

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/9/22

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

7 (1) the offender engages in sexual penetration with another person
8 without consent of that person **by the use of force or the express or implied threat**
9 **of force against any 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; 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 * **Sec. 2.** AS 11.41.420(a) is amended to read:

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

12 (1) the offender engages in sexual contact with another person without
13 consent of that person **by the use of force or the express or implied threat of force**
14 **against any person;**

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

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

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

18 (i) by authority of law; or

19 (ii) in a facility or program that is required by law to be
20 licensed by the state;

21 (3) the offender engages in sexual penetration with a person who is

22 (A) mentally incapable;

23 (B) incapacitated; or

24 (C) unaware that a sexual act is being committed; [OR]

25 (4) the offender engages in sexual contact with a person who the
26 offender knows is unaware that a sexual act is being committed and

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

28 (B) the offense takes place during the course of professional
29 treatment of the victim; **or**

30 **(5) under circumstances not proscribed under AS 11.41.410, the**
31 **offender engages in sexual penetration with another person without consent of**

1 **that person.**

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

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

5 (1) engages in sexual contact with a person who 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; **or**

31 **(7) under circumstances not proscribed under AS 11.41.420, the**

1 **offender engages in sexual contact with another person without consent of that**
 2 **person; in this paragraph, "sexual contact" does not include an offender**
 3 **knowingly causing a person to come into contact with semen.**

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

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

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

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

11 (3) consent may be revoked or withdrawn at any time and a clear
 12 verbal refusal establishes the revocation or withdrawal of prior consent; lack of
 13 consent or revocation or withdrawal of consent may be overridden by subsequent
 14 consent given before the conduct at issue occurred;

15 (4) a person who is incapacitated as a result of an act of the defendant
 16 cannot consent.

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

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

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

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

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

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

25 * **Sec. 8.** AS 26.05.900(e) is amended by adding a new paragraph to read:

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

27 * **Sec. 9.** AS 44.41.065(a) is amended to read:

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

30 (1) within 30 days after the agency collects the sexual assault
 31 examination kit, send the sexual assault examination kit to an accredited laboratory in

1 coordination with the Department of Public Safety or a laboratory operated by the
2 Department of Public Safety;

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

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

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

13 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 APPLICABILITY. AS 11.41.410(a), as amended by sec. 1 of this Act,
16 AS 11.41.420(a), as amended by sec. 2 of this Act, AS 11.41.425(a), as amended by sec. 3 of
17 this Act, AS 11.41.445(c), enacted by sec. 4 of this Act, AS 11.41.470, as amended by sec. 5
18 of this Act, AS 11.56.765(c), as amended by sec. 6 of this Act, AS 11.56.767(c), as amended
19 by sec. 7 of this Act, AS 26.05.900(e), as amended by sec. 8 of this Act, and the repeals of
20 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. 10 of
21 this Act, apply to offenses committed on or after the effective date of secs. 1 - 8 and 10 of this
22 Act.

23 * **Sec. 12.** Section 9 of this Act takes effect July 1, 2023.