

ALASKA STATE LEGISLATURE

House Judiciary Committee



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House Bill 5 Summary of Changes Version W to Version R

Version R incorporates provisions found in the Model Penal Code: Sexual Assault and Related Offenses (MPC), certain provisions in Senate Bill 187 (2022) that was put forward by the Department of Law, and the Montana statute pertaining to consent.

Sections 1-3

Version R grades sexual assault in the first, second, and third degree by including a use of force element in the description of sexual assault in the first degree (sexual penetration) and excluding the use of force element from sexual assault in the second degree (sexual penetration). This approach is based on the grading used in Senate Bill 187. Including this grading allows sexual assault with the use of force to be more easily prosecuted while maintaining the use of aggravating factors.

With this change reflected in Version R, sexual assault in the first degree is amended to include sexual penetration without consent by use or threat of force. Sexual assault in the second degree is amended to include sexual contact without consent by use or threat of force and sexual penetration without consent. Sexual assault in the third degree is amended to include sexual contact without consent.

Section 4

The use of the word consent in Version R is based on the updated MPC. Section 4 aligns with the most recent proposal under consideration by the American Law Institute in their work related to sexual assault offenses. An expression of lack of consent through words or conduct is expressly established in Version R as meaning there is no consent. The requirement of a use of force is removed from statute and the absence of verbal or physical resistance is established as not establishing consent. This provision encompasses what is frequently referred to as the “frozen fear victim,” the victim who reacts to the experience of being sexually assaulted by freezing when experiencing a sexual assault. This response is an observed and frequent psychological response.

Section 5

Section 5 establishes consent as willingness to engage in the conduct at issue. The definition of consent is amended in Version R to use the word “willingness” rather than “freely given” because “willingness” better captures the concept that a person wants a specific act, rather than just agrees to it. Assent can be tainted or made ineffective based on a variety of factors including the use of force, use of deception, and an individual’s incapacity as a result of an act of the defendant.

Version R does not require the use of force to establish a lack of consent. Version R addresses rape by fraud differently than Version W. Montana and other states address “rape by fraud” by making consent ineffective if induced by force, duress, or deception. This phrasing, based on the language in Montana statute, is found in Version R.

Section 6

Section 6, which decreases the time allowed for laboratories to wait to test sexual assault examination kits, remain unchanged.

Version R removes sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree, from the bill (previously found in Sections 3 and 4 of Version W).