

PENAL CODE

CHAPTER 22. ASSAULTIVE OFFENSES

§ 22.011. SEXUAL ASSAULT. (a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the

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other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

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(1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child

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and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a) (2) that:

(1) the actor was not more than three years older than the victim and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(2) the victim:

(A) was a child of 14 years of age or older; and

(B) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, § 3, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 557, § 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1029, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 662, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 273, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, § 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1031, § 1, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1286, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1102, § 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1415, § 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, § 14.829, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 155, § 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 528, § 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 553, § 2.017, eff. Feb.

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1, 2004; Acts 2005, 79th Leg., ch. 268, § 4.02, eff. Sept. 1, 2005.