

*Barry, Chair*  
*Larson*  
*Parmenter*

**HSB 133**

JUDICIARY  
Succeeded by  
**SF/HF**

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY CHAIR-  
PERSON LARSON)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act defining sexual abuse in the third degree to include  
2 certain acts related to incapacitated victims, providing  
3 related definitions, and applying a penalty.

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

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SB  
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2200002

1 Section ~~71~~ NEW SECTION. 709.1A INCAPACITATION.

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

4 1. "Mentally incapacitated" means that a person is  
5 temporarily incapable of apprising or controlling the person's  
6 own conduct due to the influence of a narcotic, anesthetic, or  
7 intoxicating substance.

8 2. "Physically helpless" means that a person is unable to  
9 communicate an unwillingness to act because the person is  
10 unconscious, asleep, or is otherwise physically limited.

11 3. "Physically incapacitated" means that a person has a  
12 bodily impairment or handicap that substantially limits the  
13 person's ability to resist or flee.

14 Sec. 2. Section 709.4, Code 1999, is amended by adding the  
15 following new subsection:

16 NEW SUBSECTION. 4. The act is performed while the other  
17 participant is mentally incapacitated, physically  
18 incapacitated, or physically helpless.

19 EXPLANATION

20 This bill amends section 709.4, regarding sexual abuse in  
21 the third degree, to provide that a sex act performed while  
22 the victim is mentally or physically incapacitated or helpless  
23 to resist will also constitute criminal sexual abuse. Sexual  
24 abuse in the third degree is a class "C" felony, punishable by  
25 up to 10 years in prison, and a fine of not less than \$500 or  
26 more than \$10,000.

27 A related definitional Code section is added to Code  
28 chapter 709, regarding incapacitation. Definitions are  
29 provided within the new Code section for "mentally  
30 incapacitated", "physically incapacitated", and "physically  
31 helpless".

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REPRINTED

MAR 12 1999

Place On Calendar

HOUSE FILE 661  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 133)

Passed House, <sup>p.944</sup> Date 3/30/99 Passed Senate, <sup>(p.1088)</sup> Date 4/13/99  
Vote: Ayes 96 Nays 0 Vote: Ayes 49 Nays 0  
Approved May 20, 1999

A BILL FOR

1 An Act relating to the offense of sexual abuse in the third  
2 degree, providing related definitions, and applying penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 709.1A INCAPACITATION.

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

4 1. "Mentally incapacitated" means that a person is  
5 temporarily incapable of apprising or controlling the person's  
6 own conduct due to the influence of a narcotic, anesthetic, or  
7 intoxicating substance.

8 2. "Physically helpless" means that a person is unable to  
9 communicate an unwillingness to act because the person is  
10 unconscious, asleep, or is otherwise physically limited.

11 3. "Physically incapacitated" means that a person has a  
12 bodily impairment or handicap that substantially limits the  
13 person's ability to resist or flee.

14 Sec. 2. Section 709.4, subsection 3, Code 1999, is amended  
15 to read as follows:

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

20 ~~a. The controlled substance, which may include but is not~~  
21 ~~limited to flunitrazepam, has been consumed by or administered~~  
22 ~~to the other participant without the other participant's~~  
23 ~~knowledge.~~

24 b. a. The controlled substance, which may include but is  
25 not limited to flunitrazepam, prevents the other participant  
26 from consenting to the act.

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

31 Sec. 3. Section 709.4, Code 1999, is amended by adding the  
32 following new subsection:

33 NEW SUBSECTION. 4. The act is performed while the other  
34 participant is mentally incapacitated, physically  
35 incapacitated, or physically helpless.

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## EXPLANATION

Code section 709.4 addresses several types of sexual abuse in the third degree. Sexual abuse in the third degree is a class "C" felony, punishable by up to 10 years in prison, and a fine of not less than \$500 or more than \$10,000.

Code section 709.4, subsection 3, addresses sexual abuse in the third degree committed while the victim is under the influence of a controlled substance (including but not limited to flunitrazepam). The bill strikes the requirement that the victim consumed the substance without the victim's knowledge as an element of the criminal offense.

Code section 709.4, subsection 4, adds another type of sexual abuse in the third degree. Under the bill, a sex act performed while the victim is mentally or physically incapacitated or helpless to resist shall constitute criminal sexual abuse in the third degree.

A related definitional Code section is added to Code chapter 709, regarding incapacitation. Definitions are provided within the new Code section for "mentally incapacitated", "physically incapacitated", and "physically helpless".

**HOUSE FILE 661  
FISCAL NOTE**

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The estimate for House File 661 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 661 defines "mentally incapacitated," "physically helpless," and "physically incapacitated" as it applies to sexual abuse in the third degree. The Bill removes the requirement that the victim who is under the influence of a controlled substance unknowingly consumed the controlled substance for the offense to qualify as sexual abuse in the third degree.

**ASSUMPTION**

The offenses affected by this Bill are currently being prosecuted as Class C felonies when the victim is suffering from a "mental defect or incapacity which precludes giving consent." This change may provide clarifications making prosecution easier.

**CORRECTIONAL IMPACT**

The changes made by House File 661 are not expected to have a significant correctional impact.

**FISCAL IMPACT**

The changes made by House File 661 are not expected to have a significant fiscal impact.

**SOURCES**

Criminal and Juvenile Justice Planning Division, Department of Human Rights  
Office of the State Public Defender

(LSB 2246hv, MDF)

FILED MARCH 17, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR

## HOUSE FILE 661

H-1241

1 Amend House File 661 as follows:

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

4 "Section 1. Section 709.1, Code 1999, is amended  
5 to read as follows:

6 709.1 SEXUAL ABUSE DEFINED.

7 Any sex act between persons is sexual abuse by  
8 either of the participants persons when the act is  
9 performed with the other participant person in any of  
10 the following circumstances:

11 1. The act is done by force or against the will of  
12 the other. If the consent or acquiescence of the  
13 other is procured by threats of violence toward any  
14 person or if the act is done while the other is under  
15 the influence of a drug inducing sleep or is otherwise  
16 in a state of unconsciousness, the act is done against  
17 the will of the other.

18 2. Such other participant person is suffering from  
19 a mental defect or incapacity which precludes giving  
20 consent, or lacks the mental capacity to know the  
21 right and wrong of conduct in sexual matters.

22 3. Such other participant person is a child."

23 2. Page 1, by striking lines 14 through 35 and  
24 inserting the following:

25 "Sec. \_\_\_\_ . Section 709.3, Code 1999, is amended to  
26 read as follows:

27 709.3 SEXUAL ABUSE IN THE SECOND DEGREE.

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

31 1. During the commission of sexual abuse the  
32 person displays in a threatening manner a dangerous  
33 weapon, or uses or threatens to use force creating a  
34 substantial risk of death or serious injury to any  
35 person.

36 2. The other participant person is under the age  
37 of twelve.

38 3. The person is aided or abetted by one or more  
39 persons and the sex act is committed by force or  
40 against the will of the other participant person  
41 against whom the sex act is committed.

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

44 Sec. \_\_\_\_ . Section 709.4, Code 1999, is amended to  
45 read as follows:

46 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

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

50 1. The act is done by force or against the will of

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1 the other participant person, whether or not the other  
2 participant person is the person's spouse or is  
3 cohabiting with the person.

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

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

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

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

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

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

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

22 (4) The person is five or more years older than  
23 the other participant person.

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

29 ~~a. The controlled substance, which may include but~~  
30 ~~is not limited to flunitrazepam, has been consumed by~~  
31 ~~or administered to the other participant without the~~  
32 ~~other participant's knowledge.~~

33 ~~or~~ a. The controlled substance, which may include  
34 but is not limited to flunitrazepam, prevents the  
35 other participant person from consenting to the act.

36 ~~or~~ b. The person performing the act knows or  
37 reasonably should have known that the other  
38 participant person was under the influence of the  
39 controlled substance, which may include but is not  
40 limited to flunitrazepam.

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

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

46 Sec. \_\_\_\_ . Section 709.5, Code 1999, is amended to  
47 read as follows:

48 709.5 RESISTANCE TO SEXUAL ABUSE.

49 Under the provisions of this chapter it shall not  
50 be necessary to establish physical resistance by a

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Page 3

1 participant person in order to establish that an act  
2 of sexual abuse was committed by force or against the  
3 will of the participant person. However, the  
4 circumstances surrounding the commission of the act  
5 may be considered in determining whether or not the  
6 act was done by force or against the will of the  
7 other."

8 3. Title page, lines 1 and 2, by striking the  
9 words "in the third degree".

10 1. By renumbering as necessary.

By DAVIS of Wapello

H-1241 FILED MARCH 25, 1999

*adopted 3/30/99*

*(p. 945)*

S-8/30/99 Judiciary  
S-3/31/99 Do Pass

HOUSE FILE 661  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 133)

(As Amended and Passed by the House, March 30, 1999)

(P.1360)  
Passed House, Date 4/15/99 Passed Senate, Date 4/13/99 (P.108)  
Vote: Ayes 89 Nays 0 Vote: Ayes 49 Nays 0  
Approved May 20, 1999

**A BILL FOR**

- \* 1 An Act relating to the offense of sexual abuse, providing related
- 2 definitions, and applying penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

**SENATE AMENDMENT TO HOUSE FILE 661**

**H-1581**

- 1 Amend House File 661, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 3, line 5, by striking the word "five"
- 4 and inserting the following: "five four".

RECEIVED FROM THE SENATE

P.1360 H-1581 FILED APRIL 13, 1999  
*House Concurred 4/15/99*

**HOUSE FILE 661**

**S-3346**

- 1 Amend House File 661, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 3, line 5, by striking the word "five"
- 4 and inserting the following: "five four".

By DAVID MILLER

S-3346 FILED APRIL 13, 1999  
ADOPTED P.1088

1 Section 1. Section 709.1, Code 1999, is amended to read as  
2 follows:

3 709.1 SEXUAL ABUSE DEFINED.

4 Any sex act between persons is sexual abuse by either of  
5 the participants persons when the act is performed with the  
6 other participant person in any of the following  
7 circumstances:

8 1. The act is done by force or against the will of the  
9 other. If the consent or acquiescence of the other is  
10 procured by threats of violence toward any person or if the  
11 act is done while the other is under the influence of a drug  
12 inducing sleep or is otherwise in a state of unconsciousness,  
13 the act is done against the will of the other.

14 2. Such other participant person is suffering from a  
15 mental defect or incapacity which precludes giving consent, or  
16 lacks the mental capacity to know the right and wrong of  
17 conduct in sexual matters.

18 3. Such other participant person is a child.

19 Sec. 2. NEW SECTION. 709.1A INCAPACITATION.

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

22 1. "Mentally incapacitated" means that a person is  
23 temporarily incapable of apprising or controlling the person's  
24 own conduct due to the influence of a narcotic, anesthetic, or  
25 intoxicating substance.

26 2. "Physically helpless" means that a person is unable to  
27 communicate an unwillingness to act because the person is  
28 unconscious, asleep, or is otherwise physically limited.

29 3. "Physically incapacitated" means that a person has a  
30 bodily impairment or handicap that substantially limits the  
31 person's ability to resist or flee.

32 Sec. 3. Section 709.3, Code 1999, is amended to read as  
33 follows:

34 709.3 SEXUAL ABUSE IN THE SECOND DEGREE.

35 A person commits sexual abuse in the second degree when the

1 person commits sexual abuse under any of the following  
2 circumstances:

3 1. During the commission of sexual abuse the person  
4 displays in a threatening manner a dangerous weapon, or uses  
5 or threatens to use force creating a substantial risk of death  
6 or serious injury to any person.

7 2. The other participant person is under the age of  
8 twelve.

9 3. The person is aided or abetted by one or more persons  
10 and the sex act is committed by force or against the will of  
11 the other participant person against whom the sex act is  
12 committed.

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

14 Sec. 4. Section 709.4, Code 1999, is amended to read as  
15 follows:

16 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

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

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

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

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

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

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

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

35 (2) The person is related to the other participant person

1 by blood or affinity to the fourth degree.

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

5 (4) The person is five or more years older than the other  
6 participant person.

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

11 a. The controlled substance, which may include but is not  
12 limited to flunitrazepam, has been consumed by or administered  
13 to the other participant without the other participant's  
14 knowledge.

15 b. a. The controlled substance, which may include but is  
16 not limited to flunitrazepam, prevents the other participant  
17 person from consenting to the act.

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

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

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

26 Sec. 5. Section 709.5, Code 1999, is amended to read as  
27 follows:

28 709.5 RESISTANCE TO SEXUAL ABUSE.

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

AN ACT

RELATING TO THE OFFENSE OF SEXUAL ABUSE, PROVIDING RELATED DEFINITIONS, AND APPLYING PENALTIES.

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

Section 1. Section 709.1, Code 1999, is amended to read as follows:

709.1 SEXUAL ABUSE DEFINED.

Any sex act between persons is sexual abuse by either of the participants persons when the act is performed with the other participant 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 participant 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 participant person is a child.

Sec. 2. NEW SECTION. 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.

Sec. 3. Section 709.3, Code 1999, is amended to read as follows:

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 participant 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 participant person against whom the sex act is committed.

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

Sec. 4. Section 709.4, Code 1999, is amended to read as follows:

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 person, whether or not the other participant 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 participant person is suffering from a mental defect or incapacity which precludes giving consent.

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

c. The other participant 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 participant person.

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

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

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

3. The act is performed while the other participant 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, has been consumed by or administered to the other participant without the other participant's knowledge.~~

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

c. b. The person performing the act knows or reasonably should have known that the other participant 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.

Sec. 5. Section 709.5, Code 1999, is amended to read as follows:

709.5 RESISTANCE TO SEXUAL ABUSE.

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a participant person in order to establish that an act of sexual abuse was committed by force or against the will of the participant 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.

\_\_\_\_\_  
RON J. CORBETT  
Speaker of the House

\_\_\_\_\_  
MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 661, Seventy-eighth General Assembly.

\_\_\_\_\_  
ELIZABETH ISAACSON  
Chief Clerk of the House

Approved May 20, 1999

\_\_\_\_\_  
THOMAS J. VILSACK  
Governor