

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/22/19

Referred: Finance

Sponsor(s): REPRESENTATIVES TARR, Spohnholz, Tuck, Rauscher, Hopkins, Fields, Drummond, Rasmussen

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to sexual assault; requiring law enforcement agencies to test sexual**  
2 **assault examination kits; requiring notification of completion of testing; relating to**  
3 **reports on untested sexual assault examination kits; and providing for an effective**  
4 **date."**

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

6 \* **Section 1.** AS 11.41.410(a) is amended to read:

7 (a) An offender commits the crime of sexual assault in the first degree if

8 (1) the offender engages in sexual penetration with another person  
9 without consent of that person;

10 (2) the offender attempts to engage in sexual penetration with another  
11 person without consent of that person and causes serious physical injury to that  
12 person;

13 (3) the offender engages in sexual penetration with another person

14 (A) who [THE OFFENDER KNOWS] is mentally incapable;

1 and

2 (B) who is in the offender's care

3 (i) by authority of law; or

4 (ii) in a facility or program that is required by law to be

5 licensed by the state; or

6 (4) the offender engages in sexual penetration with a person who [THE  
7 OFFENDER KNOWS] is unaware that a sexual act is being committed and

8 (A) the offender is a health care worker; and

9 (B) the offense takes place during the course of professional  
10 treatment of the victim.

11 \* **Sec. 2.** AS 11.41.420(a) is amended to read:

12 (a) An offender commits the crime of sexual assault in the second degree if

13 (1) the offender engages in sexual contact with another person without  
14 consent of that person;

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

16 (A) who [THE OFFENDER KNOWS] is mentally incapable;

17 and

18 (B) who is in the offender's care

19 (i) by authority of law; or

20 (ii) in a facility or program that is required by law to be

21 licensed by the state;

22 (3) the offender engages in sexual penetration with a person who [THE  
23 OFFENDER KNOWS] is

24 (A) mentally incapable;

25 (B) incapacitated; or

26 (C) unaware that a sexual act is being committed; or

27 (4) the offender engages in sexual contact with a person who [THE  
28 OFFENDER KNOWS] is unaware that a sexual act is being committed and

29 (A) the offender is a health care worker; and

30 (B) the offense takes place during the course of professional  
31 treatment of the victim.

1 \* **Sec. 3.** AS 11.41.425(a) is amended to read:

2 (a) An offender commits the crime of sexual assault in the third degree if the  
3 offender

4 (1) engages in sexual contact with a person who [THE OFFENDER  
5 KNOWS] is

6 (A) mentally incapable;

7 (B) incapacitated; or

8 (C) unaware that a sexual act is being committed;

9 (2) while employed in a state correctional facility or other placement  
10 designated by the commissioner of corrections for the custody and care of prisoners,  
11 engages in sexual penetration with a person who the offender knows is committed to  
12 the custody of the Department of Corrections to serve a term of imprisonment or  
13 period of temporary commitment;

14 (3) engages in sexual penetration with a person 18 or 19 years of age  
15 who the offender knows is committed to the custody of the Department of Health and  
16 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of  
17 the person;

18 (4) while employed in the state by a law enforcement agency as a  
19 peace officer, or while acting as a peace officer in the state, engages in sexual  
20 penetration with a person with reckless disregard that the person is in the custody or  
21 the apparent custody of the offender, or is committed to the custody of a law  
22 enforcement agency;

23 (5) while employed by the state or a municipality of the state as a  
24 probation officer or parole officer, or while acting as a probation officer or parole  
25 officer in the state, engages in sexual penetration with a person with reckless disregard  
26 that the person is on probation or parole; or

27 (6) while employed as a juvenile probation officer or as a juvenile  
28 facility staff, engages in sexual penetration with a person 18 or 19 years of age with  
29 reckless disregard that the person is committed to the custody or probationary  
30 supervision of the Department of Health and Social Services.

31 \* **Sec. 4.** AS 44.41 is amended by adding a new section to read:

1           **Sec. 44.41.065. Sexual assault examination kits.** (a) When a law enforcement  
2 agency collects a sexual assault examination kit under AS 18.68.010, the agency shall

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

7                   (2) ensure that the laboratory to which the sexual assault examination  
8 kit is sent under (1) of this subsection conducts a serological or DNA test on the  
9 sexual assault examination kit within one year after the laboratory receives the sexual  
10 assault examination kit; and

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

15           (b) A criminal action may not be dismissed nor the evidence deemed  
16 nonadmissible for failure to be tested within the times established in (a)(1) and (2) of  
17 this section.

18           (c) If a case is resolved before a sexual assault examination kit is tested, a law  
19 enforcement agency is not required to meet the time limits established in (a) of this  
20 section.

21           (d) In this section,

22                   (1) "law enforcement agency" or "agency" has the meaning given to  
23 "law enforcement agency" in AS 12.36.090;

24                   (2) "victim" has the meaning given in AS 11.41.470.

25 \* **Sec. 5.** AS 44.41.070(a) is amended to read:

26           (a) By September 1 of each year, each law enforcement agency and state  
27 department charged with the maintenance, storage, and preservation of sexual assault  
28 examination kits shall conduct an inventory of untested sexual assault examination kits  
29 and report, in writing, to the Department of Public Safety the number of untested  
30 sexual assault examination kits in the possession of the agency or department, **the**  
31 **number of sexual assault examination kits that the law enforcement agency or**

1 **state department has determined is ineligible for testing under (e) of this section,**  
 2 **with the reason or reasons the untested sexual assault examination kits were**  
 3 **determined to be ineligible for testing,** and the date on which each untested sexual  
 4 assault examination kit was collected.

5 \* **Sec. 6.** AS 44.41.070(b) is amended to read:

6 (b) By November 1 of each year, the Department of Public Safety shall  
 7 prepare and transmit a report to the president of the senate and the speaker of the  
 8 house of representatives that contains

9 (1) the number of untested sexual assault examination kits stored by  
 10 each law enforcement agency or department **and the number of sexual assault**  
 11 **examination kits that the law enforcement agency or state department has**  
 12 **determined is ineligible for testing under (e) of this section, with the reason or**  
 13 **reasons the untested sexual assault examination kits were determined to be**  
 14 **ineligible for testing;**

15 (2) the date each untested sexual assault examination kit was collected;  
 16 and

17 (3) a plan for addressing the backlog and prevention of a backlog of  
 18 untested sexual assault examination kits.

19 \* **Sec. 7.** AS 44.41.070 is amended by adding a new subsection to read:

20 (e) A sexual assault examination kit is ineligible for testing if the law  
 21 enforcement agency or state department finds that the sexual assault examination kit

22 (1) is scientifically unviable;

23 (2) does not meet eligibility requirements for inclusion in the  
 24 Combined DNA Index System database; or

25 (3) was collected from a person who wishes to remain anonymous.

26 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
 27 read:

28 APPLICABILITY. AS 11.41.410(a), as amended by sec. 1 of this Act,  
 29 AS 11.41.420(a), as amended by sec. 2 of this Act, and AS 11.41.425(a), as amended by sec.  
 30 3 of this Act, apply to offenses committed on or after the effective date of secs. 1 - 3 of this  
 31 Act.

1      \* **Sec. 9.** This Act takes effect January 1, 2021.