

**Senate File 84 - Introduced**

SENATE FILE 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 "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 "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 "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.