



House Bill 20

RELATING TO RAPE KIT REFORM, DEFINITION OF CONSENT, AND SEXUAL
ASSAULT OF AN INCAPACITATED PERSON

Background

Rape Kit Reform: Began working in fall of 2014, multi-year effort to reform all aspects of criminal justice system that are failing victims of sexual assault

- first statewide audit (HB 117, 2015)

- crime lab audit (submitted following hearings on HB 117)

- Senate Bill 54 – put audit requirement in statute

- House Bill 31 – puts victim centered approach in statute, requires training on sexual assault for all law enforcement, and renews audit requirement

Unfinished: timeline for testing and victim notification

Section 1: Sexual Assault in the First Degree

Title 11: Criminal Law

Chapter 41: Crimes Against a Person

Article 4: Sexual Offenses

11.41.410 (a): Sexual Assault in the First Degree (sexual penetration)

Updates to say that a person commits this crime if they know **or reasonably should know** the victim is mentally incapable

Sentencing:

For first felony conviction, if victim is

less than 13 years of age, 25 to 35 years

13 years of age or older, 20 to 30 years

Section 2: Sexual Assault in the Second Degree

Title 11: Criminal Law

Chapter 41: Crimes Against a Person

Article 4: Sexual Offenses

11.41.420 (a): Sexual Assault in the Second Degree (sexual contact)

Updates to say that a person commits this crime if they know **or reasonably should know** the victim is mentally incapable

Sentencing:

for the first felony conviction 5 to 15 years

Section 3: Sexual Assault in the Third Degree

Title 11: Criminal Law

Chapter 41: Crimes Against a Person

Article 4: Sexual Offenses

11.41.425 (a): Sexual Assault in the Third Degree (sexual contact)

Updates to say that a person commits this crime if they know **or reasonably should know** the victim is mentally incapable

Sentencing:

for the first felony conviction 2 to 12 years

Section 4: Updates the Definition of Consent

Current 11.41.470 (8) defines “without consent” as means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant.

Problem: Current outdated definition implies force must be used. This is not always the case and jurors often look for evidence of force.

Section 4: Updates the Definition of Consent

Solution: Update the meaning of consent to be in the affirmative, to demonstrate that consent has been given. This is consistent with other jurisdictions to require a more overt expression of consent.

New language to 11.41.470 :

(9) "consent" means words or overt actions indicating freely given agreement to engage in sexual penetration or sexual contact.

Section 5: Offenses Against Public Administration

Title 11: Criminal Law

Chapter 56: Offenses Against Public Administration

Article 5: Obstruction of Public Administration

11.56.765 (a): Failure to Report a Violent Crime Committed Against a Child

Updates to make it clear a child can never give consent to sexual penetration

Was flagged by Legislative Legal as an error from original statute, after listening to the hearings for the enabling legislation they recommended a change

Section 6: Updates the Definition of Consent

Title 11: Criminal Law

Chapter 56: Offenses Against Public Administration

Article 5: Obstruction of Public Administration

11.56.767 (c): Failure to Report a Violent Crime Committed Against
an Adult

Updates to add definition of consent provided in 11.41.470

Section 7: Updates the Definition of Consent

Title 11: Military Affairs, Veterans, Disasters, and Aerospace

Chapter 5: Military Code of Justice

Article 2: Military Justice

26.05.900(e): Other Sexual Misconduct; Indecent Viewing, Visual Recording, or Broadcasting

Current: (8) “without the other person’s consent” has the meaning given to “without consent” in AS 11.41.470

Updates to add (9) to add the definition of consent provided in 11.41.470

Section 8: Sexual Assault Examination Kits

Title 44: State Government

Chapter 41: Department of Public Safety

Section 65: new section – Sexual Assault Examination Kits

Adds language to requires three things:

1. That all sexual assault examination kits are sent to the crime lab within 30 days of collection
2. That all sexual assault examination kits be tested within six months
3. That victims be notified by law enforcement within two weeks of receiving the results that the kit has been tested

Section 9: Sexual Assault Examination Kits

Title 44: State Government

Chapter 41: Department of Public Safety

Section 70: Report on Untested Sexual Assault Examination Kits

Amends 44.41.070 (a) and adds language to require the reason a kit was not tested as described in Section 11 that amends 44.41.070

Section 10: Sexual Assault Examination Kits

Title 44: State Government

Chapter 41: Department of Public Safety

Section 70: Report on Untested Sexual Assault Examination Kits

Amends 44.41.070 (b) and adds language to require the reason a kit was not tested as described in Section 11 that amends 44.41.070

Section 11: Sexual Assault Examination Kits

Title 44: State Government

Chapter 41: Department of Public Safety

Section 70: Report on Untested Sexual Assault Examination Kits

Amends 44.41.070 to add a new subsection (e) to read

A sexual assault examination kit is ineligible for testing if the law enforcement agency or state department finds that the sexual assault examination kit

(1) was collected improperly

(2) is not necessary to identify the perpetrator of the crime; or

(3) was collected from a person who does not wish to proceed with criminal charges.

Section 12: Repeal old consent definitions

Repeals definition of “without consent” to be replaced with new definition of “consent”

11.41.470 (8) Update to Sexual Assault in the Third Degree

11.56.765 (c)(4) Update to Failure to Report a Crime Committed Against a Child

11.56.767 (c)(4) Update to Failure to Report a Crime Committed Against an Adult

26.05.900 (e)(8) Update in Military Code of Justice

Section 13: Applicability

Makes it clear that these changes “apply to offenses committed on or after the effective dates of secs. 1-7 and 12 of this Act.”

Section 13: Effective Date

This act takes effect January 1, 2020.



Thank you!

Questions?

