

HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	Senate File 84 (Formerly HF 646)	House Committee:	PASSED on March 3 (19-1)
Committee:	Judiciary	House Floor:	PASSED on April 4 (96-0)
Floor Manager:	Rep. Nordman	Senate Floor:	PASSED on March 6 (47-0)
Date:	May 8, 2023	Bouncing:	PASSED on April 24 (47-0)
Staff:	Amanda Wille (1-5230)	Governor:	

Sexual Exploitation of a Minor

- Enhances the penalties for sexual exploitation of a minor. Does not permit a deferred judgement for these crimes.
- **Fiscal Note-** Estimated general fund DPS costs are increased by approximately \$900,000 due to the length of stay of inmates.

Section by Section Analysis

Division I

Sexual Exploitation of a Minor

Section 1- Kidnapping and Related Offenses- Enticing a Minor (710.10)

This code section criminalizes enticing a minor for sexual purposes. The amendment ensures a person who entices a law enforcement officer, posing as a minor, receives the same penalty.

Section 2 – Obscenity- Sexual Exploitation of a Minor (728.12)

Penalties for sexual exploitation of a minor are increased.

- Creating child pornography. Current penalty is a class “C” felony, new penalty is a class “B” felony
- Promoting child pornography. Current penalty is a class “D” felony, new penalty is a class “C” felony.
- Possessing of child pornography. Current penalty is an aggravated misdemeanor, new penalty is a class “D” felony for a first offense and a class “C” felony for second or subsequent offense. The court can use convictions in other states to consider the charge a second offense.

A previous deferred judgement shall be counted as a first offense for the purpose of determining if a second offense has occurred.

Section 3- Judgement and Sentencing Procedures- Parole or Work Release Eligibility Determination- Certain Offenses (901.11)

At the time of sentencing the court will determine the mandatory minimum based on all information including the criminal record, validated risk assessment and the negative impact the offense had on the victim or others.

Section 4 –Felonies- Minimum Sentence for Certain Felonies- Eligibility for Parole or Work Release (902.12)

A person convicted under section one of the bill shall not be eligible for parole or work release until the person has served between 50% to 70% of their sentence. The guidelines for how a court determines the minimum sentence is found in section two of the bill.

Section 5- Sex Offender Special Sentencing and Hormone Treatment- Special Sentence- Class "B" or class "C" Felonies (903B.1)

Ensures anyone charged with creating child pornography or promoting child pornography is on the sex offender registry for life. (The is a conforming change). A person convicted for a first possession of child pornography shall be on the registry for 10 years. (This is a conforming change)

Section 6- Deferred Judgement, Deferred or Suspended Sentence, Probation- Deferred Judgement, Deferred Sentence, or Suspended Sentence (907.3)

There is no deferred judgement if a person is convicted under section one of the bill.

Section 7- Victim Rights- Victim Restitution Rights (915.100)

A person charged with creating or promoting child pornography shall pay restitution. Restitution is determined by the court and shall include the full amount of the victim's losses. A minimum amount of \$3,000 shall be set. The court shall order pecuniary damages that reflect the offender's role in the cause of the victim's losses. A minimum amount of \$3,000 shall be set.

Division II

Stalking Utilizing a Technological Device

Fiscal note -General fund costs to the DOC Class "D" felonies 354,282. Class "C" felonies \$1,330,267

Class "C" felony stalking if any of the following apply:

- The person stalking is subject to restrictions in a protective order or any order that prohibits contact between the stalker and the victim.
- The person commits stalking while in possession of a dangerous weapon.
- The person commits stalking directed at a person under 18
- The person utilizes a technological device while committing stalking
- A third or subsequent offense

A second offense stalking is a class "D" felony

Amendment Analysis