



# IOWA SEXUAL ABUSE LAWS & CONSENT

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# SELF-CARE

We're talking about sexual abuse as it relates to children and minors. We recognize this can be a triggering and upsetting subject. We encourage you to take care of yourself – if you need to step away, please do so.

# DEFINITIONS

When discussing criminal statutes, attention must be paid to the definitions provided in the law.

What individuals may consider “sexual abuse” does not necessarily qualify as “sexual abuse” under Iowa criminal law.

# LEGAL LANGUAGE AHEAD!

Quick overview of statutes – you don't need to memorize these, we just want to give you an idea of some laws in Iowa.

We generally use words as they appear in the law (example: defendant, victim, etc.).

# WHAT IS SEXUAL ABUSE?

(CODE 709.1 – SEXUAL ABUSE DEFINED)

- *Any sex act* when:
  - Act is done by force OR against the will of another.
    - “Consent” is not adequate if given under threats of violence toward any person OR if they are under the influence of a sleep-inducing drug or unconscious.
  - The other person is suffering from a mental defect or incapacity if their condition prevents them from giving consent or knowing the right and wrong in regards to sexual matters.
  - The other person is a *child*.

## WHAT IS A SEX ACT? (CODE 702.17 – SEX ACT)

- Sexual contact + 2 or more people AND
  - Penetration of penis into vagina or anus OR
  - Contact that is: genital to mouth; mouth to anus\*; genital to genital; genital to anus; or hand, finger or other body part\* to genital or anus OR
  - Ejaculating onto someone OR
  - Using a substitute sex organ on genitals or anus OR
  - Touching one's own genitalia or anus with a finger, hand, artificial sex organ, etc. at the direction of another person.\*

\*Newly passed in 2021

## HOW OLD IS A CHILD? (IOWA CODE 702.5)

- A child is anyone under the age of 14.
- In other parts of the code, “child” may mean something different.

# SERIOUS INJURY (CODE 702.18)

- Disabling mental illness
- Bodily injury +
  - Substantial risk of death
  - Serious and permanent disfigurement
  - Protracted loss/impairment of an organ
- Injury to a child requiring surgical repair and general anesthesia.
- Examples: rib fractures, head injuries, HIV transmission (*State v. Keene*)



# SEXUAL ABUSE AS A CRIME

- 1<sup>st</sup> degree
  - Sexual abuse + serious injury
  - Class “A” felony – life sentence
    - Special sentencing guidelines if defendant is under the age of 18
- 2<sup>nd</sup> degree
  - Sexual abuse +
    - Display of dangerous weapon in a threatening manner OR
    - Threat or use of force that creates a substantial risk of death or serious injury (even to another person) OR
    - Person harmed is under 12 OR
    - One or more person helps and it is against someone’s will
  - Class “B” felony – up to 25 years. Enhanced sentencing possible.

# SEXUAL ABUSE AS A CRIME (CONT.)

- 3<sup>rd</sup> degree
  - Done by force or against another's will – living arrangement is irrelevant, marital status is irrelevant
  - Parties are not living together as “husband and wife\*” AND
    - Other person has a mental defect or incapacity that prevents them from giving consent OR
    - Other person is 12 or 13 years old OR
    - Other person is 14 or 15 years old AND
      - Defendant is a member of the household or
      - Related by blood or affinity to 4<sup>th</sup> degree or
      - Defendant is in a position of authority and uses their authority to coerce or
      - Defendant is 4+ years older or
  - Victim is under influence of a controlled substance at time of abuse AND
    - Substance prevents consent and
    - Person performing act knew or should have known the other person was under the influence.
  - Act is performed while victim is mentally or physically incapacitated or otherwise physically helpless
- Class “C” felony – up to 10 years AND fine of \$1,000 to \$10,000. Enhanced sentencing possible.

## IS FORCE A REQUIREMENT? (CODE 709.5)

Physical resistance is **not** a required element to show an act was done by force or against the will of another person.

Court may consider all surrounding circumstances when determining whether an act was done by force or against someone's will.

# LASCIVIOUS ACTS WITH A CHILD (CODE 709.8)

- Person committing act must be 16 years or older
- Victim must be 14 or younger
- Intent must be to arousing or satisfy sexual desire of either person

- Fondling or touching pubes or genitals of a child
- Permitting or causing a child to fondle or touch the person's genitals or pubes

Class "C" felony  
(with enhanced  
sentencing)

- Soliciting a child to engage in a sexual act or soliciting a person to arrange  
a sex act with a child
- Inflicting pain or discomfort upon a child or permitting a child to do the same to the person.

Class "D" felony

# INDECENT CONTACT WITH A CHILD (CODE 709.12)

- Perpetrator – 18 years of age or older
- Consent is irrelevant
- Purpose of arousing or satisfying sexual desires of either
- Acts:
  - Fondling or touching inner thigh, groin, buttock, anus, or breast of the child OR clothing immediately over these areas OR
  - Soliciting or permitting a child to fondle or touch these areas OR
  - Soliciting a child to engage in an act found in 709.8 (1, 2, or 4)
- Aggravated misdemeanor
- Also applies if perpetrator is 16 or 17 years old and victim is more than five years younger
  - Case will transfer to juvenile court

# LASCIVIOUS CONDUCT WITH A MINOR (CODE 709.14)

- Perpetrator is over 18 years old and in a position of authority
- Victim is a minor
- For the purpose of arousing or satisfying the sexual desires of either party
- Consent is irrelevant
- Acts covered:
  - Force, persuade, or coerce a minor to partially or fully disrobe
- Serious misdemeanor

# INCEST (CODE 726.2)

- Applies to a perpetrator who isn't a "child" → perpetrator must be an adult.
- Sex act +
  - Relative, such as a sibling (whole or half), aunt/uncle, niece/nephew, etc. AND
  - Knowledge that the person is a relative.
- Class "D" felony – Up to 5 years in prison.

# SEXUAL EXPLOITATION BY A COUNSELOR, THERAPIST, OR SCHOOL EMPLOYEE (CODE 709.15)

- Counselor or therapist
  - Emotional dependence – professional knows or should have known the person is unable to give consent
  - Mental health services – treatment, assessment, or counseling.
    - one year limitation
  - Current or former patient
  - For the purposes of sexual arousal of either party
- School employee
  - Any sexual contact
  - For purposes of arousing either party

May be anywhere from a Class “D” felony to a serious misdemeanor.



# STATUTORY RAPE

- May be sexual abuse in the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree.
  - 1<sup>st</sup> – in commission of sex *act*, defendant causes another serious injury.
  - 2<sup>nd</sup> – sex *act* + victim under 12 years old.
  - 3<sup>rd</sup> – Parties not cohabitating as husband and wife\* AND
    - Victim is 12 or 13 years old; OR
    - Victim is 14 or 15 years old AND
      - Defendant is in the same household;
      - Defendant is related to victim by blood or affinity to the 4<sup>th</sup> degree;
      - Defendant is in a position of authority AND uses authority to coerce victim to submit; or
      - Defendant is four or more years older than the victim.



# IOWA CONSENT LAWS & MINORS

THIS SECTION WILL CLOSELY EXAMINE IOWA LAWS ON WHEN MINORS CAN  
CONSENT TO SEXUAL ACTIVITY.

## WHEN CONSENT DEPENDS ON AGE

- Age of consent
  - The age at which a person is legally competent to agree to sexual activity.
- In Iowa, the age of consent is 16.
  - 709.4 -- Under the age of 16, the acts may be sexual abuse in the 3<sup>rd</sup> degree.
- If there is more than a 4 year age difference, it may be sexual abuse in 3<sup>rd</sup> degree.
- However, age may be irrelevant for certain relationships.
  - Incest, mental health counselors, school employees, etc.

# CONSENT SCENARIO #1

Jamie is 13. Alex is 16. Alex has no position of authority over Jamie. Jamie is mentally healthy and is not under the influence of any drug.

They are not married. Jamie consents to sex with Alex.

Under Iowa law, Alex has committed sexual abuse in the 3<sup>rd</sup> degree.

Why?

Under 709.4, a person commits 3<sup>rd</sup> degree sexual abuse if they engage in a sex act with someone they are not married to if the other person is twelve or thirteen. A 13 year old is not considered legally competent to consent to sexual activity.

## CONSENT SCENARIO #2

Taylor is 15 years old. Jordan is 20. Taylor tells Jordan it is ok to have sex with each other and they have sex. Taylor holds no position of authority over Taylor. Taylor is not under the influence of any drugs.

Under Iowa law, Jordan has committed sexual abuse in the 3<sup>rd</sup> degree.

Why?

Under 709.4, a person commits 3<sup>rd</sup> degree sexual abuse if they engage in a sex act with someone they are not married to, if the other person is 14 or 15, and the other person is four or more years older.

## CONSENT SCENARIO #3

Jamie just turned 18. Alex is 14. At a party, they both drink. They end up making out and they each fondle each other.

Has Jamie committed the crime of indecent contact with a child?

No. Alex is 14. Iowa law defines a child as someone under the age of 14. (Code 702.5)

If Alex was 13, then Jamie could be charged with indecent contact with a child. (“Touch the clothing covering the immediate area of inner thigh, groin, buttock, anus, or breast...”)

Have either of them committed any other crime?

Probably not. Kissing and fondling don’t fit the definition of “sex act” under Iowa law and Jamie is not in a position of power over Alex, which is a required element for lascivious conduct with a minor.

## CONSENT SCENARIO #4

Charlie is 13. Austin is also 13. Curious, they mutually engage in sexual touching but no intercourse occurs.

Under Iowa law, they both *may* have committed 3<sup>rd</sup> degree sexual abuse.

Why?

Under 709.4, a person commits 3<sup>rd</sup> degree sexual abuse if they engage in a sex act with someone they are not married to, if the other person is 12 or 13 years old. However, 709.4 requires a sex act occur. "Sex act" as defined in 702.17 requires penetration or mouth contact. A sex act may also be performed by touching "genitalia or anus". We don't know in this scenario who touched what.



# IOWA CONSENT LAWS & MINORS

THIS SECTION WILL CLOSELY EXAMINE IOWA LAWS ON WHEN MINORS CAN  
CONSENT TO MEDICAL OR ADVOCACY SERVICES.



# MEDICAL SERVICES

- Minors can consent to emergency services, contraceptives/family planning, STD care, partner therapy for STDs, HIV/AIDS care, drug/alcohol treatment, treatment for sexual abuse or assault, and tobacco cessation.
- Minors should NOT be forced to undergo medical treatment just because a parent/guardian wants them to.
- Consent does NOT guarantee confidentiality.
  - Different laws, both state and federal, mean parents may have to be notified in certain circumstances.
- Consent for treatment and consent for insurance billing are different things.
  - A minor may be able to consent to certain treatments, but that does not mean they can consent for insurance to be billed. This can cause complications. Iowa law does allow for payment of certain services (sexual assault exam).
- Just because the law allows for minors to consent to certain services does not mean every provider will provide services. If a hospital or doctor refuses to treat a minor, ask for a written policy.

If you have questions on a specific case, please contact the IowaCASA legal department.

# ADVOCACY SERVICES

- When can a child provide consent to meet with advocates? – The limit does not exist...
  - As long as the child is able to understand confidentiality, obligations, etc.
- Can a parent/guardian or other family member provide consent for advocacy services? – It's not needed.
  - Answer may be different for other services, such as therapy.
- Can minors sign releases? – As long as they are able to understand confidentiality and the effect of waiving confidentiality, advocates should legally be able to rely on those releases and not require the parent or guardian to sign as well.

# SOME COMMONLY ASKED QUESTIONS

- Alcohol and consent
  - Mentally incapacitated – temporarily incapable of controlling the person’s own conduct due to influence of a narcotic, anesthetic, or intoxicating substance.
  - Physically helpless – unable to communicate an unwillingness to act because the person is unconscious, asleep, or otherwise physically limited.
  - Physically incapacitated – has a bodily impairment or handicap that substantially limits a person’s ability to resist or flee.
  - Courts have said that some level of awareness during an assault “does not preclude...[a] finding they were incapacitated”.  
(*State v. Tapia*)

## SOME COMMONLY ASKED QUESTIONS (CONT.)

- Mandatory reporting → Child abuse + caretaker
  - Sexual abuse of a child does not automatically require a report.
  - Some questions to ask:
    - Was the person who committed the abuse responsible for the care of the child at the time the abuse occurred?
    - Did a caretaker fail to act to protect a child from sexual abuse they knew may occur or would occur?

# SURVEY

Link will be provided in the chat. Please click the link before leaving the session.