

House Study Bill 522 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act relating to the admissibility of evidence in a
2 prosecution for physical abuse or a sexual offense upon or
3 against a child, person with an intellectual disability,
4 person with a cognitive impairment, or person with a
5 developmental disability.

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

1 Section 1. NEW SECTION. 622.31A Admissibility of evidence
2 in certain physical abuse and sexual offense cases.

3 1. As used in this section:

4 a. "Child" means a person under fourteen years of age.

5 b. "Cognitive impairment" means a deficiency in a person's
6 short-term or long-term memory; orientation as to person,
7 place, and time; deductive or abstract reasoning; or judgment
8 as it relates to safety awareness.

9 c. "Developmental disability" means the same as defined
10 under the federal Developmental Disabilities Assistance and
11 Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in
12 42 U.S.C. §15002(8).

13 d. "Intellectual disability" means a disability of
14 children and adults who as a result of inadequately developed
15 intelligence have a significant impairment in ability to learn
16 or to adapt to the demands of society.

17 2. In a prosecution for physical abuse or a sexual offense
18 including but not limited to a sexual offense in violation of
19 section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15,
20 709.16, or 709.23, upon or against a child, a person with an
21 intellectual disability, person with a cognitive impairment, or
22 person with a developmental disability, the following evidence
23 shall be admitted as an exception to the hearsay rule if all of
24 the requirements in subsection 3 apply:

25 a. Testimony by the victim concerning an out-of-court
26 statement made by the victim to another person regarding the
27 occurrence of the offense.

28 b. Testimony by another concerning an out-of-court statement
29 made by the victim describing any act or detail pertaining to
30 any act which is an element of an offense charged for physical
31 abuse or a sexual offense against the victim.

32 3. The testimony described in subsection 2 shall be admitted
33 into evidence at trial as an exception to the hearsay rule if
34 all of the following apply:

35 a. The party intending to offer the statement does all of

1 the following:

2 (1) Notifies the adverse party of the intent to offer the
3 statement.

4 (2) Provides the adverse party with the name of the witness
5 through whom the statement will be offered.

6 (3) Provides the adverse party with a written summary of the
7 statement to be offered.

8 *b.* The court finds, in a hearing conducted outside the
9 presence of the jury, that the timing of the statement, the
10 content of the statement, and the circumstances surrounding
11 the making of the statement provide sufficient safeguards of
12 reliability.

13 *c.* The child, person with an intellectual disability, person
14 with a cognitive impairment, or person with a developmental
15 disability satisfies one of the following:

16 (1) Testifies at the trial.

17 (2) Is unavailable to testify but provides corroborative
18 evidence of the act which is the subject of the statement.

19 4. If a statement is admitted pursuant to this section,
20 the court shall instruct the jury that it is for the jury
21 to determine the weight and credibility to be given to the
22 statement, and in making that determination, the jury shall
23 consider the age and maturity of the child or the disability
24 of the person with an intellectual disability, person with
25 a cognitive impairment, or person with a developmental
26 disability; the nature of the statement; the circumstances
27 under which the statement was made, and any other relevant
28 factors.

29 5. This section shall not prevent the admission of any
30 evidence concerning the forfeiture of property under chapter
31 809A.

32 EXPLANATION

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

35 This bill relates to the admissibility of evidence in a

1 prosecution for physical abuse or a sexual offense upon or
2 against a child, person with an intellectual disability, person
3 with a cognitive impairment, or person with a developmental
4 disability.

5 The bill provides that in a prosecution for physical abuse
6 or a sexual offense including but not limited to a sexual
7 offense in violation of Code section 709.2 (sexual abuse in
8 the first degree), 709.3 (sexual abuse in the second degree),
9 709.4 (sexual abuse in the third degree), 709.11 (assault with
10 the intent to commit sexual abuse), 709.12 (indecent contact
11 with a child), 709.14 (lascivious conduct with a minor),
12 709.15 (sexual exploitation by a counselor, therapist, or
13 school employee), 709.16 (sexual misconduct with offenders
14 and juveniles), or 709.23 (continuous sexual abuse of a
15 child), upon or against a child, a person with an intellectual
16 disability, a person with a cognitive impairment, or a person
17 with a developmental disability, testimony by the victim
18 concerning an out-of-court statement made by the victim to
19 another person regarding the occurrence of the offense and
20 testimony by another concerning an out-of-court statement made
21 by the victim describing any act or detail pertaining to any
22 act which is an element of an offense charged for physical
23 abuse or a sexual offense against the victim shall be admitted
24 into evidence at trial as an exception to the hearsay rule.
25 Such out-of-court statements shall be admitted if the party
26 intending to offer the statement notifies the adverse party
27 of the intent to offer the statement, provides the adverse
28 party with the name of the witness through whom the statement
29 will be offered, and provides the adverse party with a written
30 summary of the statement to be offered; the court finds in
31 a hearing conducted outside of the presence of the jury that
32 the timing of the statement, the content of the statement,
33 and the circumstances surrounding the making of the statement
34 provide sufficient safeguards of reliability; and the child,
35 person with an intellectual disability, person with a cognitive

1 impairment, or person with a developmental disability testifies
2 at the trial or is unavailable to testify but provides
3 corroborative evidence of the act which is the subject of the
4 statement.

5 The bill provides that if a statement is admitted pursuant
6 to the bill, the court shall instruct the jury that it is for
7 the jury to determine the weight and credibility to be given to
8 the statement, and in making that determination, the jury shall
9 consider the age and maturity of the child or the disability
10 of the person with an intellectual disability, cognitive
11 impairment, or developmental disability; the nature of the
12 statement; the circumstances under which the statement was
13 made; and any other relevant factor.

14 The bill shall not prevent the admission of any evidence in a
15 forfeiture proceeding brought under Code chapter 809A.

16 The bill provides definitions for "child", "cognitive
17 impairment", "developmental disability", and "intellectual
18 disability".