

## REPRESENTATIVE GERAN TARR

Work Draft 32-LS0065\I

Radford

2-2-21

“An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; and relating to the testing of sexual assault examination kits.”

Sectional Analysis Version I

February 2, 2021

### Section One

**Sec. 11.41.434**, sexual abuse of a minor in the first degree, is amended by adding a subsection that makes engaging in sexual penetration a first degree offense for a person who is 18 years or older, and at least 10 years older than the victim when the victim is between the ages of 13 and 17 years of age. Current statute at **Sec. 11.41.436** considers this crime a second degree offense if the offender is 17 years or older and at least four years older than the victim when the victim is between the ages of 13 and 15.

Additionally, **Sec. 11.41.434** makes encouragement of sexual penetration between the parties described in the above paragraph a crime in the first degree.

### Section Two

**Sec. 11.41.436**, sexual abuse of a minor in the second degree, is amended by stating that a person above the age of 17 and between four and 10 years older than a victim between 13 and 15 with whom the offender engages in sexual penetration, commits the crime of sexual abuse of a minor in the second degree. If the offender is more than 10 years older, this amendment moves the offense into the first degree category in **Sec. 11.41.434**.

Additionally, a person who aids or encourages sexual penetration between the parties described in the paragraph directly above has committed a crime in the second degree.

Finally, a person commits the crime of sexual abuse of a minor in the second degree if the offender is 18 years or older and at least 10 years older than a victim who is between the ages of 13 and 17, and engages in sexual contact or encourages sexual contact with that victim.

### Section Three

**Sec. 11.41.445** is amended to describe consent to a sexual act in prosecution. Consent is described in regards to the meaning of an expression of lack of consent, lack of resistance to force or a threat of force not constituting consent, and a previous relationship or manner of dress not constituting consent.

Additionally, **Sec. 11.41.445** describes states of a person where consent cannot be obtained; for example, a sleeping, unconscious or incompetent person cannot consent, and a person cannot consent to force that could cause death or grievous bodily harm. The section also addresses consent obtained by fraud, stating that consent cannot be obtained when a person has been induced to believe that the accused is another person.

Finally, **Sec. 11.41.445** establishes that consent may be inferred from the circumstances of the offense.

#### **Section Four**

**Sec. 11.41.470** is amended by adding a definition of consent, to mean “a freely given, reversible agreement specific to the conduct at issue by a competent person.”

#### **Section Five**

**Sec. 11.56.765** is amended to add the definition of consent described in **Sec. Four** of this sectional analysis to the section of the statute on failure to report a violent crime committed against a child.

#### **Section Six**

**Sec. 11.56.767** is amended to add the definition of consent described in **Sec. Four** of this sectional analysis to the section of statute on failure to report a violent crime committed against an adult.

#### **Section Seven**

**Sec. 26.05.900** is amended to add the definition of consent found in **Sec. 26.05.890**, the section of statute addressing sexual assault in members of the militia, to the section of statute on other sexual misconduct of members of the militia.

#### **Section Eight**

**Sec. 44.41.065** is amended to change the time for a laboratory to conduct a serological or DNA test on a sexual assault examination kit from one year to six months.

#### **Section Nine**

**Sec. 11.41.470**, **Sec. 11.56.765**, **Sec. 11.56.767**, and **Sec. 11.26.05.900** are modified to repeal definitions of “without consent.”

#### **Section Ten**

States that the actions of **Secs. One through Nine** of this bill apply to offenses committed on or after the effective date of the bill.

## **Section Eleven**

States that the actions of **Sec. Eight** of this bill take effect on July 1, 2022.