



29 osteopathic physician, physician assistant, nurse, dentist, physical therapist, chiropractor,  
30 mental health therapist, social service worker, clinical social worker, certified social worker,  
31 marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric  
32 mental health nurse specialist, or substance abuse counselor.

33 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized  
34 member of the clergy.

35 (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

36 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of  
37 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a  
38 child, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a  
39 child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted  
40 sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse  
41 of a child, or simple sexual abuse is without consent of the victim under any of the following  
42 circumstances:

43 (a) the victim expresses lack of consent through words or conduct;

44 (b) the actor overcomes the victim through the actual application of physical force or  
45 violence;

46 (c) the actor is able to overcome the victim through concealment or by the element of  
47 surprise;

48 (d) (i) the actor coerces the victim to submit by threatening to retaliate in the  
49 immediate future against the victim or any other person, and the victim perceives at the time  
50 that the actor has the ability to execute this threat; or

51 (ii) the actor coerces the victim to submit by threatening to retaliate in the future  
52 against the victim or any other person, and the victim believes at the time that the actor has the  
53 ability to execute this threat;

54 (e) the actor knows the victim is unconscious, unaware that the act is occurring, or is  
55 physically unable to resist;

56 (f) the actor knows or reasonably should know that the victim has a mental disease or  
57 defect, which renders the victim unable to:

58 (i) appraise the nature of the act;

59 (ii) resist the act;

60 (iii) understand the possible consequences to the victim's health or safety; or

61 (iv) appraise the nature of the relationship between the actor and the victim;

62 (g) the actor knows that the victim [~~submits or~~] participates because the victim  
63 erroneously believes that the actor is [~~the victim's spouse~~] someone else;

64 (h) the actor intentionally impaired the power of the victim to appraise or control his or  
65 her conduct by administering any substance without the victim's knowledge;

66 (i) the victim is younger than 14 years of age;

67 (j) the victim is younger than 18 years of age and at the time of the offense the actor  
68 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of  
69 special trust in relation to the victim as defined in Section [76-5-404.1](#);

70 (k) the victim is 14 years of age or older, but younger than 18 years of age, and the  
71 actor is more than three years older than the victim and entices or coerces the victim to submit  
72 or participate, under circumstances not amounting to the force or threat required under  
73 Subsection (2)(b) or (d); or

74 (l) the actor is a health professional or religious counselor, the act is committed under  
75 the guise of providing professional diagnosis, counseling, or treatment, and at the time of the  
76 act the victim reasonably believed that the act was for medically or professionally appropriate  
77 diagnosis, counseling, or treatment to the extent that resistance by the victim could not  
78 reasonably be expected to have been manifested.

79 (3) Consent to any sexual act or prior consensual activity between or with any party  
80 does not necessarily constitute consent to any other sexual act. Consent may be initially given  
81 but may be withdrawn through words or conduct at any time prior to or during sexual activity.