

Sexual Assault and Consent Draft Language

* **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 **by**

(A) the use of force or the express or implied threat of force against any person or property; or

(B) causing the victim to become incapacitated;

(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

(A) who the offender knows is mentally incapable; and

(B) 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 who the offender knows 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 **by**

(A) the use of force or the express or implied threat of force against any person or property; or

(B) causing the victim to become incapacitated;

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

- (A) who the offender knows is mentally incapable; and
- (B) 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 who 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 who the offender knows 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;

(5) under circumstances not proscribed in AS 11.41.410, the offender engages in sexual penetration with another person without consent of that person.

* **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 who 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; or

(7) under circumstances not proscribed under AS 11.41.420, the offender engages in sexual contact with another person without consent of that person.

* **Sec. 4.** AS 11.41.470(10) is repealed and reenacted to read:

(10) “without consent”

(A) means that there was not a freely given, reversible agreement specific to the conduct at issue, and is determined by the totality of the circumstances surrounding the offense;

(B) includes

(i) an expression of lack of consent through words or conduct;

(ii) the defendant fraudulently representing that the sexual act serves a professional purpose: in this paragraph “professional purpose” means an act the defendant has represented as a necessary part or component of a provided service, part of the routine course of a procedure, or a component of the defendant’s profession that would occur if a person sought services from another practitioner in the same field as the defendant;

(C) In this paragraph,

(i) “agreement” does not include a current or previous dating, social or sexual relationship by itself, or the manner of dress of the victim

(ii) “freely given” means agreement to cooperate in the act was positively expressed by word or action pursuant to free will;

(iii) “reversible agreement” means an agreement to engage in the conduct at issue may be revoked at any time;

(iii) “expression of lack of consent” does not require verbal or physical resistance and may include inaction.

* **Sec. 5.** AS 11.41.530(a) is amended to read:

(a) A person commits the crime of coercion if, **under circumstances not proscribed under AS 11.41.410 – 11.41.427**, the person compels another to engage in conduct from which there is a legal right to abstain or abstain from conduct in which there is a legal right to engage, by means of instilling in the person who is compelled a fear that, if the demand is not complied with, the person who makes the demand or another may

(1) inflict physical injury on anyone, except under circumstances constituting robbery in any degree, or commit any other crime;

(2) accuse anyone of a crime;

(3) expose confidential information or a secret, whether true or false, tending to subject a person to hatred, contempt, or ridicule or to impair the person’s credit or business repute;

(4) take or withhold action as a public servant or cause a public servant to take or withhold action;

(5) bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the person making the threat or suggestion purports to act;

(6) testify or provide information or withhold testimony or information with respect to a person’s legal claim or defense.