CHAPTER 709

SEXUAL ABUSE

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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

Referred to in **§611.23**, **§614.1**, **§668.15**, **§692A.101**, **§692A.102**, **§713.3**, **§915.40**

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]

Referred to in **§321.375**, **§664A.2**, **§692A.101**, **§692A.102**, **§709.19**, **§903B.10**

Definition of forcible felony, §702.11

709.3 Sexual abuse in the second degree.

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

a. 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.

b. The other person is under the age of twelve.

c. 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.

2. 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; 2013 Acts, ch 90, §228

Referred to in **§321.375**, **§664A.2**, **§692A.101**, **§692A.102**, **§709.19**, **§901A.2**, **§902.12**, **§902.14**, **§903B.10**, **§906.15**

Definition of forcible felony, §702.11

Definition of sex act, §702.17

709.4 Sexual abuse in the third degree.

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

a. 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.

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

(1) The other person is suffering from a mental defect or incapacity which precludes giving consent.

(2) The other person is twelve or thirteen years of age.

(3) The other person is fourteen or fifteen years of age and any of the following are true:

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

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

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

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

c. 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:

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

(2) 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.

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

2. 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; 2013 Acts, ch 30, §201

Referred to in **§321.375**, **§664A.2**, **§692A.101**, **§692A.102**, **§692A.121**, **§702.11**, **§709.19**, **§902.14**, **§903B.10**, **§906.15**

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. Repealed by .

709.8 Lascivious acts with a child.

1. 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:

a. Fondle or touch the pubes or genitals of a child.

b. Permit or cause a child to fondle or touch the person's genitals or pubes.

c. Cause the touching of the person's genitals to any part of the body of a child.

d. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.

e. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

2. *a.* Any person who violates a provision of this section involving an act included in subsection 1, paragraph *"a"* through *"c"*, shall, upon conviction, be guilty of a class "C" felony.

b. Any person who violates a provision of this section involving an act included in subsection 1, paragraph *"d"* or *"e"*, 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; 2013 Acts, ch 30, §202; 2013 Acts, ch 43, §2, 3

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]

Referred to in **§692A.102**, **§709.19**

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:

1. Is guilty of a class "C" felony if the person thereby causes serious injury to any person.
2. Is guilty of a class "D" felony if the person thereby causes any person a bodily injury other than a serious injury.
3. Is guilty of an aggravated misdemeanor if no injury results.

[81 Acts, ch 204, §6]
2013 Acts, ch 90, §229
Referred to in **§232.22**, **§692A.101**, **§692A.102**, **§709.19**, **§802.2B**, **§903B.10**

709.12 Indecent contact with a child.

1. 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:

a. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.

b. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.

c. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.

d. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, paragraph *"a"*, *"b"*, or *"e"*.

2. 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; 2013 Acts, ch 30, §203

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
Referred to in **§692A.102**, **§709.19**, **§802.2B**, **§903B.10**

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 or a person issued a coaching authorization under section 272.31, subsection 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. *a.* Sexual exploitation by a counselor or therapist occurs when any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3).

(2) 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:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in section 702.17.

(3) 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:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in section 702.17.

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

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2).

(2) 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:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in section 702.17.

b. 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*", subparagraph (1), commits a class "D" felony.

b. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "*a*", subparagraph (2), commits an aggravated misdemeanor.

c. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "*a*", subparagraph (3), 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*", subparagraph (1), commits a class "D" felony.

b. A school employee who commits sexual exploitation in violation of subsection 3, paragraph "*a*", subparagraph (2), commits an aggravated misdemeanor.

91 Acts, ch 130, §2; 92 Acts, ch 1163, §119; 92 Acts, ch 1199, §2 – 6; 2003 Acts, ch 180, §65; 2004 Acts, ch 1086, §102; 2013 Acts, ch 90, §230; 2014 Acts, ch 1114, §1, 2

Subsection 1, paragraph f amended

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. *a.* 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.

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

(1) A child foster care facility licensed under section 237.4.

(2) Institutions controlled by the department of human services listed in section 218.1.

(3) Juvenile detention and juvenile shelter care homes approved under section 232.142.

(4) Psychiatric medical institutions for children licensed under chapter 135H.

(5) Facilities for the treatment of persons with substance-related disorders 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; 2013 Acts, ch 30, §204; 2013 Acts, ch 90, §185

709.17 Repealed by 98 Acts, ch 1090, §80, 84. See §915.44.

709.18 Sexual abuse of a corpse.

1. A person commits sexual 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.

2. A person who violates this section commits a class "D" felony.

96 Acts, ch 1006, §1; 2007 Acts, ch 91, §2; 2010 Acts, ch 1074, §4

Referred to in **§692A.102**

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

No-contact orders, see chapter 664A

709.20 Sexual abuse — no-contact order. Repealed by 2006 Acts, ch 1101, §21. See §664A.3.

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

Referred to in **§692A.102**

709.22 Prevention of further sexual assault — notification of rights.

1. 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:

a. 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 residence when it is the scene of the alleged sexual assault, or if unable to remain on the scene, assisting the victim in leaving the scene.

b. 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.

c. Providing a victim with immediate and adequate notice of the victim's rights. The notice shall consist of handing the victim a document that includes the telephone numbers of shelters, support groups, and crisis lines operating in the area and contains 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:

[1] 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 664A.3 or 915.22, if your attacker is arrested for sexual assault.

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

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

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

[5] You have the right to apply for victim compensation.

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

[7] 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.

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

[9] You have the right to request the presence of a victim counselor, as defined in section 915.20A, at any proceeding related to an assault including a medical examination.

[10] 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.

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

2005 Acts, ch 158, §45; 2006 Acts, ch 1101, §15; 2008 Acts, ch 1068, §1; 2009 Acts, ch 133, §176, 177