

House File 526 - Introduced

HOUSE FILE 526

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HF 148)

A BILL FOR

1 An Act relating to the criminal offense of invasion of privacy,
2 providing penalties, and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.8, subsection 1, Code 2017, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. e. The juvenile court shall have exclusive
4 jurisdiction in a proceeding concerning a child under the age
5 of eighteen alleged to have committed the offense of invasion
6 of privacy in violation of section 709.21, subsection 2 or 3.

7 Sec. 2. Section 692A.102, subsection 1, paragraph b,
8 subparagraph (7), Code 2017, is amended to read as follows:

9 (7) Invasion of privacy — ~~nudity~~ in violation of section
10 709.21, subsection 4.

11 Sec. 3. Section 709.21, Code 2017, is amended by striking
12 the section and inserting in lieu thereof the following:

13 **709.21 Invasion of privacy.**

14 1. As used in this section:

15 a. "*Full or partial nudity*" means the showing of any part
16 of the human genitals or pubic area or buttocks, or any part
17 of the nipple of the breast of a female, with less than fully
18 opaque covering.

19 b. "*Photographs or films*" means the making of any
20 photograph, motion picture film, videotape, or any other
21 recording or transmission of the image of a person.

22 c. "*Sex act*" means the same as defined in section 702.17.

23 2. A person who, without the consent of another person,
24 knowingly disseminates, publishes, distributes, posts, or
25 causes to be disseminated, published, distributed, or posted a
26 photograph or film showing the other person in a state of full
27 or partial nudity or engaged in a sex act, commits invasion of
28 privacy.

29 3. A person who knowingly photographs or films another
30 person in a state of full or partial nudity or engaged in a
31 sex act, if the other person does not consent or is unable to
32 consent to creation of the photograph or film, commits invasion
33 of privacy.

34 4. A person who knowingly views, photographs, or films
35 another person, for the purpose of arousing or gratifying the

1 sexual desire of any person, commits invasion of privacy if all
2 of the following apply:

3 a. The other person does not consent or is unable to consent
4 to being viewed, photographed, or filmed.

5 b. The other person is in a state of full or partial nudity.

6 c. The other person has a reasonable expectation of privacy
7 while in a state of full or partial nudity.

8 5. Subsections 2 and 3 do not apply to any of the following:

9 a. A photograph or film involving voluntary exposure by a
10 person in public or commercial settings.

11 b. Disclosures made in the public interest, including but
12 not limited to the reporting of unlawful conduct, disclosures
13 by law enforcement, news reporting, legal proceeding
14 disclosures, or medical treatment disclosures.

15 c. Disclosures by an interactive computer service of
16 information provided by another information content provider,
17 as those terms are defined in 47 U.S.C. §230.

18 6. A person who violates this section commits an aggravated
19 misdemeanor.

20 7. A person who violates subsection 2 or 3 shall not be
21 sentenced to serve a special sentence pursuant to section
22 903B.2.

23 Sec. 4. Section 903B.2, Code 2017, is amended to read as
24 follows:

25 **903B.2 Special sentence — class “D” felonies or**
26 **misdemeanors.**

27 A Except as otherwise provided in section 709.21, subsection
28 7, a person convicted of a misdemeanor or a class “D” felony
29 offense under [chapter 709, section 726.2](#), or [section 728.12](#)
30 shall also be sentenced, in addition to any other punishment
31 provided by law, to a special sentence committing the person
32 into the custody of the director of the Iowa department of
33 corrections for a period of ten years, with eligibility for
34 parole as provided in [chapter 906](#). The board of parole shall
35 determine whether the person should be released on parole

1 or placed in a work release program. The special sentence
2 imposed under [this section](#) shall commence upon completion of
3 the sentence imposed under any applicable criminal sentencing
4 provisions for the underlying criminal offense and the person
5 shall begin the sentence under supervision as if on parole or
6 work release. The person shall be placed on the corrections
7 continuum in [chapter 901B](#), and the terms and conditions of the
8 special sentence, including violations, shall be subject to
9 the same set of procedures set out in [chapters 901B, 905, 906,](#)
10 [and 908](#), and rules adopted under those chapters for persons on
11 parole or work release. The revocation of release shall not be
12 for a period greater than two years upon any first revocation,
13 and five years upon any second or subsequent revocation. A
14 special sentence shall be considered a category "A" sentence
15 for purposes of calculating earned time under [section 903A.2](#).

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with
18 the explanation's substance by the members of the general assembly.

19 This bill relates to the criminal offense of invasion of
20 privacy, provides penalties, and makes penalties applicable.

21 Current law provides that a person commits the crime of
22 invasion of privacy, an aggravated misdemeanor, if the person
23 knowingly views, photographs, or films another person, for
24 the purpose of arousing or gratifying the sexual desire of
25 any person, if all of the following apply: the other person
26 does not consent or is unable to consent to being viewed,
27 photographed, or filmed; the other person is in a state of
28 full or partial nudity; and the other person has a reasonable
29 expectation of privacy while in a state of full or partial
30 nudity. Under the bill, the current law creating the criminal
31 offense of invasion of privacy is moved to Code section
32 709.21(4), but strikes the requirement that the prosecution
33 prove the victim did not have knowledge about being viewed,
34 photographed, or filmed.

35 The bill creates two additional invasion of privacy criminal

1 offenses in Code section 709.21(2) and (3).

2 The bill provides that if a juvenile commits invasion of
3 privacy in violation of either of the newly created offenses in
4 Code section 709.21(2) or (3), the juvenile court shall have
5 exclusive jurisdiction in a proceeding concerning the juvenile.

6 New Code section 709.21(2) provides that a person who,
7 without the consent of another person, knowingly disseminates,
8 publishes, distributes, posts, or causes to be disseminated,
9 published, distributed, or posted, a photograph or film showing
10 the other person in a state of full or partial nudity or
11 engaged in a sex act, commits an invasion of privacy.

12 New Code section 709.21(3) provides that a person who
13 knowingly photographs or films another person in a state of
14 full or partial nudity or engaged in a sex act, if the other
15 person did not or is unable to consent to the creation of the
16 photograph or film, commits invasion of privacy.

17 Current law and the bill define "full or partial nudity" to
18 mean the showing of any part of the human genitals or pubic
19 area or buttocks, or any part of the nipple of the breast of a
20 female, with less than fully opaque covering.

21 Current law and the bill define "photographs or films"
22 to mean the making of any photograph, motion picture film,
23 videotape, or any other recording or transmission of the image
24 of a person.

25 A "sex act" is defined in Code section 702.17.

26 New Code section 709.21(2) and (3) do not apply to the
27 following: a photograph or film involving voluntary exposure
28 in public or commercial settings; or to disclosures made in the
29 public interest, including but not limited to for the reporting
30 of unlawful conduct, disclosures by law enforcement, news
31 reporting, legal proceeding disclosures, or medical treatment
32 disclosures.

33 A person who violates the bill commits an aggravated
34 misdemeanor. An aggravated misdemeanor is punishable by
35 confinement for no more than two years and a fine of at least

1 \$625 but not more than \$6,250.

2 Under current law and the bill, a person convicted of
3 invasion of privacy in violation of Code section 709.21(4) is
4 required to register as a sex offender under Code chapter 692A.
5 The bill provides that if a person commits invasion of privacy
6 in violation of the new Code section 709.21(2) or (3), the
7 person is not required to register as a sex offender.

8 A person who commits invasion of privacy in violation of Code
9 section 709.21(4) is also subject to a special 10-year sentence,
10 which may include parole, under Code section 903B.2. The bill
11 provides that a person convicted of a violation of Code section
12 709.21(2) or (3) shall not be sentenced to a 10-year special
13 sentence.