

CHAPTER 159**SEXUAL ABUSE — MISCELLANEOUS PROVISIONS**

H.F. 661

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.

~~e. 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.

Approved May 20, 1999