

HOUSE BILL NO. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES TARR, Foster, Tuck, Spohnholz, Fields, Schrage, Hopkins

Introduced: 2/18/21

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the**
2 **code of military justice; relating to consent; relating to the testing of sexual assault**
3 **examination kits; and providing for an effective date."**

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

5 *** Section 1.** AS 11.41.434(a) is amended to read:

6 (a) An offender commits the crime of sexual abuse of a minor in the first
7 degree if

8 (1) being 16 years of age or older, the offender engages in sexual
9 penetration with a person who is under 13 years of age or aids, induces, causes, or
10 encourages a person who is under 13 years of age to engage in sexual penetration with
11 another person;

12 (2) being 18 years of age or older, the offender engages in sexual
13 penetration with a person who is under 18 years of age, and the offender is the victim's
14 natural parent, stepparent, adopted parent, or legal guardian; [OR]

1 (3) being 18 years of age or older, the offender engages in sexual
2 penetration with a person who is under 16 years of age, and

3 (A) the victim at the time of the offense is residing in the same
4 household as the offender and the offender has authority over the victim; or

5 (B) the offender occupies a position of authority in relation to
6 the victim; or

7 **(4) being 18 years of age or older, the offender engages in sexual**
8 **penetration with a person who is 13, 14, 15, 16, or 17 years of age and at least 10**
9 **years younger than the offender, or aids, induces, causes, or encourages a person**
10 **who is 13, 14, 15, 16, or 17 years of age and at least 10 years younger than the**
11 **offender to engage in sexual penetration with another person.**

12 * **Sec. 2.** AS 11.41.436(a) is amended to read:

13 (a) An offender commits the crime of sexual abuse of a minor in the second
14 degree if,

15 (1) being 17 years of age or older, the offender engages in sexual
16 penetration with a person who is 13, 14, or 15 years of age and at least four years, **but**
17 **not more than 10 years,** younger than the offender, or aids, induces, causes, or
18 encourages a person who is 13, 14, or 15 years of age and at least four years, **but not**
19 **more than 10 years,** younger than the offender to engage in sexual penetration with
20 another person;

21 (2) being 16 years of age or older, the offender engages in sexual
22 contact with a person who is under 13 years of age or aids, induces, causes, or
23 encourages a person under 13 years of age to engage in sexual contact with another
24 person;

25 (3) being 18 years of age or older, the offender engages in sexual
26 contact with a person who is under 18 years of age, and the offender is the victim's
27 natural parent, stepparent, adopted parent, or legal guardian;

28 (4) being 16 years of age or older, the offender aids, induces, causes,
29 or encourages a person who is under 16 years of age to engage in conduct described in
30 AS 11.41.455(a)(2) - (6);

31 (5) being 18 years of age or older, the offender engages in sexual

1 contact with a person who is under 16 years of age, and

2 (A) the victim at the time of the offense is residing in the same
3 household as the offender and the offender has authority over the victim; or

4 (B) the offender occupies a position of authority in relation to
5 the victim;

6 (6) being 18 years of age or older, the offender engages in sexual
7 penetration with a person who is 16 or 17 years of age and at least three years younger
8 than the offender, and the offender occupies a position of authority in relation to the
9 victim; [OR]

10 (7) being under 16 years of age, the offender engages in sexual
11 penetration with a person who is under 13 years of age and at least three years younger
12 than the offender; or

13 **(8) being 18 years of age or older, the offender engages in sexual**
14 **contact with a person who is 13, 14, 15, 16, or 17 years of age and at least 10 years**
15 **younger than the offender, or aids, induces, causes, or encourages a person who**
16 **is 13, 14, 15, 16, or 17 years of age and at least 10 years younger than the offender**
17 **to engage in sexual contact with another person.**

18 * **Sec. 3.** AS 11.41.445 is amended by adding a new subsection to read:

19 (c) In a prosecution under AS 11.41.410 - 11.41.440, where consent is at
20 issue,

21 (1) an expression of lack of consent through words or conduct means
22 there is no consent; lack of verbal or physical resistance or submission resulting from
23 the use of force, threat of force, or placing another person in fear may not constitute
24 consent; a current or previous dating, social, or sexual relationship by itself or the
25 manner of dress of the person involved with the accused in the conduct at issue may
26 not constitute consent;

27 (2) a sleeping, unconscious, incompetent, or incapacitated person
28 cannot consent; a person cannot consent to force causing or likely to cause death or
29 grievous bodily harm or to being rendered unconscious; a person cannot consent while
30 under threat or fear or under circumstances where the person is fraudulently made to
31 believe that the sexual act serves a professional purpose; a person cannot consent

1 when induced to believe by any artifice, pretense, or concealment that the accused is
2 another person;

3 (3) lack of consent may be inferred based on the circumstances of the
4 offense; the surrounding circumstances shall be considered in determining whether a
5 person gave consent or whether a person did not resist or ceased to resist only because
6 of another person's actions.

7 * **Sec. 4.** AS 11.41.470 is amended by adding a new paragraph to read:

8 (9) "consent" means a freely given, reversible agreement specific to
9 the conduct at issue by a competent person.

10 * **Sec. 5.** AS 11.56.765(c) is amended by adding a new paragraph to read:

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

12 * **Sec. 6.** AS 11.56.767(c) is amended by adding a new paragraph to read:

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

14 * **Sec. 7.** AS 26.05.900(e) is amended by adding a new paragraph to read:

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

16 * **Sec. 8.** AS 44.41.065(a) is amended to read:

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

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

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

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

31 * **Sec. 9.** AS 11.41.470(8); AS 11.56.765(c)(4), 11.56.767(c)(4); and AS 26.05.900(e)(8) are

1 repealed.

2 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. AS 11.41.434(a), as amended by sec. 1 of this Act,
5 AS 11.41.436(a), as amended by sec. 2 of this Act, AS 11.41.445(c), enacted by sec. 3 of this
6 Act, AS 11.41.470, as amended by sec. 4 of this Act, AS 11.56.765(c), as amended by sec. 5
7 of this Act, AS 11.56.767(c), as amended by sec. 6 of this Act, AS 26.05.900(e), as amended
8 by sec. 7 of this Act, and the repeals of AS 11.41.470(8), AS 11.56.765(c)(4),
9 AS 11.56.767(c)(4), and AS 26.05.900(e)(8) by sec. 9 of this Act apply to offenses committed
10 on or after the effective date of secs. 1 - 7 and 9 of this Act.

11 * **Sec. 11.** Section 8 of this Act takes effect July 1, 2022.