

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 361
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVES B.DAVIS, Ellis, Barnes, Ulmer, Lincoln, Bruckman, Brown, Boyer, Koponen

Introduced: 1/24/92
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the offenses of sexual assault committed against a person who is
2 unaware that a sexual act is being committed."

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

4 * **Section 1. FINDINGS AND PURPOSE.** The legislature finds that existing law as set out in
5 AS 11.41.410(a)(1) and (2), amended by sec. 2 of this Act, covers the conduct defined in
6 AS 11.41.420(a)(3)(C), added by sec. 3 of this Act, and that existing law as set out in
7 AS 11.41.420(a)(1) covers the conduct defined in AS 11.41.425(a)(3), added by sec. 4 of this Act.
8 However, the legislature finds that the penalty for that conduct is inappropriate, and the offenses should
9 be reclassified. It is therefore the purpose of this Act to reclassify existing conduct and not to
10 criminalize conduct that is not currently criminal.

11 * **Sec. 2.** AS 11.41.410(a) is amended to read:

12 (a) An offender [A PERSON] commits the crime of sexual assault in the first degree if
13 (1) the offender [DEFENDANT] engages in sexual penetration with another
14 person without consent of that person;

1 (2) the offender [DEFENDANT] attempts to engage in sexual penetration with
2 another person without consent of that person and causes serious physical injury to that person;
3 or

4 (3) the offender [DEFENDANT] engages in sexual penetration with another
5 person

6 (A) who the offender [DEFENDANT] knows is mentally incapable; and
7 (B) who is entrusted to the offender's [DEFENDANT'S] care
8 (i) by authority of law; or
9 (ii) in a facility or program that is required by law to be licensed
10 by the Department of Health and Social Services; or

11 (4) the offender engages in sexual penetration with a person who the offender
12 knows is unaware that a sexual act is being committed and

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

14 (B) the offense takes place during the course of professional treatment
15 of the victim.

16 * Sec. 3. AS 11.41.420(a) is amended to read:

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

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

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

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

22 (B) who is entrusted to the offender's care

23 (i) by authority of law; or

24 (ii) in a facility or program that is required by law to be licensed
25 by the Department of Health and Social Services; or

26 (3) the offender engages in sexual penetration with a person who the offender
27 knows is

28 (A) mentally incapable; [OR]

29 (B) incapacitated; or

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

31 (4) the offender engages in sexual contact with a person who the offender

1 **knows is unaware that a sexual act is being committed and**
2 **(A) the offender is a health care worker; and**
3 **(B) the offense takes place during the course of professional treatment**
4 **of the victim.**

5 * Sec. 4. AS 11.41.425(a) is amended to read:

6 (a) An offender commits the crime of sexual assault in the third degree if the offender
7 engages in sexual contact with a person who the offender knows is

8 (1) mentally incapable; [OR]

9 (2) incapacitated; or

10 **(3) unaware that a sexual act is being committed.**

11 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

12 (7) "health care worker" includes an anesthesiologist, acupuncturist, chiropractor,
13 dentist, health aide, hypnotist, massage therapist, mental health counselor, midwife, nurse, nurse
14 practitioner, osteopath, naturopath, physical therapist, physical therapy assistant, physician,
15 physician's assistant, psychiatrist, psychologist, psychological associate, radiologist, religious
16 healing practitioner, surgeon, x-ray technician, or a substantially similar position;

17 (8) "sexual act" means sexual penetration or sexual contact.