



1 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the immediate  
2 future against the victim or any other person, and the victim perceives at the time that the actor has  
3 the ability to execute this threat; or

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

7 (b) as used in this subsection "to retaliate" includes but is not limited to threats of physical  
8 force, kidnaping, or extortion;

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

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

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

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

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

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

21 (11) the victim is 14 years of age or older, but not older than 17, and the actor is more than  
22 three years older than the victim and entices or coerces the victim to submit or participate, under  
23 circumstances not amounting to the force or threat required under Subsection (2) or (4)[-]; or

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

30 (a) "health professional" means an individual who is licensed or who holds himself out to  
31 be licensed, or who otherwise provides professional physical or mental health services, diagnosis,

1 treatment or counseling including, but not limited to, a physician, osteopathic physician, nurse,  
2 dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical  
3 social worker, certified social worker, marriage and family therapist, professional counselor,  
4 psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor;  
5 and  
6 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized  
7 member of the clergy.

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**Legislative Review Note**  
**as of 1-7-98 3:32 PM**

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

**Office of Legislative Research and General Counsel**