

House File 742 - Introduced

HOUSE FILE 742
BY ABDUL-SAMAD

A BILL FOR

- 1 An Act relating to sexual abuse in the third degree.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 692A.101, subsection 2, paragraph a,
2 subparagraph (3), Code 2021, is amended to read as follows:

3 (3) Sexual abuse in the third degree in violation of section
4 709.4, except for a violation of [section 709.4, subsection 1](#),
5 paragraph "b", subparagraph ~~(3)~~ (2), subparagraph division (d).

6 Sec. 2. Section 692A.102, subsection 1, paragraph a,
7 subparagraphs (3) and (4), Code 2021, are amended to read as
8 follows:

9 (3) Sexual abuse in the third degree in violation of section
10 709.4, subsection 1, paragraph "b", subparagraph (1) ~~or (2)~~, if
11 committed by a person under the age of fourteen.

12 (4) Sexual abuse in the third degree in violation of section
13 709.4, subsection 1, paragraph "b", subparagraph ~~(3)~~ (2).

14 Sec. 3. Section 692A.102, subsection 1, paragraph c,
15 subparagraph (11), Code 2021, is amended to read as follows:

16 (11) Sexual abuse in the third degree in violation of
17 section 709.4, subsection 1, paragraph "b", subparagraph (1) ~~or~~
18 ~~(2)~~, if committed by a person fourteen years of age or older.

19 Sec. 4. Section 692A.121, subsection 2, paragraph b,
20 subparagraph (2), subparagraph division (a), Code 2021, is
21 amended to read as follows:

22 (a) The relevant information about a sex offender who was
23 under twenty years of age at the time the offender committed
24 a violation of [section 709.4, subsection 1](#), paragraph "b",
25 subparagraph ~~(3)~~ (2), subparagraph division (d).

26 Sec. 5. Section 702.11, subsection 2, paragraph c, Code
27 2021, is amended to read as follows:

28 c. Sexual abuse in violation of [section 709.4, subsection 1](#),
29 paragraph "b", subparagraph ~~(3)~~ (2), subparagraph division (d).

30 Sec. 6. Section 709.4, subsection 1, paragraphs a and b,
31 Code 2021, are amended to read as follows:

32 a. The act is done by force, violence, duress, fear of
33 bodily injury, or against the will of the other person, whether
34 or not the other person is the person's spouse or is cohabiting
35 with the person. As used in this paragraph, "duress" means a

1 direct or implied threat of force, violence, or retribution
2 sufficient to coerce a reasonable person to perform or
3 acquiesce to the act.

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

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

9 ~~(2)~~ (1) The other person is twelve or thirteen years of
10 age.

11 ~~(3)~~ (2) The other person is fourteen or fifteen years of
12 age and any of the following are true:

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

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

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

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

22 Sec. 7. Section 709.4, subsection 1, paragraph d, Code 2021,
23 is amended to read as follows:

24 d. The act is performed while the other person is precluded
25 from giving consent due to being mentally incapacitated, or is
26 physically incapacitated, or physically helpless.

27 Sec. 8. Section 709.4, subsection 1, Code 2021, is amended
28 by adding the following new paragraph:

29 NEW PARAGRAPH. e. The act is between persons who are
30 spouses or in an intimate relationship as defined in section
31 263.2 and if any of the following are true:

32 (1) The act is performed while the other person is
33 unconscious of the nature of the act and this is known by the
34 person. As used in this paragraph, "*unconscious of the nature*
35 *of the act*" means incapable of resisting because the person is

1 unconscious or asleep.

2 (2) The act is performed against the other person's will by
3 threat of future retaliation against the other person or any
4 other person and it is reasonable to believe that the person
5 will act upon the threat.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill relates to sexual abuse in the third degree.

10 Current law provides that a person commits sexual abuse
11 in the third degree when the person performs a sex act and
12 the act is between persons who are not at the time cohabiting
13 as husband and wife and the other person is suffering from a
14 mental defect or incapacity which precludes giving consent.

15 The bill provides that a person commits sexual abuse in the
16 third degree when the act is done by force, violence, duress,
17 fear of bodily injury, or against the will of the other person,
18 whether or not the other person is the person's spouse or is
19 cohabiting with the person. "Duress" is defined as a direct or
20 implied threat of force, violence, or retribution sufficient to
21 coerce a reasonable person to perform or acquiesce to the act.

22 The bill provides that a person commits sexual abuse in the
23 third degree when the person performs a sex act and the act
24 is performed while the other person is precluded from giving
25 consent due to being mentally incapacitated or is physically
26 incapacitated or physically helpless. The bill provides that a
27 person commits sexual abuse in the third degree when the act is
28 between persons who are spouses or in an intimate relationship
29 and if any of the following are true: the act is performed
30 while the other person is unconscious of the nature of the act
31 and this is known by the person or the act is performed against
32 the other person's will by threat of future retaliation against
33 the other person or any other person and it is reasonable to
34 believe that the person will act upon the threat. "Unconscious
35 of the nature of the act" is defined as incapable of resisting

1 because the person is unconscious or asleep. Sexual abuse
2 in the third degree is a class "C" felony punishable by
3 confinement for no more than 10 years and a fine of at least
4 \$1,037 but no more than \$13,660.

5 The bill makes conforming Code changes to Code sections
6 692A.101 (definition of aggravated offense against a minor),
7 692A.102 (sex offense classifications), 692A.121 (access to sex
8 offender information), and 702.11 (forcible felony) to apply
9 the numbering changes the bill makes to Code section 709.4.