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:
H.F. 148

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

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

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

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

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

709.21 Invasion of privacy.

1. As used in this section:

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

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

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

d. "Visual depiction" means the same as defined in section 728.1.

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

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

4. A person who knowingly views, photographs, or films another person, for the purpose of arousing or gratifying the
sexual desire of any person, commits invasion of privacy if all of the following apply:

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

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

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

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

a. Visual depictions involving voluntary exposure by a person in public or commercial settings.

b. Disclosures made in the public interest, including but not limited to the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

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

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

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

903B.2 Special sentence — class "D" felonies or misdemeanors.

A Except as otherwise provided in this section, a person convicted of a misdemeanor or a class "D" felony offense under chapter 709, section 726.2, or section 728.12 shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906. For a person convicted of a violation of section 709.21, subsection 2 or 3, a sexual motivation determination under section 692A.126 must be made in order for a person to
be sentenced to a special sentence. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole or work release. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and 908, and rules adopted under those chapters for persons on parole or work release. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category “A” sentence for purposes of calculating earned time under section 903A.2.

EXPLANATION

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

This bill relates to the criminal offense of invasion of privacy, provides penalties, and makes penalties applicable. Current law provides that a person commits the crime of invasion of privacy, an aggravated misdemeanor, if the person knowingly views, photographs, or films another person, for the purpose of arousing or gratifying the sexual desire of any person, if all of the following apply: the other person does not consent or is unable to consent to being viewed, photographed, or filmed; the other person is in a state of full or partial nudity; and the other person has a reasonable expectation of privacy while in a state of full or partial nudity. Under the bill, the current law creating the criminal offense of invasion of privacy is moved to Code section 709.21(4), but strikes the requirement that the prosecution prove the victim did not have knowledge about being viewed,
The bill creates two additional invasion of privacy criminal offenses in Code section 709.21(2) and (3).

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

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

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

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

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

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

New Code section 709.21(2) and (3) do not apply to the following: visual depictions involving voluntary exposure in public or commercial settings; or to disclosures made in the public interest, including but not limited to for the reporting of unlawful conduct, or for the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

A person who violates the bill commits an aggravated misdemeanor. An aggravated misdemeanor is punishable by confinement for no more than two years and a fine of at least
$625 but not more than $6,250.

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

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