

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 5/6/21

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES TARR, Foster, Tuck, Zulkosky, Spohnholz, Fields, Schrage, Hopkins, Drummond, Hannan, Snyder

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the
2 code of military justice; relating to consent; relating to the testing of sexual assault
3 examination kits; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 11.41.410 is amended to read:

6 **Sec. 11.41.410. Sexual assault in the first degree.** (a) An offender commits
7 the crime of sexual assault in the first degree if

8 (1) the offender engages in sexual penetration with another person
9 without consent of that person;

10 (2) the offender attempts to engage in sexual penetration with another
11 person without consent of that person and causes serious physical injury to that
12 person;

13 (3) the offender engages in sexual penetration with another person

14 (A) who the offender knows is mentally incapable; and

1 (B) who is in the offender's care

2 (i) by authority of law; or

3 (ii) in a facility or program that is required by law to be
4 licensed by the state; [OR]

5 (4) the offender engages in sexual penetration with a person who the
6 offender knows is unaware that a sexual act is being committed and

7 (A) the offender is a health care worker; and

8 (B) the offense takes place during the course of professional
9 treatment of the victim; **or**

10 **(5) the offender engages in sexual penetration with a person whom**
11 **the offender has induced to believe by artifice, pretense, or concealment that the**
12 **offender is another person based on the offender's real identity, not on**
13 **characteristics, traits, or accomplishments of or similar facts about the offender,**
14 **with reckless disregard that the person would not have consented to the sexual**
15 **penetration if the person knew the offender's real identity.**

16 (b) Sexual assault in the first degree,

17 **(1) under (a)(1) - (4) of this section,** is an unclassified felony and is
18 punishable as provided in AS 12.55;

19 **(2) under (a)(5) of this section, is a class A felony and is punishable**
20 **as provided in AS 12.55.**

21 * **Sec. 2.** AS 11.41.420(a) is amended to read:

22 (a) An offender commits the crime of sexual assault in the second degree if

23 (1) the offender engages in sexual contact with another person without
24 consent of that person;

25 (2) the offender engages in sexual contact with a person

26 (A) who the offender knows is mentally incapable; and

27 (B) who is in the offender's care

28 (i) by authority of law; or

29 (ii) in a facility or program that is required by law to be
30 licensed by the state;

31 (3) the offender engages in sexual penetration with a person who is

1 (A) mentally incapable;

2 (B) incapacitated; or

3 (C) unaware that a sexual act is being committed; [OR]

4 (4) the offender engages in sexual contact with a person who the
5 offender knows is unaware that a sexual act is being committed and

6 (A) the offender is a health care worker; and

7 (B) the offense takes place during the course of professional
8 treatment of the victim; or

9 **(5) the offender engages in sexual contact with a person whom the**
10 **offender has induced to believe by artifice, pretense, or concealment that the**
11 **offender is another person based on the offender's real identity, not on**
12 **characteristics, traits, or accomplishments of or similar facts about the offender,**
13 **with reckless disregard that the person would not have consented to the sexual**
14 **contact if the person knew the offender's real identity.**

15 * Sec. 3. AS 11.41.434(a) is amended to read:

16 (a) An offender commits the crime of sexual abuse of a minor in the first
17 degree if

18 (1) being 16 years of age or older, the offender engages in sexual
19 penetration with a person who is under 13 years of age or aids, induces, causes, or
20 encourages a person who is under 13 years of age to engage in sexual penetration with
21 another person;

22 (2) being 18 years of age or older, the offender engages in sexual
23 penetration with a person who is under 18 years of age, and the offender is the victim's
24 natural parent, stepparent, adopted parent, or legal guardian; [OR]

25 (3) being 18 years of age or older, the offender engages in sexual
26 penetration with a person who is under 16 years of age, and

27 (A) the victim at the time of the offense is residing in the same
28 household as the offender and the offender has authority over the victim; or

29 (B) the offender occupies a position of authority in relation to
30 the victim; or

31 **(4) being 18 years of age or older, the offender engages in sexual**

1 **penetration with a person who is 13, 14, 15, 16, or 17 years of age and at least 10**
 2 **years younger than the offender, or aids, induces, causes, or encourages a person**
 3 **who is 13, 14, 15, 16, or 17 years of age and at least 10 years younger than the**
 4 **offender to engage in sexual penetration with another person.**

5 * **Sec. 4.** AS 11.41.436(a) is amended to read:

6 (a) An offender commits the crime of sexual abuse of a minor in the second
 7 degree if,

8 (1) being 17 years of age or older, the offender engages in sexual
 9 penetration with a person who is 13, 14, or 15 years of age and at least four years, **but**
 10 **not more than 10 years,** younger than the offender, or aids, induces, causes, or
 11 encourages a person who is 13, 14, or 15 years of age and at least four years, **but not**
 12 **more than 10 years,** younger than the offender to engage in sexual penetration with
 13 another person;

14 (2) being 16 years of age or older, the offender engages in sexual
 15 contact with a person who is under 13 years of age or aids, induces, causes, or
 16 encourages a person under 13 years of age to engage in sexual contact with another
 17 person;

18 (3) being 18 years of age or older, the offender engages in sexual
 19 contact with a person who is under 18 years of age, and the offender is the victim's
 20 natural parent, stepparent, adopted parent, or legal guardian;

21 (4) being 16 years of age or older, the offender aids, induces, causes,
 22 or encourages a person who is under 16 years of age to engage in conduct described in
 23 AS 11.41.455(a)(2) - (6);

24 (5) being 18 years of age or older, the offender engages in sexual
 25 contact with a person who is under 16 years of age, and

26 (A) the victim at the time of the offense is residing in the same
 27 household as the offender and the offender has authority over the victim; or

28 (B) the offender occupies a position of authority in relation to
 29 the victim;

30 (6) being 18 years of age or older, the offender engages in sexual
 31 penetration with a person who is 16 or 17 years of age and at least three years younger

1 than the offender, and the offender occupies a position of authority in relation to the
2 victim; [OR]

3 (7) being under 16 years of age, the offender engages in sexual
4 penetration with a person who is under 13 years of age and at least three years younger
5 than the offender; or

6 **(8) being 18 years of age or older, the offender engages in sexual**
7 **contact with a person who is 13, 14, 15, 16, or 17 years of age and at least 10 years**
8 **younger than the offender, or aids, induces, causes, or encourages a person who**
9 **is 13, 14, 15, 16, or 17 years of age and at least 10 years younger than the offender**
10 **to engage in sexual contact with another person.**

11 * **Sec. 5.** AS 11.41.445 is amended by adding a new subsection to read:

12 (c) In a prosecution under AS 11.41.410 - 11.41.440, where consent is at
13 issue,

14 (1) an expression of lack of consent through words or conduct means
15 there is no consent; lack of verbal or physical resistance or submission resulting from
16 the use of force, threat of force, or placing another person in fear may not constitute
17 consent; a current or previous dating, social, or sexual relationship by itself or the
18 manner of dress of the person involved with the defendant in the conduct at issue may
19 not constitute consent;

20 (2) a person cannot consent to force causing or likely to cause death or
21 serious physical injury or to being rendered unconscious; a person cannot consent
22 while under threat or fear or under circumstances where the person is fraudulently
23 made to believe that the sexual act serves a professional purpose; in this paragraph,
24 "professional purpose" means an act the defendant has represented as a necessary part
25 or component of a provided service, part of the routine course of a procedure, or a
26 component of the defendant's profession that would occur if a person sought services
27 from another practitioner in the same field as the defendant;

28 (3) lack of consent may be inferred based on the circumstances of the
29 offense; the surrounding circumstances shall be considered in determining whether a
30 person gave consent or whether a person did not resist or ceased to resist only because
31 of another person's actions.

1 * **Sec. 6.** AS 11.41.470 is amended by adding a new paragraph to read:

2 (9) "consent" means a freely given, reversible agreement specific to
3 the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in
4 the act was positively expressed by word or action.

5 * **Sec. 7.** AS 11.56.765(c) is amended by adding a new paragraph to read:

6 (5) "consent" has the meaning given in AS 11.41.470.

7 * **Sec. 8.** AS 11.56.767(c) is amended by adding a new paragraph to read:

8 (5) "consent" has the meaning given in AS 11.41.470.

9 * **Sec. 9.** AS 26.05.900(e) is amended by adding a new paragraph to read:

10 (9) "consent" has the meaning given in AS 26.05.890(h).

11 * **Sec. 10.** AS 44.41.065(a) is amended to read:

12 (a) When a law enforcement agency collects a sexual assault examination kit
13 under AS 18.68.010, the agency shall

14 (1) within 30 days after the agency collects the sexual assault
15 examination kit, send the sexual assault examination kit to an accredited laboratory in
16 coordination with the Department of Public Safety or a laboratory operated by the
17 Department of Public Safety;

18 (2) ensure that the laboratory to which the sexual assault examination
19 kit is sent under (1) of this subsection conducts a serological or DNA test on the
20 sexual assault examination kit within six months [ONE YEAR] after the laboratory
21 receives the sexual assault examination kit; and

22 (3) within two weeks after the laboratory that receives the sexual
23 assault examination kit under (1) of this subsection completes serological or DNA
24 testing, make a reasonable effort to notify the victim from whom the sexual assault
25 examination kit was collected that the sexual assault examination kit has been tested.

26 * **Sec. 11.** AS 11.41.470(8); AS 11.56.765(c)(4), 11.56.767(c)(4); and AS 26.05.900(e)(8)
27 are repealed.

28 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 APPLICABILITY. AS 11.41.410, as amended by sec. 1 of this Act, AS 11.41.420(a),
31 as amended by sec. 2 of this Act, AS 11.41.434(a), as amended by sec. 3 of this Act,

1 AS 11.41.436(a), as amended by sec. 4 of this Act, AS 11.41.445(c), enacted by sec. 5 of this
2 Act, AS 11.41.470, as amended by sec. 6 of this Act, AS 11.56.765(c), as amended by sec. 7
3 of this Act, AS 11.56.767(c), as amended by sec. 8 of this Act, AS 26.05.900(e), as amended
4 by sec. 9 of this Act, and the repeals of AS 11.41.470(8), AS 11.56.765(c)(4),
5 AS 11.56.767(c)(4), and AS 26.05.900(e)(8) by sec. 11 of this Act apply to offenses
6 committed on or after the effective date of secs. 1 - 9 and 11 of this Act.

7 * **Sec. 13.** Section 10 of this Act takes effect July 1, 2023.