

32-LS0065\U
Radford
5/10/22

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES TARR, Foster, Tuck, Zulkosky, Spohnholz, Fields, Schrage, Hopkins,
Drummond, Hannan, Snyder, Story, Rasmussen**

A BILL

FOR AN ACT ENTITLED

**"An Act relating to sexual offenses; relating to the code of military justice; relating to
consent; relating to the testing of sexual assault examination kits; and providing for an
effective date."**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 11.41.410 is amended to read:

Sec. 11.41.410. Sexual assault in the first degree. (a) An offender commits
the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person

(A) without consent of that person **by**

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

(ii) causing the person to become incapacitated;

(B) by impersonating someone known to the person for the
purpose of obtaining consent;

(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.

(b) Sexual assault in the first degree [IS AN UNCLASSIFIED FELONY AND] is punishable as provided in AS 12.55 **and is**

(1) an unclassified felony if the offender violates (a)(1)(A), (2), (3), or (4) of this section;

(2) a class A felony if the offender violates (a)(1)(B) of this section.

* 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

(A) without consent of that person by

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

(ii) causing the person to become incapacitated;

(B) by impersonating someone known to the person for the purpose of obtaining consent;

(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; or

(5) under circumstances not proscribed under 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; in this paragraph, "sexual contact" does not include an offender knowingly causing a person to come into contact with semen.

* Sec. 4. AS 11.41.445 is amended by adding a new subsection to read:

(c) In a prosecution under AS 11.41.410 - 11.41.427, where consent is at issue,

(1) an expression of lack of consent through words or conduct means there is no consent; absence of verbal or physical resistance does not establish consent;

(2) consent may be express or inferred from a person's behavior; both a person's action and inaction, in the context of the circumstances, may be considered;

(3) a current or previous dating, social, or sexual relationship between the defendant and the person involved with the defendant in the conduct at issue may not by itself constitute consent;

(4) a person cannot consent if the person is fraudulently made to believe 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.

* **Sec. 5.** AS 11.41.470 is amended by adding a new paragraph to read:

(11) "consent" means a freely given, reversible agreement specific to the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in the act was positively expressed by word or action.

* **Sec. 6.** AS 11.56.765(c) is amended by adding a new paragraph to read:

(5) "consent" has the meaning given in AS 11.41.470.

* **Sec. 7.** AS 11.56.767(c) is amended by adding a new paragraph to read:

(5) "consent" has the meaning given in AS 11.41.470.

* **Sec. 8.** AS 12.55.035(b) is amended to read:

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of not more than

(1) \$500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a minor in the first degree, kidnapping, sex trafficking in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

(4) \$50,000 for a class C felony;

(5) \$25,000 for a class A misdemeanor;

(6) \$2,000 for a class B misdemeanor;

(7) \$500 for a violation.

* **Sec. 9.** AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a minor in the first degree, unlawful exploitation of a minor under AS 11.41.455(c)(2), or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more

than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) **sexual assault in the first degree under AS 11.41.410(a)(1)(B),** unlawful exploitation of a minor under AS 11.41.455(c)(1), enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, enticement of a minor under AS 11.41.452(d), indecent exposure in the first degree under AS 11.41.458(b)(2), or distribution of child pornography under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, sexual abuse of a minor in the

third degree under AS 11.41.438(c), incest, indecent exposure in the first degree under AS 11.41.458(b)(1), indecent viewing or production of a picture under AS 11.61.123(f)(1) or (2), possession of child pornography, distribution of child pornography under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction and does not involve the circumstances described in (B) or (C) of this paragraph, two to 12 years;

(B) if the offense is a first felony conviction under AS 11.61.125(e)(1) and does not involve circumstances described in (C) of this paragraph, four to 12 years;

(C) if the offense is a first felony conviction under AS 11.61.125(e)(1), and the defendant hosted, created, or helped host or create a mechanism for multi-party sharing or distribution of child pornography, or received a financial benefit or had a financial interest in a child pornography sharing or distribution mechanism, six to 14 years;

(D) if the offense is a second felony conviction and does not involve circumstances described in (E) of this paragraph, eight to 15 years;

(E) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(F) if the offense is a third felony conviction and does not involve circumstances described in (G) of this paragraph, 15 to 25 years;

(G) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

* **Sec. 10.** AS 26.05.900(e) is amended by adding a new paragraph to read:

(9) "consent" has the meaning given in AS 26.05.890(h).

* **Sec. 11.** AS 44.41.065(a) is amended to read:

(a) When a law enforcement agency collects a sexual assault examination kit under AS 18.68.010, the agency shall

(1) within 30 days after the agency collects the sexual assault examination kit, send the sexual assault examination kit to an accredited laboratory in coordination with the Department of Public Safety or a laboratory operated by the Department of Public Safety;

(2) ensure that the laboratory to which the sexual assault examination kit is sent under (1) of this subsection conducts a serological or DNA test on the sexual assault examination kit within six months [ONE YEAR] after the laboratory receives the sexual assault examination kit; and

(3) within two weeks after the laboratory that receives the sexual assault examination kit under (1) of this subsection completes serological or DNA testing, make a reasonable effort to notify the victim from whom the sexual assault examination kit was collected that the sexual assault examination kit has been tested.

* **Sec. 12.** AS 11.41.470(10); AS 11.56.765(c)(4), 11.56.767(c)(4); and AS 26.05.900(e)(8) are repealed.

* **Sec. 13.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 11.41.410, as amended by sec. 1 of this Act, AS 11.41.420(a), as amended by sec. 2 of this Act, AS 11.41.425(a), as amended by sec. 3 of this Act, AS 11.41.445(c), enacted by sec. 4 of this Act, AS 11.41.470, as amended by sec. 5 of this Act, AS 11.56.765(c), as amended by sec. 6 of this Act, AS 11.56.767(c), as amended by sec. 7 of this Act, AS 12.55.035(b), as amended by sec. 8 of this Act, AS 12.55.125(i), as amended by sec. 9 of this Act, AS 26.05.900(e), as amended by sec. 10 of this Act, and the repeals of AS 11.41.470(10), AS 11.56.765(c)(4), 11.56.767(c)(4), and AS 26.05.900(e)(8) by sec. 12 of this Act, apply to offenses committed on or after the effective date of secs. 1 - 10 and 12 of this Act.

* **Sec. 14.** Section 11 of this Act takes effect July 1, 2023.

* **Sec. 15.** Except as provided in sec. 14 of this Act, this Act takes effect January 1, 2023.