

PART II
MODEL PENAL CODE
ARTICLE 213

SECTION 213.0. GENERAL PRINCIPLES OF LIABILITY; DEFINITIONS

(1) This Article is governed by Part I of the 1962 Model Penal Code, including the definitions given in Section 210.0, except that:

(a) Section 2.11 (the definition of “consent”) does not apply to this article.

(b) Subsection (2) of Section 2.08 (Intoxication) does not apply to this article. Instead, the general provisions of the criminal law and rules of evidence of the jurisdiction govern the materiality of the actor’s intoxication in determining the actor’s culpability for an offense.

(2) Definitions

In this Article, unless a different definition is plainly required:

(a) “Sexual penetration” means an act involving penetration, however slight, of the anus or genitalia by an object or a body part, except when done for legitimate medical, hygienic, or law-enforcement purposes.*

(b) “Oral sex” means a touching of the anus or genitalia of one person by the mouth or tongue of another person.*

(c) “Sexual contact” means any of the following acts, when the actor’s purpose is the sexual arousal, sexual gratification, sexual humiliation, or sexual degradation of any person:

(i) touching the clothed or unclothed genitalia, anus, groin, breast, buttocks, or inner thigh of any person with any body part or object; or

* Approved by the membership, May 2017.

§ 213.0 General Principles of Liability; Definitions

(ii) touching any body part of any person with the clothed or unclothed genitalia, anus, groin, breast, buttocks, or inner thigh of any person; or

(iii) touching any clothed or unclothed body part of any person with the ejaculate of any person.

The touching described in paragraph (c) includes the actor touching another person, another person touching the actor or a third party, or another person touching that person's own body. It does not include the actor touching the actor's own body.

(d) "Fondling" means prolonged contact with or manipulation of the genitals, when the actor's purpose is the sexual arousal, sexual gratification, sexual humiliation, or sexual degradation of any person. Fondling requires more than a transient grope or grab. "To fondle" means to engage in fondling.

(e) "Consent"^{**}

(i) "Consent" for purposes of Article 213 means a person's willingness to engage in a specific act of sexual penetration, oral sex, or sexual contact.

(ii) Consent may be express or it may be inferred from behavior—both action and inaction—in the context of all the circumstances.

(iii) Neither verbal nor physical resistance is required to establish that consent is lacking, but their absence may be considered, in the context of all the circumstances, in determining the issue of consent.

(iv) Notwithstanding subsection (2)(e)(ii) of this Section, consent is ineffective when given by a person incompetent to consent or under circumstances precluding the free exercise of consent, as provided in Sections 213.1, 213.2, 213.3, 213.4, 213.5, 213.7, 213.8, and 213.9.

(v) Consent may be revoked or withdrawn any time before or during the act of sexual penetration, oral sex, or sexual contact. A clear verbal refusal—such as "No," "Stop," or "Don't"—establishes the lack of

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§ 213.0 General Principles of Liability; Definitions

1 consent or the revocation or withdrawal of previous consent. Lack of
2 consent or revocation or withdrawal of consent may be overridden by
3 subsequent consent given prior to the act of sexual penetration, oral sex, or
4 sexual contact.

5 (f) Force.

6 (i) “Physical force or restraint” means a physical act or physical
7 restraint that inflicts more than negligible physical harm, pain, or
8 discomfort or that significantly restricts a person’s ability to move freely.
9 More than negligible physical harm includes but is not limited to a burn,
10 black eye, or bloody nose, and more than negligible pain or discomfort
11 includes but is not limited to the pain or discomfort resulting from a kick,
12 punch, or slap on the face.

13 (ii) “Aggravated physical force or restraint” means a physical act
14 or physical restraint that inflicts or is capable of inflicting death, serious
15 bodily injury, or extreme physical pain, or that confines another for a
16 substantial period in a place of isolation other than under color of law.

17 (g) “Actor” means a person more than 12 years old, except that “actor”
18 includes a person younger than 12 when the charge is Sexual Assault by
19 Aggravated Physical Force or Restraint (Section 213.1). “Actor” includes, where
20 relevant, a person guilty of an omission.

21 (h) “Registrable offense”

22 (i) “Registrable offense” means an offense that makes a convicted
23 person eligible for or subject to any of the collateral consequences specified
24 in Section 213.11.

25 (ii) No offense is a registrable offense under any provision of law
26 unless it is specifically so designated in this Article or is committed in another
27 jurisdiction, is a registrable offense in that jurisdiction, and would be a
28 registrable offense in this jurisdiction if it had been committed in this
29 jurisdiction.

Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint

1 SECTION 213.1. SEXUAL ASSAULT BY AGGRAVATED PHYSICAL FORCE OR RESTRAINT

2 (1) *Sexual Assault by Aggravated Physical Force or Restraint.* An actor is guilty of
 3 Sexual Assault by Aggravated Physical Force or Restraint when:

4 (a) the actor causes another person to submit to or perform an act of
 5 sexual penetration or oral sex; and

6 (b) the act is without effective consent because:

7 (i) the actor uses or explicitly or implicitly threatens to use
 8 aggravated physical force or restraint against anyone; and

9 (ii) the actor's use of or threat to use aggravated physical force or
 10 restraint causes the other person to submit to or perform the act of sexual
 11 penetration or oral sex; and

12 (c) the actor knows that the circumstances described in paragraphs (a)
 13 and (b) are present.

14 (2) *Grading.* Sexual Assault by Aggravated Physical Force or Restraint is a
 15 registrable offense. It is a felony of the third degree [*10-year maximum*], except that (1) the
 16 maximum term of imprisonment is five years greater than that otherwise applicable to a
 17 felony of the third degree; and (2) it is a felony of the second degree [*20-year maximum*] if
 18 the actor violates subsection (1) of this Section and in so doing:

19 (a) knowingly uses or explicitly or implicitly threatens to use a deadly
 20 weapon and knows that this act causes the other person to submit to or perform the
 21 act of sexual penetration or oral sex; or

22 (b) knowingly acts with one or more persons who:

23 (i) also engage in an act or acts of sexual penetration or oral sex with
 24 the same victim at the same place at a time contemporaneous with the actor's
 25 violation of this Section; or

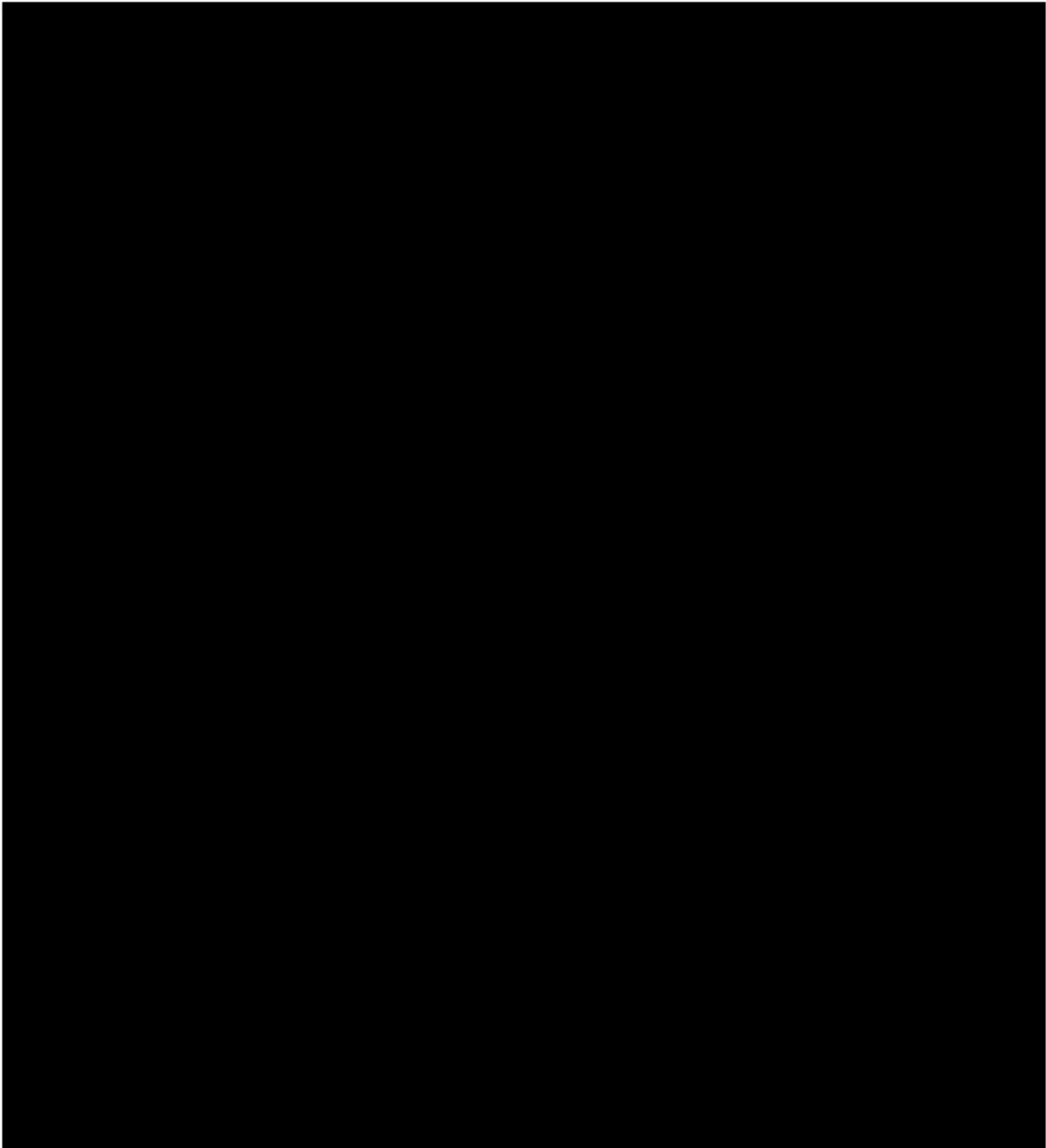
26 (ii) assist in the use of or threat to use aggravated physical force or
 27 restraint when the actor's act of sexual penetration or oral sex occurs; or

28 (c) causes serious bodily injury to any person, and is aware of, yet recklessly
 29 disregards, the risk of causing such injury.

30 (3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
 31 other person submitted to or performed the act of sexual penetration or oral sex under the

Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint

1 **circumstances described in subsection(1)(b). Submission, acquiescence, or words or**
2 **conduct that would otherwise indicate consent do not constitute effective consent when**
3 **occurring in a circumstance described in that subsection. If applicable, the actor may raise**
4 **an affirmative defense of Explicit Prior Permission according to the terms of Section**
5 **213.10.**



Section 213.2. Sexual Assault by Physical Force or Restraint

1 **SECTION 213.2. SEXUAL ASSAULT BY PHYSICAL FORCE OR RESTRAINT**

2 ***(1) Sexual Assault by Physical Force or Restraint.*** An actor is guilty of Sexual
3 **Assault by Physical Force or Restraint** when:

4 (a) the actor causes another person to submit to or perform an act of sexual
5 penetration or oral sex; and

6 (b) the act is without effective consent because:

7 (i) the actor uses or explicitly or implicitly threatens to use physical
8 force or restraint against anyone; and

9 (ii) the actor's use of or threat to use physical force or restraint causes
10 the other person to submit to or perform the act of sexual penetration or oral
11 sex; and

12 (c) the actor is aware of, yet recklessly disregards, the risk that the
13 circumstances described in paragraphs (a) and (b) are present.

14 ***(2) Grading.*** Sexual Assault by Physical Force or Restraint is a felony of the third
15 **degree [10-year maximum].** It is a registrable offense when the actor has previously been
16 convicted of a felony sex offense.

17 ***(3) Effective consent.*** Consent is ineffective under Section 213.0(2)(e)(iv) when the
18 other person submitted to or performed the act of sexual penetration or oral sex under the
19 circumstances described in subsection (1)(b). Submission, acquiescence, or words or
20 conduct that would otherwise indicate consent do not constitute effective consent when
21 occurring in a circumstance described in that subsection. If applicable, the actor may
22 raise an affirmative defense of Explicit Prior Permission according to the terms of Section
23 213.10.

Section 213.3 Sexual Assault of an Incapacitated, Vulnerable, or Legally Restricted Person

1 **SECTION 213.3 SEXUAL ASSAULT OF AN INCAPACITATED, VULNERABLE, OR LEGALLY**
 2 **RESTRICTED PERSON**

3 **(1) *Sexual Assault of an Incapacitated Person.* An actor is guilty of Sexual Assault**
 4 **of an Incapacitated Person when:**

5 **(a) the actor causes another person to submit to or perform an act of sexual**
 6 **penetration or oral sex; and**

7 **(b) the act is without effective consent because at the time of the act, the**
 8 **other person:**

9 **(i) is sleeping, unconscious, or physically unable to communicate**
 10 **lack of consent; or**

11 **(ii) lacks substantial capacity to appraise, control, or remember the**
 12 **person's own sexual conduct or that of anyone else because of a substance**
 13 **administered to that person, without that person's knowledge or**
 14 **consent; and the actor administered the incapacitating substance for the**
 15 **purpose of causing that incapacity or knows that it was surreptitiously**
 16 **administered by another for that purpose; and**

17 **(c) the actor is aware of, yet recklessly disregards, the risk that the**
 18 **circumstances described in paragraphs (a) and (b) are present.**

19 **Sexual Assault of an Incapacitated Person is a felony of the third degree [10-year**
 20 **maximum]. It is a registrable offense when the actor has previously been convicted of a**
 21 **felony sex offense.**

22 **(2) *Sexual Assault of a Vulnerable Person.* An actor is guilty of Sexual Assault of a**
 23 **Vulnerable Person when:**

24 **(a) the actor causes another person to submit to or perform an act of sexual**
 25 **penetration or oral sex; and**

26 **(b) the act is without effective consent because at the time of the act, the**
 27 **other person:**

28 **(i) has an intellectual, developmental, or mental disability, or a**
 29 **mental illness, that makes the person substantially incapable of appraising**
 30 **the nature of the sexual activity involved, or of understanding the right to**

Section 213.3 Sexual Assault of an Incapacitated, Vulnerable, or Legally Restricted Person

1 give or withhold consent in sexual encounters, and the actor has no
2 similarly serious disability; or

3 (ii) is passing in and out of consciousness; or

4 (iii) lacks substantial capacity to communicate lack of consent; or

5 (iv) is wholly or partly undressed, or in the process of undressing,
6 for the purpose of receiving nonsexual professional or commercial services
7 from the actor and has not given the actor explicit prior permission to
8 engage in that act; and

9 (c) the actor is aware of, yet recklessly disregards, the risk that the
10 circumstances described in paragraphs (a) and (b) are present.

11 Sexual Assault of a Vulnerable Person is a felony of the fourth degree [*five-year*
12 *maximum*].

13 (3) *Sexual Assault of a Legally Restricted Person*. An actor is guilty of Sexual Assault
14 of Legally Restricted Person when:

15 (a) the actor, who did not have a consensual sexually intimate relationship with
16 the other person at the time that a state-imposed restriction on that person's liberty
17 began, causes the other person to submit to or perform an act of sexual penetration or
18 oral sex; and

19 (b) the act is without effective consent because at the time of the act, the other
20 person is:

21 (i) in custody, incarcerated, on probation, on parole, under civil
22 commitment, in a pretrial release or pretrial diversion or treatment program,
23 or in any other status involving a state-imposed restriction on liberty; and

24 (ii) the actor is in a position of actual or apparent authority or
25 supervision over the restriction on the other person's liberty; and

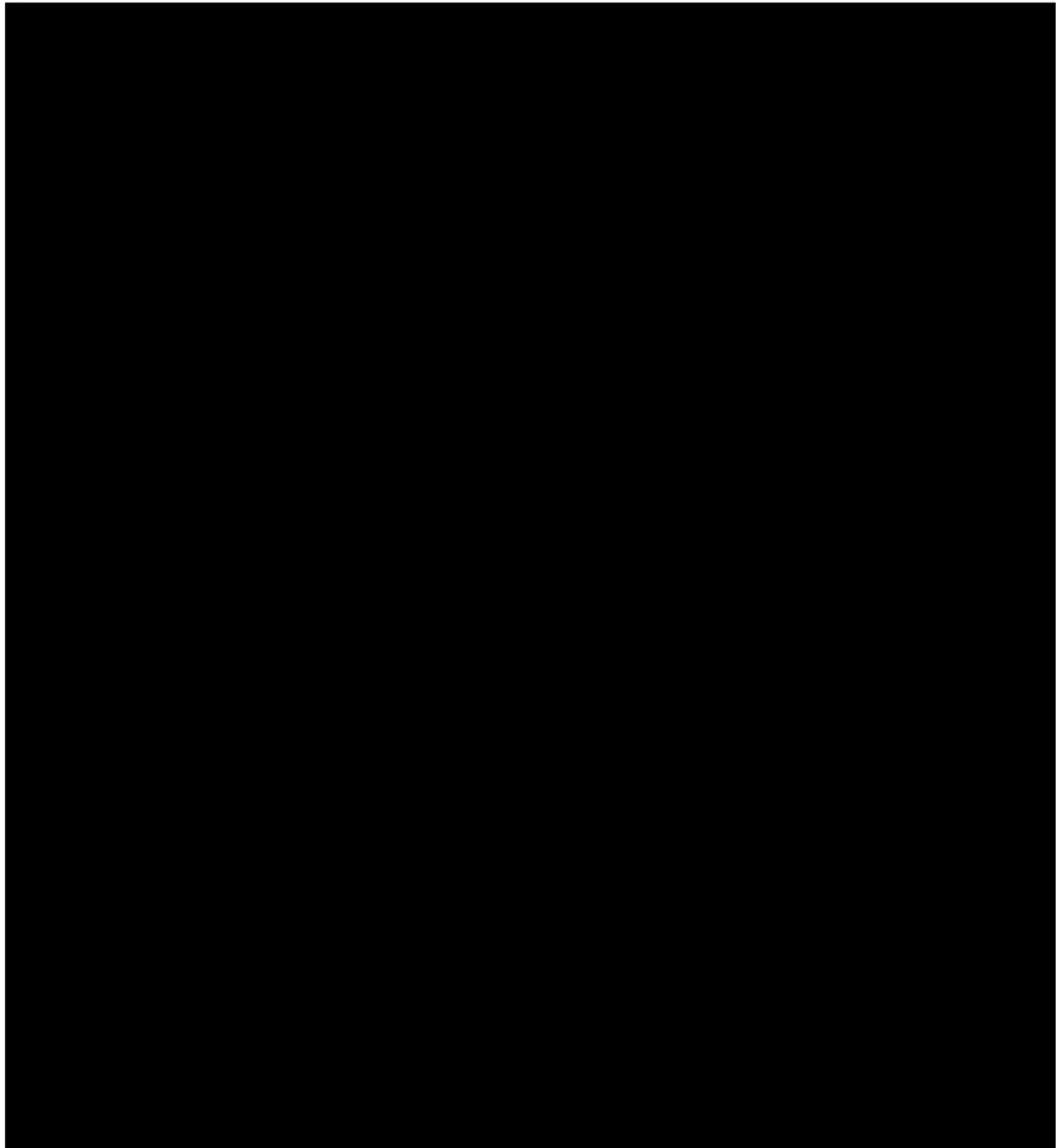
26 (c) the actor knows that the circumstances described in paragraphs (a) and (b)
27 are present.

28 Sexual Assault of a Legally Restricted Person is a felony of the fifth degree [*three-*
29 *year maximum*].

30 (4) *Effective consent*. Consent is ineffective under Section 213.0(2)(c)(iv) when a

Section 213.3 Sexual Assault of an Incapacitated, Vulnerable, or Legally Restricted Person

1 **condition or circumstance described in subsections (1)(b), (2)(b), or (3)(b) existed at the**
2 **time the other person submitted to or performed the act of sexual penetration or oral sex.**
3 **Submission, acquiescence, or words or conduct that would otherwise indicate consent do**
4 **not constitute effective consent when occurring in a condition or circumstance described in**
5 **these subsections.**



Section 213.4. Sexual Assault by Extortion

1 SECTION 213.4. SEXUAL ASSAULT BY EXTORTION

2 (1) *Sexual Assault by Extortion.* An actor is guilty of Sexual Assault by Extortion
3 when:

4 (a) the actor causes another person to submit to or perform an act of sexual
5 penetration or oral sex; and

6 (b) the act is without effective consent because the actor explicitly or
7 implicitly threatened:

8 (i) to accuse that person or anyone else of a criminal offense or of a
9 failure to comply with immigration regulations; or

10 (ii) to take or withhold action as an official, or cause an official to take
11 or withhold action, whether or not the purported official has actual authority
12 to do so; or

13 (iii) to take any action or cause any consequence that would cause
14 submission to or performance of the act of sexual penetration or oral sex by
15 someone of ordinary resolution in that person's situation under all the
16 circumstances; and

17 (iv) the actor's threat causes the other person to submit to or perform
18 the act of sexual penetration or oral sex; and

19 (c) the actor is aware of, yet recklessly disregards, the risk that the
20 circumstances described in paragraphs (a) and (b) are present.

21 (2) *Grading.* Sexual Assault by Extortion is a felony of the fourth degree [*five-year*
22 *maximum*].

23 (3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
24 other person submitted to or performed the act of sexual penetration or oral sex because
25 of a threat described in subsection (1)(b). Submission, acquiescence, or words or conduct
26 that would otherwise indicate consent do not constitute effective consent when occurring
27 in a circumstance described in that paragraph. If applicable, the actor may raise an
28 affirmative defense of Explicit Prior Permission under Section 213.10.

Section 213.5. Sexual Assault by Prohibited Deception

SECTION 213.5. SEXUAL ASSAULT BY PROHIBITED DECEPTION

(1) An actor is guilty of Sexual Assault by Prohibited Deception when:

(a) the actor causes another person to submit to or perform an act of sexual penetration or oral sex; and

(b) the act is without effective consent because:

(i) the actor caused the other person to believe falsely that the act had diagnostic, curative, or preventive medical properties; or

(ii) the actor caused the other person to believe falsely that the actor was someone else who was personally known to that person; and

(iii) the actor's deception causes the other person to submit to or perform the act of sexual penetration or oral sex; and

(c) the actor knows that the circumstances described in paragraphs (a) and (b) are present.

(2) *Grading.* Sexual Assault by Prohibited Deception is a felony of the fifth degree [three-year maximum].

(3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the other person submitted to or performed the act of sexual penetration or oral sex because of a circumstance described in subsection (1)(b). Submission, acquiescence, or words or conduct that would otherwise indicate consent do not constitute effective consent when occurring under a circumstance described in that paragraph.

Section 213.6. Sexual Assault in the Absence of Consent

1 **SECTION 213.6. SEXUAL ASSAULT IN THE ABSENCE OF CONSENT**2 **(1) An actor is guilty of Sexual Assault in the Absence of Consent when:**3 **(a) the actor causes another person to submit to or perform an act of sexual**
4 **penetration or oral sex; and**5 **(b) the other person does not consent to that act; and**6 **(c) the actor is aware of, yet recklessly disregards, the risk that the**
7 **circumstances described in paragraphs (a) and (b) are present.**8 **(2) Grading. Sexual Assault in the Absence of Consent is a felony of the fifth degree**
9 **[three-year maximum], except that it is a felony of the fourth degree [five-year maximum]**
10 **when:**11 **(a) the other person has, by words or actions, expressly communicated**
12 **unwillingness to submit to or perform the act, or the act is so sudden or unexpected**
13 **that the other person has no adequate opportunity to express unwillingness before**
14 **the act occurs; and**15 **(b) the actor is aware of, yet recklessly disregards, the risk that a**
16 **circumstance described in paragraph (a) existed at the time of the act of sexual**
17 **penetration or oral sex.**18 **(3) If applicable, the actor may raise an affirmative defense of Explicit Prior**
19 **Permission under Section 213.10.**