



# 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

# Mental State in Criminal Code

## AS 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "**intentionally**" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "**knowingly**" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "**recklessly**" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "**criminal negligence**" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

# Mental State in Criminal Code

**(3)** a person acts "**recklessly**" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

# 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 recklessly disregards that the** 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 recklessly disregards** 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 recklessly disregards** the victim is mentally incapable

Sentencing:

for the first felony conviction 2 to 12 years

# Section 4: 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 **one year**
3. That victims be notified by law enforcement within two weeks of receiving the results that the kit has been tested

**New: (b) criminal action can not be dismissed if deadline not met**

**(c) If case is resolved before kit is tested, timeline does not apply (plea deal)**

# Section 5: 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 6: 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 7: 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) 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**

## Section 8: Applicability

Makes it clear that these changes “apply to offenses committed on or after the effective dates of secs. 1-3 of this Act.”

## Section 13: Effective Date

This act takes effect **January 1, 2021.**



**Thank you!**

**Questions?**