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Radford
3/21/19

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES TARR, Spohnholz, Tuck, Rauscher, Hopkins, Fields, Drummond

A BILL

FOR AN ACT ENTITLED

"An Act relating to sexual assault; requiring law enforcement agencies to test sexual assault examination kits; requiring notification of completion of testing; relating to reports on untested sexual assault examination kits; and providing for an effective date."

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

* **Section 1.** AS 11.41.410(a) is amended to read:

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

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

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

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

when

(A) [WHO] the offender knows **or recklessly disregards that the other person** is mentally incapable; and

(B) **the other person** [WHO] is in the offender's care

(i) by authority of law; or

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

(4) the offender engages in sexual penetration with a person **when** [WHO] the offender knows **or recklessly disregards that the person** is unaware that a sexual act is being committed and

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

(B) the offense takes place during the course of professional treatment of the victim.

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

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

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

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

(A) [WHO] the offender knows **or recklessly disregards that the person** is mentally incapable; and

(B) **the person** [WHO] is in the offender's care

(i) by authority of law; or

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

(3) the offender engages in sexual penetration with a person **when** [WHO] the offender knows **or recklessly disregards that the person** is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

(4) the offender engages in sexual contact with a person **when** [WHO] the offender knows **or recklessly disregards that the person** is unaware that a sexual act is being committed and

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

(B) the offense takes place during the course of professional treatment of the victim.

* **Sec. 3.** AS 11.41.425(a) is amended to read:

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

(1) engages in sexual contact with a person when [WHO] the offender knows or recklessly disregards that the person is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person;

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with

reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

* **Sec. 4.** AS 44.41 is amended by adding a new section to read:

Sec. 44.41.065. Sexual assault examination kits. (a) When a law enforcement agency collects a sexual assault examination kit under AS 18.68.010, the agency shall

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

(2) ensure that the laboratory to which the sexual assault examination kit is sent under (1) of this subsection conducts a serological or DNA test on the sexual assault examination kit within one year after the laboratory receives the sexual assault examination kit; and

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

(b) A criminal action may not be dismissed nor the evidence deemed nonadmissible for failure to be tested within the times established in (a)(1) and (2) of this section.

(c) If a case is resolved before a sexual assault examination kit is tested, a law enforcement agency is not required to meet the time limits established in (a) of this section.

(d) In this section,

(1) "law enforcement agency" or "agency" has the meaning given to "law enforcement agency" in AS 12.36.090;

(2) "victim" has the meaning given in AS 11.41.470.

* **Sec. 5.** AS 44.41.070(a) is amended to read:

(a) By September 1 of each year, each law enforcement agency and state department charged with the maintenance, storage, and preservation of sexual assault examination kits shall conduct an inventory of untested sexual assault examination kits

and report, in writing, to the Department of Public Safety the number of untested sexual assault examination kits in the possession of the agency or department, the number of sexual assault examination kits that the law enforcement agency or state department has determined is ineligible for testing under (e) of this section, with the reason or reasons the untested sexual assault examination kits were determined to be ineligible for testing, and the date on which each untested sexual assault examination kit was collected.

* **Sec. 6.** AS 44.41.070(b) is amended to read:

(b) By November 1 of each year, the Department of Public Safety shall prepare and transmit a report to the president of the senate and the speaker of the house of representatives that contains

(1) the number of untested sexual assault examination kits stored by each law enforcement agency or department and the number of sexual assault examination kits that the law enforcement agency or state department has determined is ineligible for testing under (e) of this section, with the reason or reasons the untested sexual assault examination kits were determined to be ineligible for testing;

(2) the date each untested sexual assault examination kit was collected;
and

(3) a plan for addressing the backlog and prevention of a backlog of untested sexual assault examination kits.

* **Sec. 7.** AS 44.41.070 is amended by adding a new subsection to read:

(e) 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) is scientifically unviable;
- (2) does not meet eligibility requirements for inclusion in the Combined DNA Index System database; or
- (3) was collected from a person who wishes to remain anonymous.

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 11.41.410(a), as amended by sec. 1 of this Act,

1 AS 11.41.420(a), as amended by sec. 2 of this Act, and AS 11.41.425(a), as amended by sec.
2 3 of this Act, apply to offenses committed on or after the effective date of secs. 1 - 3 of this
3 Act.

4 * **Sec. 9.** This Act takes effect January 1, 2021.