

House File 563 - Introduced

HOUSE FILE 563
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 172)

A BILL FOR

1 An Act relating to the penalties for the criminal offense of
2 sexual exploitation of a minor by the purchase or possession
3 of child pornography.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 728.12, subsection 3, Code 2013, is
2 amended to read as follows:

3 3. a. It shall be unlawful to knowingly purchase or possess
4 a visual depiction of a minor engaging in a prohibited sexual
5 act or the simulation of a prohibited sexual act. A visual
6 depiction containing pictorial representations of different
7 minors shall be prosecuted and punished as separate offenses
8 for each pictorial representation of a different minor in the
9 visual depiction. However, violations of this subsection
10 involving multiple visual depictions of the same minor shall be
11 prosecuted and punished as one offense. A Except as provided
12 in paragraph "b", a person who commits a violation of this
13 subsection commits an aggravated misdemeanor a class "D" felony
14 for a first offense and a class "D" "C" felony for a second
15 or subsequent offense. For purposes of this subsection, an
16 offense is considered a second or subsequent offense if, prior
17 to the person's having been convicted under this subsection,
18 any of the following apply:

19 a. (1) The person has a prior conviction or deferred
20 judgment under this subsection.

21 b. (2) The person has a prior conviction, deferred
22 judgment, or the equivalent of a deferred judgment in another
23 jurisdiction for an offense substantially similar to the
24 offense defined in this subsection. The court shall judicially
25 notice the statutes of other states that define offenses
26 substantially similar to the offense defined in this subsection
27 and that therefore can be considered corresponding statutes.

28 b. For a first offense violation of paragraph "a", a person
29 twenty-one years of age or younger commits an aggravated
30 misdemeanor if the minor shown in the visual depiction gave or
31 sent the visual depiction to the person without being solicited
32 to do so by the person who received it, the person is not more
33 than four years older than the minor, and the person maintains
34 possession of the visual depiction but does not give, send, or
35 disseminate the visual depiction to another.

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EXPLANATION

This bill relates to the penalties for the criminal offense of sexual exploitation of a minor by the purchase or possession of child pornography.

The bill increases the criminal penalty in most instances for knowingly purchasing or possessing a visual depiction of a minor engaged in a prohibited sexual or simulated sexual act. For a first offense violation, the bill increases the criminal penalty from an aggravated misdemeanor to a class "D" felony. However, for a first offense violation, a person 21 years of age or younger commits an aggravated misdemeanor if the minor shown in the visual depiction gave or sent the visual depiction, unsolicited, the person is not more than four years older than the minor, and the person maintains the visual depiction but does not give, send, or disseminate the visual depiction to another. For any second or subsequent violation, the bill increases the criminal penalty from a class "D" felony to a class "C" felony.

Under the bill, by increasing the criminal penalty from a class "D" felony to a class "C" felony, a person convicted of a second or subsequent offense of sexual exploitation of a minor in violation of Code section 728.12(3) is also required to serve a special sentence for the rest of the person's life under Code section 903B.1. Current law requires a person convicted of a first or subsequent offense of sexual exploitation of a minor in violation of Code section 728.12(3) to serve a 10-year special sentence under Code section 903B.2.

A person serving a special sentence is required to register as a sex offender for a period equal to the term of the special sentence, but in no case shall the person register as a sex offender for less than 10 years pursuant to Code section 692A.106(2).

An aggravated misdemeanor is punishable by confinement for no more than two years and a fine of at least \$625 but not more than \$6,250. A class "D" felony is punishable by confinement

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1 for no more than five years and a fine of at least \$750 but
2 not more than \$7,500. A class "C" felony is punishable by
3 confinement for no more than 10 years and a fine of at least
4 \$1,000 but not more than \$10,000.