

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.17

RAPE; PUBLIC INDECENCY; PROSTITUTION; SEX CRIMES

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7.17.1. Definitions. As used in this chapter:

(a) “Sexual intercourse” means:

(1) Its ordinary meaning and occurs upon any penetration, however slight;

(2) Any penetration of the vagina or anus, however slight, by an object, when committed on one person by another whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; and

(3) Any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(b) “Married” means one who is legally married to another.

(c) “Mental incapacity” is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual

intercourse whether that condition is produced by illness, defect, the influence of a substance, or from some other cause.

(d) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(e) "Forcible compulsion" means physical force which overcomes resistance; or a threat, express or implied, that places a person in fear of death or physical injury to him- or herself or another person; or fear that he or she or another person will be kidnapped.

(f) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.2. Testimony — Evidence — Written Motion — Admissibility. (a) In order to convict a person of any crime defined in this code, it shall not be necessary that the testimony of the alleged victim be corroborated.

(b) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in §7.17.2(c); but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(c) In any prosecution for the crime of rape or for an attempt to commit or an assault with an intent to commit any such crime, evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and admissible on the issue of consent only pursuant to the following procedure:

(1) A written pretrial motion shall be made by the defendant to the Court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) If the Court finds that the offer of proof is sufficient, the Court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the Court.

(4) At the conclusion of the hearing, if the Court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim (1) is relevant to the issue of the victim's consent and (2) is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice, and that exclusion of that evidence would result in denial of substantial justice to the defendant, the Court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the Court.

(d) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the Court may require a hearing pursuant to §7.17.2(c) concerning such evidence. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.3. Defense to Prosecution under This Chapter. (a) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(b) In any prosecution under this title in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age or that the perpetrator believed the victim to be older, as the case may be; provided that it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be older based upon declaration as to age by the alleged victim. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.4. Rape in the First Degree. (a) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person where the perpetrator or an accessory:

- (1) Uses forcible compulsion;
- (2) Uses or threatens to use a deadly weapon;
- (3) Kidnaps the victim;
- (4) Inflicts serious physical injury; or

(5) Feloniously enters into the building or vehicle where the victim is situated.

(b) Rape in the first degree is a felony. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.5. Rape in the Second Degree. (a) A person is guilty of rape in the second degree when under circumstances not constituting rape in the first degree the person engages in sexual intercourse with another person not married to the perpetrator when the victim is incapable of consent by reason of being physically helpless or mentally impaired.

(b) Rape in the second degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.6. Rape in the Third Degree. (a) A person is guilty of rape in the third degree when under circumstances not constituting rape in the first or second degrees such person engages in sexual intercourse with another person:

(1) Where the victim did not consent as defined in §7.17.1(f) to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or

(2) Where there is threat of substantial unlawful harm to property rights of the victim.

(b) Rape in the third degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.7. Statutory Rape in the First Degree. (a) A person over thirteen (13) years of age is guilty of statutory rape in the first degree when the person engages in sexual intercourse with another person who is less than eleven (11) years old.

(b) Statutory rape in the first degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.8. Statutory Rape in the Second Degree. (a) A person over sixteen (16) years of age is guilty of statutory rape in the second degree when such person engages in sexual intercourse with another person, not married to the perpetrator, who is eleven (11) years of age or older but less than fourteen (14) years old.

(b) Statutory rape in the second degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.9. Statutory Rape in the Third Degree. (a) A person over eighteen (18) years of age is guilty of statutory rape in the third degree when such person engages in sexual

intercourse with another person, not married to the perpetrator, who is fourteen (14) years of age or older but less than sixteen (16) years old.

(b) Statutory rape in the third degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.10. (Reserved)

7.17.11. Public Indecency. (a) A person is guilty of public indecency if he or she makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.

(b) Public indecency is a misdemeanor unless such person exposes himself to a person under the age of fourteen (14) years in which case indecency is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.12. Child Molestation. (a) A person is guilty of child molestation if he or she:

(1) Entices or persuades a child under the age of eighteen (18) years to enter a building, vehicle, room, boat, or any other place with intent to commit sexual intercourse as defined in §7.17.1(a) or sexual touching as defined in §7.17.19(c); or

(2) Has possession of a child under the age of eighteen (18) years in any such place with intent to commit sexual intercourse or sexual contact.

(b) Child molestation is a gross misdemeanor unless the offender has previously been convicted of a felony sexual offense or has previously been convicted under this section in which case child molestation is a felony. Upon conviction of child molestation, the offender may be required by the Court to undergo medical evaluation and treatment, in addition to or instead of any other sentence imposed by the Court. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.13. Prostitution. (a) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(b) Prostitution is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.14. Prostitution — Sex of Parties Immaterial — No Defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is not a defense that:

(a) Such persons were of the same sex; or

(b) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.15. Promoting Prostitution — Definitions. The following definitions are applicable in §7.17.15 through §7.17.18.

(a) “Advances prostitution.” A person “advances prostitution” if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(b) “Profits from prostitution.” A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.16. Promoting Prostitution in the First Degree. (a) A person is guilty of promoting prostitution in the first degree if he or she knowingly:

(1) Advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(2) Advances or profits from prostitution of a person less than eighteen (18) years old.

(b) Promoting prostitution in the first degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.17. Promoting Prostitution in the Second Degree. (a) A person is guilty of promoting prostitution in the second degree if he or she knowingly:

(1) Profits from prostitution; or

(2) Advances prostitution.

(b) Promoting prostitution in the second degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.18. Permitting Prostitution. (a) A person is guilty of permitting prostitution if, having possession or control of premises which he or she knows are being used for

prostitution purposes, he or she fails without lawful excuse to make reasonable effort to halt or abate such use.

(b) Permitting prostitution is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.17.19. Abusive Sexual Touching. (a) Any person who knowingly engages in or causes or attempts sexual touching, as defined in this section, with or by another person in any one of the following circumstances commits the crime of abusive sexual touching:

(1) By using force against the other person;

(2) By in any way threatening or placing the other person in fear;

(3) When the other person is a child under the age of fourteen (14);

(4) When the other person is unconscious or physically or mentally incapable of declining participation or communicating unwillingness to engage in sexual activity for any reason including physical handicap, mental disease, mental disability, or alcohol or drug intoxication;

(5) When the defendant is in a position of trust or authority with respect to the other person and takes advantage of that position to cause sexual touching;
or

(6) When the defendant is related to the victim as an ancestor, descendant, sibling, aunt, uncle, niece, nephew, or first cousin.

(b) Abusive sexual touching is a felony.

(c) "Sexual touching" means any touching of the sexual or other intimate parts of a person done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of abusing, humiliating, harassing, or degrading another person.

(d) "Position of trust or authority" means but is not limited to the special authoritative or confidential relationships relating to the provision of education, health care, any kind of counseling, coaching, religious advice, public safety services, or other professional services. (Res. 93-025 (part), passed Mar. 8, 1993)

Note 1: All subsections in this chapter have been renumbered for consistency, as follows, with the exception of sections 7.17.2 and 7.17.4 (see note 2). (Res. 2016-090, Jun. 20, 2016)

All Arabic numerals (1, 2, 3, etc.) used as subsection headings have been changed to lower case letters (a, b, c, etc.)

All lower case letters have been changed to Arabic numerals

Example: What was previously 7.17.1(1)(a) is now 7.17.1(a)(1)

Note 2: First level subsections within 7.17.2 and 7.17.4 have been changed from Arabic numerals to lower case letters, but second level subsections kept their original Arabic numeral designations. (Res. 2016-090, Jun. 20, 2016)