

House File 646 - Introduced

HOUSE FILE 646
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 321)

(COMPANION TO SF 84 BY
DRISCOLL)

A BILL FOR

1 An Act relating to sexual exploitation of a minor and providing
2 penalties.

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

1 Section 1. Section 728.12, subsections 1, 2, and 3, Code
2 2023, are amended to read as follows:

3 1. It shall be unlawful to employ, use, persuade, induce,
4 entice, coerce, solicit, knowingly permit, or otherwise cause
5 or attempt to cause a minor to engage in a prohibited sexual
6 act or in the simulation of a prohibited sexual act. A person
7 must know, or have reason to know, or intend that the act
8 or simulated act may be photographed, filmed, or otherwise
9 preserved in a visual depiction. A person who commits a
10 violation of [this subsection](#) commits a class "C" "B" felony.
11 Notwithstanding [section 902.9](#), the court may assess a fine of
12 not more than fifty thousand dollars for each offense under
13 this subsection in addition to imposing any other authorized
14 sentence.

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

24 3. It shall be unlawful to knowingly purchase or possess
25 a visual depiction of a minor engaging in a prohibited sexual
26 act or the simulation of a prohibited sexual act. A visual
27 depiction containing pictorial representations of different
28 minors shall be prosecuted and punished as separate offenses
29 for each pictorial representation of a different minor in the
30 visual depiction. However, violations of [this subsection](#)
31 involving multiple visual depictions of the same minor shall
32 be prosecuted and punished as one offense. A person who
33 commits a violation of [this subsection](#) commits ~~an aggravated~~
34 ~~misdemeanor~~ a class "D" felony for a first offense and a
35 class "D" "C" felony for a second or subsequent offense. For

1 purposes of this subsection, an offense is considered a second
2 or subsequent offense if, prior to the person's having been
3 convicted under this subsection, ~~any of the following apply:~~
4 the person has a prior conviction under this subsection or has
5 a prior conviction in another jurisdiction for a substantially
6 similar offense. The court shall judicially notice the
7 statutes of other states that define offenses substantially
8 similar to the offenses defined in this subsection and that
9 therefore can be considered corresponding statutes.

10 ~~a. The person has a prior conviction or deferred judgment~~
11 ~~under this subsection.~~

12 ~~b. The person has a prior conviction, deferred judgment, or~~
13 ~~the equivalent of a deferred judgment in another jurisdiction~~
14 ~~for an offense substantially similar to the offense defined~~
15 ~~in this subsection. The court shall judicially notice the~~
16 ~~statutes of other states that define offenses substantially~~
17 ~~similar to the offense defined in this subsection and that~~
18 ~~therefore can be considered corresponding statutes.~~

19 Sec. 2. Section 901.11, Code 2023, is amended by adding the
20 following new subsection:

21 NEW SUBSECTION. 6. At the time of sentencing, the court
22 shall determine when a person convicted of sexual exploitation
23 of a minor as described in section 902.12, subsection 6, shall
24 first become eligible for parole or work release within the
25 parameters specified in section 902.12, subsection 6, based
26 upon all pertinent information including the person's criminal
27 record, a validated risk assessment, and the negative impact
28 the offense has had on the victim or other persons.

29 Sec. 3. Section 902.12, Code 2023, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 6. A person serving a sentence for a
32 conviction of sexual exploitation of a minor in violation
33 of section 728.12, subsection 1, shall be denied parole or
34 work release until the person has served between one-half and
35 seven-tenths of the maximum term of the person's sentence as

1 determined under section 901.11, subsection 6.

2 Sec. 4. Section 903B.1, Code 2023, is amended to read as
3 follows:

4 **903B.1 Special sentence — class “B” or class “C” felonies.**

5 A person convicted of a class “C” felony or greater offense
6 under [chapter 709](#) or [section 728.12](#), or a class “B” felony
7 under [section 713.3, subsection 1](#), paragraph “d”, ~~or a class~~
8 ~~“C” felony under [section 728.12](#)~~, shall also be sentenced, in
9 addition to any other punishment provided by law, to a special
10 sentence committing the person into the custody of the director
11 of the Iowa department of corrections for the rest of the
12 person’s life, with eligibility for parole as provided in
13 chapter 906. The board of parole shall determine whether the
14 person should be released on parole or placed in a work release
15 program. The special sentence imposed under [this section](#) shall
16 commence upon completion of the sentence imposed under any
17 applicable criminal sentencing provisions for the underlying
18 criminal offense and the person shall begin the sentence under
19 supervision as if on parole or work release. The person shall
20 be placed on the corrections continuum in [chapter 901B](#), and
21 the terms and conditions of the special sentence, including
22 violations, shall be subject to the same set of procedures set
23 out in [chapters 901B, 905, 906, and 908](#), and rules adopted
24 under those chapters for persons on parole or work release.
25 The revocation of release shall not be for a period greater
26 than two years upon any first revocation, and five years upon
27 any second or subsequent revocation. A special sentence
28 shall be considered a category “A” sentence for purposes of
29 calculating earned time under [section 903A.2](#).

30 Sec. 5. Section 907.3, subsection 1, paragraph a, Code 2023,
31 is amended by adding the following new subparagraph:

32 NEW SUBPARAGRAPH. (15) The offense is a violation of
33 section 728.12.

34 Sec. 6. Section 915.100, subsection 2, Code 2023, is amended
35 by adding the following new paragraph:

1 NEW PARAGRAPH. *j.* In cases where the offender was convicted
2 of sexual exploitation of a minor in violation of section
3 728.12, subsection 1 or 2, the court shall order restitution
4 under this section in an amount to be determined by the court
5 as follows:

6 (1) The court shall determine the full amount of the
7 victim's losses that were incurred or are reasonably projected
8 to be incurred by the victim as a result of the sexual
9 exploitation of the victim, but in no case shall such amount be
10 less than three thousand dollars.

11 (2) After completing the determination required under
12 subparagraph (1), the court shall order pecuniary damages in
13 an amount that reflects the offender's relative role in the
14 causal process that underlies the victim's losses, but in no
15 case shall such amount be less than three thousand dollars.

16 (3) For purposes of this paragraph, in addition to the
17 definition of victim provided in section 915.10, subsection 3,
18 "*victim*" means the individual harmed as a result of a commission
19 of a crime under section 728.12. The legal guardian of the
20 victim or representative of the victim's estate, another family
21 member, or any other person appointed as suitable by the court,
22 may assume the crime victim's rights under this paragraph, but
23 in no event shall the offender be named as a representative or
24 guardian.

25

EXPLANATION

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

28 This bill relates to sexual exploitation of a minor.

29 Current law provides that it is a class "C" felony to employ,
30 use, persuade, induce, entice, coerce, solicit, knowingly
31 permit, or otherwise cause or attempt to cause a minor to
32 engage in a prohibited sexual act or in the simulation of a
33 prohibited sexual act. The bill increases the penalty to a
34 class "B" felony.

35 Current law provides that it is a class "D" felony to

1 knowingly promote any material visually depicting a live
2 performance of a minor engaging in a prohibited sexual act
3 or in the simulation of a prohibited sexual act. The bill
4 increases the penalty to a class "C" felony.

5 Current law provides that it is an aggravated misdemeanor
6 for a first offense and a class "D" felony for a second or
7 subsequent offense to knowingly purchase or possess a visual
8 depiction of a minor engaging in a prohibited sexual act or
9 the simulation of a prohibited sexual act. A visual depiction
10 containing pictorial representations of different minors shall
11 be prosecuted and punished as separate offenses for each
12 pictorial representation of a different minor in the visual
13 depiction. The bill increases the penalty to a class "D"
14 felony for a first offense, and a class "C" felony for a second
15 or subsequent offense. The bill provides that an offense is
16 considered a subsequent offense if the person has previously
17 been convicted of knowingly purchasing or possessing a visual
18 depiction of a minor engaging in a prohibited sexual act or the
19 simulation of a prohibited sexual act or the person has a prior
20 conviction in another jurisdiction for a substantially similar
21 offense.

22 A class "B" felony is punishable by confinement for no more
23 than five years and a fine of at least \$1,025 but not more than
24 \$10,245. A class "C" felony is punishable by confinement for
25 no more than 10 years and a fine of at least \$1,370 but not more
26 than \$13,660. A class "D" felony is punishable by confinement
27 for no more than five years and a fine of at least \$1,025 but
28 not more than \$10,245.

29 The bill provides that a person serving a sentence for
30 a conviction of sexual exploitation of a minor that is a
31 class "B" felony shall be denied parole or work release until
32 the person has served between one-half and seven-tenths of
33 the maximum term of the person's sentence. At the time of
34 sentencing, the court shall determine when a person convicted
35 of sexual exploitation of a minor shall first become eligible

1 for parole or work release based upon all pertinent information
2 including the person's criminal record, a validated risk
3 assessment, and the negative impact the offense has had on the
4 victim or other persons.

5 The bill provides that a court shall not defer judgment if
6 the offense is a conviction of sexual exploitation of a minor.

7 The bill provides that in cases where the offender was
8 convicted of sexual exploitation of a minor involving causing
9 or attempting to cause a minor to engage in a prohibited
10 sexual act or the simulation of a prohibited sexual act, or
11 in knowingly promoting any material visually depicting a
12 live performance of a minor engaging in a prohibited sexual
13 act or in the simulation of a prohibited sexual act, the
14 court shall order restitution. The court shall determine the
15 full amount of the victim's losses that were incurred or are
16 reasonably projected to be incurred as a result of the sexual
17 exploitation of the victim, but in no case shall such amount
18 be less than \$3,000. The court shall order pecuniary damages
19 in an amount that reflects the offender's relative role in
20 the causal process that underlies the victim's losses, but in
21 no case shall such amount be less than \$3,000. For purposes
22 of determining restitution, in addition to the definition of
23 victim provided in Code section 915.10(3), "victim" means the
24 individual harmed as a result of sexual exploitation. The
25 legal guardian of the victim or representative of the victim's
26 estate, another family member, or any other person appointed as
27 suitable by the court, may assume the crime victim's rights,
28 but in no event shall the offender be named as a representative
29 or guardian.