

LC1jo1 (Unofficial Draft Copy 4/7/2106)

Questions/Suggestions/Comments

Sen. Moe

**p. 8, subsections (40) and (41)**

Do we intend to distinguish between the impaired ability of the mentally disordered and that of the mentally incapacitated? The slight change in wording leaves the person whose conduct is being appraised or controlled by the mentally disordered(40) vague, but specifies that the conduct is confined to the mentally incapacitated person's own conduct in (41).

I think the impaired ability logically applies in both cases to the victim's ability to appraise his or her own conduct, as well as to appraise the conduct of others. This comes up sometimes, when jurors/people ask, "You got in the car with him after he said that?", etc. I think the word "control" muddies the issue and goes further than the original language ("appreciate") intended.

Suggested Revisions:

(40) "Mentally disordered" means that a person suffers from a mental disease or disorder ~~that renders the person incapable of appreciating the nature of the person's own conduct~~ that substantially impairs the person's ability to appraise his or her own conduct or the conduct of others.

(41) "Mentally incapacitated" means that a person is rendered temporarily ~~incapable of appreciating or controlling the person's own conduct~~, as a result of the influence of an intoxicating substance the person's ability to appraise his or her own conduct, or the conduct of others, is substantially impaired.

**p. 18 and 19, Section 3. Definitions**

The definition of "consent" is confused by a lot of language that really defines "lack of consent." The jumbling of more than one factor that cannot be used to infer consent adds to the confusion. Finally, I think the advice in section (C), p. 19, on looking at all surrounding circumstances is a bit muddled by the word "and" instead of the word "that."

So I recommend revising the section as follows:

**45-5-501. Definitions** (1) (a) As used in Section 1, 45-5-502 and 45-5-503, the term ~~"without consent"~~ "consent" means: ~~(i) the victim is compelled to submit by force against the victim or another words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.~~

(b) As used in Section 1, 45-5-502 and 45-5-503, the term “lack of consent” means words or overt actions indicating no agreement or the withdrawal of agreement to have sexual intercourse or sexual contact and is further defined by the following:

- (i) A current or previous dating or social or sexual relationship by itself does not constitute consent.
- (ii) The manner of dress of the person whose consent is required does not constitute consent.
- (iii) Lack of consent may be inferred based on all of the surrounding circumstances that must be considered in whether a person gave consent.

[Subsequent letters and numbers in the section will need to be changed if these suggested changes are adopted.]

**p. 20, Section H (I) and (II)**

I have two concerns:

1. The wording makes it sound like the section applies to any perpetrator who is an employee or service provider at any public or private K-12 school, even if the victim is not a student at that particular school. That means that a 20-year-old FVCC student who is assistant soccer coach at Whitefish High School could be charged with SIWOC for a sexual relationship with an 18-year-old senior at Bigfork High School
2. The long list of employees seems unnecessary and could overlook some employees (I see two without thinking very hard – librarian and musical accompanist).

I suggest these revisions:

(H) enrolled as a student in any public or private K-12 school and the perpetrator is:

- (I) an employee, contractor, or volunteer of the student’s school or school district; or
- (II) any other person who provides services at the student’s school.