

FILED MAR 17 '03

SENATE FILE 402
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1029)

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

A BILL FOR

1 An Act relating to the admissibility of prior criminal offenses
2 into evidence in the prosecution of certain sexual offenses.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 402

1 Section 1. NEW SECTION. 701.11 EVIDENCE OF SIMILAR
2 OFFENSES -- SEXUAL ABUSE.

3 1. In a criminal prosecution in which a defendant has been
4 charged with sexual abuse, evidence of the defendant's
5 commission of another sexual abuse is admissible and may be
6 considered for its bearing on any matter for which the
7 evidence is relevant. This evidence, though relevant, may be
8 excluded if the probative value of the evidence is
9 substantially outweighed by the danger of unfair prejudice,
10 confusion of the issues, or misleading the jury, or by
11 considerations of undue delay, waste of time, or needless
12 presentation of cumulative evidence.

13 2. If the prosecution intends to offer evidence pursuant
14 to this section, the prosecution shall disclose such evidence
15 to the defendant, including statements of witnesses or a
16 summary of the substance of any testimony that is expected to
17 be offered, ten days prior to the scheduled date of trial.
18 The court may for good cause shown permit disclosure less than
19 ten days prior to the scheduled date of trial.

20 3. For purposes of this section, "sexual abuse" means any
21 commission of or conviction for a crime defined in chapter
22 709. "Sexual abuse" also means any commission of or
23 conviction for a crime in another jurisdiction under a statute
24 that is substantially similar to any crime defined in chapter
25 709.

26 EXPLANATION

27 This bill relates to the admissibility of prior criminal
28 offenses into evidence in the prosecution of certain sexual
29 offenses.

30 The bill provides that in a criminal prosecution in which a
31 defendant has been charged with a sexual abuse-related
32 offense, evidence of the commission of another sexual abuse-
33 related offense by the defendant is admissible for its bearing
34 on any matter which is relevant. However, the evidence may be
35 excluded if the probative value of the evidence is

1 substantially outweighed by the danger of unfair prejudice,
2 confusion of the issues, or misleading.

3 The bill defines "sexual abuse" to mean any commission of
4 or conviction for a crime defined in Code chapter 709.

5 The bill also defines "sexual abuse" to mean any commission
6 of or conviction for a crime in another jurisdiction under a
7 statute that is substantially similar to any crime defined in
8 Code chapter 709.

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SENATE FILE 402

S-3072

1 Amend Senate File 402 as follows:
 2 1. Page 1, line 7, by inserting after the word
 3 "relevant" the following: ", except as otherwise
 4 provided in this section".
 5 2. Page 1, line 12, by inserting after the word
 6 "evidence." the following: "This evidence is not
 7 admissible unless the state presents clear proof of
 8 the commission of the prior act of sexual abuse."
 By LARRY MCKIBBEN

With **S-3072 FILED MARCH 20, 2003**

SENATE FILE 402

S-3090

1 Amend Senate File 402 as follows:
 2 1. Page 1, line 12, by inserting after the word
 3 "evidence." the following: "This evidence is not
 4 admissible unless the state presents clear proof of
 5 the commission of the prior act of sexual abuse."
 By LARRY MCKIBBEN

S-3090 FILED MARCH 25, 2003
 ADOPTED *3/25/03*

SF 402 - Evidence of Prior Sex Abuse Crimes (LSB 1041 SV)

Analyst: Jennifer Dean (Phone: (515) 281-7846) (jennifer.dean@legis.state.ia.us)

Fiscal Note Version — New

Description

Senate File 402 relates to the admissibility of prior criminal offenses into evidence in the prosecution of certain sexual offenses.

Assumptions

1. The law will become effective July 1, 2003. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
2. In FY 2002, 569 sex offenses (Chapter 709) were dismissed, or resulted in acquittal. If SF 402 had been in affect, some of these offenses may have resulted in convictions. To the extent that additional convictions do occur, there would be a correctional impact on prisons, jails, and Community-Based Corrections resources.
3. The cost to the Judicial Branch may be significant with prosecution being able to admit evidence of the commission of another sexual abuse, in addition to the admission or evidence in prior convictions. The amount of court time would likely increase from half a day to one day per case. The increase in court costs per case would range from \$396 for a regular trial to \$526 for a jury trial.

Correctional Impact

There is no readily available information to estimate how many additional convictions per year would occur. To the extent that additional convictions do occur, there would be a correctional impact on prisons, jails, and Community-Based Corrections.

Fiscal Impact

There is no readily available information with which to estimate how many additional convictions per year would occur if SF 402 became law, therefore, the fiscal impact cannot be determined. However, if half of the offenses that were dismissed or acquitted in FY 2002 had evidence of prior offenses brought into trial, the potential General Fund impact on the Judicial Branch would range from \$113,000 to \$150,000 per year.

Sources

Attorney General
State Public Defender
Department of Human Rights, Criminal and Juvenile Justice Planning Division
Judicial Branch

/s/ Dennis C Prouty

March 19, 2003

1 Section 1. NEW SECTION. 701.11 EVIDENCE OF SIMILAR
2 OFFENSES -- SEXUAL ABUSE.

3 1. In a criminal prosecution in which a defendant has been
4 charged with sexual abuse, evidence of the defendant's
5 commission of another sexual abuse is admissible and may be
6 considered for its bearing on any matter for which the
7 evidence is relevant. This evidence, though relevant, may be
8 excluded if the probative value of the evidence is
9 substantially outweighed by the danger of unfair prejudice,
10 confusion of the issues, or misleading the jury, or by
11 considerations of undue delay, waste of time, or needless
12 presentation of cumulative evidence. This evidence is not
13 admissible unless the state presents clear proof of the
14 commission of the prior act of sexual abuse.

15 2. If the prosecution intends to offer evidence pursuant
16 to this section, the prosecution shall disclose such evidence
17 to the defendant, including statements of witnesses or a
18 summary of the substance of any testimony that is expected to
19 be offered, ten days prior to the scheduled date of trial.
20 The court may for good cause shown permit disclosure less than
21 ten days prior to the scheduled date of trial.

22 3. For purposes of this section, "sexual abuse" means any
23 commission of or conviction for a crime defined in chapter
24 709. "Sexual abuse" also means any commission of or
25 conviction for a crime in another jurisdiction under a statute
26 that is substantially similar to any crime defined in chapter
27 709.

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SENATE FILE 402

H-1391

- 1 Amend Senate File 402, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by inserting after line 27 the
4 following:
5 "Sec. _____. Section 708.2, Code 2003, is amended by
6 adding the following new subsection:
7 NEW SUBSECTION. 4A. A person who commits an
8 assault, as defined in section 708.1, and who uses any
9 object to penetrate the genitalia or anus of another
10 person, is guilty of a class "C" felony."
11 2. Title page, line 1, by inserting after the
12 word "to" the following: "sexual assault offenses by
13 affecting".
14 3. Title page, line 2, by inserting after the
15 word "offenses" the following: "and by modifying the
16 penalties for certain assaults".
17 4. By renumbering as necessary.

By McCARTHY of Polk
BAUDLER of Adair

H-1391 FILED APRIL 22, 2003
ADOPTED

HOUSE AMENDMENT TO
SENATE FILE 402

S-3280

- 1 Amend Senate File 402, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by inserting after line 27 the
4 following:
5 "Sec. _____. Section 708.2, Code 2003, is amended by
6 adding the following new subsection:
7 NEW SUBSECTION. 4A. A person who commits an
8 assault, as defined in section 708.1, and who uses any
9 object to penetrate the genitalia or anus of another
10 person, is guilty of a class "C" felony."
11 2. Title page, line 1, by inserting after the
12 word "to" the following: "sexual assault offenses by
13 affecting".
14 3. Title page, line 2, by inserting after the
15 word "offenses" the following: "and by modifying the
16 penalties for certain assaults".
17 4. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3280 FILED APRIL 22, 2003
Senate concurred 4/23/03

McKibben
Quirnbach
Miller

SSB 1029

SENATE/HOUSE FILE Judiciary
BY (PROPOSED ATTORNEY
GENERAL BILL)

Introduced By
SF/HF 402

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

A BILL FOR

1 An Act relating to the admissibility of prior criminal offenses
2 into evidence in the prosecution of certain sexual offenses.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 701.11 EVIDENCE OF SIMILAR
2 OFFENSES -- SEXUAL ABUSE.

3 1. Notwithstanding any other provision in the Code to the
4 contrary, in a criminal prosecution in which a defendant has
5 been charged with sexual abuse, evidence of the defendant's
6 commission of another sexual abuse is admissible and may be
7 considered for its bearing on any matter for which the
8 evidence is relevant.

9 2. If the prosecution intends to offer evidence pursuant
10 to this section, the prosecution shall disclose such evidence
11 to the defendant, including statements of witnesses or a
12 summary of the substance of any testimony that is expected to
13 be offered, ten days prior to the scheduled date of trial.
14 The court may for good cause shown permit disclosure less than
15 ten days prior to the scheduled date of trial.

16 3. For purposes of this section, "sexual abuse" means any
17 commission of or conviction for a crime defined in chapter
18 709. "Sexual abuse" also means any commission of or
19 conviction for a crime in another jurisdiction under a statute
20 that is substantially similar to any crime defined in chapter
21 709.

22 4. Any rules of evidence in contravention of this section
23 are void when applied to this section.

24 EXPLANATION

25 This bill relates to the admissibility of prior criminal
26 offenses into evidence in the prosecution of certain sexual
27 offenses.

28 The bill provides that in a criminal prosecution in which a
29 defendant has been charged with a sexual abuse-related
30 offense, evidence of the commission of another sexual abuse-
31 related offense by the defendant is admissible for its bearing
32 on any matter which is relevant. The bill defines "sexual
33 abuse" to mean any commission of or conviction for a crime
34 defined in Code chapter 709.

35 The bill also defines "sexual abuse" to mean any commission

1 of or conviction for a crime in another jurisdiction under a
2 statute that is substantially similar to any crime defined in
3 Code chapter 709.

4 The bill also voids any rules of evidence in contravention
5 of this bill when applied to the bill. Current Iowa rule of
6 evidence 5.404(b) only permits the admissibility of a prior
7 crime, wrong, or act for purposes of proving motive,
8 opportunity, intent, preparation, plan, knowledge, identity,
9 or absence of mistake or accident.

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THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

MEMORANDUM

TO: Members of the General Assembly
FROM: Anne Sheeley, Legislative Liaison
DATE: January 13, 2003
Subject: Admitting Evidence of Past Criminal Behavior

Problem:

Social science research establishes that sex abusers are more likely than other offenders to repeat their criminal behavior. Evidence of prior sex offenses in a sexual abuse case is especially relevant and helpful to jurors. Currently, evidence of these prior offenses may be admitted under Iowa Rule of Evidence 404(b) as prior bad acts if relevant to "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." However, the application of Rule 404(b) varies greatly from one case to the next. Therefore, prosecutors are unable to predict whether jurors will be permitted to hear evidence of a defendant's prior sex crimes. Prosecutors also are unable to predict if the admission of prior acts evidence will be upheld on appeal.

Solution:

Adding a specific code section addressing the admissibility of evidence of sexual abuse offenses will result in a more comprehensive search for truth in criminal trials. Uniformity of rulings would also be enhanced. At the same time, trial courts would continue to balance the probative value of this and all evidence against the danger of unfair prejudice, confusion of the issues, and misleading of the jury, as well as consideration of undue delay, waste of time or the needless presentation of cumulative evidence under Iowa Rule of Evidence 403, thus preserving some exercise of discretion in individual cases.

This proposed statute is based on the Federal Rule of Evidence 413 effective in 1996, which allows for evidence of similar crimes in sexual assault cases and child molestation cases.

SENATE FILE 402

AN ACT

RELATING TO SEXUAL ASSAULT OFFENSES BY AFFECTING THE ADMISSIBILITY OF PRIOR CRIMINAL OFFENSES INTO EVIDENCE IN THE PROSECUTION OF CERTAIN SEXUAL OFFENSES AND BY MODIFYING THE PENALTIES FOR CERTAIN ASSAULTS.

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

Section 1. NEW SECTION. 701.11 EVIDENCE OF SIMILAR OFFENSES -- SEXUAL ABUSE.

1. In a criminal prosecution in which a defendant has been charged with sexual abuse, evidence of the defendant's commission of another sexual abuse is admissible and may be considered for its bearing on any matter for which the evidence is relevant. This evidence, though relevant, may be excluded if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. This evidence is not admissible unless the state presents clear proof of the commission of the prior act of sexual abuse.

2. If the prosecution intends to offer evidence pursuant to this section, the prosecution shall disclose such evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, ten days prior to the scheduled date of trial. The court may for good cause shown permit disclosure less than ten days prior to the scheduled date of trial.

3. For purposes of this section, "sexual abuse" means any commission of or conviction for a crime defined in chapter

709. "Sexual abuse" also means any commission of or conviction for a crime in another jurisdiction under a statute that is substantially similar to any crime defined in chapter 709.

Sec. 2. Section 708.2, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. A person who commits an assault, as defined in section 708.1, and who uses any object to penetrate the genitalia or anus of another person, is guilty of a class "C" felony.

MARY E. KRAMER
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 402, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2003

THOMAS J. VILSACK
Governor