

Judiciary
Do pass amend. 3408 3-23-89 (p.1004)

reprinted

FILED MAR 14 1989

SENATE FILE 426
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 319)

Passed Senate, Date 4-3-89 (p.1126) Passed House, Date 4-17-89 (p.1625)
Vote: Ayes 42 Nays 2 Vote: Ayes 91 Nays 5
Approved May 8, 1989

A BILL FOR

1 An Act relating to sexual abuse, including sexual abuse in the
2 third degree and sexual abuse which constitutes a forcible
3408 - 3 felony, and providing penalties.

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

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SF 426

1 Section 1. Section 702.11, Code 1989, is amended to read
2 as follows:

3 702.11 FORCIBLE FELONY.

4 A "forcible felony" is any felonious child endangerment,
5 assault, murder, sexual abuse other than sexual abuse in the
6 third degree committed between spouses or in violation of
7 section 709.4, subsection 2, paragraph "c", subparagraph (4),
8 kidnapping, robbery, arson in the first degree, or burglary in
9 the first degree.

10 Sec. 2. Section 709.4, Code 1989, is amended by striking
11 the section and inserting in lieu thereof the following:

12 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

13 A person commits sexual abuse in the third degree when the
14 person performs a sex act under any of the following
15 circumstances:

16 1. The act is done by force or against the will of the
17 other participant, whether or not the other participant is the
18 person's spouse or is cohabiting with the person.

19 2. The act is between persons who are not at the time
20 cohabiting as husband and wife and if any of the following are
21 true:

22 a. The other participant is suffering from a mental defect
23 or incapacity which precludes giving consent.

24 b. The other participant is twelve or thirteen years of
25 age.

26 c. The other participant is fourteen or fifteen years of
27 age and any of the following are true:

28 (1) The person is a member of the same household as the
29 other participant.

30 (2) The person is related to the other participant by
31 blood or affinity to the fourth degree.

32 (3) The person is in a position of authority over the
33 other participant and uses that authority to coerce the other
34 participant to submit.

35 (4) The person is six or more years older than the other

1 participant.

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2 Sexual abuse in the third degree is a class "C" felony.

3 EXPLANATION

4 Section 1 of this bill excludes sexual abuse in the third
5 degree committed between spouses or if a person is fourteen or
6 fifteen years of age and the other person is six or more years
7 older, from the definition of a forcible felony.

8 Section 2 modifies the structure of Code section 709.4
9 (sexual abuse in the third degree) to state that a sex act by
10 force or against the will of another is sexual abuse in the
11 third degree and enumerating the situations under which acts
12 which are not by force or against the will of another are
13 still classifiable as sexual abuse in the third degree.

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SENATE FILE 426

S-3439

1 Amend Senate File 426 as follows:

2 1. Page 2, by inserting after line 2 the follow-
3 ing:

4 "Sec. ____ . Section 811.1, subsection 1, Code 1989,
5 is amended to read as follows:

6 1. A defendant awaiting judgment of conviction and
7 sentencing following either a plea or verdict of
8 guilty of a class "A" felony, murder, felonious
9 assault, sexual abuse in the second degree, sexual
10 abuse in the third degree ~~in violation of section~~
11 ~~709-47-subsections-1-and-3~~, kidnapping, robbery in the
12 first degree, arson in the first degree, or burglary
13 in the first degree."

14 2. Renumber as necessary.

By RICHARD VARN

S-3439 FILED MARCH 28, 1989

Adopted 4-3-89 (p. 1125)

SENATE FILE 426

S-3408

1 Amend Senate File 426 as follows:

2 1. Page 2, by inserting after line 2 the
3 following:

4 "Sec. ____ . Section 811.1, subsection 2, Code 1989,
5 is amended to read as follows:

6 2. A defendant appealing a conviction of a class
7 "A" felony, murder, felonious assault, sexual abuse in
8 the second degree, sexual abuse in the third degree ~~in~~
9 ~~violation of section 709-47-subsections-1-and-3~~,
10 kidnapping, robbery in the first degree, arson in the
11 first degree, or burglary in the first degree."

12 2. Title page, line 3, by inserting after the
13 word "felony," the following: "to release on appeal
14 from a conviction of sexual abuse in the third
15 degree,".

16 3. By renumbering as necessary.

By COMMITTEE ON JUDICIARY

DONALD V. DOYLE, Chairperson

S-3408 FILED MARCH 23, 1989

Adopted 4-3-89 (p. 1125)

SENATE FILE 426

S-3489

1 Amend Senate File 426 as follows:

2 1. Page 2, by inserting after line 2, the
3 following:

4 "Sec. ____ . NEW SECTION. 668.15 DAMAGES RESULTING
5 FROM SEXUAL ABUSE -- EVIDENCE.

6 In an action against a person accused of sexual
7 abuse, as defined in section 709.1, by an alleged
8 victim of sexual abuse for damages resulting from the
9 act of sexual abuse, evidence concerning the past
10 sexual behavior of the alleged victim is not
11 admissible."

12 2. Renumber as necessary.

By RICHARD VARN
JIM RIORDAN

S-3489 FILED MARCH 29, 1989

Out of Order 4-3-89 (p.1125)

3913 -

1 Section 1. Section 702.11, Code 1989, is amended to read
2 as follows:

3 702.11 FORCIBLE FELONY.

4 A "forcible felony" is any felonious child endangerment,
5 assault, murder, sexual abuse other than sexual abuse in the
6 third degree committed between spouses or in violation of
7 section 709.4, subsection 2, paragraph "c", subparagraph (4),
8 kidnapping, robbery, arson in the first degree, or burglary in
9 the first degree.

10 Sec. 2. Section 709.4, Code 1989, is amended by striking
11 the section and inserting in lieu thereof the following:

12 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

13 A person commits sexual abuse in the third degree when the
14 person performs a sex act under any of the following
15 circumstances:

16 1. The act is done by force or against the will of the
17 other participant, whether or not the other participant is the
18 person's spouse or is cohabiting with the person.

19 2. The act is between persons who are not at the time
20 cohabiting as husband and wife and if any of the following are
21 true:

22 a. The other participant is suffering from a mental defect
23 or incapacity which precludes giving consent.

24 b. The other participant is twelve or thirteen years of
25 age.

26 c. The other participant is fourteen or fifteen years of
27 age and any of the following are true:

28 (1) The person is a member of the same household as the
29 other participant.

30 (2) The person is related to the other participant by
31 blood or affinity to the fourth degree.

32 (3) The person is in a position of authority over the
33 other participant and uses that authority to coerce the other
34 participant to submit.

35 (4) The person is six or more years older than the other

1 participant.

2 Sexual abuse in the third degree is a class "C" felony.

3 Sec. 3. Section 811.1, subsection 1, Code 1989, is amended
4 to read as follows:

5 1. A defendant awaiting judgment of conviction and
6 sentencing following either a plea or verdict of guilty of a
7 class "A" felony, murder, felonious assault, sexual abuse in
8 the second degree, sexual abuse in the third degree in
9 violation-of-section-709-47-subsections-1-and-3, kidnapping,
10 robbery in the first degree, arson in the first degree, or
11 burglary in the first degree.

12 Sec. 4. Section 811.1, subsection 2, Code 1989, is amended
13 to read as follows:

14 2. A defendant appealing a conviction of a class "A"
15 felony, murder, felonious assault, sexual abuse in the second
16 degree, sexual abuse in the third degree in-violation-of
17 section-709-47-subsections-1-and-3, kidnapping, robbery in the
18 first degree, arson in the first degree, or burglary in the
19 first degree.

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HOUSE AMENDMENT TO
SENATE FILE 426

S-3793

1 Amend Senate File 426, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Sec. ____ . NEW SECTION. 668.15 DAMAGES RESULTING
6 FROM SEXUAL ABUSE -- EVIDENCE.

7 In an action against a person accused of sexual
8 abuse, as defined in section 709.1, by an alleged
9 victim of sexual abuse for damages arising from an
10 injury resulting from the act of sexual abuse,
11 evidence concerning the past sexual behavior of the
12 alleged victim is not admissible."

13 2. Title page, line 4, by inserting after the
14 word "degree," the following: "to evidence admissible
15 in an action for damages arising from an injury
16 resulting from an act of sexual abuse,".

17 3. Renumber as necessary.

RECEIVED FROM THE HOUSE

S-3793 FILED APRIL 19, 1989

Senate Concurred 4-20-89 (p. 1573)

RORDAN, CH.
HANNON
HAGERLA

SSB 319
HUMAN RESOURCES

SENATE FILE 426
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to sexual abuse, including sexual abuse in the
2 third degree and sexual abuse which constitutes a forcible
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10 Sec. 2. Section 709.4, Code 1989, is amended by striking
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32 (3) The person is in a position of authority over the
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2 Sexual abuse in the third degree is a class "C" felony.

3 EXPLANATION

4 Section 1 of this bill excludes sexual abuse in the third
5 degree committed between spouses or if a person is fourteen or
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8 Section 2 modifies the structure of Code section 709.4
9 (sexual abuse in the third degree) to state that a sex act by
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SENATE FILE 426

AN ACT

RELATING TO SEXUAL ABUSE, INCLUDING SEXUAL ABUSE IN THE THIRD DEGREE AND SEXUAL ABUSE WHICH CONSTITUTES A FORCIBLE FELONY, TO RELEASE ON APPEAL FROM A CONVICTION OF SEXUAL ABUSE IN THE THIRD DEGREE, TO EVIDENCE ADMISSIBLE IN AN ACTION FOR DAMAGES ARISING FROM AN INJURY RESULTING FROM AN ACT OF SEXUAL ABUSE, AND PROVIDING PENALTIES.

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

Section 1. NEW SECTION. 668.15 DAMAGES RESULTING FROM SEXUAL ABUSE -- EVIDENCE.

In an action against a person accused of sexual abuse, as defined in section 709.1, by an alleged victim of sexual abuse for damages arising from an injury resulting from the act of sexual abuse, evidence concerning the past sexual behavior of the alleged victim is not admissible.

Sec. 2. Section 702.11, Code 1989, is amended to read as follows:

702.11 FORCIBLE FELONY.

A "forcible felony" is any felonious child endangerment, assault, murder, sexual abuse other than sexual abuse in the third degree committed between spouses or in violation of section 709.4, subsection 2, paragraph "c", subparagraph (4), kidnapping, robbery, arson in the first degree, or burglary in the first degree.

Sec. 3. Section 709.4, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other participant, whether or not the other participant is the person's spouse or is cohabiting with the person.

2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

a. The other participant is suffering from a mental defect or incapacity which precludes giving consent.

b. The other participant is twelve or thirteen years of age.

c. The other participant is fourteen or fifteen years of age and any of the following are true:

(1) The person is a member of the same household as the other participant.

(2) The person is related to the other participant by blood or affinity to the fourth degree.

(3) The person is in a position of authority over the other participant and uses that authority to coerce the other participant to submit.

(4) The person is six or more years older than the other participant.

Sexual abuse in the third degree is a class "C" felony.

Sec. 4. Section 811.1, subsection 1, Code 1989, is amended to read as follows:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, felonious assault, sexual abuse in the second degree, sexual abuse in the third degree ~~in violation of section 709.4, subsections 1 and 3,~~ kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree.

Sec. 5. Section 811.1, subsection 2, Code 1989, is amended to read as follows:

2. A defendant appealing a conviction of a class "A" felony, murder, felonious assault, sexual abuse in the second

degree, sexual abuse in the third degree in-violation-of
section-709.47-subsections-1-and-3, kidnapping, robbery in the
first degree, arson in the first degree, or burglary in the
first degree.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 426, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 8, 1989

TERRY E. BRANSTAD
Governor