

Eichhorn, Ch.
Shey
Kreitman

HSB 138

JUDICIARY

Introduced By
SF/HF 327

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 offenses of enticing a minor away
2 and sexual exploitation of a minor and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 692A.1, subsection 4, Code 2001, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. mm. Enticing away a minor in violation of
4 section 710.10, subsection 1.

5 Sec. 2. Section 692A.1, subsection 4, paragraph n, Code
6 2001, is amended to read as follows:

7 n. An indictable offense committed in another jurisdiction
8 which would constitute an indictable offense under paragraphs
9 "a" through "m" "mm".

10 Sec. 3. Section 710.10, Code 2001, is amended to read as
11 follows:

12 710.10 ENTICING AWAY A ~~CHILD~~ MINOR.

13 1. A person commits a class "B" "C" felony when, without
14 authority and with the intent to commit ~~an-illegal-act~~ sexual
15 abuse or sexual exploitation upon the-child a minor under the
16 age of thirteen, the person entices away a ~~child~~ the minor
17 under the age of thirteen, or entices away a person reasonably
18 believed to be under the age of thirteen.

19 2. A person commits ~~an-aggravated-misdemeanor~~ a class "D"
20 felony when, without authority and with the intent to commit
21 an illegal act upon ~~the-child~~ a minor under the age of
22 sixteen, the person ~~attempts-to-entice~~ entices away a ~~child~~
23 minor under the age of be sixteen, or entices away a person
24 reasonably believed to be under the age of sixteen.

25 3. A person commits an aggravated misdemeanor when,
26 without authority and with the intent to commit an illegal act
27 upon a minor under the age of sixteen, the person attempts to
28 entice away a minor under the age of sixteen, or attempts to
29 entice away a person reasonably believed to be under the age
30 of sixteen.

31 3- 4. A person's intent to commit ~~an-illegal-act-upon-the~~
32 child a violation of this section may be inferred when the
33 ~~individual~~ person is not known to the ~~child~~ person being
34 enticed away and the ~~individual~~ person does not have the
35 permission of the ~~child's~~ parent, guardian, or custodian to

1 contact the child person being enticed away.

2 5. For purposes of determining jurisdiction under section
3 803.1, an offense is considered committed in this state if the
4 communication to entice away a minor or a person believed to
5 be a minor who is present in this state originates from
6 another state, or the communication to entice away a minor a
7 person believed to be a minor is sent from this state.

8 Sec. 4. Section 728.12, Code 2001, is amended to read as
9 follows:

10 728.12 SEXUAL EXPLOITATION OF A MINOR.

11 ~~1. A person commits a class "C" felony when the person~~
12 ~~employs, uses, persuades, induces, entices, coerces, knowingly~~
13 ~~permits, It shall be unlawful to employ, use, persuade,~~
14 ~~induce, entice, coerce, knowingly permit, or otherwise causes~~
15 ~~cause a minor to engage in a prohibited sexual act or in the~~
16 ~~simulation of a prohibited sexual act if the person knows,~~
17 ~~has. A person must know, or have reason to know, or intends~~
18 ~~intend that the act or simulated act may be photographed,~~
19 ~~filmed, or otherwise preserved in a negative, slide, book,~~
20 ~~magazine, computer, computer disk, or other print or visual~~
21 ~~medium, or be preserved in an electronic, magnetic, or optical~~
22 ~~storage system, or in any other type of storage system. A~~
23 ~~person who commits a violation of this subsection commits a~~
24 ~~class "C" felony. Notwithstanding section 902.9, the court~~
25 ~~may assess a fine of not more than fifty thousand dollars for~~
26 ~~each offense under this subsection in addition to imposing any~~
27 ~~other authorized sentence.~~

28 2. ~~A person commits a class "D" felony when the person~~
29 ~~knowingly promotes It shall be unlawful to knowingly promote~~
30 ~~any material visually depicting a live performance of a minor~~
31 ~~or what appears to be a minor engaging in a prohibited sexual~~
32 ~~act or in the simulation of a prohibited sexual act. A person~~
33 ~~who commits a violation of this subsection commits a class "D"~~
34 ~~felony. Notwithstanding section 902.9, the court may assess a~~
35 ~~fine of not more than twenty-five thousand dollars for each~~

1 offense under this subsection in addition to imposing any
2 other authorized sentence.

3 3. ~~A person who~~ It shall be unlawful to knowingly
4 ~~purchases or possesses~~ purchase or possess a negative, slide,
5 book, magazine, computer, computer disk, or other print or
6 visual medium depicting, or an electronic, magnetic, or
7 optical storage system, or any other type of storage system
8 which depicts a minor or what appears to be a minor engaging
9 in a prohibited sexual act or the simulation of a prohibited
10 sexual act ~~commits a serious misdemeanor.~~ A person who
11 commits a violation of this subsection commits an aggravated
12 misdemeanor. A person who commits a second or subsequent
13 violation of this subsection, or a person who commits a
14 violation of this subsection and who has committed a prior
15 offense in another jurisdiction which would constitute a
16 violation under this subsection, commits a class "D" felony.

17 4. ~~However, this~~ This section does not apply to law
18 enforcement officers, court personnel, licensed physicians,
19 licensed psychologists, or attorneys in the performance of
20 their official duties.

21 Sec. 5. Section 901A.1, subsection 1, Code 2001, is
22 amended by adding the following new paragraph:

23 NEW PARAGRAPH. bb. Enticing a minor away in violation of
24 section 710.10, subsection 1.

25 EXPLANATION

26 This bill relates to the criminal offenses of enticing a
27 minor away and sexual exploitation of a minor.

28 The bill changes the name of the crime of enticing a child
29 away to enticing a minor away, and makes changes to the
30 penalties. The bill provides that a person commits a class
31 "C" felony, if the person entices away a minor under the age
32 of 13 or a person believed to be under the age of 13 with the
33 intent to commit sexual abuse or sexual exploitation. The
34 bill provides that a person commits a class "D" felony, if the
35 person entices a minor away under the age of 16 or a person

1 believed to be under the age of 16, with the intent to commit
 2 an illegal act. The bill provides that a person commits an
 3 aggravated misdemeanor, if the person attempts to entice a
 4 minor away who is under the age of 16 or a person believed to
 5 be under the age of 16. Under current law, a person commits a
 6 class "D" felony for enticing a minor away, and an aggravated
 7 misdemeanor for attempting to entice a minor away.

8 The bill also provides that the offense is considered
 9 committed in this state, if the communication to entice away a
 10 minor or person believed to be a minor who is present in this
 11 state originates in another state, or the communication to
 12 entice away a minor or person believed to be a minor which is
 13 sent from this state.

14 The bill adds enticing a minor away under the age of 13 in
 15 violation of Code section 710.10, subsection 1, to the list of
 16 sexually predatory offenses in Code chapter 901A. A person
 17 convicted of a sexually predatory offense will serve a greater
 18 sentence than if only convicted of the underlying offense.
 19 The bill also requires that a person who commits enticing a
 20 minor away under the age of 13 register as a sex offender.

21 The bill also makes changes to the definition of the
 22 criminal offense of sexual exploitation of a minor. The bill
 23 makes it unlawful to induce or permit a minor to engage in a
 24 sex act if the person knows or should know that the sex act
 25 will be preserved in some manner on a computer, computer disk,
 26 or be placed in an electronic storage system, or in any other
 27 type of storage system. Under current law it is unlawful to
 28 induce or permit a minor to engage in a sex act if the person
 29 knows or should have known that the sex act may be
 30 photographed, filmed, or otherwise preserved in a negative,
 31 slide, book, magazine, or other print or visual medium. A
 32 person who commits sexual exploitation of a minor by
 33 unlawfully inducing or permitting a minor to engage in a sex
 34 act commits a class "C" felony.

35 The bill also makes it unlawful to knowingly purchase or

1 possess images of a minor or what appears to be a minor
2 engaged in a sex act if the images are contained in a
3 computer, computer disk, or in an electronic storage system,
4 or in any other type of storage system. Under current law, it
5 is unlawful to knowingly purchase or possess images of a minor
6 in a sex act if the image is in a negative, slide, book, or
7 magazine, or other print or visual medium. The bill increases
8 the penalty for purchasing or possessing sexually exploitive
9 images from a serious misdemeanor to an aggravated
10 misdemeanor. In addition, the bill provides that if a person
11 commits a second or subsequent offense of purchasing or
12 possessing sexually exploitive images, the person commits a
13 class "D" felony.

14 An aggravated misdemeanor is punishable by confinement for
15 no more than two years and a fine of at least \$500 but not
16 more than \$5,000. A class "D" felony is punishable by
17 confinement for no more than five years and a fine of at least
18 \$750 but not more than \$7,500. A class "C" felony is
19 punishable by confinement for no more than 10 years and a fine
20 of at least \$1,000 but not more than \$10,000.

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Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE 515-281-5164
FACSIMILE 515-281-4209

MEMORANDUM

TO: Members of the General Assembly
FROM: Anne M. Bunz
DATE: January 8, 200
SUBJECT: Possession of Child Pornography/Travelers

This bill proposal is divided into two sections. The first section deals with the solicitation of a minor and the second section deals with the possession of child pornography.

Section 1: Prohibits the creation of what appears to be child pornography by use of a means such as a computer to either combine an innocent picture of a child with elements making it appear pornographic or otherwise creating such an image. This amendment is necessary to keep up with the current technology in creating child pornography.

This section also increases the penalty for possession of child pornography from a serious misdemeanor to an aggravated misdemeanor for the first offense, and to a class "D" felony for a subsequent offense. This change brings penalties more in line with those of federal law and other states.

Section 2: Expands the crime of solicitation of a child to cover the pedophile who engages in conversations in a computer chat room and eventually convinces the child to meet with the intent of entering into a sexual relationship.

This section rewrites the current "Enticing a Child" statute and changes the title to "Solicitation of Minor." This rewrite includes:

- a. An enhanced penalty is provided if the victim is believed to be under age twelve. Because the perpetrator does not know the actual age of the person he or she is communicating with, and because on some occasions the "victim" is actually a law enforcement officer, the bill speaks to communicating with someone the perpetrator believes to be under 16 years of age.
- b. An enhanced punishment is included for enticing a child under age 12 for the purpose of sexual abuse or sexual exploitation. By referring to intent to commit sexual abuse, the age parameters set out for sexual abuse apply.
- c. The penalty for "attempting" to entice a child is raised from an aggravated misdemeanor to a class "D" felony.

This crime will be added to the list of sexual predatory offenses if the underlying intent is to commit sexual abuse or sexual exploitation of a minor. In addition, this crime will also be added to the list of offenses requiring sex offender registration.

Substituted for SF 351
3-21-01

(P.763)

REPRINTED

FEB 21 2001

Place On Calendar

HOUSE FILE 327

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 138)

Passed House, Date ^(P.600) 3-6-01 Passed Senate, Date ^(P.763) 3-21-01
Vote: Ayes 97 Nays 0 Vote: Ayes 49 Nays 0
Approved 3/28/01

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HF 327

1 Section 1. Section 692A.1, subsection 4, Code 2001, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. mm. Enticing away a minor in violation of
4 section 710.10, subsection 1.

5 Sec. 2. Section 692A.1, subsection 4, paragraph n, Code
6 2001, is amended to read as follows:

7 n. An indictable offense committed in another jurisdiction
8 which would constitute an indictable offense under paragraphs
9 "a" through "m" "mm".

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11 follows:

12 710.10 ENTICING AWAY A ~~CHILD~~ MINOR.

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14 authority and with the intent to commit ~~an illegal act~~ sexual
15 abuse or sexual exploitation upon the child a minor under the
16 age of thirteen, the person entices away ~~a child~~ the minor
17 under the age of thirteen, or entices away a person reasonably
18 believed to be under the age of thirteen.

19 2. A person commits ~~an aggravated misdemeanor~~ a class "D"
20 felony when, without authority and with the intent to commit
21 an illegal act upon ~~the child~~ a minor under the age of
22 sixteen, the person ~~attempts to entice~~ entices away a ~~child~~
23 minor under the age of sixteen, or entices away a person
24 reasonably believed to be under the age of sixteen.

25 3. A person commits an aggravated misdemeanor when,
26 without authority and with the intent to commit an illegal act
27 upon a minor under the age of sixteen, the person attempts to
28 entice away a minor under the age of sixteen, or attempts to
29 entice away a person reasonably believed to be under the age
30 of sixteen.

31 3. 4. A person's intent to commit ~~an illegal act upon the~~
32 child a violation of this section may be inferred when the
33 ~~individual person~~ person is not known to the ~~child~~ person being
34 enticed away and the ~~individual person~~ person does not have the
35 permission of the ~~child's~~ parent, guardian, or custodian to

1 contact the ~~child~~ person being enticed away.

2 5. For purposes of determining jurisdiction under section
3 803.1, an offense is considered committed in this state if the
4 communication to entice away a minor or a person believed to
5 be a minor who is present in this state originates from
6 another state, or the communication to entice away a minor or
7 a person believed to be a minor is sent from this state.

8 Sec. 4. Section 728.12, Code 2001, is amended to read as
9 follows:

10 728.12 SEXUAL EXPLOITATION OF A MINOR.

11 ~~1. A person commits a class "C" felony when the person~~
12 ~~employs, uses, persuades, induces, entices, coerces, knowingly~~
13 ~~permits, It shall be unlawful to employ, use, persuade,~~
14 ~~induce, entice, coerce, knowingly permit, or otherwise causes~~
15 ~~cause a minor to engage in a prohibited sexual act or in the~~
16 ~~simulation of a prohibited sexual act if the person knows,~~
17 ~~has. A person must know, or have reason to know, or intends~~
18 ~~intend that the act or simulated act may be photographed,~~
19 ~~filmed, or otherwise preserved in a negative, slide, book,~~
20 ~~magazine, computer, computer disk, or other print or visual~~
21 ~~medium, or be preserved in an electronic, magnetic, or optical~~
22 ~~storage system, or in any other type of storage system. A~~
23 ~~person who commits a violation of this subsection commits a~~
24 ~~class "C" felony. Notwithstanding section 902.9, the court~~
25 ~~may assess a fine of not more than fifty thousand dollars for~~
26 ~~each offense under this subsection in addition to imposing any~~
27 ~~other authorized sentence.~~

28 ~~2. A person commits a class "D" felony when the person~~
29 ~~knowingly promotes It shall be unlawful to knowingly promote~~
30 ~~any material visually depicting a live performance of a minor~~
31 ~~or what appears to be a minor engaging in a prohibited sexual~~
32 ~~act or in the simulation of a prohibited sexual act. A person~~
33 ~~who commits a violation of this subsection commits a class "D"~~
34 ~~felony. Notwithstanding section 902.9, the court may assess a~~
35 ~~fine of not more than twenty-five thousand dollars for each~~

1 offense under this subsection in addition to imposing any
2 other authorized sentence.

3 3. ~~A person who~~ It shall be unlawful to knowingly
4 ~~purchases or possesses~~ purchase or possess a negative, slide,
5 book, magazine, computer, computer disk, or other print or
6 visual medium depicting, or an electronic, magnetic, or
7 optical storage system, or any other type of storage system
8 which depicts a minor or what appears to be a minor engaging
9 in a prohibited sexual act or the simulation of a prohibited
10 sexual act ~~commits a serious misdemeanor.~~ A person who
11 commits a violation of this subsection commits an aggravated
12 misdemeanor. A person who commits a second or subsequent
13 violation of this subsection, or a person who commits a
14 violation of this subsection and who has committed a prior
15 offense in another jurisdiction which would constitute a
16 violation under this subsection, commits a class "D" felony.
17 For purposes of this subsection, a violation is considered a
18 second or subsequent violation, if, prior to the person's
19 having been convicted of the offense, the person has ever been
20 convicted under this subsection or in another jurisdiction of
21 an offense which would constitute a violation under this
22 subsection.

23 4. ~~However, this~~ This section does not apply to law
24 enforcement officers, court personnel, licensed physicians,
25 licensed psychologists, or attorneys in the performance of
26 their official duties.

27 Sec. 5. Section 901A.1, subsection 1, Code 2001, is
28 amended by adding the following new paragraph:

29 NEW PARAGRAPH. bb. Enticing a minor away in violation of
30 section 710.10, subsection 1.

31 EXPLANATION

32 This bill relates to the criminal offenses of enticing a
33 minor away and sexual exploitation of a minor.

34 The bill changes the name of the crime of enticing a child
35 away to enticing a minor away, and makes changes to the

1 penalties. The bill provides that a person commits a class
2 "C" felony, if the person entices away a minor under the age
3 of 13 or a person believed to be under the age of 13 with the
4 intent to commit sexual abuse or sexual exploitation. The
5 bill provides that a person commits a class "D" felony, if the
6 person entices a minor away under the age of 16 or a person
7 believed to be under the age of 16, with the intent to commit
8 an illegal act. The bill provides that a person commits an
9 aggravated misdemeanor, if the person attempts to entice a
10 minor away who is under the age of 16 or a person believed to
11 be under the age of 16. Under current law, a person commits a
12 class "D" felony for enticing a minor away, and an aggravated
13 misdemeanor for attempting to entice a minor away.

14 The bill also provides that the offense is considered
15 committed in this state, if the communication to entice away a
16 minor or person believed to be a minor who is present in this
17 state originates in another state, or the communication to
18 entice away a minor or person believed to be a minor which is
19 sent from this state.

20 The bill adds enticing a minor away under the age of 13 in
21 violation of Code section 710.10, subsection 1, to the list of
22 sexually predatory offenses in Code chapter 901A. A person
23 convicted of a sexually predatory offense will serve a greater
24 sentence than if only convicted of the underlying offense.
25 The bill also requires that a person who commits enticing a
26 minor away under the age of 13 register as a sex offender.

27 The bill also makes changes to the definition of the
28 criminal offense of sexual exploitation of a minor. The bill
29 makes it unlawful to induce or permit a minor to engage in a
30 sex act if the person knows or should know that the sex act
31 will be preserved in some manner on a computer, computer disk,
32 or be placed in an electronic storage system, or in any other
33 type of storage system. Under current law it is unlawful to
34 induce or permit a minor to engage in a sex act if the person
35 knows or should have known that the sex act may be

1 photographed, filmed, or otherwise preserved in a negative,
2 slide, book, magazine, or other print or visual medium. A
3 person who commits sexual exploitation of a minor by
4 unlawfully inducing or permitting a minor to engage in a sex
5 act commits a class "C" felony.

6 The bill also makes it unlawful to knowingly purchase or
7 possess images of a minor or what appears to be a minor
8 engaged in a sex act if the images are contained in a
9 computer, computer disk, or in an electronic storage system,
10 or in any other type of storage system. Under current law, it
11 is unlawful to knowingly purchase or possess images of a minor
12 in a sex act if the image is in a negative, slide, book, or
13 magazine, or other print or visual medium. The bill increases
14 the penalty for purchasing or possessing sexually exploitive
15 images from a serious misdemeanor to an aggravated
16 misdemeanor. In addition, the bill provides that if a person
17 commits a second or subsequent offense of purchasing or
18 possessing sexually exploitive images, the person commits a
19 class "D" felony. Under the bill, a second or subsequent
20 offense means that at anytime prior to a conviction, the
21 person is convicted of the same offense in this state or any
22 other jurisdiction with a similar criminal offense.

23 An aggravated misdemeanor is punishable by confinement for
24 no more than two years and a fine of at least \$500 but not
25 more than \$5,000. A class "D" felony is punishable by
26 confinement for no more than five years and a fine of at least
27 \$750 but not more than \$7,500. A class "C" felony is
28 punishable by confinement for no more than 10 years and a fine
29 of at least \$1,000 but not more than \$10,000.

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HOUSE FILE 327

H-1078

1 Amend House File 327 as follows:

2 1. Page 3, by striking lines 12 through 22, and
3 inserting the following: "misdemeanor for a first
4 offense and a class "D" felony for a second or
5 subsequent offense. For purposes of this subsection,
6 an offense is considered a second or subsequent
7 offense if, prior to the person's having been
8 convicted under this subsection, any of the following
9 apply:

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

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

By TREMMEL of Wapello

H-1078 FILED FEBRUARY 23, 2001

adapted
3-6-01
(p. 600)

HOUSE FILE 327
FISCAL NOTE

The estimate for **House File 327** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 327 amends Section 710.10, Code of Iowa, by changing the name of enticing a child away to enticing a minor away, and changes the penalties. The Bill increases the penalty from a Class D to a Class C felony in cases where sexual abuse or sexual exploitation of a minor was intended. The Bill increases the penalty from an aggravated misdemeanor to a Class D felony in cases where a minor under 16 years of age is enticed away. House File 327 creates an aggravated misdemeanor for attempting to entice a minor away. The Bill increases the penalty from a serious misdemeanor to an aggravated misdemeanor or a Class D felony for purchasing or possessing media depicting minors in prohibited sexual acts. The Bill facilitates prosecution and conviction of people who use the Internet to entice or attempt to entice minors. House File 327 adds enticing a minor away under the age of 13 to the list of sexually predatory offenses.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. The law will become effective July 1, 2001. A lag effect of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
4. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court information. Conviction and penalty information is based on FY 2000 data.
5. The correctional impact and fiscal impact cannot be determined for the provisions of the Bill relating to prosecution and conviction of using the Internet to entice or attempt to entice away a minor. There may be additional charges and convictions due to this clarification; however, due to insufficient information, an accurate estimate cannot be provided.
6. Average jail terms are based on the average jail term imposed for all aggravated misdemeanors.
7. During FY 2000, two people were convicted of a Class D felony for enticing away a child, and three people were convicted of an aggravated misdemeanor

-2-

- for enticement. All of the convicted offenders received probation, with one person being required to serve time in a Community-Based Corrections (CBC) residential facility.
8. Neither of the two Class D felony convictions that occurred during FY 2000 had been charged with sexual abuse or sexual exploitation. Therefore, there is no correctional impact associated with the increased penalty (from Class D to Class C felony) in cases where sexual abuse or sexual exploitation of a minor was intended.
 9. Based on 1999 Iowa Incident-Based Crime information, there will be no Class D felony convictions due to increasing the penalty from an aggravated misdemeanor to a Class D felony in cases where the minor is under the age of 16. There will be one additional aggravated misdemeanor conviction annually under this provision. This person will be placed on probation.
 10. There were seven people convicted in FY 2000 of purchasing or possessing media depicting minors in prohibited sexual acts. Under the Bill, these people will now be convicted of an aggravated misdemeanor rather than a serious misdemeanor. These convicted offenders will already be on probation.
 11. The marginal cost per day for county jails will not exceed \$25 per offender. The average length of stay for serious misdemeanors is 30 days. The average length of stay in jail for aggravated misdemeanors is 41 days.
 12. The marginal cost per day for probation or parole is \$1.55 per offender. The average length of stay for street supervision is 6 months for a serious misdemeanor and 19 months for an aggravated misdemeanor.
 13. The median cost per case for aggravated misdemeanors and Class D felonies is \$1,000 to defend. The marginal cost per case for serious misdemeanors is \$750.
 14. Court costs vary by type of offense charged as well as contested versus uncontested cases. Trial costs for an aggravated misdemeanor case ranges from \$173 to \$3,700. Trial costs for a serious misdemeanor case range from \$190 to \$2,800. These costs include expenses for the Clerk of Court, court attendant, court reporter, juries, and judges; i.e., Magistrates, District Associate Judges, and District Court Judges.
 15. The Department of Public Safety indicates there is no impact on the Sex Offender Registry workload under House File 327.

CORRECTIONAL IMPACT

It is estimated there will be two more jail admissions during FY 2002, and three more admissions each year thereafter. On an annual basis, there will be one more aggravated misdemeanor case for attempting to entice a minor away. The seven serious misdemeanor convictions for purchasing or possessing media depicting minors in prohibited sexual acts will become seven aggravated misdemeanor convictions.

-3-

There will be one additional admission to probation under House File 327. Convicted offenders already on probation will serve a longer sentence. The Bill will not have a correctional impact on the State prison system.

FISCAL IMPACT

The fiscal impact of House File 327 is as follows:

State General Fund:

	FY 2002	FY 2003
	_____	_____
Parol/Probation Costs	\$ 3,000	\$ 3,000
Indigent Defense Costs	2,000	3,000
Judicial Department Costs	5,000	5,000
	_____	_____
Total General Fund Cost	\$10,000	\$11,000
	_____	_____

Local Government:

County Jails	\$ 2,000	\$ 4,000
	_____	_____
	_____	_____

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
 Department of Corrections
 Supreme Court
 State Public Defender's Office

(LSB 1124HV, BAL)

FILED MARCH 1, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 327
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 138)

(As Amended and Passed by the House March 6, 2001)

Passed House, ^(p. 600) Date 3-6-01 Passed Senate, ^(p. 763) Date 3-21-01
Vote: Ayes 97 Nays 0 Vote: Ayes 49 Nays 0
Approved 3/28/01

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1 An Act relating to the criminal offenses of enticing a minor away
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House Amendments _____

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2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. mm. Enticing away a minor in violation of
4 section 710.10, subsection 1.

5 Sec. 2. Section 692A.1, subsection 4, paragraph n, Code
6 2001, is amended to read as follows:

7 n. An indictable offense committed in another jurisdiction
8 which would constitute an indictable offense under paragraphs
9 "a" through "m" "mm".

10 Sec. 3. Section 710.10, Code 2001, is amended to read as
11 follows:

12 710.10 ENTICING AWAY A ~~CHILD~~ MINOR.

13 1. A person commits a class ~~"B"~~ "C" felony when, without
14 authority and with the intent to commit ~~an-illegal-act~~ sexual
15 abuse or sexual exploitation upon ~~the-child~~ a minor under the
16 age of thirteen, the person entices away ~~a-child~~ the minor
17 under the age of thirteen, or entices away a person reasonably
18 believed to be under the age of thirteen.

19 2. A person commits ~~an-aggravated-misdemeanor~~ a class "D"
20 felony when, without authority and with the intent to commit
21 an illegal act upon ~~the-child~~ a minor under the age of
22 sixteen, the person ~~attempts-to-entice~~ entices away a ~~child~~
23 minor under the age of sixteen, or entices away a person
24 reasonably believed to be under the age of sixteen.

25 3. A person commits an aggravated misdemeanor when,
26 without authority and with the intent to commit an illegal act
27 upon a minor under the age of sixteen, the person attempts to
28 entice away a minor under the age of sixteen, or attempts to
29 entice away a person reasonably believed to be under the age
30 of sixteen.

31 3- 4. A person's intent to commit ~~an-illegal-act-upon-the~~
32 child a violation of this section may be inferred when the
33 ~~individual~~ person is not known to the ~~child~~ person being
34 enticed away and the ~~individual~~ person does not have the
35 permission of the ~~child's~~ parent, guardian, or custodian to

1 contact the ~~child~~ person being enticed away.

2 5. For purposes of determining jurisdiction under section
3 803.1, an offense is considered committed in this state if the
4 communication to entice away a minor or a person believed to
5 be a minor who is present in this state originates from
6 another state, or the communication to entice away a minor or
7 a person believed to be a minor is sent from this state.

8 Sec. 4. Section 728.12, Code 2001, is amended to read as
9 follows:

10 728.12 SEXUAL EXPLOITATION OF A MINOR.

11 ~~1. A person commits a class "C" felony when the person~~
12 ~~employs, uses, persuades, induces, entices, coerces, knowingly~~
13 ~~permits, It shall be unlawful to employ, use, persuade,~~
14 ~~induce, entice, coerce, knowingly permit, or otherwise causes~~
15 ~~cause a minor to engage in a prohibited sexual act or in the~~
16 ~~simulation of a prohibited sexual act if the person knows,~~
17 ~~has. A person must know, or have reason to know, or intends~~
18 ~~intend that the act or simulated act may be photographed,~~
19 ~~filmed, or otherwise preserved in a negative, slide, book,~~
20 ~~magazine, computer, computer disk, or other print or visual~~
21 ~~medium, or be preserved in an electronic, magnetic, or optical~~
22 ~~storage system, or in any other type of storage system. A~~
23 ~~person who commits a violation of this subsection commits a~~
24 ~~class "C" felony. Notwithstanding section 902.9, the court~~
25 ~~may assess a fine of not more than fifty thousand dollars for~~
26 ~~each offense under this subsection in addition to imposing any~~
27 ~~other authorized sentence.~~

28 ~~2. A person commits a class "B" felony when the person~~
29 ~~knowingly promotes It shall be unlawful to knowingly promote~~
30 ~~any material visually depicting a live performance of a minor~~
31 ~~or what appears to be a minor engaging in a prohibited sexual~~
32 ~~act or in the simulation of a prohibited sexual act. A person~~
33 ~~who commits a violation of this subsection commits a class "D"~~
34 ~~felony. Notwithstanding section 902.9, the court may assess a~~
35 ~~fine of not more than twenty-five thousand dollars for each~~

1 offense under this subsection in addition to imposing any
2 other authorized sentence.

3 3. ~~A person who~~ It shall be unlawful to knowingly
4 ~~purchases or possesses~~ purchase or possess a negative, slide,
5 book, magazine, computer, computer disk, or other print or
6 visual medium depicting, or an electronic, magnetic, or
7 optical storage system, or any other type of storage system
8 which depicts a minor or what appears to be a minor engaging
9 in a prohibited sexual act or the simulation of a prohibited
10 sexual act ~~commits a serious misdemeanor.~~ A person who
11 commits a violation of this subsection commits an aggravated
12 misdemeanor for a first offense and a class "D" felony for a
13 second or subsequent offense. For purposes of this
14 subsection, an offense is considered a second or subsequent
15 offense if, prior to the person's having been convicted under
16 this subsection, any of the following apply:

17 a. The person has a prior conviction or deferred judgment
18 under this subsection.

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

27 4. ~~However, this~~ This section does not apply to law
28 enforcement officers, court personnel, licensed physicians,
29 licensed psychologists, or attorneys in the performance of
30 their official duties.

31 Sec. 5. Section 901A.1, subsection 1, Code 2001, is
32 amended by adding the following new paragraph:

33 NEW PARAGRAPH. bb. Enticing a minor away in violation of
34 section 710.10, subsection 1.

35

HOUSE FILE 327

AN ACT

RELATING TO THE CRIMINAL OFFENSES OF ENTICING A MINOR AWAY AND SEXUAL EXPLOITATION OF A MINOR AND PROVIDING A PENALTY.

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

Section 1. Section 692A.1, subsection 4, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. mm. Enticing away a minor in violation of section 710.10, subsection 1.

Sec. 2. Section 692A.1, subsection 4, paragraph n, Code 2001, is amended to read as follows:

n. An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "m" "mm".

Sec. 3. Section 710.10, Code 2001, is amended to read as follows:

710.10 ENTICING AWAY A ~~CHILD~~ MINOR.

1. A person commits a class "B" "C" felony when, without authority and with the intent to commit ~~an illegal act~~ sexual abuse or sexual exploitation upon the child a minor under the age of thirteen, the person entices away ~~a child~~ the minor under the age of thirteen, or entices away a person reasonably believed to be under the age of thirteen.

2. A person commits ~~an aggravated misdemeanor~~ a class "D" felony when, without authority and with the intent to commit an illegal act upon ~~the child~~ a minor under the age of sixteen, the person ~~attempts to entice~~ entices away a child minor under the age of sixteen, or entices away a person reasonably believed to be under the age of sixteen.

3. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to

enticing away a minor under the age of sixteen, or attempts to entice away a person reasonably believed to be under the age of sixteen.

3. 4. A person's intent to commit ~~an illegal act upon the child~~ a violation of this section may be inferred when the ~~individual person~~ person is not known to the ~~child~~ person being enticed away and the ~~individual person~~ person does not have the permission of the ~~child's~~ parent, guardian, or custodian to contact the ~~child~~ person being enticed away.

5. For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice away a minor or a person believed to be a minor who is present in this state originates from another state, or the communication to entice away a minor or a person believed to be a minor is sent from this state.

Sec. 4. Section 728.12, Code 2001, is amended to read as follows:

728.12 SEXUAL EXPLOITATION OF A MINOR.

1. ~~A person commits a class "C" felony when the person employs, uses, persuades, induces, entices, coerces, knowingly permits, it shall be unlawful to employ, use, persuade, induce, entice, coerce, knowingly permit, or otherwise causes cause~~ a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act ~~if the person knows, has, A person must know, or have reason to know, or intends intend~~ that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class "C" felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

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

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

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

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

4. ~~However, this~~ This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

Sec. 5. Section 901A.1, subsection 1, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. bb. Enticing a minor away in violation of section 710.10, subsection 1.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 327, Seventy-ninth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved March 28, 2001

THOMAS J. VILSACK
Governor