

## Legal Definitions of Sexual Assault

The State of Texas Penal Code Chapter 22, Section 22.011 defines sexual assault this way:

### § 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 female 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 female 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 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; or

(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.

(c) In this section:

(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 the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);
- (B) a chiropractor licensed under Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes);
- (C) a licensed vocational nurse licensed under Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes);
- (D) a physical therapist licensed under Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes);
- (E) a physician assistant licensed under the Physician Assistant Licensing Act (Article 4495b-1, Vernon's Texas Civil Statutes); or
- (F) a registered nurse or an advanced practice nurse licensed under Chapter 7, Title 71, Revised Statutes.

(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 50.001, Human Resources Code;
- (B) chemical dependency counselor as defined by Section 1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Vernon's Texas Civil Statutes);
- (C) licensed professional counselor as defined by Section 2, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes);
- (D) licensed marriage and family therapist as defined by Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes);
- (E) member of the clergy;
- (F) psychologist offering psychological services as defined by Section 2, Psychologists' Licensing Act (Article 4512c, Vernon's Texas Civil Statutes); or
- (G) special officer for mental health assignment certified under Section 415.037, Government Code.

(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 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, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, to register for life as a sex offender; or
  - (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section; and
- (2) the victim was a child of 14 years of age or older
- . (f) An offense under this section is a felony of the second degree.

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.

Amended by 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.

The Texas Penal Code Chapter 22, Section 22.021 defines Aggravated Sexual Assault this way:

### **§ 22.021. Aggravated Sexual Assault**

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

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

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

(iii) 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

(B) intentionally or knowingly:

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

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

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

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

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

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, or gamma hydroxybutyrate to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is 65 years of age or older.

(b) In this section, "child" has the meaning assigned that term by Section 22.011(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

(e) An offense under this section is a felony of the first degree.

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, § 3, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 573, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 16, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

Amended by Acts 1995, 74th Leg., ch. 318, § 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1286, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 417, § 1, eff. Sept. 1, 1999.