

# House Study Bill 98

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

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

## A BILL FOR

1 An Act relating to the criminal offense of sexual exploitation of  
2 a minor.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1057DP 80  
5 jm/cf/24

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1 1 Section 1. Section 728.12, subsections 1 and 2, Code 2003,  
1 2 are amended to read as follows:  
1 3 1. It shall be unlawful to employ, use, persuade, induce,  
1 4 entice, coerce, solicit, knowingly permit, or otherwise cause  
1 5 or attempt to cause a minor to engage in a prohibited sexual  
1 6 act or in the simulation of a prohibited sexual act. A person  
1 7 must know, or have reason to know, or intend that the act or  
1 8 simulated act may be photographed, filmed, or otherwise  
1 9 preserved in a negative, slide, book, magazine, computer,  
1 10 computer disk, or other print or visual medium, or be  
1 11 preserved in an electronic, magnetic, or optical storage  
1 12 system, or in any other type of storage system. A person who  
1 13 commits a violation of this subsection commits a class "C"  
1 14 felony. Notwithstanding section 902.9, the court may assess a  
1 15 fine of not more than fifty thousand dollars for each offense  
1 16 under this subsection in addition to imposing any other  
1 17 authorized sentence.

1 18 2. It shall be unlawful to knowingly promote any material  
1 19 visually depicting a live performance of a minor ~~or what~~  
~~1 20 appears to be a minor~~ engaging in a prohibited sexual act or  
1 21 in the simulation of a prohibited sexual act. A person who  
1 22 commits a violation of this subsection commits a class "D"  
1 23 felony. Notwithstanding section 902.9, the court may assess a  
1 24 fine of not more than twenty-five thousand dollars for each  
1 25 offense under this subsection in addition to imposing any  
1 26 other authorized sentence.

1 27 Sec. 2. Section 728.12, subsection 3, unnumbered paragraph  
1 28 1, Code 2003, is amended to read as follows:

1 29 It shall be unlawful to knowingly purchase or possess a  
1 30 negative, slide, book, magazine, computer, computer disk, or  
1 31 other print or visual medium, or an electronic, magnetic, or  
1 32 optical storage system, or any other type of storage system  
1 33 which depicts a minor ~~or what appears to be a minor~~ engaging  
1 34 in a prohibited sexual act or the simulation of a prohibited  
1 35 sexual act. A person who commits a violation of this  
2 1 subsection commits an aggravated misdemeanor for a first  
2 2 offense and a class "D" felony for a second or subsequent  
2 3 offense. For purposes of this subsection, an offense is  
2 4 considered a second or subsequent offense if, prior to the  
2 5 person's having been convicted under this subsection, any of  
2 6 the following apply:

### EXPLANATION

2 7  
2 8 This bill makes changes to the definition of the criminal  
2 9 offense of sexual exploitation of a minor by making it  
2 10 unlawful to solicit or attempt to cause a minor to engage in a  
2 11 prohibited sexual act or simulated prohibited sexual act.

2 12 The bill also strikes language from the criminal elements  
2 13 of the crime of sexual exploitation of a minor in response to  
2 14 a recent United States Supreme Court Opinion, Ashcroft v. Free  
2 15 Speech Coalition, 122 S.Ct. 1389 (2002). The bill strikes  
2 16 language that prohibits the purchase, possession, or promotion  
2 17 of material that portrays what appears to be a minor in a  
2 18 prohibited sexual act. The Supreme Court found the provision  
2 19 "what appears to be a minor" to be overbroad and in violation  
2 20 of the First Amendment of the United States Constitution and  
2 21 stated its own opinion that the First Amendment requires a  
2 22 more precise restriction.  
2 23 LSB 1057DP 80

