

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES TARR, Spohnholz, Tuck, Rauscher, Hopkins, Fields, Drummond

Introduced: 3/11/19

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sexual assault; relating to the definitions of 'without consent' and**
2 **'consent'; relating to failure to report a violent crime; relating to sexual misconduct**
3 **under the code of military justice; requiring law enforcement agencies to test sexual**
4 **assault examination kits; requiring notification of completion of testing; relating to**
5 **reports on untested sexual assault examination kits; and providing for an effective**
6 **date."**

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

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

9 (a) An offender commits the crime of sexual assault in the first degree if
10 (1) the offender engages in sexual penetration with another person
11 without consent of that person;
12 (2) the offender attempts to engage in sexual penetration with another
13 person without consent of that person and causes serious physical injury to that

1 person;

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

3 (A) who the offender knows **or reasonably should know** is
4 mentally incapable; and

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

6 (i) by authority of law; or

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

9 (4) the offender engages in sexual penetration with a person who the
10 offender knows **or reasonably should know** is unaware that a sexual act is being
11 committed and

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

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

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 without
18 consent of that person;

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

20 (A) who the offender knows **or reasonably should know** is
21 mentally incapable; and

22 (B) who is in 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
25 licensed by the state;

26 (3) the offender engages in sexual penetration with a person who the
27 offender knows **or reasonably should know** is

28 (A) mentally incapable;

29 (B) incapacitated; or

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

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

1 offender knows **or reasonably should know** is unaware that a sexual act is being
 2 committed and

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

4 (B) the offense takes place during the course of professional
 5 treatment of the victim.

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

7 (a) An offender commits the crime of sexual assault in the third degree if the
 8 offender

9 (1) engages in sexual contact with a person who the offender knows **or**
 10 **reasonably should know** is

11 (A) mentally incapable;

12 (B) incapacitated; or

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

14 (2) while employed in a state correctional facility or other placement
 15 designated by the commissioner of corrections for the custody and care of prisoners,
 16 engages in sexual penetration with a person who the offender knows is committed to
 17 the custody of the Department of Corrections to serve a term of imprisonment or
 18 period of temporary commitment;

19 (3) engages in sexual penetration with a person 18 or 19 years of age
 20 who the offender knows is committed to the custody of the Department of Health and
 21 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
 22 the person;

23 (4) while employed in the state by a law enforcement agency as a
 24 peace officer, or while acting as a peace officer in the state, engages in sexual
 25 penetration with a person with reckless disregard that the person is in the custody or
 26 the apparent custody of the offender, or is committed to the custody of a law
 27 enforcement agency;

28 (5) while employed by the state or a municipality of the state as a
 29 probation officer or parole officer, or while acting as a probation officer or parole
 30 officer in the state, engages in sexual penetration with a person with reckless disregard
 31 that the person is on probation or parole; or

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

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

(9) "consent" means words or overt actions indicating freely given agreement to engage in sexual penetration or sexual contact.

* **Sec. 5.** AS 11.56.765(a) is amended to read:

(a) A person, other than the victim, commits the crime of failure to report a violent crime committed against a child if the person

(1) witnesses what the person knows or reasonably should know is

(A) the murder or attempted murder of a child by another;

(B) the kidnapping or attempted kidnapping of a child by another;

(C) the sexual penetration or attempted sexual penetration by another **of a child**

[(i) OF A CHILD WITHOUT CONSENT OF THE CHILD;

(ii) OF A CHILD THAT IS MENTALLY INCAPABLE;

(iii) OF A CHILD THAT IS INCAPACITATED; OR

(iv) OF A CHILD THAT IS UNAWARE THAT A SEXUAL ACT IS BEING COMMITTED]; or

(D) the assault of a child by another causing serious physical injury to the child;

(2) knows or reasonably should know that the child is under 16 years of age; and

(3) does not in a timely manner report that crime to a peace officer or law enforcement agency.

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

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

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

2 (9) "consent" has the meaning given in AS 11.41.470.

3 * **Sec. 8.** AS 44.41 is amended by adding a new section to read:

4 **Sec. 44.41.065. Sexual assault examination kits.** (a) When a law enforcement
5 agency collects a sexual assault examination kit under AS 18.68.010, the agency shall

6 (1) within 30 days after the agency collects the sexual assault
7 examination kit, send the sexual assault examination kit to a laboratory operated or
8 approved by the Department of Public Safety;

9 (2) ensure that the laboratory to which the sexual assault examination
10 kit is sent under (1) of this subsection conducts a serological or DNA test on the
11 sexual assault examination kit within six months after the agency collects the sexual
12 assault examination kit; and

13 (3) within two weeks after the laboratory that receives the sexual
14 assault examination kit under (1) of this subsection completes serological or DNA
15 testing, notify the person from whom the sexual assault examination kit was collected
16 that the sexual assault examination kit has been tested.

17 (b) In this section, "law enforcement agency" or "agency" has the meaning
18 given to "law enforcement agency" in AS 12.36.090.

19 * **Sec. 9.** AS 44.41.070(a) is amended to read:

20 (a) By September 1 of each year, each law enforcement agency and state
21 department charged with the maintenance, storage, and preservation of sexual assault
22 examination kits shall conduct an inventory of untested sexual assault examination kits
23 and report, in writing, to the Department of Public Safety the number of untested
24 sexual assault examination kits in the possession of the agency or department, the
25 number of sexual assault examination kits that the law enforcement agency or
26 state department has determined are ineligible for testing under (e) of this
27 section, with the reason or reasons the untested sexual assault examination kits
28 were determined to be ineligible for testing, and the date on which each untested
29 sexual assault examination kit was collected.

30 * **Sec. 10.** AS 44.41.070(b) is amended to read:

31 (b) By November 1 of each year, the Department of Public Safety shall

1 prepare and transmit a report to the president of the senate and the speaker of the
2 house of representatives that contains

3 (1) the number of untested sexual assault examination kits stored by
4 each law enforcement agency or department and the number of sexual assault
5 examination kits that the law enforcement agency or state department has
6 determined are ineligible for testing under (e) of this section, with the reason or
7 reasons the untested sexual assault examination kits were determined to be
8 ineligible for testing;

9 (2) the date each untested sexual assault examination kit was collected;
10 and

11 (3) a plan for addressing the backlog and prevention of a backlog of
12 untested sexual assault examination kits.

13 * **Sec. 11.** AS 44.41.070 is amended by adding a new subsection to read:

14 (e) A sexual assault examination kit is ineligible for testing if the law
15 enforcement agency or state department finds that the sexual assault examination kit

16 (1) was collected improperly;

17 (2) is not necessary to identify the perpetrator of the crime; or

18 (3) was collected from a person who does not wish to proceed
19 with criminal charges.

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

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

24 APPLICABILITY. AS 11.41.410(a), as amended by sec. 1 of this Act,
25 AS 11.41.420(a), as amended by sec. 2 of this Act, AS 11.41.425(a), as amended by sec. 3 of
26 this Act, AS 11.41.470(9), enacted by sec. 4 of this Act, AS 11.56.765(a), as amended by sec.
27 5 of this Act, AS 11.56.767(c)(5), enacted by sec. 6 of this Act, AS 26.05.900(e), enacted by
28 sec. 7 of this Act, and the repeals of AS 11.41.470(8), AS 11.56.765(c)(4), 11.56.767(c)(4),
29 and AS 26.05.900(e)(8) by sec. 12 of this Act, apply to offenses committed on or after the
30 effective date of secs. 1 - 7 and 12 of this Act.

31 * **Sec. 14.** This Act takes effect January 1, 2020.