

## SEXUAL ABUSE

### Footnotes

Victim counselor privilege; see §915.20A

### **709.1 Sexual abuse defined.**

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
3. Such other person is a child.

[C51, § 2581, 2583; R60, § 4204, 4206; C73, § 3861, 3863; C97, § 4756, 4758; C24, 27, 31, 35, 39, § **12966**, **12967**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1, 698.3; C79, 81, § 709.1]

84 Acts, ch 1188, § 1; 99 Acts, ch 159, §1

### Footnotes

Definition of sex act, § 702.17

### **709.1A Incapacitation.**

As used in this chapter, "*incapacitated*" means a person is disabled or deprived of ability, as follows:

1. "*Mentally incapacitated*" means that a person is temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.
2. "*Physically helpless*" means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.
3. "*Physically incapacitated*" means that a person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee.

99 Acts, ch 159, §2

### **709.2 Sexual abuse in the first degree.**

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class "A" felony.

[C51, § 2581; R60, § 4204; C73, § 3861; C97, § 4756; C24, 27, 31, 35, 39, § **12966**; C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, § 698.1; C79, 81, § 709.2]

## **Footnotes**

Definition of forcible felony, § 702.11

### **709.3 Sexual abuse in the second degree.**

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.
2. The other person is under the age of twelve.
3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.

Sexual abuse in the second degree is a class "B" felony.

[C51, § 2581; R60, § 4204; C73, § 3861; C97, § 4756; C24, 27, 31, 35, 39, § **12966**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1; C79, 81, § 709.3]

84 Acts, ch 1188, § 2; 99 Acts, ch 159, §3

## **Footnotes**

Definition of forcible felony, § 702.11

Definition of sex act, §702.17

### **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 person, whether or not the other person 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 person is suffering from a mental defect or incapacity which precludes giving consent.
  - b. The other person is twelve or thirteen years of age.
  - c. The other person 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 person.
    - (2) The person is related to the other person by blood or affinity to the fourth degree.

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

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

3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

*a.* The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.

*b.* The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

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

[C51, § 2581, 2583; R60, § 4204, 4206; C73, § 3861, 3863; C97, § 4756, 4758; C24, 27, 31, 35, 39, § 12966, 12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1, 698.3; C79, 81, § 709.4]

89 Acts, ch 138, § 3; 94 Acts, ch 1128, §1; 97 Acts, ch 78, §1; 99 Acts, ch 159, §4

## **Footnotes**

Definition of forcible felony, see § 702.11

Definition of sex act, see § 702.17

### **709.5 Resistance to sexual abuse.**

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other.

[C79, 81, § 709.5]

99 Acts, ch 159, §5

### **709.6 Jury instructions for offenses of sexual abuse.**

No instruction shall be given in a trial for sexual abuse cautioning the jury to use a different standard relating to a victim's testimony than that of any other witness to that offense or any other offense.

[C79, 81, § 709.6]

### **709.7 Detention in brothel.**

Any person who, by force, intimidation, or false pretense entices another who is not a prostitute to enter a brothel with the intent to cause such other to become an inmate thereof, or who detains another, whether a prostitute or not, in any brothel, against the will of such other, with the intent that such other engage in

prostitution therein, commits a class "C" felony.

[C51, § 2713; R60, § 4355; C73, § 4016; C97, § 4942; S13, § 4944-j; C24, 27, 31, 35, 39, § 13180, 13181; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 724.8, 724.9; C79, 81, § 709.7]

### **709.8 Lascivious acts with a child.**

It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.
2. Permit or cause a child to fondle or touch the person's genitals or pubes.
3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.
4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "C" felony. Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.

[S13, § 4938-a; C24, 27, 31, 35, 39, § 13184; C46, 50, 54, 58, 62, 66, 71, 73, § 725.2; C75, 77, § 725.10; C79, 81, § 709.8]

85 Acts, ch 181, §1; 96 Acts, ch 1062, § 1; 2000 Acts, ch 1165, §1; 2005 Acts, ch 158, §35

### **Footnotes**

Definition of sex act, § 702.17

### **709.9 Indecent exposure.**

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and
2. The person knows or reasonably should know that the act is offensive to the viewer.

[C79, 81, § 709.9]

### **Footnotes**

Definition of sex act, § 702.17

### **709.10 Sexual abuse evidence.**

1. When an alleged victim of sexual abuse consents to undergo a sexual abuse examination and to having the evidence preserved, a sexual abuse evidence collection kit must be collected and properly stored with the law enforcement agency under whose jurisdiction the offense occurred or with the agency collecting the evidence to ensure that the chain of custody is complete and sufficient.

2. If an alleged victim of sexual abuse has not filed a complaint and a sexual abuse evidence collection kit has been completed, the kit must be stored by the law enforcement agency for a minimum of ten years. In addition, if the alleged victim does not want their name recorded on the sexual abuse collection kit, a case number or other identifying information shall be assigned to the kit in place of the name of the alleged victim.

2004 Acts, ch 1055, §1

#### **709.11 Assault with intent to commit sexual abuse.**

Any person who commits an assault, as defined in section 708.1, with the intent to commit sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person and guilty of a class "D" felony if the person thereby causes any person a bodily injury other than a serious injury. The person is guilty of an aggravated misdemeanor if no injury results.

[81 Acts, ch 204, § 6]

#### **709.12 Indecent contact with a child.**

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

[81 Acts, ch 204, § 7]

85 Acts, ch 181, §2; 88 Acts, ch 1252, §4

#### **709.13 Child in need of assistance complaints.**

During or following an investigation into allegations of violations of this chapter or of chapter 726 or 728 involving an alleged victim under the age of eighteen and an alleged offender who is not a person responsible for the care of the child, anyone with knowledge of the alleged offense may file a complaint pursuant to section 232.83 alleging the child to be a child in need of assistance. In all cases, the complaint shall be filed by any peace officer with knowledge of the investigation when the peace officer has reason to believe that the alleged victim may require treatment as a result of the alleged offense and that the child's parent, guardian, or custodian will be unwilling or unable to provide the treatment.

88 Acts, ch 1252, §5

#### **709.14 Lascivious conduct with a minor.**

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

Lascivious conduct with a minor is a serious misdemeanor.

89 Acts, ch 105, § 2

### **709.15 Sexual exploitation by a counselor, therapist, or school employee.**

1. As used in this section:

*a. "Counselor or therapist"* means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

*b. "Emotionally dependent"* means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in subsection 2, by the counselor or therapist.

For the purposes of subsection 2, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

*c. "Former patient or client"* means a person who received mental health services from the counselor or therapist.

*d. "Mental health service"* means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

*e. "Patient or client"* means a person who receives mental health services from the counselor or therapist.

*f. "School employee"* means a practitioner as defined in section 272.1.

*g. "Student"* means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

2. Sexual exploitation by a counselor or therapist occurs when any of the following are found:

*a.* A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "*b*" or "*c*".

*b.* Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

*c.* Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying

the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

Sexual exploitation by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

3. Sexual exploitation by a school employee occurs when any of the following are found:

- a. A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "b".
- b. Any sexual conduct with a student for the purpose of arousing or satisfying the sexual desires of the school employee or the student. Sexual conduct includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

Sexual exploitation by a school employee does not include touching that is necessary in the performance of the school employee's duties while acting within the scope of employment.

- 4. a. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "a", commits a class "D" felony.
- b. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "b", commits an aggravated misdemeanor.
- c. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "c", commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph "b", the offender may be required to attend a sexual abuser treatment program.

- 5. a. A school employee who commits sexual exploitation in violation of subsection 3, paragraph "a", commits a class "D" felony.
- b. A school employee who commits sexual exploitation in violation of subsection 3, paragraph "b", commits an aggravated misdemeanor.

91 Acts, ch 130, § 2; 92 Acts, ch 1163, § 119; 92 Acts, ch 1199, § 26; 2003 Acts, ch 180, §65; 2004 Acts, ch 1086, §102

### **709.16 Sexual misconduct with offenders and juveniles.**

- 1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.
- 2. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.

For purposes of this subsection, a "*juvenile placement facility*" means any of the following:

- a. A child foster care facility licensed under section 237.4.

- b. Institutions controlled by the department of human services listed in section 218.1.
- c. Juvenile detention and juvenile shelter care homes approved under section 232.142.
- d. Psychiatric medical institutions for children licensed under chapter 135H.
- e. Substance abuse facilities as defined in section 125.2.

3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

91 Acts, ch 219, §21; 98 Acts, ch 1094, §1

**709.17 Polygraph examinations of victims or witnesses limitations.** Repealed by 98 Acts, ch 1090, §80, 84. See § 915.44.

**709.18 Abuse of a corpse.**

A person commits abuse of a human corpse if the person knowingly and intentionally engages in a sex act, as defined in section 702.17, with a human corpse. Abuse of a human corpse is a class "D" felony.

96 Acts, ch 1006, §1

**709.19 No-contact order upon defendant's release from jail or prison.**

1. Upon the filing of an affidavit by a victim, or a parent or guardian on behalf of a minor who is a victim, of a crime that is a sexual offense in violation of section 709.2, 709.3, 709.4, 709.8, 709.9, 709.11, 709.12, 709.14, 709.15, or 709.16, that states that the presence of or contact with the defendant whose release from jail or prison is imminent or who has been released from jail or prison continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family, the court shall enter a temporary no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim's immediate family.

2. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from the date of issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

3. Upon motion of the party, the court shall issue a no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim's immediate family if the court, after a hearing, finds by a preponderance of the evidence, that the defendant poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family.

4. A no-contact order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the purpose of the order.

5. The court shall set the duration of the no-contact order for the period it determines is necessary to protect the safety of the victim, persons residing with the victim, or members of the victim's immediate family, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The victim, at any time within ninety days before the expiration of the order, may apply for a new no-contact order under this section.

6. Violation of a no-contact order issued under this section constitutes contempt of court and may be

punished by contempt proceedings.

2002 Acts, ch 1085, §1; 2003 Acts, ch 108, §113

### **709.20 Sexual abuse no-contact order.**

1. When a person arrested for sexual abuse in violation of section 709.2, 709.3, or 709.4 is brought before a magistrate for initial appearance under section 804.21, 804.22, or 804.24, and the magistrate finds probable cause to believe that a violation of section 709.2, 709.3, or 709.4 has occurred and that the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the defendant to have no contact with the alleged victim's children shall prevail over any existing order which may be in conflict with the no-contact order.

The court order shall contain the court's directives restricting the defendant from having contact with the victim, persons residing with the victim, or the victim's immediate family. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

2. The clerk of the district court or other person designated by the court shall provide a copy of this order to the victim pursuant to this chapter. The order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final disposition of the criminal or juvenile court action, the court shall make a determination whether the no-contact order should be modified or terminated. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 709.2, 709.3, or 709.4, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of five years from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon the filing of an affidavit by the victim which states that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

The clerk of the district court shall also provide notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four-hour dispatcher for the law enforcement agencies, in the same manner as provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

2002 Acts, ch 1099, §1

### **709.21 Invasion of privacy nudity.**

1. 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 have knowledge about and 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.

2. 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.

3. A person who violates this section commits a serious misdemeanor.

2004 Acts, ch 1099, §1

### **709.22 Prevention of further sexual assault notification of rights.**

If a peace officer has reason to believe that a sexual assault as defined in section 915.40 has occurred, the officer shall use all reasonable means to prevent further violence including but not limited to the following:

1. If requested, remaining on the scene of the alleged sexual assault as long as there is a danger to the victim's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the victim in leaving the residence.
2. Assisting a victim in obtaining medical treatment necessitated by the sexual assault, including providing assistance to the victim in obtaining transportation to the emergency room of the nearest hospital.
3. Providing a victim with immediate and adequate notice of the victim's rights. The notice shall consist of handing the victim a copy of the following statement written in English and Spanish, asking the victim to read the statement, and asking whether the victim understands the rights:

"You have the right to ask the court for help with any of the following on a temporary basis:

- a. Keeping your attacker away from you, your home, and your place of work.
- b. The right to stay at your home without interference from your attacker.
- c. The right to seek a no-contact order under section 709.20 or 915.22, if your attacker is arrested for sexual assault.

You have the right to register as a victim with the county attorney under section 915.12.

You have the right to file a complaint for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to you or your property.

You have the right to apply for victim compensation.

You have the right to contact the county attorney or local law enforcement to determine the status of your case.

If you are in need of medical treatment, you have the right to request that the officer present assist you in

obtaining transportation to the nearest hospital or otherwise assist you.

You have the right to a sexual assault examination performed at state expense.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured."

The notice shall also contain the telephone numbers of shelters, support groups, and crisis lines operating in the area.

4. A peace officer is not civilly or criminally liable for actions taken in good faith pursuant to this section.

2005 Acts, ch 158, §45