



# LAWS OF ALASKA

1988

**Source**

CSHB 545 (Jud)

**Chapter No.**

96

**AN ACT**

Amending crimes relating to sexual assault as they relate to persons who are mentally incapable.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 3, 1988  
Actual Effective Date: September 1, 1988

AN ACT

Amending crimes relating to sexual assault as they relate  
to persons who are mentally incapable.

\* Section 1. AS 11.41.410(a) is repealed and reenacted to read:

(a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

(2) being any age, the defendant attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) being over the age of 18, the defendant engages in sexual penetration with another person

(A) who the defendant knows is mentally incapable;

and

(B) who is entrusted to the defendant's care

(i) by authority of law; or

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

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

(a) An offender commits the crime of sexual assault in the second degree if [THE OFFENDER ENGAGES IN]

(1) the offender engages in sexual contact with another

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1 person without consent of that person; [OR]

2 (2) being over the age of 18, the offender engages in  
3 sexual contact [PENETRATION] with a person

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

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

6 (i) by authority of law; or

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

10 (3) being over the age of 18, the offender engages in  
11 sexual penetration with a person who the offender knows is

12 (A) mentally incapable; [IS SUFFERING FROM A MENTAL  
13 DISORDER OR DEFECT WHICH RENDERS THE PERSON INCAPABLE OF APPRAIS-  
14 ING THE NATURE OF THE CONDUCT UNDER CIRCUMSTANCES IN WHICH A  
15 PERSON WHO IS CAPABLE OF APPRAISING THE NATURE OF THE CONDUCT  
16 WOULD NOT ENGAGE IN SEXUAL PENETRATION]; or

17 (B) [IS] incapacitated.

18 \* Sec. 3. AS 11.41 is amended by adding a new section to read:

19 Sec. 11.41.425. SEXUAL ASSAULT IN THE THIRD DEGREE. (a) An  
20 offender commits the crime of sexual assault in the third degree if,  
21 being over the age of 18, the offender engages in sexual contact with  
22 a person who the offender knows is

23 (1) mentally incapable; or

24 (2) temporarily incapable of appraising the nature of the  
25 person's conduct and is physically unable to express unwillingness to  
26 act.

27 (b) Sexual assault in the third degree is a class C felony.

28 \* Sec. 4. AS 11.41 is amended by adding a new section to read:

29 Sec. 11.41.432. DEFENSE. It is a defense to a crime charged

1 under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.-  
2 425 that the offender is

3 (1) mentally incapable; or

4 (2) married to the person and neither party has filed with  
5 the court for a separation, divorce, or dissolution of the marriage.

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

7 (4) "mentally incapable" means a person who suffers from a  
8 mental disease or defect that renders the person incapable of under-  
9 standing the nature or consequences of the person's conduct, including  
10 the potential for harm to that person.  
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