

28 the ability to execute this threat; or

29 (ii) the actor coerces the victim to submit by threatening to retaliate in the future against
30 the victim or any other person, and the victim believes at the time that the actor has the ability to
31 execute this threat;

32 (b) as used in this Subsection (4)(b) "to retaliate" includes but is not limited to threats of
33 physical force, kidnaping, or extortion;

34 (5) the victim has not consented and the actor knows the victim is unconscious, unaware
35 that the act is occurring, or physically unable to resist;

36 (6) the actor knows that as a result of mental disease or defect, the victim is at the time of
37 the act incapable either of appraising the nature of the act or of resisting it;

38 (7) the actor knows that the victim submits or participates because the victim erroneously
39 believes that the actor is the victim's spouse;

40 (8) the actor intentionally impaired the power of the victim to appraise or control his or
41 her conduct by administering any substance without the victim's knowledge;

42 (9) the victim is younger than 14 years of age;

43 (10) the victim is younger than 18 years of age and at the time of the offense the actor was
44 the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special
45 trust in relation to the victim as defined in Subsection 76-5-404.1(3)(h);

46 (11) the victim is 14 years of age or older, but ~~[not older than 17]~~ younger than 18 years
47 of age, and the actor is more than three years older than the victim and entices or coerces the victim
48 to submit or participate, under circumstances not amounting to the force or threat required under
49 Subsection (2) or (4); or

50 (12) the actor is a health professional or religious counselor, as those terms are defined in
51 this Subsection (12), the act is committed under the guise of providing professional diagnosis,
52 counseling, or treatment, and at the time of the act the victim reasonably believed that the act was
53 for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that
54 resistance by the victim could not reasonably be expected to have been manifested. For purposes
55 of this Subsection (12):

56 (a) "health professional" means an individual who is licensed or who holds himself out to
57 be licensed, or who otherwise provides professional physical or mental health services, diagnosis,
58 treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse,

59 dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical
60 social worker, certified social worker, marriage and family therapist, professional counselor,
61 psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor;
62 and

63 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
64 member of the clergy.

Legislative Review Note
as of 1-13-00 11:48 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel