

**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 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](#); [2021 Acts, ch 37, §4](#)

Referred to in [§272C.15](#), [321.375](#), [622.31B](#), [664A.2](#), [664A.3](#), [692A.101](#), [692A.102](#), [692A.121](#), [692A.128](#), [702.11](#), [709.19](#), [902.14](#), [903B.10](#), [906.15](#)

Definition of forcible felony, see [§702.11](#)

Definition of sex act, see [§702.17](#)

Sentencing restrictions for forcible felonies and mandatory reporters of child abuse, see [§907.3](#)