be brought by a  
21 county attorney or by the attorney general."

By LINN FUHRMAN

S-3658 FILED APRIL 12, 1989

*out of order 4-18-89 (p. 1524)*

HOUSE FILE 740

-3672

1 Amend House File 740 as amended, passed and  
2 reprinted by the House, as follows:  
3 1. Page 4, line 15, by inserting after the word  
4 "felonies." the following: "As used in this  
5 subsection, a "person" excludes any information-access  
6 service provider that merely provides transmission  
7 capacity without control over the content of the  
8 transmission."

By DONALD V. DOYLE

S-3672 FILED APRIL 12, 1989

*out of order 4-18-89 (p. 1524)*

S-3722

1 Amend the amendment, S-3585, to House File 740, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 1, by striking lines 5 through 26 and  
5 inserting the following:

6 "Sec. \_\_\_\_ . Section 728.1, subsection 1, Code  
7 1989, is amended to read as follows:

8 1. ~~"Obscene material" is any material depicting or~~  
9 ~~describing the genitals, sex acts, masturbation,~~  
10 ~~excretory functions or sadomasochistic abuse which the~~  
11 ~~average person, taking the material as a whole and~~  
12 ~~applying contemporary community standards with respect~~  
13 ~~to what is suitable material for minors, would find~~  
14 ~~appeals to the prurient interest and is patently~~  
15 ~~offensive, and the material, taken as a whole, lacks~~  
16 ~~serious literary, scientific, political or artistic~~  
17 ~~value. "Harmful material" means any material that~~  
18 ~~meets all of the following conditions:~~

19 a. Taken as a whole, the average person, applying  
20 contemporary community standards, would find the  
21 material to have a tendency to excite lustful or  
22 erotic thoughts in minors or appeal to the prurient  
23 interest of minors in sex.

24 b. (1) Depicts a sex act, excretory functions,  
25 sadomasochistic abuse, or lascivious exhibition of the  
26 genitals, buttocks, or female breast.

27 (2) The depiction is in a way that is patently  
28 offensive to prevailing standards in the adult  
29 community with respect to what is suitable for minors.

30 c. A reasonable person would find, taken as a  
31 whole, the material lacks serious literary, artistic,  
32 political, or scientific value.

33 Sec. \_\_\_\_ . Section 728.1, Code 1989, is amended by  
34 adding the following new subsection:

35 NEW SUBSECTION. 10. "Obscene material" means  
36 material that meets all of the following conditions:

37 a. The average person, applying contemporary adult  
38 community standards, would find that, taken as a  
39 whole, the material appeals to the prurient interest  
40 in sex.

41 b. Depicts any of the following:

42 (1) Patently offensive representations of sex  
43 acts, actual or simulated.

44 (2) Patently offensive representations of  
45 masturbation, excretory functions, sadomasochistic  
46 abuse, or lascivious exhibition of the genitals,  
47 actual or simulated.

48 c. A reasonable person would find, taken as a  
49 whole, the material lacks serious literary, artistic,  
50 political, or scientific value.

S-3722

Page 2

1 Sec. \_\_\_\_ . NEW SECTION. 728.1A DETERMINATION OF  
2 MATERIAL DEPICTING LASCIVIOUS EXHIBITION OF THE  
3 GENITALS, BUTTOCKS, OR FEMALE BREAST.

4 In determining whether a depiction constitutes a  
5 "lascivious exhibition of the genitals, buttocks, or  
6 female breast", the trier of fact shall consider all  
7 of the following factors:

8 1. Whether the focal point of the depiction is on  
9 the genitals, buttocks, or female breast.

10 2. Whether the depiction of the setting is  
11 sexually suggestive, such as when the setting is in a  
12 place generally associated with sexual activity.

13 3. Whether the person is depicted in a pose  
14 generally associated with sexual activity.

15 4. Whether the depiction suggests sexual coyness  
16 or a willingness to engage in sexual activity.

17 5. Whether the depiction is intended or designed  
18 to elicit a sexual response.

19 Not all of the factors need be involved for  
20 material to depict "lascivious exhibition of the  
21 genitals, buttocks, or female breast". The  
22 determination shall be made based on the overall  
23 content of the depiction.

24 Sec. \_\_\_\_ . Section 728.2, Code 1989, is amended to  
25 read as follows:

26 728.2 DISSEMINATION AND EXHIBITION OF OBSCENE  
27 HARMFUL MATERIAL TO MINORS A MINOR.

28 Any A person, other than the parent or guardian of  
29 the minor, who knowingly disseminates or exhibits  
30 obscene harmful material to a minor, including the  
31 exhibition of obscene harmful material so that it can  
32 be observed by a minor on or off the premises where it  
33 is displayed, is guilty, ~~of a public offense and shall~~  
34 upon conviction, ~~be guilty~~ of a serious misdemeanor.

35 Sec. \_\_\_\_ . Section 728.3, Code 1989, is amended to  
36 read as follows:

37 728.3 ADMITTING MINORS A MINOR OR A CHILD TO  
38 PREMISES WHERE OBSCENE HARMFUL MATERIAL IS EXHIBITED.

39 1. A person who knowingly sells, gives, delivers,  
40 or provides a minor who is not a child with a pass or  
41 admits the minor to premises where obscene harmful  
42 material is exhibited is guilty, ~~of a public offense~~  
43 and upon conviction, ~~is guilty~~ of a serious  
44 misdemeanor.

45 2. A person who knowingly sells, gives, delivers,  
46 or provides a child with a pass or admits a child to a  
47 premise where obscene harmful material is exhibited is  
48 guilty, ~~of a public offense and~~ upon conviction, ~~is~~  
49 guilty of an aggravated misdemeanor.

50 Sec. \_\_\_\_ . Section 728.4, Code 1989, is amended to

S-3722

Page 3

1 read as follows:

2 728.4 RENTAL OR SALE OF HARD-CORE-PORNOGRAPHY  
3 OBSCENE MATERIALS.

4 1. A person who knowingly rents, sells, or offers  
5 for rental or sale obscene material depicting a sex  
6 act involving sadomasochistic abuse, excretory  
7 functions, or bestiality, which the average adult  
8 taking the material as a whole in applying  
9 contemporary community standards would find appeals to  
10 the prurient interest and is patently offensive, and  
11 which material, taken as a whole, lacks serious  
12 literary, scientific, political, or artistic value, is  
13 guilty, upon conviction, is guilty of an aggravated  
14 misdemeanor. However, second and subsequent  
15 violations of this subsection by a person who has  
16 previously been convicted of violating this subsection  
17 are class "D" felonies.

18 2. A person who knowingly imports or causes to be  
19 brought or sent into this state, for purposes of sale  
20 or rental, any obscene material is guilty, upon  
21 conviction, of a class "D" felony.

22 3. Charges under this section may only be brought  
23 by a county attorney or by the attorney general.

24 Sec. \_\_\_\_ . Section 728.6, Code 1989, is amended to  
25 read as follows:

26 728.6 CIVIL SUIT TO DETERMINE OBSCENITY OR THE  
27 SALE OR RENTAL OF MATERIAL HARMFUL TO A MINOR.

28 Whenever if the county attorney of any a county has  
29 reasonable cause to believe that any a person is  
30 engaged or plans to engage in the dissemination or  
31 exhibition of harmful material to a minor or obscene  
32 material within the county attorney's county, to  
33 minors the county attorney may institute a civil  
34 proceeding in the district court of the county to  
35 enjoin the dissemination or exhibition of obscene  
36 harmful material to minors a minor or the sale or  
37 rental of obscene material. Such The application for  
38 injunction is optional and not mandatory and shall not  
39 be construed as a prerequisite to criminal prosecution  
40 for a violation of this chapter.

41 Sec. \_\_\_\_ . Section 728.10, Code 1989, is amended to  
42 read as follows:

43 728.10 AFFIRMATIVE DEFENSE.

44 In any a prosecution for disseminating or  
45 exhibiting obscene harmful material to minors a minor,  
46 it is an affirmative defense that the defendant had  
47 reasonable cause to believe that the minor involved  
48 was eighteen years old or more and the minor exhibited  
49 to the defendant a draft card, driver's license, birth  
50 certificate, or other official or apparently official



1 document purporting to establish that such the minor  
 2 was eighteen years old or more or was accompanied by a  
 3 parent or spouse eighteen years of age or more.  
 4 Sec. \_\_\_\_ . Section 728.11, Code 1989, is amended to  
 5 read as follows:  
 6 728.11 UNIFORM APPLICATION.  
 7 In order to provide for the uniform application of  
 8 the provisions of this chapter relating to obscene  
 9 material-applicable-to-minors or harmful material  
 10 within this state, it-is-intended-that the sole and  
 11 only regulation of obscene or harmful material shall  
 12 be under the-provisions-of this chapter, and no a  
 13 municipality, county, or other governmental unit  
 14 within this state shall not make any a law, ordinance,  
 15 or regulation relating to the availability of obscene  
 16 materials or harmful material. All such laws,  
 17 ordinances, or regulations shall-be-or-become are  
 18 void, unenforceable, and of no effect on January 1,  
 19 1978. Nothing-in-this This section shall does not  
 20 restrict the zoning authority of cities and  
 21 counties.""

By RAY TAYLOR

S-3722 FILED APRIL 17, 1989  
 RULED OUT OF ORDER

4-17-89 (p.1493)

HOUSE FILE 740

S-3710

1 Amend House File 740, as amended, passed, and  
 2 reprinted by the House, as follows:  
 3 1. By striking page 3, line 2, through page 4,  
 4 line 6.

By TOM MANN, Jr.

S-3710 FILED APRIL 14, 1989

out of order 4-18-89 (p.1524)  
 HOUSE FILE 740

S-3711

1 Amend amendment, S-3672, to House File 740, as  
 2 amended, passed, and reprinted by the House, as  
 3 follows:  
 4 1. Page 1, line 5, by striking the word  
 5 "excludes" and inserting the following: "includes".  
 6 2. Page 1, by striking lines 6 through 8 and  
 7 inserting the following: "service provider that  
 8 provides transmission capacity.""

By RAY TAYLOR

S-3711 FILED APRIL 14, 1989

out of order 4-18-89 (p.1524)

S-3734

1 Amend House File 740, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 5, by inserting before line 5 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 728.16 MATERIAL HARMFUL  
6 TO INMATES.

7 1. As used in this section, "material harmful to  
8 inmates" means any material that meets all of the  
9 following:

10 a. Taken as a whole, the average person, applying  
11 contemporary community standards, would find the  
12 material to have a tendency to excite lustful or  
13 erotic thoughts in inmates or appeal to the prurient  
14 interest in sex of inmates.

15 b. (1) Depicts a sex act, excretory functions,  
16 sadomasochistic abuse, or exhibition of the genitals,  
17 buttocks, or female breast.

18 (2) The depiction is in a way that is patently  
19 offensive to prevailing standards in the community  
20 with respect to what is suitable for inmates.

21 c. Taken as a whole, the material lacks serious  
22 literary, artistic, political, or scientific value.

23 2. It is the belief of the general assembly that  
24 the availability or possession of material harmful to  
25 inmates represents a potential danger to the community  
26 and to personnel of the Iowa department of  
27 corrections. Material harmful to an inmate shall not  
28 be available or disseminated to an inmate. The Iowa  
29 department of corrections shall not provide a room or  
30 facility for the viewing of material which could be  
31 considered harmful to inmates."

By WILLIAM W. DIELEMAN

S-3734 FILED APRIL 17, 1989

*Out of Order 4-18-89 (p.1524)*

HOUSE FILE 740

S-3742

1 Amend House File 740, as amended, passed, and re-  
2 printed by the House, as follows:

3 1. By striking page 1, line 20 through page 2,  
4 line 5 and inserting the following:

5 "Sec. \_\_\_\_ . Section 728.4, Code 1989, is amended to  
6 read as follows:

7 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

8 A person who knowingly rents, sells, or offers for  
9 rental or sale material depicting a sex act involving  
10 sadomasochistic abuse, excretory functions, or  
11 bestiality, which the average adult taking the  
12 material as a whole in applying contemporary community  
13 standards would find appeals to the prurient interest  
14 and is patently offensive; and which material, taken  
15 as a whole, lacks serious literary, scientific,  
16 political, or artistic value, upon conviction is  
17 guilty of an aggravated misdemeanor. Charges under  
18 this section may only be brought by a county attorney  
19 or by the attorney general."

By LARRY MURPHY

S-3742 FILED APRIL 17, 1989

*Out of Order 4-18-89 (p.1524)*

## HOUSE FILE 740

S-3763

1 Amend House File 740, as amended, passed, and re-  
2 printed by the House, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. Section 728.1, subsection 8, Code  
6 1989, is amended to read as follows:

7 8. "Prohibited sexual act" means any of the  
8 following:

9 a. A sex act as defined in section 702.17.

10 b. An act of bestiality involving a ~~child~~ minor.

11 c. Fondling or touching the pubes or genitals of a  
12 ~~child~~ minor.

13 d. Fondling or touching the pubes or genitals of a  
14 person by a ~~child~~ minor.

15 e. Sadomasochistic abuse of a ~~child~~ minor for the  
16 purpose of arousing or satisfying the sexual desires  
17 of a person who may view a depiction of the abuse.

18 f. Sadomasochistic abuse of a person by a ~~child~~  
19 minor for the purpose of arousing or satisfying the  
20 sexual desires of a person who may view a depiction of  
21 the abuse ~~or~~.

22 g. Nudity of a ~~child~~ minor for the purpose of  
23 arousing or satisfying the sexual desires of a person  
24 who may view a depiction of the nude ~~child~~ minor.

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

27 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

28 A person who knowingly rents, sells, or offers for  
29 rental or sale material depicting a sex act involving  
30 sadomasochistic abuse, excretory functions, or  
31 bestiality, which the average adult taking the  
32 material as a whole in applying statewide contemporary  
33 community standards would find appeals to the prurient  
34 interest and is patently offensive; and which  
35 material, taken as a whole, lacks serious literary,  
36 ~~scientific~~, political, or artistic value, upon  
37 conviction is guilty of an aggravated misdemeanor.  
38 Charges under this section may only be brought by a  
39 county attorney or by the attorney general.

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

42 728.12 SEXUAL EXPLOITATION OF CHILDREN A MINOR.

43 1. A person commits a class "C" felony when the  
44 person employs, uses, persuades, induces, entices,  
45 coerces, knowingly permits, or otherwise causes a  
46 ~~child~~ minor to engage in a prohibited sexual act or in  
47 the simulation of a prohibited sexual act if the  
48 person knows, has reason to know, or intends that the  
49 act or simulated act may be photographed, filmed, or  
50 otherwise preserved in a negative, slide, book,

S-3763

Page 2

1 magazine, or other print or visual medium.

2 Notwithstanding section 902.9, the court may assess a  
3 fine of not more than fifty thousand dollars for each  
4 offense under this subsection in addition to imposing  
5 any other authorized sentence.

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

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

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

24 2. Title page, line 1, by striking the words "  
25 providing penalties,".

By TOM MANN, Jr.

LINN FUHRMAN

JULIA GENTLEMAN

PAUL PATE

WALLY HORN

S-3763 FILED APRIL 18, 1989

RULED OUT OF ORDER

4-18-89 (p. 1524)

## HOUSE FILE 740

S-3765

1 Amend amendment, S-3585, to House File 740 as  
2 follows:  
3 1. Page 1, by inserting after line 4 the  
4 following:  
5 "Sec. \_\_\_\_ Section 728.1, subsection 8, Code 1989,  
6 is amended to read as follows:  
7 8. "Prohibited sexual act" means any of the  
8 following:  
9 a. A sex act as defined in section 702.17.  
10 b. An act of bestiality involving a child minor.  
11 c. Fondling or touching the pubes or genitals of a  
12 child minor.  
13 d. Fondling or touching the pubes or genitals of a  
14 person by a child minor.  
15 e. Sadomasochistic abuse of a child minor for the  
16 purpose of arousing or satisfying the sexual desires  
17 of a person who may view a depiction of the abuse.  
18 f. Sadomasochistic abuse of a person by a child  
19 minor for the purpose of arousing or satisfying the  
20 sexual desires of a person who may view a depiction of  
21 the abuse.  
22 g. Nudity of a child minor for the purpose of  
23 arousing or satisfying the sexual desires of a person  
24 who may view a depiction of the nude child minor."  
25 2. Page 1, by striking lines 20 and 21 and  
26 inserting the following:  
27 "Sec. \_\_\_\_ Section 728.12, Code 1989, is amended  
28 to read as follows:  
29 728.12 SEXUAL EXPLOITATION OF CHILDREN A MINOR.  
30 1. A person commits a class "C" felony when the  
31 person employs, uses, persuades, induces, entices,  
32 coerces, knowingly permits, or otherwise causes a  
33 child minor to engage in a prohibited sexual act or in  
34 the simulation of a prohibited sexual act if the  
35 person knows, has reason to know, or intends that the  
36 act or simulated act may be photographed, filmed, or  
37 otherwise preserved in a negative, slide, book,  
38 magazine, or other print or visual medium.  
39 Notwithstanding section 902.9, the court may assess a  
40 fine of not more than fifty thousand dollars for each  
41 offense under this subsection in addition to imposing  
42 any other authorized sentence.  
43 2. A person commits a class "D" felony when the  
44 person knowingly promotes any material visually  
45 depicting a live performance of a child minor engaging  
46 in a prohibited sexual act or in the simulation of a  
47 prohibited sexual act. Notwithstanding section 902.9,  
48 the court may assess a fine of not more than twenty-  
49 five thousand dollars for each offense under this  
50 subsection in addition to imposing any other

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Page 2

1 authorized sentence.

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

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

12 3. Page 1, by striking lines 24 through 26.

13 4. Renumber sections as necessary.

By RICHARD VARN

S-3765 FILED APRIL 18, 1989

RULED OUT OF ORDER

4-18-89 (p. 1524)

SENATE AMENDMENT TO HOUSE FILE 740

H-4132

1 Amend House File 740, as amended, passed, and re-  
2 printed by the House, as follows:

4343 3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. Section 728.4, Code 1989, is amended  
6 to read as follows:

7 728.4 RENTAL OR SALE OF HARD CORE PORNOGRAPHY.

8 A person who knowingly rents, sells, or offers for  
9 rental or sale material depicting a sex act involving  
10 sadomasochistic abuse, excretory functions, or  
11 bestiality, which the average adult taking the  
12 material as a whole in applying statewide contemporary  
13 community standards would find appeals to the prurient  
14 interest and is patently offensive; and which  
15 material, taken as a whole, lacks serious literary,  
16 scientific, political, or artistic value, upon  
17 conviction is guilty of an aggravated misdemeanor.  
18 Charges under this section may only be brought by a  
19 county attorney or by the attorney general.

20 Sec. 2. This Act, being deemed of immediate  
21 importance, takes effect upon its enactment."

22 2. Title page, line 1, by striking the words "  
23 providing penalties,".

24 3. Title page, line 2, by inserting after the  
25 word "applicable" the following: "and providing an  
26 effective date".

RECEIVED FROM THE SENATE

H-4132 FILED APRIL 20, 1989

*Amended per 4343 & concurred 5/5 (y. 2527)*

HOUSE AMENDMENT TO SENATE AMENDMENT TO  
HOUSE FILE 740

S-4144

1 Amend the amendment, H-4132, to House File 740, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 1, by striking lines 3 through 26 and  
5 inserting the following:  
6 "\_\_\_\_. Page 3, by striking lines 15 through 18 and  
7 inserting the following: "of the minor, but shall  
8 report depictions involving a prohibited sexual act.  
9 This section shall".  
10 \_\_\_\_\_. Page 4, line 15, by inserting after the word  
11 "felonies." the following: "As used in this  
12 subsection, a "person" excludes any information-access  
13 service provider that merely provides transmission  
14 capacity without control over the content of the  
15 transmission.""

RECEIVED FROM THE HOUSE

S-4144 FILED MAY 5, 1989

~~CONCURRED~~

*Refused to concur 5-5-89 (p.1994)*  
*House insisted 5-5-89 (p.2570)*



HOUSE FILE 740

H-4343

1 Amend the amendment, H-4132, to House File 740, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 1, by striking lines 3 through 26 and  
5 inserting the following:  
6 "\_\_\_\_. Page 3, by striking lines 15 through 18 and  
7 inserting the following: "of the minor, but shall  
8 report depictions involving a prohibited sexual act.  
9 This section shall".  
10 \_\_\_\_\_. Page 4, line 15, by inserting after the word  
11 "felonies." the following: "As used in this  
12 subsection, a "person" excludes any information-access  
13 service provider that merely provides transmission  
14 capacity without control over the content of the  
15 transmission.""

By JAY of Appanoose

PAVICH of Pottawattamie  
HANSEN of Woodbury

SIEGRIST of Pottawattamie

H-4343 FILED MAY 1, 1989

*Adopted 5/5 (p. 2527)*

1                   REPORT OF THE CONFERENCE COMMITTEE  
2                   ON HOUSE FILE 740

3       To the Speaker of the House of Representatives and the  
4       President of the Senate:

5       We, the undersigned members of the conference committee  
6       appointed to resolve the differences between the House of  
7       Representatives and the Senate on House File 740, a bill for An  
8       Act relating to obscenity law, providing penalties, and making  
9       penalties applicable, respectfully make the following report:

10      1. That the House recedes from its amendment, S-4144.

11      2. That the Senate recedes from its amendment, H-4132.

12      3. That House File 740, as amended, passed, and reprinted  
13      by the House, is amended as follows:

14      1. Page 1, line 25, by striking the words "or describing".

15      2. Page 1, line 26, by striking the words "or  
16      descriptions".

17      3. Page 1, line 28, by striking the words "or  
18      descriptions".

19      4. Page 3, by striking lines 15 through 18 and inserting  
20      the following: "of the minor, but shall report depictions  
21      involving a prohibited sexual act. This section shall".

22      5. Page 4, line 15, by inserting after the word  
23      "felonies." the following: "As used in this subsection, a  
24      "person" excludes any information-access service provider that  
25      merely provides transmission capacity without control over the  
26      content of the transmission."

ON THE PART OF THE HOUSE:

DANIEL J. JAY, Chairperson  
STEVEN HANSEN  
WILLIAM HARBOR  
CHARLES PONCY  
BRENT SIEGRIST

ON THE PART OF THE SENATE:

DONALD V. DOYLE, Chairperson  
EUGENE FRAISE  
THOMAS MANN, Jr.

CCR-740 FILED MAY 6, 1989  
REPORT ADOPTED. (J. 2649)

HOUSE FILE 740  
BY (PROPOSED ATTORNEY  
GENERAL BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to obscene and pornographic material and the  
2 sexual exploitation of a minor, and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 728.1, subsections 1 and 8, Code 1989,  
2 are amended to read as follows:

3 1. "Obscene material" is any material depicting or  
4 describing the genitals, pubic area, or buttocks with less  
5 than a full opaque covering, or the showing of the female  
6 breast with less than a fully opaque covering of any portion  
7 below the top of the areola, or the depiction of covered male  
8 genitals in a discernibly turgid state; sex acts,  
9 masturbation, excretory functions, or sadomasochistic abuse  
10 which the average person, taking the material as a whole and  
11 applying contemporary community standards with respect to what  
12 is suitable material for minors, would find appeals to the  
13 prurient interest and is patently offensive; and the material,  
14 taken as a whole, lacks serious literary, scientific,  
15 political or artistic value.

16 8. "Prohibited sexual act" means any of the following:

17 a. A sex act as defined in section 702.17;

18 b. An act of bestiality involving a child minor;

19 c. Fondling or touching the pubes or genitals of a child  
20 minor;

21 d. Fondling or touching the pubes or genitals of a person  
22 by a child minor;

23 e. Sadomasochistic abuse of a child minor for the purpose  
24 of arousing or satisfying the sexual desires of a person who  
25 may view a depiction of the abuse;

26 f. Sadomasochistic abuse of a person by a child minor for  
27 the purpose of arousing or satisfying the sexual desires of a  
28 person who may view a depiction of the abuse; or

29 g. Nudity of a child minor for the purpose of arousing or  
30 satisfying the sexual desires of a person who may view a  
31 depiction of the nude child minor.

32 Sec. 2. Section 728.2, Code 1989, is amended to read as  
33 follows:

34 728.2 DISSEMINATION AND EXHIBITION OF OBSCENE MATERIAL TO  
35 MINORS.

1 Any person, other than the parent or guardian of the minor,  
2 who knowingly disseminates or exhibits obscene material to a  
3 minor, including the exhibition of obscene material so that it  
4 can be observed by a minor on or off the premises where it is  
5 displayed, is guilty of a public offense and ~~shall~~ upon  
6 conviction ~~be~~ is guilty of a serious misdemeanor. Upon  
7 conviction for a second or subsequent offense under this  
8 section, the person is guilty of an aggravated misdemeanor.

9 Sec. 3. Section 728.3, Code 1989, is amended to read as  
10 follows:

11 728.3 ADMITTING MINORS TO PREMISES WHERE OBSCENE MATERIAL  
12 IS EXHIBITED.

13 1. A person who knowingly sells, gives, delivers, or  
14 provides a minor who is not a child with a pass or admits the  
15 minor to premises where obscene material is exhibited is  
16 guilty of a public offense and upon conviction is guilty of a  
17 serious misdemeanor. Upon conviction for a second or  
18 subsequent offense under this subsection, the person is guilty  
19 of an aggravated misdemeanor.

20 2. A person who knowingly sells, gives, delivers, or  
21 provides a child with a pass or admits a child to a premise  
22 where obscene material is exhibited is guilty of a public  
23 offense and upon conviction is guilty of an aggravated  
24 misdemeanor. Upon conviction for a second or subsequent  
25 offense under this subsection, the person is guilty of a class  
26 "D" felony.

27 Sec. 4. Section 728.4, Code 1989, is amended to read as  
28 follows:

29 728.4 SALE OF HARD CORE PORNOGRAPHY.

30 A person who knowingly sells, rents, exchanges, or offers  
31 for sale, rental, or exchange, or otherwise provides in  
32 exchange for goods, money, or services, any material depicting  
33 a sex act, involving sadomasochistic abuse, excretory  
34 functions, lewd exhibition of the genitals, or bestiality,  
35 which the average adult taking the material as a whole in

1 applying contemporary community standards would find appeals  
2 to the prurient interest and is patently offensive; and which  
3 material, taken as a whole, lacks serious literary,  
4 scientific, political, or artistic value, upon conviction is  
5 guilty of an aggravated misdemeanor. Upon conviction for a  
6 second or subsequent offense under this section, the person is  
7 guilty of a class "B" felony. Charges under this section may  
8 only be brought by a county attorney or by the attorney  
9 general.

10 Sec. 5. Section 728.12, Code 1989, is amended to read as  
11 follows:

12 728.12 SEXUAL EXPLOITATION OF CHILDREN MINORS.

13 1. A person commits a class "C" felony when the person  
14 employs, uses, persuades, induces, entices, coerces, knowingly  
15 permits, or otherwise causes a ~~child~~ minor to engage in a  
16 prohibited sexual act or in the simulation of a prohibited  
17 sexual act if the person knows, has reason to know, or intends  
18 that the act or simulated act may be photographed, filmed, or  
19 otherwise preserved in a negative, slide, book, magazine, or  
20 other print or visual medium. Upon conviction for a second or  
21 subsequent offense under this subsection, the person is guilty  
22 of a class "B" felony. Notwithstanding section 902.9, the  
23 court may assess a fine of not more than fifty thousand  
24 dollars for each offense under this subsection in addition to  
25 imposing any other authorized sentence.

26 2. A person commits a class "D" felony when the person  
27 knowingly promotes any material visually depicting a live  
28 performance of a ~~child~~ minor engaging in a prohibited sexual  
29 act or in the simulation of a prohibited sexual act. Upon  
30 conviction for a second or subsequent offense under this  
31 subsection, the person is guilty of a class "C" felony.  
32 Notwithstanding section 902.9, the court may assess a fine of  
33 not more than twenty-five thousand dollars for each offense  
34 under this subsection in addition to imposing any other  
35 authorized sentence.

1     3. A person commits an aggravated misdemeanor when the  
2 person solicits, commands, entreats, or otherwise attempts to  
3 persuade a minor to engage in a prohibited sexual act or in  
4 the simulation of a prohibited sexual act, if the person  
5 knows, has reason to know, or intends that the act or  
6 simulated act may be photographed, filmed, or otherwise  
7 preserved in a negative, slide, book, magazine, or other print  
8 or visual medium. It is not necessary that the minor actually  
9 engage in the act or simulated act. Upon conviction for a  
10 second or subsequent offense under this subsection, the person  
11 is guilty of a class "D" felony. Notwithstanding sections  
12 902.9 and 903.1, the court may assess a fine of not more than  
13 ten thousand dollars for each offense under this subsection in  
14 addition to imposing any other authorized sentence.

15     3 4. A person who knowingly purchases or possesses any  
16 negative, slide, book, magazine or other print or visual  
17 medium depicting a ~~child~~ minor engaging in a prohibited sexual  
18 act or the simulation of a prohibited sexual act commits a  
19 serious misdemeanor. Upon conviction for a second or  
20 subsequent offense under this subsection, the person is guilty  
21 of an aggravated misdemeanor.

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

#### EXPLANATION

26  
27     This bill amends Iowa's obscenity laws by expanding their  
28 coverage and enhancing a number of penalties for repeat  
29 offenders. The bill expands the definition of obscene  
30 material by including material depicting or describing various  
31 human anatomical parts in a manner which the average person,  
32 taking the material as a whole and applying contemporary  
33 community standards with respect to what is suitable material  
34 for minors, would find appeals to the prurient interest and is  
35 patently offensive; and the material, taken as a whole, lacks

1 serious literary, scientific, political, or artistic value.  
2 Section 728.4 prohibiting the sale of pornographic material is  
3 expanded to include the lewd exhibition of the genitals and to  
4 prohibit the rental and exchange of such material. Section  
5 728.12 criminalizing the sexual exploitation of children is  
6 expanded to include all minors. A subsection is added pro-  
7 viding that a person who solicits, commands, entreats, or  
8 otherwise attempts to persuade a minor to engage in a pro-  
9 hibited sex act or in the simulation of a prohibited sex act  
10 is guilty of an aggravated misdemeanor.

11 Penalties are enhanced for second and subsequent offenses  
12 for the dissemination and exhibition of obscene material to  
13 minors; for admitting minors to premises where obscene  
14 material is exhibited; for the sale, rental, or exchange of  
15 obscene material; and for sexual exploitation of minors.

16 BACKGROUND STATEMENT

17 SUBMITTED BY THE AGENCY

18 Concern has been raised that Iowa's present law prohibits  
19 the sale but not rental of hard core pornography. The pro-  
20 posal also strengthens Iowa's pornography and sexual exploi-  
21 tation laws as they relate to minors. These amendments  
22 reflect the Attorney General's recommendations to the  
23 legislative interim study committee concerning pornography.

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HOUSE FILE 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.
- 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. Sadoomasochistic 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. Sadoomasochistic 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.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 740, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved May 31, 1989

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TERRY E. BRANSTAD  
Governor