

House File 148 - Introduced

HOUSE FILE 148
BY HEARTSILL

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:

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

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

5 Sec. 2. Section 692A.126, subsection 1, Code 2017, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. w. Invasion of privacy in violation of
8 section 709.21, subsection 2 or 3.

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

11 **709.21 Invasion of privacy.**

12 1. As used in this section:

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

17 b. *“Photographs or films”* means the making of any
18 photograph, motion picture film, videotape, or any other
19 recording or transmission of the image of a person.

20 c. *“Sex act”* means the same as defined in section 702.17.

21 d. *“Visual depiction”* means the same as defined in section
22 728.1.

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

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

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

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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. Visual depictions 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, or the lawful
13 and common practices of law enforcement, criminal reporting,
14 legal proceedings, or medical treatment.

15 6. A person who violates this section commits an aggravated
16 misdemeanor.

17 7. For purposes of determining whether a person should
18 register as a sex offender pursuant to the provisions of
19 chapter 692A for a violation of subsection 2 or 3, the fact
20 finder shall make a determination as provided in section
21 692A.126.

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

24 **903B.2 Special sentence — class “D” felonies or**
25 **misdemeanors.**

26 ★ Except as otherwise provided in this section, a person
27 convicted of a misdemeanor or a class “D” felony offense under
28 chapter 709, section 726.2, or section 728.12 shall also be
29 sentenced, in addition to any other punishment provided by law,
30 to a special sentence committing the person into the custody
31 of the director of the Iowa department of corrections for a
32 period of ten years, with eligibility for parole as provided in
33 chapter 906. For a person convicted of a violation of section
34 709.21, subsection 2 or 3, a sexual motivation determination
35 under section 692A.126 must be made in order for a person to

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

EXPLANATION

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

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

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1 photographed, or filmed.

2 The bill creates two additional invasion of privacy criminal
3 offenses in Code section 709.21(2) and (3).

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

10 New Code section 709.21(3) provides that a person who
11 knowingly creates a visual depiction that shows another person
12 in a state of full or partial nudity or engaged in a sex act,
13 if the other person did not or was unable to consent to the
14 creation, commits invasion of privacy.

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

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

23 The bill defines "visual depiction" to mean the same as
24 defined under Code section 728.1.

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: visual depictions involving voluntary exposure in
28 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, or for the lawful and common practices
31 of law enforcement, criminal reporting, legal proceedings, or
32 medical treatment.

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

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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)
4 is required to register as a sex offender under Code chapter
5 692A. The bill provides that if a person commits invasion of
6 privacy in violation of the new Code section 709.21(2) or (3),
7 the person may be required to register as a sex offender if
8 the fact finder determines, beyond a reasonable doubt, that
9 the violation was sexually motivated pursuant to Code section
10 692A.126.

11 A person who commits invasion of privacy is also subject to
12 a special 10-year sentence, which may include parole, under
13 Code section 903B.2. A person convicted of a violation of Code
14 section 709.21(2) or (3) shall not be sentenced to a 10-year
15 special sentence unless sexual motivation under Code section
16 692A.126 is found.