

AMENDMENT # 4

HUGHES
KIEHL
Myers
OLSON
Holland
Graybach
Shower
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OFFERED IN THE SENATE

TO: HB 325

1 Page 1, line 1:

2 Delete all material and insert:

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

6

7 Page 1, following line 2:

8 Insert new bill sections to read:

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

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

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

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

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

16 **(ii) causing the person to become incapacitated;**

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

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

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

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

- 1 (B) who is in the offender's care
- 2 (i) by authority of law; or
- 3 (ii) in a facility or program that is required by law to be
- 4 licensed by the state; or
- 5 (4) the offender engages in sexual penetration with a person who the
- 6 offender knows is unaware that a sexual act is being committed and
- 7 (A) the offender is a health care worker; and
- 8 (B) the offense takes place during the course of professional
- 9 treatment of the victim.

10 (b) Sexual assault in the first degree [IS AN UNCLASSIFIED FELONY

11 AND] is punishable as provided in AS 12.55 **and is**

12 **(1) an unclassified felony if the offender violates (a)(1)(A), (2), (3),**

13 **or (4) of this section;**

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

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

- 16 (a) An offender commits the crime of sexual assault in the second degree if
- 17 (1) the offender engages in sexual contact with another person
- 18 (A) without consent of that person **by**
- 19 **(i) the use of force or the express or implied threat of**
- 20 **force against any person or property; or**
- 21 **(ii) causing the person to become incapacitated;**
- 22 **(B) by impersonating someone known to the person for the**
- 23 **purpose of obtaining consent;**
- 24 (2) the offender engages in sexual contact with a person
- 25 (A) who the offender knows is mentally incapable; and
- 26 (B) who is in the offender's care
- 27 (i) by authority of law; or
- 28 (ii) in a facility or program that is required by law to be
- 29 licensed by the state;
- 30 (3) the offender engages in sexual penetration with a person who is
- 31 (A) mentally incapable;

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- (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;

1 (5) while employed by the state or a municipality of the state as a
 2 probation officer or parole officer, or while acting as a probation officer or parole
 3 officer in the state, engages in sexual penetration with a person with reckless disregard
 4 that the person is on probation or parole; [OR]

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

9 (7) under circumstances not proscribed under AS 11.41.420, the
 10 offender engages in sexual contact with another person without consent of that
 11 person; in this paragraph, "sexual contact" does not include an offender
 12 knowingly causing a person to come into contact with semen.

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

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

16 (1) an expression of lack of consent through words or conduct means
 17 there is no consent; an expression of lack of consent under this paragraph does not
 18 require verbal or physical resistance and may include inaction;

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

22 (3) a person cannot consent if the person is fraudulently made to
 23 believe that the sexual act serves a professional purpose; in this paragraph,
 24 "professional purpose" means an act the defendant has represented as a necessary part
 25 or component of a provided service, part of the routine course of a procedure, or a
 26 component of the defendant's profession that would occur if a person sought services
 27 from another practitioner in the same field as the defendant.

28 * Sec. 5. AS 11.41.470(10) is repealed and reenacted to read:

29 (10) "without consent" means that, under the totality of the
 30 circumstances surrounding the offense, there was not a freely given, reversible
 31 agreement specific to the conduct at issue; in this paragraph, "freely given" means

1 agreement to cooperate in the act was positively expressed by word or action.

2 * **Sec. 6.** AS 11.41.530(a) is amended to read:

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

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

11 (2) accuse anyone of a crime;

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

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

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

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

22 * **Sec. 7.** AS 11.61.118(a) is amended to read:

23 (a) A person commits the crime of harassment in the first degree if, under
24 circumstances not proscribed under AS 11.41.410 - 11.41.427 or 11.41.434 -
25 11.41.440 [AS 11.41.434 - 11.41.440], the person violates AS 11.61.120(a)(5) and the
26 offensive physical contact is contact

27 (1) with human or animal blood, mucus, saliva, semen, urine, vomitus,
28 or feces; or

29 (2) by the person touching through clothing another person's genitals,
30 buttocks, or female breast.

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

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

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

9 (2) \$250,000 for a class A felony;

10 (3) \$100,000 for a class B felony;

11 (4) \$50,000 for a class C felony;

12 (5) \$25,000 for a class A misdemeanor;

13 (6) \$2,000 for a class B misdemeanor;

14 (7) \$500 for a violation.

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

16 (i) A defendant convicted of

17 (1) sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2),
 18 (3), or (4), sexual abuse of a minor in the first degree, unlawful exploitation of a minor
 19 under AS 11.41.455(c)(2), or sex trafficking in the first degree under
 20 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
 21 than 99 years and shall be sentenced to a definite term within the following
 22 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

31 (C) if the offense is a second felony conviction and does not

1 involve circumstances described in (D) of this paragraph, 30 to 40 years;

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

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

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

10 (2) sexual assault in the first degree under AS 11.41.410(a)(1)(B),
11 unlawful exploitation of a minor under AS 11.41.455(c)(1), enticement of a minor
12 under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault
13 in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a
14 minor in the first degree, or sex trafficking in the first degree under
15 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
16 than 99 years and shall be sentenced to a definite term within the following
17 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

30 (E) if the offense is a third felony conviction, the offense does
31 not involve circumstances described in (F) of this paragraph, and the defendant

1 is not subject to sentencing under (I) of this section, 35 to 50 years;

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

5 (3) sexual assault in the second degree, sexual abuse of a minor in the
6 second degree, enticement of a minor under AS 11.41.452(d), indecent exposure in the
7 first degree under AS 11.41.458(b)(2), [OR] distribution of child pornography under
8 AS 11.61.125(e)(2), or attempt, conspiracy, or solicitation to commit sexual
9 assault in the first degree under AS 11.41.410(a)(1)(B) may be sentenced to a
10 definite term of imprisonment of not more than 99 years and shall be sentenced to a
11 definite term within the following presumptive ranges, subject to adjustment as
12 provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

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

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

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

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

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

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

18 (G) if the offense is a third felony conviction and the defendant
19 has two prior convictions for sexual felonies, 99 years."
20

21 Page 1, line 3:

22 Delete "**Section 1**"

23 Insert "**Sec. 10**"
24

25 Page 2, following line 3:

26 Insert new bill sections to read:

27 "* **Sec. 11.** AS 26.05.900(e) is amended by adding a new paragraph to read:

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

29 * **Sec. 12.** AS 44.41.065(a) is amended to read:

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

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

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

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

13 * **Sec. 13.** AS 26.05.900(e)(8) is repealed.

14 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **APPLICABILITY.** AS 11.41.410, as amended by sec. 1 of this Act, AS 11.41.420(a),
17 as amended by sec. 2 of this Act, AS 11.41.425(a), as amended by sec. 3 of this Act,
18 AS 11.41.445(c), enacted by sec. 4 of this Act, AS 11.41.470(10), as repealed and reenacted
19 by sec. 5 of this Act, AS 11.41.530(a), as amended by sec. 6 of this Act, AS 11.61.118(a), as
20 amended by sec. 7 of this Act, AS 12.55.035(b), as amended by sec. 8 of this Act,
21 AS 12.55.125(i), as amended by sec. 9 of this Act, AS 26.05.900(e), as amended by sec. 11 of
22 this Act, and the repeal of AS 26.05.900(e)(8) by sec. 13 of this Act, apply to offenses
23 committed on or after the effective date of secs. 1 - 9, 11, and 13 of this Act.

24 * **Sec. 15.** Section 12 of this Act takes effect July 1, 2023.

25 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect January 1, 2023."