MODEL PENAL CODE
ARTICLE 213

I. PROPOSED SECTIONS 213.0 TO 213.7

SECTION 213.0. DEFINITIONS

In this Article, unless a different definition is plainly required:

(1) The definitions given in Section 210.0 apply;

(2) “Commercial sex act” means any act of sexual intercourse or sexual contact in exchange for which any money, property, or services are given to or received by any person.

(3) “Consent” means a person’s positive agreement, communicated by either words or actions, to engage in sexual intercourse or sexual contact.

(4) “Nonconsent” means a person’s refusal to consent to sexual intercourse or sexual contact, communicated by either words or actions; a verbally expressed refusal establishes nonconsent in the absence of subsequent words or actions indicating positive agreement.

(5) “Recklessly” shall carry only the meaning designated in Model Penal Code § 2.02(2)(c); the provisions of Model Penal Code § 2.08(2) shall not apply to this Article.

(6) “Sexual contact” means . . . . [reserved].

(7) “Sexual intercourse” means:

(a) any act involving penetration, however slight, of the anus or vagina by any object or body part, unless done for bona fide medical, hygienic, or law-enforcement purposes; or

(b) direct contact between the mouth or tongue of one person and the anus, penis, or vagina of another person.

SECTION 213.1. RAPE AND RELATED OFFENSES

(1) An actor is guilty of rape, a felony of the second degree, if he or she knowingly or recklessly:

(a) uses physical force, physical restraint, or an implied or express threat of physical force, bodily injury, or physical restraint to cause another person to engage in an act of sexual intercourse with anyone; or

(b) causes another person to engage in an act of sexual intercourse by threatening to inflict bodily injury on someone other than such person or by threatening to commit any other crime of violence; or

(c) has, or enables another person to have, sexual intercourse with a person who, at the time of such act of sexual intercourse:
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(i) is less than 12 years old; or

(ii) is sleeping, unconscious, or physically unable to express nonconsent to engage in such act of sexual intercourse; or

(iii) lacks the capacity to express nonconsent to engage in such act of sexual intercourse, because of mental disorder or disability, whether temporary or permanent; or

(iv) lacks substantial capacity to appraise or control his or her conduct because of drugs, alcohol, or other intoxicating or consciousness-altering substances that the actor administered or caused to be administered, without the knowledge of such other person, for the purpose of impairing such other person’s capacity to express nonconsent to such act of sexual intercourse.

(2) An actor is guilty of aggravated rape, a felony of the first degree, if he or she violates subsection (1) of this Section and:

(a) uses a deadly weapon to cause the other person to engage in such act of sexual intercourse; or

(b) acts with the active participation or assistance of one or more other persons who are present at the time of the act of sexual intercourse; or

(c) knowingly or recklessly causes serious bodily injury to the other person or to anyone else for the purpose of causing such other person to engage in the act of sexual intercourse; or

(d) the act of sexual intercourse in violation of subsection (2) of this Section is a commercial sex act.

SECTION 213.2. SEXUAL INTERCOURSE BY COERCION OR IMPOSITION.

(1) An actor is guilty of sexual intercourse by coercion, a felony of the third degree, if he or she:

(a) knowingly or recklessly has, or enables another person to have, sexual intercourse with a person who at the time of the act of sexual intercourse:

   (i) has by words or conduct expressly indicated nonconsent to such act of sexual intercourse; or

   (ii) is undressed or is in the process of undressing for the purpose of receiving nonsexual professional services from the actor, and has not given consent to sexual activity; or

(b) obtains the other person’s consent by threatening to:

   (i) accuse anyone of a criminal offense or of a failure to comply with immigration regulations; or

   (ii) expose any information tending to impair the credit or business repute of any person; or
(iii) take or withhold action in an official capacity, whether public or private, or cause another person to take or withhold action in an official capacity, whether public or private; or

(iv) inflict any substantial economic or financial harm that would not benefit the actor; or

(c) knows or recklessly disregards the risk that the other person:

   (i) is less than 18 years old and the actor is a parent, foster parent, guardian, teacher, educational or religious counselor, school administrator, extracurricular instructor, or coach of such person; or

   (ii) is on probation or parole and that the actor holds any position of authority or supervision with respect to such person’s probation or parole; or

   (iii) is detained in a hospital, prison, or other custodial institution, and that the actor holds any position of authority at such facility.

(2) An actor is guilty of aggravated sexual intercourse by coercion, a felony of the second degree, if he or she violates subsection (1)(b) or (1)(c) of this Section and in doing so causes a person to engage in a commercial sex act involving sexual intercourse.

(3) An actor is guilty of sexual intercourse by imposition, a felony of the third degree, if he or she knowingly or recklessly has, or enables another person to have, sexual intercourse with a person who, at the time of the act of sexual intercourse:

   (a) lacks the capacity to express nonconsent to such act of sexual intercourse, because of intoxication, whether voluntary or involuntary, and regardless of the identity of the person who administered such intoxicants; or

   (b) is less than 16 years old and the actor is more than four years older than such person; or

   (c) is mentally disabled, developmentally disabled, or mentally incapacitated, whether temporarily or permanently, to the extent that such person is incapable of understanding the physiological nature of sexual intercourse, its potential for causing pregnancy, or its potential for transmitting disease; or

   (d) is mentally or developmentally disabled to the extent that such person’s social or intellectual capacities are no greater than that of a person who is less than 12 years old.

(4) An actor is guilty of aggravated sexual intercourse by imposition, a felony of the second degree, if he or she violates subsection (3) of this Section and in doing so causes a person to engage in a commercial sex act involving sexual intercourse.

SECTION 213.3. SEXUAL INTERCOURSE BY EXPLOITATION

An actor is guilty of sexual intercourse by exploitation, a felony of the fourth degree, if he or she has sexual intercourse with another person and:
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(1) is engaged in providing professional treatment, assessment, or counseling for a mental or emotional illness, symptom, or condition of such person over a period concurrent with or substantially contemporaneous with the time when the act of sexual intercourse occurs, regardless of the location where such act of sexual intercourse occurs and regardless of whether the actor is formally licensed to provide such treatment; or

(2) represents that the act of sexual intercourse is for purposes of medical treatment or that such person is in danger of physical injury or illness which the act of sexual intercourse may serve to mitigate or prevent; or

(3) knowingly leads such person to believe falsely that he or she is someone with whom such person has been sexually intimate.

SECTION 213.4. SEXUAL INTERCOURSE WITHOUT CONSENT.

An actor is guilty of sexual intercourse without consent, a misdemeanor, if the actor knowingly or recklessly has, or enables another person to have, sexual intercourse with a person who at the time of the act of sexual intercourse has not given consent to that act.

SECTION 213.5. CRIMINAL SEXUAL CONTACT

[Reserved]

SECTION 213.6. SEXUAL OFFENSES INVOLVING SPOUSES AND OTHER INTIMATE PARTNERS

[Reserved]

SECTION 213.7. PROCEDURAL AND EVIDENTIARY PRINCIPLES APPLICABLE TO ARTICLE 213

(1) Sexual Activity of the Complainant.

(a) General Rule

(i) In a prosecution under this Article, notwithstanding any other provision of law, reputation or opinion evidence about the sexual activity of the complainant is not admissible, unless constitutionally required.

(ii) Evidence of specific instances of sexual activity of the complainant, other than sexual activity with the accused, shall be inadmissible, except as provided in subsection (b), or when its admissibility is constitutionally required. If the proffered sexual activity alleges a prior instance of false accusation of a sexual offense, such evidence is further inadmissible unless the falsehood of the prior accusation is established by a preponderance of evidence, with proof beyond mere evidence that the complaint was judged unfounded or was otherwise not pursued.