



THE AMERICAN LAW INSTITUTE

MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

Council Draft No. 12
(December 2021)

SUBJECTS COVERED

ARTICLE 213	Sections 213.0-213.11J (black letter only; provisions marked by * for reapproval following motions approved at 2021 Annual Meeting)
APPENDIX A	Text of Amendments Approved at 2021 Annual Meeting
APPENDIX B	Comparison of Black Letter – Tentative Draft No. 5 to Council Draft No. 12
APPENDIX C	Pertinent Provisions of 1962 Model Penal Code

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**Model Penal Code:
Sexual Assault and Related Offenses**

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MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

COUNCIL DRAFT NO. 12

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PROJECT STATUS AT A GLANCE

Section 213.0(2)(e) (formerly Section 213.0(3) in T.D. No. 2) – approved as amended at 2016 Annual Meeting; approved by Council Oct. 2016

Section 213.0(2)(a) and (b) (formerly Section 213.0(1) and (2) in T.D. No. 3) – approved at 2017 Annual Meeting

Part I, Grading, and Part II, consisting of black letter and commentary of Sections 213.0 through 213.11J (other than previously approved portions of Section 213.0(2)(a), (b), and (e)) – approved at 2021 Annual Meeting; this marks completion of the project, pending Council approval of amendments approved at the 2021 Annual Meeting

History of Material in This Draft

The Council approved the start of this project in 2012. The most recent earlier version of black letter and commentary to Sections 213.0 through 213.11J can be found in Tentative Draft No. 5 (2021).

Model Penal Code: Sexual Assault and Related Offenses

Council Draft No. 12

Stephen J. Schulhofer, *Reporter*

December 7, 2021

REPORTERS' MEMORANDUM

This Council Draft contains the complete text of the black letter for the completed project to amend *Article 213 of the Model Penal Code*. In January 2021, Council approved black letter of equivalent scope in CD 11 and submitted it to the membership. At the Annual Meeting in June 2021, the membership passed a number of amendments and then gave its approval to that black letter, as amended. Where amended, the black-letter language has not yet been considered by Council, which accordingly must now decide whether to approve it.

Most of the amendments suggested a direction for revision rather than a definitive text and left it to the Reporter to translate the sense of each amendment into language that could be properly integrated into the final black letter. Subsequently, the Reporter, together with ALI staff, especially Ben Brady, completed the process of interpreting the sense of the amendments in light of discussion at the Annual Meeting, consulting with sponsors of the amendments where necessary, drafting suitable final language, and integrating it into the black letter. Council Draft 12 embodies the result of that process. In effect, it represents the exact black-letter text approved by the membership, subject only to the editorial prerogative of Boskey-compliant revisions.

The usual Comments and Reporters' Notes do not accompany this Draft because none of the amendments supersedes or renders inaccurate the Comments and Reporters' Notes included in D 5. Those Comments and Reporters' Notes remain adequate to support the black letter as amended.

The first section of this Council Draft contains that black letter, with signals to indicate amended language that requires Council approval. The Appendices contain, respectively: A, the text of the membership-approved amendments, as originally presented to the Annual Meeting; B, a comparison document showing the differences between the black letter of this Council Draft and that of TD 5; and C, the text of the 1962 Code provisions that are pertinent to revised Article 213.

Associate Reporter Erin Murphy is currently on leave from the project and did not participate in preparing this Council Draft. She expects to return to the project in the Fall of 2022.

ARTICLE 213
BLACK LETTER

1 *(Text marked with an asterisk indicates a change approved by the membership at the 2021 Annual*
2 *Meeting that now requires Council approval.)*

3 **SECTION 213.0. GENERAL PRINCIPLES OF LIABILITY; DEFINITIONS**

4 **(1) This Article is governed by Part I of the 1962 Model Penal Code, and the**
5 **definitions given in Section 210.0, except that:**

6 **(a) Section 2.11 (the definition of “consent”) does not apply to this article.**

7 **(b) Subsection (2) of Section 2.08 (Intoxication) does not apply to this article.**

8 **Instead, the general provisions of the criminal law and rules of evidence of the**
9 **jurisdiction govern the materiality of the actor’s intoxication in determining the**
10 **actor’s culpability for an offense.**

11 ***(2) Definitions***

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

13 **(a) “Sexual penetration” means an act involving penetration, however slight,**
14 **of the anus or genitalia by an object or a body part, except when done for legitimate**
15 **medical, hygienic, or law-enforcement purposes.**

16 **(b) “Oral sex” means a touching of the anus or genitalia of one person by the**
17 **mouth or tongue of another person.**

18 **(c) “Sexual contact” means any of the following acts, when the actor’s purpose**
19 **is the sexual arousal, sexual gratification, sexual humiliation, or sexual degradation**
20 **of any person:**

21 **(i) touching the clothed or unclothed genitalia, anus, groin, breast,**
22 **buttocks, or inner thigh of any person with any body part or object; or**

23 **(ii) touching any body part of any person with the clothed or unclothed**
24 **genitalia, anus, groin, breast, buttocks, or inner thigh of any person; or**

25 **(iii) touching any clothed or unclothed body part of any person with the**
26 **ejaculate of any person.**

27 **The touching described in paragraph (c) includes the actor touching another**
28 **person, another person touching the actor or a third party, or another person**

1 touching that person’s own body. It does not include the actor touching the actor’s
2 own body.

3 (d) “Fondling” means prolonged contact with or manipulation of the genitals,
4 when the actor’s purpose is the sexual arousal, sexual gratification, sexual
5 humiliation, or sexual degradation of any person. Fondling requires more than a
6 transient grope or grab. “To fondle” means to engage in fondling.

7 (e) “Consent”

8 (i) “Consent” for purposes of Article 213 means a person’s willingness
9 to engage in a specific act of sexual penetration, oral sex, or sexual contact.

10 (ii) Consent may be express or it may be inferred from behavior—both
11 action and inaction—in the context of all the circumstances.

12 (iii) Neither verbal nor physical resistance is required to establish that
13 consent is lacking, but their absence may be considered, in the context of all
14 the circumstances, in determining the issue of consent.

15 (iv) Notwithstanding subsection (2)(e)(ii) of this Section, consent is
16 ineffective when given by a person incompetent to consent or under
17 circumstances precluding the free exercise of consent, as provided in Sections
18 213.1, 213.2, 213.3, 213.4, 213.5, 213.7, 213.8, and 213.9.

19 (v) Consent may be revoked or withdrawn any time before or during
20 the act of sexual penetration, oral sex, or sexual contact. A clear verbal
21 refusal—such as “No,” “Stop,” or “Don’t”—establishes the lack of consent or
22 the revocation or withdrawal of previous consent. Lack of consent or
23 revocation or withdrawal of consent may be overridden by subsequent consent
24 given prior to the act of sexual penetration, oral sex, or sexual contact.

25 (f) Force.

26 (i) “Physical force or restraint” means a physical act or physical
27 restraint that inflicts more than negligible physical harm, pain, or discomfort
28 or that significantly restricts a person’s ability to move freely. More than
29 negligible physical harm includes but is not limited to a burn, black eye, or
30 bloody nose, and more than negligible pain or discomfort includes but is not
31 limited to the pain or discomfort resulting from a kick, punch, or slap on the

1 **face.**

2 (ii) “Aggravated physical force or restraint” means a physical act or
3 physical restraint that inflicts or is capable of inflicting death, serious bodily
4 injury, or extreme physical pain, or that confines another for a substantial
5 period in a place of isolation other than under color of law.

6 (g) “Actor” means a person more than 12 years old, except that “actor”
7 includes a person younger than 12 when the charge is Sexual Assault by Aggravated
8 Physical Force or Restraint (Section 213.1). “Actor” includes, where relevant, a
9 person guilty of an omission.

10 (h) “Registrable offense”

11 (i) “Registrable offense” means an offense that makes a convicted
12 person eligible for or subject to any of the collateral consequences specified in
13 Section 213.11.

14 (ii) No offense is a registrable offense under any provision of law unless
15 it is specifically so designated in this Article or is committed in another
16 jurisdiction, is a registrable offense in that jurisdiction, and would be a
17 registrable offense in this jurisdiction if it had been committed in this
18 jurisdiction.

19 **SECTION 213.1. SEXUAL ASSAULT BY AGGRAVATED PHYSICAL FORCE OR RESTRAINT**

20 (1) *Sexual Assault by Aggravated Physical Force or Restraint.* An actor is guilty of
21 **Sexual Assault by Aggravated Physical Force or Restraint** when:

22 (a) the actor causes another person to submit to or perform an act of sexual
23 penetration or oral sex; and

24 (b) the act is without effective consent because:

25 (i) the actor uses or explicitly or implicitly threatens to use aggravated
26 physical force or restraint against anyone; and

27 (ii) the actor’s use of or threat to use aggravated physical force or
28 restraint causes the other person to submit to or perform the act of sexual
29 penetration or oral sex; and

Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint

1 *(c) the actor acts knowingly with respect to the conduct, attendant
2 circumstances, and results specified in paragraphs (a) and (b).

3 (2) *Grading.* Sexual Assault by Aggravated Physical Force or Restraint is a registrable
4 offense. It is a felony of the third degree [*10-year maximum*], except that (1) the maximum
5 term of imprisonment is five years greater than that otherwise applicable to a felony of the
6 third degree; and (2) it is a felony of the second degree [*20-year maximum*] if the actor violates
7 subsection (1) of this Section and in so doing:

8 (a) knowingly uses or explicitly or implicitly threatens to use a deadly weapon
9 and knows that this act causes the other person to submit to or perform the act of
10 sexual penetration or oral sex; or

11 (b) knowingly acts with one or more persons who:

12 (i) also engage in an act or acts of sexual penetration or oral sex with
13 the same victim at the same place at a time contemporaneous with the actor's
14 violation of this Section; or

15 (ii) assist in the use of or threat to use aggravated physical force or
16 restraint when the actor's act of sexual penetration or oral sex occurs; or

17 *(c) recklessly causes serious bodily injury to any person.

18 (3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
19 other person submitted to or performed the act of sexual penetration or oral sex under the
20 circumstances described in subsection(1)(b). Submission, acquiescence, or words or conduct
21 that would otherwise indicate consent do not constitute effective consent when occurring in
22 a circumstance described in that subsection. If applicable, the actor may raise an affirmative
23 defense of Explicit Prior Permission according to the terms of Section 213.10.

24 **SECTION 213.2. SEXUAL ASSAULT BY PHYSICAL FORCE OR RESTRAINT**

25 (1) *Sexual Assault by Physical Force or Restraint.* An actor is guilty of Sexual Assault
26 by Physical Force or Restraint when:

27 (a) the actor causes another person to submit to or perform an act of sexual
28 penetration or oral sex; and

29 (b) the act is without effective consent because:

1 **(i) the actor uses or explicitly or implicitly threatens to use physical**
2 **force or restraint against anyone; and**

3 **(ii) the actor’s use of or threat to use physical force or restraint causes**
4 **the other person to submit to or perform the act of sexual penetration or oral**
5 **sex; and**

6 ***(c) the actor is reckless with respect to the conduct, attendant circumstances,**
7 **and results specified in paragraphs (a) and (b).**

8 **(2) Grading. Sexual Assault by Physical Force or Restraint is a felony of the third**
9 **degree [10-year maximum]. It is a registrable offense when the actor has previously been**
10 **convicted of a felony sex offense.**

11 **(3) Effective consent. Consent is ineffective under Section 213.0(2)(e)(iv) when the**
12 **other person submitted to or performed the act of sexual penetration or oral sex under the**
13 **circumstances described in subsection (1)(b). Submission, acquiescence, or words or conduct**
14 **that would otherwise indicate consent do not constitute effective consent when occurring in**
15 **a circumstance described in that subsection. If applicable, the actor may raise an affirmative**
16 **defense of Explicit Prior Permission according to the terms of Section 213.10.**

17 **SECTION 213.3. SEXUAL ASSAULT OF AN INCAPACITATED, VULNERABLE, OR LEGALLY**
18 **RESTRICTED PERSON**

19 **(1) Sexual Assault of an Incapacitated Person. An actor is guilty of Sexual Assault of**
20 **an Incapacitated Person when:**

21 ***(a) the actor engages in an act of sexual penetration or oral sex with another**
22 **person or causes another person to submit to or perform an act of sexual penetration**
23 **or oral sex; and**

24 **(b) the act is without effective consent because at the time of the act, the other**
25 **person:**

26 **(i) is sleeping, unconscious, or physically unable to communicate lack**
27 **of consent; or**

28 **(ii) lacks substantial capacity to appraise, control, or remember the**
29 **person’s own sexual conduct or that of anyone else because of a substance**

1 **administered to that person, without that person’s knowledge or consent;**
2 **and the actor administered the incapacitating substance for the purpose of**
3 **causing that incapacity or knows that it was surreptitiously administered by**
4 **another for that purpose; and**

5 ***(c) the actor is reckless with respect to the conduct, attendant circumstances,**
6 **and results specified in paragraphs (a) and (b).**

7 **Sexual Assault of an Incapacitated Person is a felony of the third degree [10-year**
8 **maximum]. It is a registrable offense when the actor has previously been convicted of a felony**
9 **sex offense.**

10 **(2) Sexual Assault of a Vulnerable Person. An actor is guilty of Sexual Assault of a**
11 **Vulnerable Person when:**

12 ***(a) the actor engages in an act of sexual penetration or oral sex with another**
13 **person or causes another person to submit to or perform an act of sexual penetration**
14 **or oral sex; and**

15 **(b) the act is without effective consent because at the time of the act, the other**
16 **person:**

17 **(i) has an intellectual, developmental, or mental disability, or a mental**
18 **illness, that makes the person substantially incapable of appraising the nature**
19 **of the sexual activity involved, or of understanding the right to give or**
20 **withhold consent in sexual encounters, and the actor has no similarly serious**
21 **disability; or**

22 **(ii) is passing in and out of consciousness; or**

23 **(iii) lacks substantial capacity to communicate lack of consent; or**

24 **(iv) is wholly or partly undressed, or in the process of undressing, for**
25 **the purpose of receiving nonsexual professional or commercial services from**
26 **the actor and has not given the actor explicit prior permission to engage in that**
27 **act; and**

28 ***(c) the actor is reckless with respect to the conduct, attendant circumstances,**
29 **and results specified in paragraphs (a) and (b).**

30 **Sexual Assault of a Vulnerable Person is a felony of the fourth degree [five-year**
31 **maximum].**

1 **(3) *Sexual Assault of a Legally Restricted Person.* An actor is guilty of Sexual Assault of**
2 **Legally Restricted Person when:**

3 *(a) the actor, who did not have a consensual sexually intimate relationship
4 with the other person at the time that a state-imposed restriction on that person's
5 liberty began, engages in an act of sexual penetration or oral sex with another person
6 or causes the other person to submit to or perform an act of sexual penetration or oral
7 sex; and

8 (b) the act is without effective consent because at the time of the act, the other
9 person is:

10 (i) in custody, incarcerated, on probation, on parole, under civil
11 commitment, in a pretrial release or pretrial diversion or treatment program,
12 or in any other status involving a state-imposed restriction on liberty; and

13 (ii) the actor is in a position of actual or apparent authority or
14 supervision over the restriction on the other person's liberty; and

15 *(c) the actor acts knowingly with respect to the conduct, attendant
16 circumstances, and results specified in paragraphs (a) and (b).

17 **Sexual Assault of a Legally Restricted Person is a felony of the fifth degree [*three-year***
18 ***maximum*].**

19 **(4) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when a**
20 **condition or circumstance described in subsections (1)(b), (2)(b), or (3)(b) existed at the time**
21 **the other person submitted to or performed the act of sexual penetration or oral sex.**
22 **Submission, acquiescence, or words or conduct that would otherwise indicate consent do not**
23 **constitute effective consent when occurring in a condition or circumstance described in these**
24 **subsections.**

25 **SECTION 213.4. SEXUAL ASSAULT BY EXTORTION**

26 **(1) *Sexual Assault by Extortion.* An actor is guilty of Sexual Assault by Extortion**
27 **when:**

28 **(a) the actor causes another person to submit to or perform an act of sexual**
29 **penetration or oral sex; and**

Section 213.4. Sexual Assault by Extortion

1 **(b) the act is without effective consent because the actor explicitly or implicitly**
2 **threatened:**

3 **(i) to accuse that person or anyone else of a criminal offense or of a**
4 **failure to comply with immigration regulations; or**

5 **(ii) to take or withhold action as an official, or cause an official to take**
6 **or withhold action, whether or not the purported official has actual authority**
7 **to do so; or**

8 **(iii) to take any action or cause any consequence that would cause**
9 **submission to or performance of the act of sexual penetration or oral sex by**
10 **someone of ordinary resolution in that person’s situation under all the**
11 **circumstances; and**

12 **(iv) the actor’s threat causes the other person to submit to or perform**
13 **the act of sexual penetration or oral sex; and**

14 *** (c) the actor is reckless with respect to the conduct, attendant circumstances,**
15 **and results specified in paragraphs (a) and (b).**

16 **(2) *Grading.* Sexual Assault by Extortion is a felony of the fourth degree [*five-year***
17 ***maximum*].**

18 **(3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the**
19 **other person submitted to or performed the act of sexual penetration or oral sex because of**
20 **a threat described in subsection (1)(b). Submission, acquiescence, or words or conduct that**
21 **would otherwise indicate consent do not constitute effective consent when occurring in a**
22 **circumstance described in that paragraph. If applicable, the actor may raise an affirmative**
23 **defense of Explicit Prior Permission under Section 213.10.**

24 **SECTION 213.5. SEXUAL ASSAULT BY PROHIBITED DECEPTION**

25 **(1) An actor is guilty of Sexual Assault by Prohibited Deception when:**

26 **(a) the actor causes another person to submit to or perform an act of sexual**
27 **penetration or oral sex; and**

28 **(b) the act is without effective consent because:**

29 **(i) the actor caused the other person to believe falsely that the act had**

1 **diagnostic, curative, or preventive medical properties; or**

2 **(ii) the actor caused the other person to believe falsely that the actor**
3 **was someone else who was personally known to that person; and**

4 **(iii) the actor's deception causes the other person to submit to or perform**
5 **the act of sexual penetration or oral sex; and**

6 ***(c) the actor is reckless with respect to the conduct, attendant circumstances,**
7 **and results specified in paragraphs (a) and (b).**

8 **(2) Grading. Sexual Assault by Prohibited Deception is a felony of the fifth degree**
9 **[three-year maximum].**

10 **(3) Effective consent. Consent is ineffective under Section 213.0(2)(e)(iv) when the**
11 **other person submitted to or performed the act of sexual penetration or oral sex because of**
12 **a circumstance described in subsection (1)(b). Submission, acquiescence, or words or**
13 **conduct that would otherwise indicate consent do not constitute effective consent when**
14 **occurring in a circumstance described in that paragraph.**

15 **SECTION 213.6. SEXUAL ASSAULT IN THE ABSENCE OF CONSENT**

16 **(1) An actor is guilty of Sexual Assault in the Absence of Consent when:**

17 **(a) the actor causes another person to submit to or perform an act of sexual**
18 **penetration or oral sex; and**

19 **(b) the other person does not consent to that act; and**

20 ***(c) the actor is reckless with respect to the conduct, attendant circumstances,**
21 **and results specified in paragraphs (a) and (b).**

22 **(2) Grading. Sexual Assault in the Absence of Consent is a felony of the fifth degree**
23 **[three-year maximum], except that it is a felony of the fourth degree [five-year maximum]**
24 **when:**

25 **(a) the other person has, by words or actions, expressly communicated**
26 **unwillingness to submit to or perform the act, or the act is so sudden or unexpected**
27 **that the other person has no adequate opportunity to express unwillingness before the**
28 **act occurs; and**

29 ***(b) the actor is reckless with respect to the attendant circumstance specified**

1 **in paragraph (a).**

2 **(3) If applicable, the actor may raise an affirmative defense of Explicit Prior**
3 **Permission under Section 213.10.**

4 **SECTION 213.7. OFFENSIVE SEXUAL CONTACT BY PHYSICAL FORCE OR RESTRAINT OR BY**
5 **SURREPTITIOUS INCAPACITATION; OFFENSIVE SEXUAL CONTACT**

6 ***(1) Offensive Sexual Contact by Physical Force or Restraint or by Surreptitious***
7 ***Incapacitation. An actor is guilty of Offensive Sexual Contact by Physical Force or Restraint***
8 ***or by Surreptitious Incapacitation when:***

9 ****(a) the actor knowingly engages in an act of sexual contact with another***
10 ***person or causes another person to submit to or perform an act of sexual contact; and***

11 ***(b) the act is without effective consent because:***

12 ***(i) the actor uses or explicitly or implicitly threatens to use physical***
13 ***force or restraint against anyone, and that conduct causes the other person to***
14 ***submit to or perform the act of sexual contact; or***

15 ***(ii) at the time of the act of sexual contact the other person lacks***
16 ***substantial capacity to appraise, control, or remember the person's own sexual***
17 ***conduct or that of anyone else because of a substance administered to that***
18 ***person, without that person's knowledge or consent; and the actor***
19 ***administered the incapacitating substance for the purpose of causing that***
20 ***incapacity or knows that it was surreptitiously administered by another for that***
21 ***purpose; and***

22 ****(c) the actor is reckless with respect to the conduct, attendant circumstances,***
23 ***and results specified in paragraph (b).***

24 **Offensive Sexual Contact by Physical Force or Restraint or by Surreptitious**
25 **Incapacitation is a felony of the fifth degree [*three-year maximum*].**

26 ***(2) Offensive Sexual Contact. An actor is guilty of Offensive Sexual Contact when:***

27 ****(a) the actor knowingly engages in an act of sexual contact with another***
28 ***person or causes another person to submit to or perform an act of sexual contact; and***

1 ***(b) the other person did not consent to that act, and the actor is reckless with**
2 **respect to the lack of consent; or**

3 **(c) the act is without effective consent because:**

4 ***(i) the other person is unaware that such act is occurring, or is**
5 **physically unable to communicate lack of consent at the time of the act, and**
6 **the actor is reckless with respect to whether the other person is in that**
7 **condition at the time of the act; or**

8 **(ii) the act would be an offense as defined by Section 213.3(2) or (3),**
9 **involving vulnerable or legally restricted persons, had the act been one of**
10 **sexual penetration or oral sex; or**

11 **(iii) the act would be an offense as defined by Section 213.4, involving**
12 **extortion, had the act been one of sexual penetration or oral sex; or**

13 **(iv) the act would be an offense as defined by Section 213.5, involving**
14 **prohibited deception, had the act been one of sexual penetration or oral sex.**

15 **Offensive Sexual Contact is a petty misdemeanor [six-month maximum].**

16 **(3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the**
17 **other person submitted to or performed the act of sexual contact in a circumstance described**
18 **in subsections (1)(b) or (2)(c). Submission, acquiescence, or words or conduct that would**
19 **otherwise indicate consent do not constitute effective consent when occurring in a**
20 **circumstance described in those subsections. If applicable, an actor charged with a violation**
21 **of subsections (1)(b)(i), (2)(b), or (2)(c)(iii) may raise an affirmative defense of Explicit Prior**
22 **Permission under Section 213.10.**

23 **SECTION 213.8. SEXUAL OFFENSES INVOLVING MINORS**

24 **(1) *Sexual Assault of a Minor.* An actor is guilty of Sexual Assault of a Minor when:**

25 **(a) the actor engages in an act of sexual penetration or oral sex with another**
26 **person or causes another person to submit to or perform an act of sexual penetration**
27 **or oral sex; and**

28 **(b) the act is without effective consent because at the time of the act:**

29 **(i) the other person is younger than 16; and**

1 (ii) the actor is more than five years older than the other person; and

2 *(c) the actor is reckless with respect to the conduct, attendant circumstances,
3 and results specified in paragraphs (a) and (b).

4 *Sexual Assault of a Minor is a felony of the fifth degree [*three-year maximum*] except
5 that it is a felony of the fourth degree [*five-year maximum*] when at the time of the act the
6 actor is 21 or older, and it is a felony of the third degree [*10-year maximum*] and a registrable
7 offense when at the time of the act the actor is 21 or older, the other person is younger than
8 12, and the actor is reckless with respect to whether the other person is younger than 12.

9 (2) *Incestuous Sexual Assault of a Minor*. An actor is guilty of Incestuous Sexual
10 Assault of a Minor when:

11 (a) the actor engages in an act of sexual penetration or oral sex with another
12 person or causes another person to submit to or perform an act of sexual penetration
13 or oral sex; and

14 (b) at the time of the act, the actor is 18 or older and the other person is
15 younger than 18; and

16 (c) the act is without effective consent because at the time of the act the actor
17 is:

18 (i) a parent or grandparent of the other person, including a biological,
19 step, adoptive, or foster parent or grandparent; or

20 (ii) the legal spouse, domestic partner, or sexual partner of a person
21 described by subparagraph (i); or

22 (iii) a legal guardian or de facto parent of the other person, who resides
23 intermittently or permanently in the same dwelling as the other person; and

24 *(d) the actor is reckless with respect to the conduct, attendant circumstances,
25 and results specified in paragraphs (a), (b), and (c).

26 Incestuous Sexual Assault of a Minor is a felony of the third degree [*10-year*
27 *maximum*]. It is a registrable offense when at the time of the act the other person is younger
28 than 16.

29 (3) *Exploitative Sexual Assault of a Minor*. An actor is guilty of Exploitative Sexual
30 Assault of a Minor when:

1 **(a) the actor engages in an act of sexual penetration or oral sex with another**
2 **person or causes another person to submit to or perform an act of sexual penetration**
3 **or oral sex; and**

4 **(b) the act is without effective consent because at the time of the act:**

5 **(i) the other person is younger than 18; and**

6 **(ii) the actor is more than five years older than the other person; and**

7 **(iii) the actor holds over the other person a formal position of authority,**
8 **such as a teacher, employer, religious leader, treatment provider,**
9 **administrator, or coach; and**

10 ***(c) the actor is reckless with respect to the conduct, attendant circumstances,**
11 **and results specified in paragraphs (a) and (b).**

12 **Exploitative Sexual Assault of a Minor is a felony of the fifth degree [*three-year***
13 ***maximum*]. It is a defense to a prosecution under Section 213.8(3) for the actor to prove by a**
14 **preponderance of the evidence that the actor's position of authority over the other person**
15 **did not impair the other person's ability to form an independent judgment about whether to**
16 **consent to the act of sexual penetration or oral sex.**

17 **(4) *Fondling a Minor.* An actor is guilty of Fondling a Minor when:**

18 **(a) the actor knowingly fondles another person, or knowingly causes another**
19 **person to submit to or perform an act of fondling; and**

20 **(b) the act is without effective consent because at the time of the act:**

21 **(i) the other person is younger than 12 and the actor is more than five**
22 **years older than the other person; or**

23 **(ii) the other person is younger than 16 and the actor is more than seven**
24 **years older than the other person; and**

25 ***(c) the actor is reckless with respect to the attendant circumstances described**
26 **in paragraph (b)(i) or (ii).**

27 ****Grading.* Fondling a Minor is a felony of the fifth degree [*three-year maximum*],**
28 **except that it is a felony of the fourth degree [*five-year maximum*] when at the time of the act**
29 **the actor is 21 or older, the other person is younger than 12, and the actor is reckless with**
30 **respect to whether the other person is younger than 12.**

1 **(5) *Aggravated Offensive Sexual Contact with a Minor.* An actor is guilty of Aggravated**
2 **Offensive Sexual Contact with a Minor when:**

3 **(a) the actor knowingly engages in an act of sexual contact with another person**
4 **or causes another person to submit to or perform an act of sexual contact; and**

5 **(b) the act is without effective consent because at the time of the act:**

6 **(i) the other person is younger than 18; and**

7 **(ii) the actor is more than five years older than the other person; and**

8 **(iii) the act, had it been an act of sexual penetration or oral sex, would**
9 **be an offense as defined by Section 213.1, 213.2, 213.3, 213.4, 213.5, or 213.8(2)**
10 **or (3); and**

11 ***(c) the actor is reckless with respect to the attendant circumstances described**
12 **in paragraph (b)(i) and (ii).**

13 **Aggravated Offensive Sexual Contact with a Minor is a felony of the fourth degree**
14 **[*five-year maximum*].**

15 **(6) *Offensive Sexual Contact with a Minor.* An actor is guilty of Offensive Sexual**
16 **Contact with a Minor when:**

17 ***(a) the actor knowingly engages with another person in, or causes another**
18 **person to submit to or perform:**

19 **(i) an act of sexual contact; or**

20 **(ii) an act involving the touching of the tongue of anyone to any body**
21 **part or object, when that act is for the purpose of anyone's sexual arousal,**
22 **sexual gratification, sexual humiliation, or sexual degradation; and**

23 **(b) the act is without effective consent because at the time of the act:**

24 **(i) the other person is younger than 12, and the actor is more than five**
25 **years older than the other person; or**

26 **(ii) the other person is younger than 16, and the actor is more than**
27 **seven years older than the other person; and**

28 ***(c) the actor is reckless with respect to the attendant circumstances described**
29 **in paragraph (b)(i) or (ii).**

30 ***Offensive Sexual Contact with a Minor is a misdemeanor [*one-year maximum*],**
31 **except that it is a felony of the fifth degree [*three-year maximum*] when at the time of the act**

1 the actor is 21 or older, the other person is younger than 12, and the actor is reckless with
2 respect to whether the other person is younger than 12.

3 (7) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
4 circumstances described in any of the subsections (1) through (6) exist at the time of the act.
5 Submission, acquiescence, or words or conduct that would otherwise indicate consent do not
6 constitute effective consent when occurring in the circumstances described in any of those
7 subsections.

8 (8) *Calculation of ages.* The age of any person described in this Section is calculated
9 according to the “days-and-month” approach, which determines age by the day, month, and
10 year of that person’s birth, measured in whole numbers.

11 [(9) *Affirmative defense of marriage.* It is an affirmative defense to a charge under
12 subsections (1), (3), (4), and (6) of this Section, and to a charge under subsection (5)(b) based
13 on an act that would be a violation of subsection (3) had it been an act of sexual penetration
14 or oral sex, that the actor was the legal spouse of the other person at the time of the act of
15 sexual penetration, oral sex, fondling, or sexual contact.]

16 *(10) In a juvenile court proceeding to adjudicate delinquency on the basis of conduct
17 that would constitute an offense under this Section, an actor younger than 14 may be
18 adjudicated delinquent only as a misdemeanor, regardless of the penalty authorized for that
19 conduct when it constitutes an offense under this Section.

20 SECTION 213.9. SEX TRAFFICKING

21 (1) *Sex Trafficking.* An actor is guilty of Sex Trafficking if the actor knowingly
22 recruits, entices, transports, transfers, harbors, provides, isolates, or maintains a person by
23 any means, with the purpose of facilitating a commercial sex act involving that person when:

24 (a) coercion is being, or will be, used to cause the person to submit to or
25 perform a commercial sex act, which therefore will be without effective consent; and
26 the actor knows that coercion is being or will be used to cause the person to submit to
27 or perform that commercial sex act; or

28 *(b) the person is younger than 18 and is being, or will be, caused to submit to
29 or perform a commercial sex act; and the actor is reckless with respect to whether the

1 person is younger than 18 and is being, or will be, caused to submit to or perform the
2 commercial sex act.

3 **(2) Definitions.** For purposes of Section 213.9(1):

4 (a) “Coercion” means:

5 (i) using or threatening to use physical force or restraint against
6 anyone;

7 (ii) taking, destroying, or threatening to take or destroy the person’s
8 money, credit or debit card, passport, driver’s license, immigration document,
9 or other government-issued identification document, including a document
10 issued by a foreign government, or any travel document pertaining to the
11 person;

12 (iii) restricting or threatening to restrict the person’s access to a
13 substance that is a controlled substance under the federal Controlled
14 Substance Act, 21 U.S.C. § 801 et seq.;

15 (iv) administering or withholding a controlled substance in
16 circumstances that impair the person’s physical or mental ability to avoid,
17 evade, or flee from the actor;

18 (v) using a scheme, plan, deception, misrepresentation, or pattern of
19 behavior for the purpose of causing the person to believe that failing to submit
20 to or perform a commercial sex act would result in physical, psychological,
21 financial, or reputational harm to anyone that is sufficiently serious to cause
22 someone of ordinary resolution, who is of the same background, in the same
23 circumstances, and in the same physical and mental condition as that person,
24 to submit to or perform a commercial sex act in order to avoid incurring that
25 harm; or

26 (vi) any combination of these circumstances.

27 (b) “Commercial Sex Act” means any act of sexual penetration, oral sex, or
28 sexual contact performed in exchange, or the expectation of exchange, for money,
29 property, services, or any other thing of value given to or received by anyone.

30 **(3) Grading.** Sex Trafficking is a felony of the third degree [*10-year maximum*].

1 **(4) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when a**
2 **circumstance described in subsection (1) is present. Submission, acquiescence, or words or**
3 **conduct that would otherwise indicate consent do not constitute effective consent when**
4 **occurring under a circumstance described in that subsection. If applicable, the actor may**
5 **raise an affirmative defense of Explicit Prior Permission under Section 213.10 when:**

6 **(a) a charge of Sex Trafficking is based on coercion under subsection (1)(a);**
7 **and**

8 **(b) the person giving such permission does so before that person has been**
9 **subjected to trafficking under subsection (1) and before that person has been**
10 **subjected to coercion under subsection (1)(a).**

11 **SECTION 213.10. AFFIRMATIVE DEFENSE OF EXPLICIT PRIOR PERMISSION**

12 **(1) Except as provided in subsection (3), it is an affirmative defense to a charge under**
13 **this Article that the actor reasonably believed that, in connection with the charged act of**
14 **sexual penetration, oral sex, or sexual contact, the other party personally gave the actor**
15 **explicit prior permission to use or threaten to use physical force or restraint, or to inflict or**
16 **threaten to inflict any harm otherwise proscribed by Sections 213.1, 213.2, 213.4, 213.7, or**
17 **213.9, or to ignore the absence of consent otherwise proscribed by Section 213.6.**

18 ***(2) Permission is “explicit” under subsection (1) only when it is given orally or by**
19 **written agreement:**

20 **(a) specifying that the actor may ignore the other party’s expressions of**
21 **unwillingness or other absence of consent;**

22 **(b) identifying the specific forms and extent of force, restraint, or threats that**
23 **are permitted; and**

24 **(c) stipulating the specific words or gestures that will withdraw the permission.**

25 **Permission given by gestures or other nonverbal conduct signaling assent is not**
26 **“explicit” under subsection (1).**

27 **(3) The defense provided by this Section is unavailable when:**

1 ***(a) the act of sexual penetration, oral sex, or sexual contact occurs after the**
2 **explicit permission was withdrawn, and the actor is reckless with respect to whether**
3 **the permission was withdrawn;**

4 **(b) the actor relies on permission to use force or restraint or ignore the absence**
5 **of consent at a time when the other party will be unconscious, asleep, or otherwise**
6 **unable to withdraw that permission;**

7 ***(c) the actor recklessly engages in conduct that causes or risks serious bodily**
8 **injury; or**

9 ***(d) at the time explicit permission is given, the other party is, and the actor is**
10 **reckless with respect to whether the other party is:**

11 **(i) younger than 18;**

12 **(ii) giving that permission while subjected to physical force or restraint;**

13 **(iii) giving that permission because of the use of or threat to use physical**
14 **force or restraint, or extortion as defined by Section 213.4, if that party does**
15 **not give the permission;**

16 **(iv) lacking substantial capacity to appraise or control that party's**
17 **conduct as a result of intoxication, whether voluntary or involuntary, and**
18 **regardless of the identity of the person who administered the intoxicants;**

19 **(v) incapacitated, vulnerable, or legally restricted, as defined by Section**
20 **213.3;**

21 **(vi) subject to prohibited deception, as defined by Section 213.5; or**

22 **(vii) subject to trafficking, as defined by Section 213.9(1).**

23 **SECTION 213.11. SENTENCING AND COLLATERAL CONSEQUENCES OF CONVICTION**

24 **(1) Definitions. For purposes of this Article:**

25 **(a) "sentencing consequences" are penalties, disabilities, or disadvantages that**
26 **are part of the sentence imposed by the court or by an agency authorized to set the**
27 **terms of parole or post-release supervision in connection with conviction of an Article**
28 **213 offense; and**

29 **(b) "collateral consequences" are penalties, disabilities, or disadvantages,**

1 **however denominated, that are authorized or required by federal, state, or local law**
2 **as a direct result of an individual’s conviction of an Article 213 offense but are not**
3 **part of the sentence imposed by the court or by an agency authorized to set the terms**
4 **of parole or post-release supervision in connection with that conviction.**

5 **(2) *General Rule.* Sentencing procedure, the authorized disposition of a person**
6 **convicted of an Article 213 offense, sentencing consequences, and collateral consequences are**
7 **specified in Articles 6 and 7 of this Code,* and are subject to the additional requirements of**
8 **this Section.**

9 **(3) *Additional Requirements for Sentencing Consequences.* Notwithstanding any**
10 **contrary provisions of law, the conditions of any suspended sentence under Section 6.02(2),**
11 **any sentence to probation under Section 6.05, and any terms of parole or post-release**
12 **supervision under Section 6.13 must be eligible for early relief under Section 213.11J and**
13 **must not include:**

14 **(a) a condition that:**

15 **(i) imposes an obligation to register with law enforcement that carries**
16 **requirements other than those authorized under Sections 213.11A-213.11G**
17 **and Section 213.11J;**

18 **(ii) permits access to the person’s registry information, except as**
19 **authorized under Section 213.11H; or**

20 **(iii) authorizes or permits any government official to notify a public or**
21 **private entity or individual, other than a government law-enforcement agency**
22 **or individual, that the person is registered with law enforcement or resides,**
23 **works, or studies in the locality;**

24 **(b) a condition that restricts the person’s occupation or employment, except as**
25 **required by state law or authorized under paragraph (d) of this subsection; or**

26 **(c) except as authorized under paragraph (d) of this subsection, a condition**
27 **that:**

28 **(i) requires the person to submit to GPS monitoring; or**

29 **(ii) restricts the person’s education, Internet access, or place of**
30 **residence.**

* MODEL PENAL CODE: SENTENCING, *Official Statutory Text* (May 24, 2017).

1 **(d) The court, and any agency authorized to set the terms of parole or post-**
2 **release supervision, may impose a condition, not required by state law, that restricts**
3 **the person’s occupation or employment, or a condition specified in paragraph (c) of**
4 **this subsection, only if the court or agency determines that the condition is manifestly**
5 **required in the interest of public safety. That determination must be:**

6 **(i) made after due consideration of the nature of the offense; all other**
7 **circumstances of the case; the person’s prior record; and the potential**
8 **negative impacts of the burden, restriction, requirement, or government**
9 **action on the person, on the person’s family, and on the person’s prospects for**
10 **rehabilitation and reintegration into society; and**

11 **(ii) accompanied by a written statement of the official setting the**
12 **condition, explaining the need for it, the evidentiary basis for the finding of**
13 **need, and the reasons why a more narrowly drawn condition would not**
14 **adequately meet that need.**

15 **(e) Any condition imposed under paragraph (d) must be:**

16 **(i) drawn as narrowly as possible to achieve the goal of public safety;**
17 **and**

18 **(ii) imposed only for a period not to exceed that permitted under**
19 **Section 213.11F for the duties to register and keep the registration current.**

20 ***(4) Additional Requirements for Collateral Consequences that are Applicable Primarily***
21 ***to Persons Convicted of a Sexual Offense.*** Notwithstanding any contrary provisions of law,
22 **collateral consequences applicable primarily to persons convicted of a sexual offense,**
23 **including the obligation to register with law enforcement; associated duties; restrictions on**
24 **occupation and employment, education, and place of residence applicable primarily to**
25 **persons convicted of a sexual offense; and other collateral consequences applicable primarily**
26 **to persons convicted of a sexual offense, are authorized and their scope and implementation**
27 **are delineated as follows:**

28 **(a) The person’s obligation to register for law-enforcement purposes is**
29 **governed by Section 213.11A.**

30 **(b) Notification of the person’s obligation to register and associated duties**
31 **is governed by Section 213.11B.**

1 (c) The time of initial registration is governed by Section 213.11C.

2 (d) The information required upon registration is specified in Section
3 213.11D.

4 (e) The duty to keep registration current is specified in Section 213.11E.

5 (f) The duration of the registration requirements is specified in Section
6 213.11F.

7 (g) Penalties for failure to register are governed by Section 213.11G.

8 (h) Access to registry information is governed by Section 213.11H.

9 (i) Collateral consequences applicable primarily to persons convicted of a
10 sexual offense, other than the obligation to register for law-enforcement purposes
11 and restrictions on occupation and employment required by state law, are
12 governed by Section 213.11I.

13 (j) Standards and procedures for relief from the obligation to register,
14 associated duties, and other collateral consequences applicable specifically to
15 persons convicted of a sexual offense are governed by Section 213.11J.

16 **(5) Retroactive Effect.* As of the effective date of this Section, all prior registration
17 requirements and other collateral consequences applicable primarily to persons convicted of
18 a sexual offense, whether imposed by this or any other jurisdiction, are subject to the
19 requirements and limits of this Section and Sections 213.11A-J.

20 **SECTION 213.11A. REGISTRATION FOR LAW-ENFORCEMENT PURPOSES**

21 ***(1) Convictions in This Jurisdiction***

22 (a) Except as provided in subsection (3), every person convicted of an offense
23 that is designated a registrable offense in this Article must, in addition to any other
24 sanction imposed upon conviction, appear personally and register, at the time
25 specified in Section 213.11C, with the law-enforcement authority designated by law
26 in the [county] where the person resides. If the person who is required to register
27 under this subsection does not reside in this jurisdiction, but works in this
28 jurisdiction, registration must be accomplished in the [county] where the person
29 works; if the person does not reside or work in this jurisdiction but is enrolled in a

1 program of study in this jurisdiction, registration must be accomplished in the
2 [county] where the person studies.

3 (b) Notwithstanding any other provision of law, no conviction for an offense
4 under this Article, or for any other criminal offense in this jurisdiction, will require
5 the person convicted to register with law enforcement or other governmental
6 authority in a registry regime applicable primarily to persons convicted of a sexual
7 offense, unless this Article designates that offense as a registrable offense.

8 ***(2) Convictions in Other Jurisdictions***

9 (a) ***Duty to register and related duties.*** Every person currently obliged to
10 register with law enforcement or other public authority in another jurisdiction,
11 because of a sexual-offense conviction in that jurisdiction, who subsequently resides,
12 works, or enrolls in a program of study in this jurisdiction, must register with the
13 law-enforcement authority designated by law and comply with the requirements of
14 Sections 213.11A-213.11G, provided that the conviction offense in the other
15 jurisdiction is comparable to an offense that would be registrable under this Article
16 if committed in this jurisdiction.

17 (b) ***Place of registration.*** If the person who is obliged to register under
18 paragraph (a) resides in this jurisdiction, registration must be accomplished in the
19 [county] where the person resides. If the person who is obliged to register under
20 paragraph (a) does not reside in this jurisdiction, but works in this jurisdiction,
21 registration must be accomplished in the [county] where the person works; if the
22 person does not reside or work in this jurisdiction but is enrolled in a program of
23 study in this jurisdiction, registration must be accomplished in the [county] where the
24 person studies.

25 (c) ***Determining the comparability of conviction offenses in other jurisdictions***

26 (i) ***Standard.*** A conviction offense in another jurisdiction is comparable
27 to a registrable offense under this Article if and only if the elements of the
28 other jurisdiction's offense are no broader than the elements of that
29 registrable offense. When, regardless of the conduct underlying the other
30 jurisdiction's conviction, the other jurisdiction's offense can be committed by
31 conduct that is not sufficient to establish a registrable offense under this

1 **Article, the two offenses are not comparable.**

2 **(ii) *Procedure.* Before determining that a conviction offense in another**
3 **jurisdiction is comparable to a registrable offense under this Article, the**
4 **authority designated to make that determination must give the person**
5 **concerned notice and an opportunity to be heard on that question, either orally**
6 **or in writing.**

7 **(d) Notwithstanding any other provision of law, no conviction for a sexual**
8 **offense in another jurisdiction will require the offender to register with law**
9 **enforcement or other governmental authority in this jurisdiction, unless that**
10 **conviction currently requires the offender to register with law enforcement or other**
11 **governmental authority in that jurisdiction and the conviction is for an offense**
12 **comparable to an offense that would be registrable under this Article if committed in**
13 **this jurisdiction.**

14 **(3) *Persons Under the Age of 18.* No person may be subject to the obligation to register**
15 **under subsection (1) of this Section, to other obligations or restrictions under this Section, or**
16 **to additional collateral consequences under Section 213.11I, on the basis of a criminal**
17 **conviction for an offense committed when the person was under the age of 18, or on the basis**
18 **of an adjudication of delinquency based on conduct when the person was under the age of**
19 **18; provided, however, that this subsection (3) does not apply to a person convicted of a**
20 **criminal offense of Sexual Assault by Aggravated Physical Force or Restraint if the person**
21 **was at least 16 years old at the time of that offense.**

22 **SECTION 213.11B. NOTIFICATION OF THE OBLIGATION TO REGISTER AND ASSOCIATED**
23 **DUTIES**

24 **(1) Before accepting a guilty plea, and at the time of sentencing after conviction on a**
25 **guilty plea or at trial, the sentencing judge must:**

26 **(a) inform the person who is subject to registration of the registration**
27 **requirement;**

28 **(b) explain the associated duties, including:**

29 **(i) the identity and location, or procedure for determining the identity**

1 **and location, of the law-enforcement agency where the person must appear to**
2 **register as required by Section 213.11A;**

3 **(ii) the duty to register with a law-enforcement agency in any locality**
4 **where the person subsequently resides, including the possible duty to register**
5 **with a law-enforcement agency or other government authority in another**
6 **jurisdiction to which the person subsequently moves;**

7 **(iii) the duty to report to that office or agency periodically in person, as**
8 **required by Section 213.11E(1); and**

9 **(iv) the duty to promptly notify at least one of the local jurisdictions**
10 **where the person is registered of any change in the registry information**
11 **pertaining to that person, as required by Section 213.11E(2);**

12 **(c) notify the person of the right to petition for relief from those duties as**
13 **provided in Section 213.11J;**

14 **(d) confirm that defense counsel has explained to that person those duties and**
15 **the right to petition for relief from those duties;**

16 **(e) confirm that the person understands those duties and that right;**

17 **(f) require the person to read and sign a form stating that defense counsel and**
18 **the sentencing judge have explained the applicable duties and the right to petition for**
19 **relief from those duties, and that the person understands those duties and that right;**

20 **(g) ensure that if the person convicted of a sexual offense cannot read or**
21 **understand the language in which the form is written, the person will be informed of**
22 **the pertinent information by other suitable means that the jurisdiction uses to**
23 **communicate with such individuals; and**

24 **(h) satisfy all other notification requirements applicable under Model Penal**
25 **Code: Sentencing, Section 7.04(1).**

26 **(2) At the time of sentencing, the convicted person shall receive a copy of the form**
27 **signed pursuant to subsection (1)(f) of this Section.**

28 **(3) If the convicted person is sentenced to a custodial sanction, an appropriate official**
29 **must, shortly before the person's release from custody, again inform the person of the**
30 **registration requirement, explain the associated rights and duties, including the right to**
31 **petition for relief from those duties, and require the person to read and sign a form stating**

1 that those rights and duties have been explained and that the person understands those rights
2 and duties. At the time of release from custody, the person concerned shall receive a copy of
3 that form.

4 **SECTION 213.11C. TIME OF INITIAL REGISTRATION**

5 A person subject to registration must initially register:

6 (a) if incarcerated after sentence is imposed, then within three business days
7 after release; or

8 (b) if not incarcerated after sentence is imposed, then not later than five
9 business days after being sentenced for the offense giving rise to the duty of
10 registration.

11 **SECTION 213.11D. INFORMATION REQUIRED IN REGISTRATION**

12 (1) A person subject to registration under Section 213.11A must provide the following
13 information to the appropriate official for inclusion in the law-enforcement registry:

14 (a) the name of the person (including any alias used by the person);

15 (b) the Social Security number, if any, of the person;

16 (c) the address of each place where the person resides or expects to reside;

17 (d) the name and address of any place where the person works or expects to
18 work;

19 (e) the name and address of any place where the person is a student or expects
20 to be a student;

21 (f) the license-plate number and a description of any vehicle owned or
22 regularly operated by the person.

23 (2) *Supplementary Information.* The local jurisdiction in which a person registers must
24 ensure that the following information is included in the registry for that person and kept up
25 to date:

26 (a) the text of the provision of law defining the sexual offense for which the
27 person is registered;

1 **(b) the person’s criminal history, including the date and offense designation of**
2 **all convictions; and the person’s parole, probation, or supervised-release status;**

3 **(c) any other information required by law.**

4 **(3) *Registrants Who Lack a Stable Residential Address.* If a person required to register**
5 **lacks a stable residential address, the person must, at the time of registration, report with as**
6 **much specificity as possible the principal place where the person sleeps, instead of the**
7 **information required under subsection (1)(c).**

8 **(4) The local jurisdiction in which a person registers must promptly provide the**
9 **information specified in subsections (1), (2), and (3) of this Section to an appropriate law-**
10 **enforcement authority in every other jurisdiction in which the registrant works or expects**
11 **to work and is enrolled or expects to enroll in a program of study.**

12 **(5) *Correction of Errors.* Each locality where a person registers and each locality that**
13 **receives information about a registrant pursuant to subsection (4) of this Section must**
14 **provide efficacious, reasonably accessible procedures for correcting erroneous registry**
15 **information. Each locality where a person registers must, at the time of registration, provide**
16 **the registrant instructions on how to use those procedures to seek correction of registry**
17 **information that the registrant believes to be erroneous.**

18 **SECTION 213.11E. DUTY TO KEEP REGISTRATION CURRENT**

19 ****(1) Annual Updates***

20 **(a) A person who is required to register under Section 213.11A must, not less**
21 **frequently than once every year, appear in person in the jurisdiction where the person is**
22 **required to register under Section 213.11A, verify the current accuracy of the information**
23 **provided in compliance with Section 213.11D(1), allow the jurisdiction to take a current**
24 **photograph, and report any change in the identity of other jurisdictions in which the person**
25 **is required to register or in which the person works or is enrolled in a program of study.**

26 ****(b) Not less than 30 nor more than 45 days before the person’s annual registration***
27 **date, the authority where the person is registered under Section 213.11A must alert the**
28 **registrant to the requirements of this Section by sending written notice to the person’s**
29 **residential address.**

1 *(c) In the case of registrants who lack a stable residential address, and therefore
2 report instead the principal place or places where they sleep, as provided in Section
3 213.11D(3), the authority where the person is registered under Section 213.11A must make
4 a good-faith effort to provide this written notice to the person at the location the person has
5 reported as the principal place where the person sleeps.

6 (2) *Change of Circumstances*

7 (a) Except as provided in paragraph (b) of this subsection, a person subject to
8 registration under Section 213.11A must, not later than five business days after each
9 change of name and each change in the location where the person resides, works, or
10 is enrolled in a program of study, notify the local jurisdiction specified in Section
11 213.11A of:

12 (i) all changes in the information that the person is required to provide
13 under Section 213.11D, and

14 (ii) the identity of all other jurisdictions in which the person resides,
15 works, or is enrolled in a program of study.

16 (b) Registrants who lack a stable residential address, and therefore report
17 instead the principal place or places where they sleep, as provided in Section
18 213.11D(3), must confirm or update those locations once every 90 days but need not
19 do so more often.

20 (c) Each jurisdiction that maintains a registry of persons who have been
21 convicted of a sexual offense must permit registrants to notify the jurisdiction, by one
22 or more reliable, readily accessible methods of communication of the jurisdiction's
23 choosing, such as U.S. mail, submission of an appropriate form online, or otherwise,
24 of any change of name, residence, employment, student status, or vehicle regularly
25 used, and any change in the identity of all other jurisdictions in which the person
26 resides, works, or is enrolled in a program of study.

27 *(d) Each jurisdiction where a person registers pursuant to Section 213.11A
28 must advise the registrant, at the time of registration, of the registrant's option to use
29 the means of communication established under subsection (2)(c), rather than
30 appearing personally for that purpose, if the registrant so chooses, other than for the
31 annual in-person meeting requirement of subsection (1).

1 **(3) The local jurisdiction notified of any changes pursuant to subsections (1) and (2)**
2 **must promptly provide the registrant a written receipt confirming that the updated**
3 **information has been provided, and must provide that information to all other jurisdictions**
4 **in which the person resides, works, or is enrolled in a program of study.**

5 **SECTION 213.11F. DURATION OF REGISTRATION REQUIREMENT**

6 **(1) *Ordinary Termination***

7 **(a) Subject to the provisions of subsection (2) of this Section and Section**
8 **213.11J, a person required to register must keep the registration current for a period**
9 **of 15 years, beginning on the date when the registrant is released from custody after**
10 **conviction for the offense giving rise to the registration requirement; or if the**
11 **registrant is not sentenced to a term of incarceration, beginning on the date when the**
12 **registrant was sentenced for that offense.**

13 ***(b) At the expiration of that 15-year period, the duty to keep that registration**
14 **current will terminate, and the person who had been registered will not be subject to**
15 **any further duties associated with that registration requirement. The person will**
16 **remain subject to any registration requirement that arises from conviction of any**
17 **other sexual offense.**

18 ***(c) In determining whether the 15-year period has been completed, that**
19 **period shall include any time in which the person was registered, prior to the effective**
20 **date of Sections 213.11 and 213.11A-J, for the offense giving rise to that registration**
21 **requirement.**

22 **(2) *Early Termination*. If, during the first 10 years of the period during which a person**
23 **is required to keep registration information current, the person:**

24 **(a) successfully completes any period of supervised release, probation, or**
25 **parole, and satisfies any financial obligation such as a fine or restitution, other than**
26 **a financial obligation that the person, despite good-faith effort, has been unable to**
27 **pay; and**

28 **(b) successfully completes any required sexual-offense treatment program;**
29 **and**

1 (c) is not convicted of, or facing pending charges for, any subsequent offense
2 under this Article, or any subsequent sexual offense in another jurisdiction that would
3 be an offense under this Article if committed in this jurisdiction; then:

4 the duty to keep that registry information current will terminate; the person who had
5 been registered will not be subject to any further duties associated with that registration
6 requirement; and subsequent access to registry information will be governed by subsection
7 (3).

8 (3) *Access to Registry Information After Termination.* When the person's obligation to
9 register and to keep registry information current terminates under subsection (1) or (2),
10 subsequent access to registry information is limited as follows:

11 (a) Registry information recorded as of the date when termination takes effect
12 may remain available to any government law-enforcement agency seeking disclosure
13 of that information in compliance with Section 213.11H(1)(a).

14 (b) Except as provided in paragraph (a), no public or private agency may
15 thereafter be permitted access to registry information associated with a registration
16 requirement that has terminated.

17 (4) *Notice of Termination.* When a person's duty to register terminates under
18 subsection (1) or (2), the law-enforcement agency in the local jurisdiction where the person
19 resides must:

20 (a) include in its registry a notice that the person's duty to register and all
21 duties associated with that registration requirement have terminated; and

22 (b) upon the person's request, notify all other jurisdictions where the person
23 is registered and where information about the registrant has been provided pursuant
24 to Section 213.11D(4) that the person's duty to register and all duties associated with
25 that registration requirement have terminated and that no public or private agency
26 other than a government law-enforcement agency shall thereafter be permitted to
27 have access to that registry information.

28 (5) *Certification.* When a person's duty to register terminates under subsection (1) or
29 (2), the law-enforcement agency in the local jurisdiction where the person resides must, upon
30 request, provide that person a certificate attesting that person's duty to register and all duties
31 associated with that registration requirement have terminated.

1 SECTION 213.11G. FAILURE TO REGISTER

2 (1) *Offense of Failure to Register.* A person required to register under Section 213.11A
3 is guilty of Failure to Register, a misdemeanor, if that person knowingly fails to register as
4 required by Sections 213.11A, 213.11C, 213.11D, and 213.11E(1), or knowingly fails to
5 update a registration as required by Section 213.11E(2).

6 (2) *Affirmative Defense.* In a prosecution for Failure to Register under subsection (1)
7 of this Section, it is an affirmative defense that:

8 (a) circumstances beyond the control of the accused prevented the accused
9 from complying;

10 *(b) the accused did not recklessly contribute to the creation of those
11 circumstances; and

12 (c) after those circumstances ceased to exist, the accused complied as soon as
13 reasonably feasible.

14 *(3) *Other Consequences of Not Meeting Registration Requirements.* Failing to register
15 or to meet other registration requirements may not be a basis for revoking bail, probation,
16 parole, or other conditions of release from custody, unless the person who failed to do so has
17 been convicted under this Section of the offense of Failure to Register.

18 SECTION 213.11H. ACCESS TO REGISTRY INFORMATION

19 (1) *Confidentiality*

20 (a) Each law-enforcement agency with which a person is registered and each
21 law-enforcement agency that receives information about a registrant pursuant to
22 Section 213.11D(4) must exercise due diligence to ensure that all information about
23 the registrant remains confidential, except that relevant information about a specific
24 registrant must be made available to any government law-enforcement agency that
25 requests information to aid in the investigation of a specific criminal offense.

26 (b) Any disclosure pursuant to paragraph (a) must include a warning that:

27 (i) the law-enforcement agency receiving the information must exercise
28 due diligence to ensure that the information remains confidential;

29 (ii) such information may be disclosed and used as provided in

1 paragraph (a), but otherwise must not be disclosed to any person or public or
2 private agency;

3 (iii) such information may be used only for the purpose requested;

4 (iv) such information may not be used to injure, harass, or commit a
5 crime against the registrant or anyone else; and

6 (v) any failure to comply with the confidentiality and use-limitation
7 requirements of paragraph (b) could result in civil or criminal penalties.

8 (2) *Unauthorized Disclosure of Registry Information.* An actor is guilty of
9 **Unauthorized Disclosure of Registry Information** if:

10 (a) the actor, having received registry information as provided in subsection
11 (1), knowingly or recklessly discloses that information, or permits that information to
12 be disclosed, to any person not authorized to receive it; or

13 (b) the actor obtains access to registry information by computer trespassing or
14 otherwise in violation of law and subsequently knowingly or recklessly discloses that
15 information, or permits that information to be disclosed, to any other person.

16 **Unauthorized Disclosure of Registry Information** is a felony of the fourth degree [*five-*
17 *year maximum*].

18 **SECTION 213.11I. ADDITIONAL COLLATERAL CONSEQUENCES OF CONVICTION**

19 ***(1) Definition.** For purposes of this Section, the term “additional collateral
20 consequence” means any collateral consequence, as defined in Section 213.11(1)(b), that is
21 applicable primarily to persons convicted of a sexual offense, other than the obligation to
22 register with law enforcement specified in Section 213.11A, the associated duties and
23 restrictions specified in Sections 213.11C-213.11G, and any restriction on occupation or
24 employment required by state law. These additional collateral consequences include any
25 government-imposed program or restriction applicable primarily to persons convicted of a
26 sexual offense that restricts the convicted person’s occupation or employment except as
27 required by state law; limits the convicted person’s education, Internet access, or place of
28 residence; uses methods such as GPS monitoring to track the person’s movements; notifies
29 a community organization or entity or a private party that the person resides, works, or

1 studies in the locality; or permits a public or private agency, organization, or person to access
2 registry information, except as authorized by Section 213.11H. An “additional collateral
3 consequence” under this Section does not include a collateral consequence that applies to
4 persons convicted of many different offenses, such as any government-imposed limits on jury
5 service, access to public benefits, and other government-imposed penalties, disabilities, and
6 disadvantages that result from conviction of a wide variety of offenses, including but not
7 limited to sexual offenses.

8 *(2) Additional Collateral Consequences Precluded for Persons Not Required to Register.*
9 Notwithstanding any other provision of law, no person shall be subject to an additional
10 collateral consequence, as defined in subsection (1), unless that person has been convicted of
11 a registrable offense and is required to register with law enforcement under Section 213.11A.

12 *(3) Additional Collateral Consequences Precluded for Persons Required to Register.*
13 Notwithstanding any other provision of law, a person required to register with law
14 enforcement under Section 213.11A must not be subject to any government action notifying
15 a community organization or entity or a private party that the person resides, works, or
16 studies in the locality; and must not be subject to any government action permitting a public
17 or private agency, organization, or person to access registry information, except as
18 authorized by Section 213.11H.

19 *(4) Additional Collateral Consequences Available for Persons Required to Register.*
20 Notwithstanding any other provision of law, a person required to register with law
21 enforcement under Section 213.11A may be subject to an additional collateral consequence
22 not specified in subsection (3), but only if an official designated by law, after affording the
23 person notice and an opportunity to respond concerning the proposed additional collateral
24 consequence, determines that the additional collateral consequence is manifestly required in
25 the interest of public safety, after due consideration of:

- 26 (a) the nature of the offense;
27 (b) all other circumstances of the case;
28 (c) the person’s prior record; and
29 (d) the potential negative impacts of the burden, restriction, requirement, or
30 government action on the person, on the person’s family, and on the person’s
31 prospects for rehabilitation and reintegration into society.

1 **(5) *Limitations.*** The designated official who approves any additional collateral
2 consequence pursuant to subsection (4) of this Section must determine that the additional
3 collateral consequence:

4 **(a)** satisfies all applicable notification requirements set forth in Section
5 213.11B;

6 **(b)** is authorized by law;

7 **(c)** is drawn as narrowly as possible to achieve the goal of public safety;

8 **(d)** is accompanied by a written statement of the official approving the
9 additional collateral consequence, explaining the need for it, the evidentiary basis for
10 the finding of need, and the reasons why a more narrowly drawn restriction,
11 disability, or government action would not adequately meet that need; and

12 **(e)** is imposed only for a period not to exceed that permitted under Section
13 213.11F for the duties to register and keep the registration current.

14 **(6) *Confidentiality.*** In any proceeding under subsection (4) to consider whether to
15 impose an additional collateral consequence, the official responsible for making the
16 determination must insure that the identity of the registrant concerned remains confidential.

17 ***(7) *Judicial Review.*** A person on whom an additional collateral consequence has been
18 imposed under subsections (4) and (5) is entitled to judicial review in an appropriate court,
19 within the time and in accordance with the procedures provided by law for review of
20 decisions of administrative agencies in this jurisdiction.

21 **SECTION 213.11J. DISCRETIONARY RELIEF FROM REGISTRATION AND OTHER SENTENCING**
22 **CONSEQUENCES AND COLLATERAL CONSEQUENCES**

23 **(1) *Petition for Discretionary Relief.*** At any time prior to the expiration of any
24 sentencing consequences imposed under Section 213.11(3) or any collateral consequences
25 applicable primarily to persons convicted of a sexual offense, including the obligation to
26 register, the obligation to comply with associated duties, restrictions on occupation or
27 employment required by state law, collateral consequences imposed under Section 213.11(4),
28 and additional collateral consequences imposed under Section 213.11I(4), the registrant may
29 petition the sentencing court, or other authority authorized by law, to order relief from all

1 or part of those consequences. If the obligation to register or other consequences arose from
2 an out-of-state conviction, the petition may be addressed to a court of general jurisdiction or
3 other authority of this state in the place where the person concerned is registered.

4 (2) *Proceedings on Petition for Discretionary Relief.* The authority to which the petition
5 is addressed may either dismiss the petition summarily, in whole or in part, or institute
6 proceedings to rule on the merits of the petition. If that authority chooses to entertain
7 submissions, hear argument, or take evidence prior to ruling on the merits of the petition, it
8 must give notice of the proceeding and an opportunity to participate in it to the prosecuting
9 attorney for the offense out of which the obligation to register or other consequence arose. If
10 the obligation to register or other consequence arose from an out-of-state conviction, notice
11 of the proceeding and an opportunity to participate in it must be addressed to the principal
12 prosecuting attorney in the jurisdiction of this state where the authority to which the petition
13 is addressed is located.

14 (3) *Judgment on Proceedings for Discretionary Relief.* Following proceedings for
15 discretionary relief under subsection (2), the authority to which the petition is addressed may
16 grant or deny relief, in whole or in part, from the obligation to register, any associated duties,
17 and any of the sentencing consequences or collateral consequences in question. When that
18 order terminates the registrant's obligation to register and to keep registry information
19 current, subsequent disclosure of registry information is governed by subsection (5) of this
20 Section. An order granting or denying relief following those proceedings must explain in
21 writing the reasons for granting or denying relief.

22 (4) *Standard for Discretionary Relief.* The authority to which the petition is addressed
23 must grant relief if it finds, after proceedings to rule on the merits pursuant to subsection
24 (2), that the sentencing consequence or collateral consequence in question is likely to impose
25 a substantial burden on the registrant's ability to reintegrate into law-abiding society, and
26 that public-safety considerations do not require continued imposition of the obligation, duty,
27 or consequence after due consideration of:

- 28 (a) the nature of the offense;
- 29 (b) all other circumstances of the case;
- 30 (c) the registrant's prior and subsequent record of criminal convictions, if any;

31 and

1 **(d) the potential negative impacts of the burden, restriction, or government**
2 **action on the registrant, on the registrant’s family, and on the registrant’s prospects**
3 **for rehabilitation and reintegration into society.**

4 **Relief must not be denied arbitrarily or for any punitive purpose.**

5 ***(5) Access to Registry Information after Discretionary Relief.* When an order of**
6 **discretionary relief terminates the person’s obligation to register and to keep registry**
7 **information current, all limits on access to registry information under Section 213.11H shall**
8 **remain in effect. Registry information recorded as of the date when discretionary relief takes**
9 **effect must remain available to any government law-enforcement agency seeking disclosure**
10 **of that information in compliance with Section 213.11H(1)(a) but must not otherwise be**
11 **disclosed.**

12 ***(6) Notice to Other Jurisdictions Concerning Discretionary Relief.***

13 **(a) When discretionary relief is granted to a person under this Section, the**
14 **authority granting the order of relief must, upon the person’s request, give notice of**
15 **that order to any other jurisdiction where the person concerned is registered or where**
16 **information about the person has been provided pursuant to Section 213.11D(4).**

17 **(b) When the other jurisdiction notified is a jurisdiction of this state, the notice**
18 **must specify that the other jurisdiction must extend the same relief from registration-**
19 **related duties and any other sentencing consequences or collateral consequences.**
20 **When that order terminates the registrant’s obligation to register and to keep registry**
21 **information current, that notice must also specify the limits on subsequent disclosure**
22 **of registry information applicable under subsection (5).**

23 ***(7) Proceedings Subsequent to Discretionary Relief.* An order of discretionary relief**
24 **granted under this Section does not preclude the authority to which the petition was**
25 **addressed from later revoking that order if, on the basis of the registrant’s subsequent**
26 **conduct or any other substantial change in circumstances, the authority finds by a**
27 **preponderance of the evidence that public-safety considerations, weighed against the burden**
28 **on the registrant’s ability to reintegrate into law-abiding society, no longer justify the order**
29 **of relief.**

1 **(8) Confidentiality.** In any proceedings under this Section to consider whether to grant
2 or deny discretionary relief, the official responsible for making the determination must
3 insure that the identity of the registrant concerned remains confidential.

Appendix A

Text of Amendments Approved at 2021 Annual Meeting

I. Ferzan-Buell Amendment to amend the “recklessly” mens rea formulations in Article 213

Amend instances where ‘recklessly’ is used as an adverb as follows: <(c) the actor is reckless with respect to (a) and (b) ~~aware of, yet recklessly disregards, the risk that the circumstances described in paragraphs (a) and (b) are present.~~>

II. Aronofsky Amendment to amend Section 213.8 (as amended during discussion)

Amend Section 213.8 to add a new subsection (10) stating: <For an offense charged under Section 213.8, an actor younger than 14 may be adjudicated delinquent only as a misdemeanor, regardless of the penalty authorized by the statute for the offense.>

III. Morrison Amendments to 213.11 (as amended during discussion)

1. Amend 213.11A by adding a new subsection (4): **“Retroactive Effect. As of the effective date of this section, all prior registration requirements applicable to persons in this state, whether imposed by this state or any other jurisdiction, are subject to the requirements and limits of this Article.”**
2. Amend Section 213.11E(1) by adding the following at the end thereof: **“The entity responsible for registration under this Article must make a good faith effort to provide notice of the requirements of this Section, sent at least 30 days before the person’s annual registration date.”** Amend Section 213.11(E)(2)(D) by adding the following at the end thereof: **“other than for the annual in person meeting requirement of Subsection (1).”**
3. Amend 213.11F by adding a new subsection (7): **“Calculating Required Years. In determining whether the 15 years in subsections (1) & (2) have been completed, any time in which the person was registered under prior registration requirements for the offense giving rise to the registration requirement shall be included in that determination.”**
4. Amend 213.11G by adding the following subsection (3): **“No Collateral Consequences. The failure to register may not be the basis of a revocation of bail, probation, parole, or other similar conditions of release from confinement, unless the person who failed to register has been convicted under this Section.”**

Appendix A

5. Amend section 213.11I by adding the following new subsection (7): **“Judicial Review. A person on whom additional collateral consequences have been imposed under this Section is entitled to judicial review in an appropriate court, within the time provided by law for review of other decisions of administrative agencies in this jurisdiction.”**

Appendix B

Black-Letter Comparison – Tentative Draft No. 5 to Council Draft No. 12

ARTICLE 213

BLACK LETTER

1 *(Text marked with an asterisk indicates a change approved by the membership at the 2021 Annual*
2 *Meeting that now requires Council approval.)*

3 SECTION 213.0. GENERAL PRINCIPLES OF LIABILITY; DEFINITIONS

4 ~~(1)~~ (1) This Article is governed by Part I of the 1962 Model Penal Code, ~~including and~~
5 the definitions given in Section 210.0, except that:

6 ~~(a)~~ (a) Section 2.11 (the definition of “consent”) does not apply to this article.

7 ~~(b)~~ (b) Subsection (2) of Section 2.08 (Intoxication) does not apply to this
8 article. Instead, the general provisions of the criminal law and rules of evidence of the
9 jurisdiction govern the materiality of the actor’s intoxication in determining the
10 actor’s culpability for an offense.

11 ~~(2)~~ (2) *Definitions*

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

13 ~~(a)~~ (a) “Sexual penetration” means an act involving penetration, however
14 slight, of the anus or genitalia by an object or a body part, except when done for
15 legitimate medical, hygienic, or law-enforcement purposes.*

16 ~~(b)~~ (b) “Oral sex” means a touching of the anus or genitalia of one person by
17 the mouth or tongue of another person.*

18 ~~(c)~~ (c) “Sexual contact” means any of the following acts, when the actor’s
19 purpose is the sexual arousal, sexual gratification, sexual humiliation, or sexual
20 degradation of any person:

21 ~~(i)~~ (i) touching the clothed or unclothed genitalia, anus, groin, breast,
22 buttocks, or inner thigh of any person with any body part or object; or

23
24
25 ** Approved by the membership, May 2017.*
26
27

Section 213.0. General Principles of Liability; Definitions

1 ~~(ii)~~ (ii) touching any body part of any person with the clothed or
2 unclothed genitalia, anus, groin, breast, buttocks, or inner thigh of any person;
3 or

4 ~~(iii)~~ (iii) touching any clothed or unclothed body part of any person with
5 the ejaculate of any person.

6 The touching described in paragraph (c) includes the actor touching another
7 person, another person touching the actor or a third party, or another person
8 touching that person's own body. It does not include the actor touching the actor's
9 own body.

10 (d) "Fondling" means prolonged contact with or manipulation of the genitals,
11 when the actor's purpose is the sexual arousal, sexual gratification, sexual
12 humiliation, or sexual degradation of any person. Fondling requires more than a
13 transient grope or grab. "To fondle" means to engage in fondling.

14 (e) "Consent"^{**}

15 (i) "Consent" for purposes of Article 213 means a person's willingness
16 to engage in a specific act of sexual penetration, oral sex, or sexual contact.

17 (ii) Consent may be express or it may be inferred from behavior—both
18 action and inaction—in the context of all the circumstances.

19 (iii) Neither verbal nor physical resistance is required to establish that
20 consent is lacking, but their absence may be considered, in the context of all
21 the circumstances, in determining the issue of consent.

22 (iv) Notwithstanding subsection (2)(e)(ii) of this Section, consent is
23 ineffective when given by a person incompetent to consent or under
24 circumstances precluding the free exercise of consent, as provided in Sections
25 213.1, 213.2, 213.3, 213.4, 213.5, 213.7, 213.8, and 213.9.

26 (v) Consent may be revoked or withdrawn any time before or during
27 the act of sexual penetration, oral sex, or sexual contact. A clear verbal
28 refusal—such as "No," "Stop," or "Don't"—establishes the lack of consent or
29 the revocation or withdrawal of previous consent. Lack of consent or

~~** Approved by the membership, May 2016.~~

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Section 213.0. General Principles of Liability; Definitions

1 revocation or withdrawal of consent may be overridden by subsequent consent
2 given prior to the act of sexual penetration, oral sex, or sexual contact.

3 (f) Force.

4 ~~(i)~~ (i) “Physical force or restraint” means a physical act or physical
5 restraint that inflicts more than negligible physical harm, pain, or discomfort
6 or that significantly restricts a person’s ability to move freely. More than
7 negligible physical harm includes but is not limited to a burn, black eye, or
8 bloody nose, and more than negligible pain or discomfort includes but is not
9 limited to the pain or discomfort resulting from a kick, punch, or slap on the

Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint

1 face.

2 ~~(ii)~~ (ii) “Aggravated physical force or restraint” means a physical act or
3 physical restraint that inflicts or is capable of inflicting death, serious bodily
4 injury, or extreme physical pain, or that confines another for a substantial
5 period in a place of isolation other than under color of law.

6 (g) “Actor” means a person more than 12 years old, except that “actor”
7 includes a person younger than 12 when the charge is Sexual Assault by Aggravated
8 Physical Force or Restraint (Section 213.1). “Actor” includes, where relevant, a
9 person guilty of an omission.

10 (h) “Registrable offense”

11 (i) “Registrable offense” means an offense that makes a convicted
12 person eligible for or subject to any of the collateral consequences specified in
13 Section 213.11.

14 (ii) No offense is a registrable offense under any provision of law unless
15 it is specifically so designated in this Article or is committed in another
16 jurisdiction, is a registrable offense in that jurisdiction, and would be a
17 registrable offense in this jurisdiction if it had been committed in this
18 jurisdiction.

19 **SECTION 213.1. SEXUAL ASSAULT BY AGGRAVATED PHYSICAL FORCE OR RESTRAINT**

20 ~~(1)~~ (1) *Sexual Assault by Aggravated Physical Force or Restraint.* An actor is guilty of
21 Sexual Assault by Aggravated Physical Force or Restraint when:

22 ~~(a)~~ (a) the actor causes another person to submit to or perform an act of sexual
23 penetration or oral sex; and

24 ~~(b)~~ (b) the act is without effective consent because:

25 (i) the actor uses or explicitly or implicitly threatens to use aggravated
26 physical force or restraint against anyone; and

27 (ii) the actor’s use of or threat to use aggravated physical force or
28 restraint causes the other person to submit to or perform the act of sexual
29 penetration or oral sex; and

Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint

1 ~~(e)~~ (c) the actor ~~knows that~~ acts knowingly with respect to the conduct,
2 attendant circumstances ~~described, and results specified~~ in paragraphs (a) and (b) ~~are~~
3 ~~present.~~

4 (2) *Grading.* Sexual Assault by Aggravated Physical Force or Restraint is a registrable
5 offense. It is a felony of the third degree [*10-year maximum*], except that (1) the maximum
6 term of imprisonment is five years greater than that otherwise applicable to a felony of the
7 third degree; and (2) it is a felony of the second degree [*20-year maximum*] if the actor violates
8 subsection (1) of this Section and in so doing:

9 (a) knowingly uses or explicitly or implicitly threatens to use a deadly weapon
10 and knows that this act causes the other person to submit to or perform the act of
11 sexual penetration or oral sex; or

12 (b) knowingly acts with one or more persons who:

13 (i) also engage in an act or acts of sexual penetration or oral sex with
14 the same victim at the same place at a time contemporaneous with the actor's
15 violation of this Section; or

16 (ii) assist in the use of or threat to use aggravated physical force or
17 restraint when the actor's act of sexual penetration or oral sex occurs; or

18 (c) recklessly causes serious bodily injury to any person, ~~and is aware of, yet~~
19 ~~recklessly disregards, the risk of causing such injury.~~

20 (3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
21 other person submitted to or performed the act of sexual penetration or oral sex under the
22 circumstances described in subsection(1)(b). Submission, acquiescence, or words or conduct
23 that would otherwise indicate consent do not constitute effective consent when occurring in
24 a circumstance described in that subsection. If applicable, the actor may raise an affirmative
25 defense of Explicit Prior Permission according to the terms of Section 213.10.

26 SECTION 213.2. SEXUAL ASSAULT BY PHYSICAL FORCE OR RESTRAINT

27 (1) *Sexual Assault by Physical Force or Restraint.* An actor is guilty of Sexual Assault
28 by Physical Force or Restraint when:

29 (a) the actor causes another person to submit to or perform an act of sexual

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Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint

1 **penetration or oral sex; and**

2 **(b) the act is without effective consent because:**

Section 213.3. Sexual Assault of an Incapacitated, Vulnerable, or Legally Restricted Person

1 (i) the actor uses or explicitly or implicitly threatens to use physical
2 force or restraint against anyone; and

3 (ii) the actor's use of or threat to use physical force or restraint causes
4 the other person to submit to or perform the act of sexual penetration or oral
5 sex; and

6 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
7 with respect to the conduct, attendant circumstances ~~described, and results specified~~
8 in paragraphs (a) and (b) ~~are present~~.

9 (2) *Grading*. Sexual Assault by Physical Force or Restraint is a felony of the third
10 degree [*10-year maximum*]. It is a registrable offense when the actor has previously been
11 convicted of a felony sex offense.

12 (3) *Effective consent*. Consent is ineffective under Section 213.0(2)(e)(iv) when the
13 other person submitted to or performed the act of sexual penetration or oral sex under the
14 circumstances described in subsection (1)(b). Submission, acquiescence, or words or conduct
15 that would otherwise indicate consent do not constitute effective consent when occurring in
16 a circumstance described in that subsection. If applicable, the actor may raise an affirmative
17 defense of Explicit Prior Permission according to the terms of Section 213.10.

18 SECTION 213.3. SEXUAL ASSAULT OF AN INCAPACITATED, VULNERABLE, OR LEGALLY
19 RESTRICTED PERSON

20 ~~(1)~~ (1) *Sexual Assault of an Incapacitated Person*. An actor is guilty of Sexual Assault
21 of an Incapacitated Person when:

22 (a) the actor engages in an act of sexual penetration or oral sex with another
23 person or causes another person to submit to or perform an act of sexual penetration
24 or oral sex; and

25 (b) the act is without effective consent because at the time of the act, the other
26 person:

27 ~~(i)~~ (i) is sleeping, unconscious, or physically unable to communicate lack
28 of consent; or

29 ~~(ii)~~ (ii) lacks substantial capacity to appraise, control, or remember the

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1 person's own sexual conduct or that of anyone else because of a substance
2 administered to that person, without that person's knowledge or consent; and
3 the actor administered the incapacitating substance for the purpose of causing
4 that incapacity or knows that it was surreptitiously administered by another
5 for that purpose; and

6 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
7 with respect to the conduct, attendant circumstances ~~described, and results specified~~
8 in paragraphs (a) and (b) ~~are present~~.

9 Sexual Assault of an Incapacitated Person is a felony of the third degree [*10-year*
10 *maximum*]. It is a registrable offense when the actor has previously been convicted of a felony
11 sex offense.

12 ~~(2)~~ (2) *Sexual Assault of a Vulnerable Person*. An actor is guilty of Sexual Assault of a
13 Vulnerable Person when:

14 (a) the actor engages in an act of sexual penetration or oral sex with another
15 person or causes another person to submit to or perform an act of sexual penetration
16 or oral sex; and

17 (b) the act is without effective consent because at the time of the act, the other
18 person:

19 ~~(i)~~ (i) has an intellectual, developmental, or mental disability, or a
20 mental illness, that makes the person substantially incapable of appraising the
21 nature of the sexual activity involved, or of understanding the right to give or
22 withhold consent in sexual encounters, and the actor has no similarly serious
23 disability; or

24 ~~(ii)~~ (ii) is passing in and out of consciousness; or

25 ~~(iii)~~ (iii) lacks substantial capacity to communicate lack of consent; or

26 ~~(iv)~~ (iv) is wholly or partly undressed, or in the process of undressing,
27 for the purpose of receiving nonsexual professional or commercial services
28 from the actor and has not given the actor explicit prior permission to engage
29 in that act; and

30 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
31 with respect to the conduct, attendant circumstances ~~described, and results specified~~

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Section 213.3. Sexual Assault of an Incapacitated, Vulnerable, or Legally Restricted Person

- 1 in paragraphs (a) and (b) ~~are present~~.
- 2 Sexual Assault of a Vulnerable Person is a felony of the fourth degree [*five-year*
- 3 *maximum*].

Section 213.4. Sexual Assault by Extortion

1 **(3) *Sexual Assault of a Legally Restricted Person.*** An actor is guilty of Sexual Assault
2 of Legally Restricted Person when:

3 **(a)** the actor, who did not have a consensual sexually intimate relationship with
4 the other person at the time that a state-imposed restriction on that person's liberty
5 began, engages in an act of sexual penetration or oral sex with another person or
6 causes the other person to submit to or perform an act of sexual penetration or oral
7 sex; and

8 **(b)** the act is without effective consent because at the time of the act, the other
9 person is:

10 **(i)** in custody, incarcerated, on probation, on parole, under civil
11 commitment, in a pretrial release or pretrial diversion or treatment program,
12 or in any other status involving a state-imposed restriction on liberty; and

13 **(ii)** the actor is in a position of actual or apparent authority or
14 supervision over the restriction on the other person's liberty; and

15 **(c)** the actor ~~knows that~~acts knowingly with respect to the conduct, attendant
16 circumstances~~described, and results specified~~ in paragraphs (a) and (b)~~are present~~.

17 **Sexual Assault of a Legally Restricted Person is a felony of the fifth degree [*three-year***
18 ***maximum*].**

19 **(4) *Effective consent.*** Consent is ineffective under Section 213.0(2)(e)(iv) when a
20 condition or circumstance described in subsections (1)(b), (2)(b), or (3)(b) existed at the time
21 the other person submitted to or performed the act of sexual penetration or oral sex.
22 Submission, acquiescence, or words or conduct that would otherwise indicate consent do not
23 constitute effective consent when occurring in a condition or circumstance described in these
24 subsections.

25 **SECTION 213.4. SEXUAL ASSAULT BY EXTORTION**

26 **(1) *Sexual Assault by Extortion.*** An actor is guilty of Sexual Assault by Extortion
27 when:

28 **(a)** the actor causes another person to submit to or perform an act of sexual
29 penetration or oral sex; and

Section 213.4. Sexual Assault by Extortion

1 (b) the act is without effective consent because the actor explicitly or implicitly
2 threatened:

3 (i) to accuse that person or anyone else of a criminal offense or of a
4 failure to comply with immigration regulations; or

5 (ii) to take or withhold action as an official, or cause an official to take
6 or withhold action, whether or not the purported official has actual authority
7 to do so; or

8 (iii) to take any action or cause any consequence that would cause
9 submission to or performance of the act of sexual penetration or oral sex by
10 someone of ordinary resolution in that person's situation under all the
11 circumstances; and

12 (iv) the actor's threat causes the other person to submit to or perform
13 the act of sexual penetration or oral sex; and

14 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
15 with respect to the conduct, attendant circumstances ~~described, and results specified~~
16 in paragraphs (a) and (b) ~~are present~~.

17 (2) *Grading.* Sexual Assault by Extortion is a felony of the fourth degree [*five-year*
18 *maximum*].

19 (3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
20 other person submitted to or performed the act of sexual penetration or oral sex because of
21 a threat described in subsection (1)(b). Submission, acquiescence, or words or conduct that
22 would otherwise indicate consent do not constitute effective consent when occurring in a
23 circumstance described in that paragraph. If applicable, the actor may raise an affirmative
24 defense of Explicit Prior Permission under Section 213.10.

25 SECTION 213.5. SEXUAL ASSAULT BY PROHIBITED DECEPTION

26 (1) An actor is guilty of Sexual Assault by Prohibited Deception when:

27 (a) the actor causes another person to submit to or perform an act of sexual
28 penetration or oral sex; and

29 (b) the act is without effective consent because:

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Section 213.4. Sexual Assault by Extortion

1

(i) the actor caused the other person to believe falsely that the act had

Section 213.6. Sexual Assault in the Absence of Consent

1 diagnostic, curative, or preventive medical properties; or

2 ~~(ii)~~ (ii) the actor caused the other person to believe falsely that the actor
3 was someone else who was personally known to that person; and

4 ~~(iii)~~ (iii) the actor's deception causes the other person to submit to or
5 perform the act of sexual penetration or oral sex; and

6 (c) the actor ~~knows that~~ is reckless with respect to the conduct, attendant
7 circumstances ~~described, and results specified~~ in paragraphs (a) and (b) ~~are present~~.

8 (2) *Grading*. Sexual Assault by Prohibited Deception is a felony of the fifth degree
9 [*three-year maximum*].

10 (3) *Effective consent*. Consent is ineffective under Section 213.0(2)(e)(iv) when the
11 other person submitted to or performed the act of sexual penetration or oral sex because of
12 a circumstance described in subsection (1)(b). Submission, acquiescence, or words or
13 conduct that would otherwise indicate consent do not constitute effective consent when
14 occurring underin a circumstance described in that paragraph.

15 SECTION 213.6. SEXUAL ASSAULT IN THE ABSENCE OF CONSENT

16 (1) An actor is guilty of Sexual Assault in the Absence of Consent when:

17 (a) the actor causes another person to submit to or perform an act of sexual
18 penetration or oral sex; and

19 (b) the other person does not consent to that act; and

20 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~ reckless
21 with respect to the conduct, attendant circumstances ~~described, and results specified~~
22 in paragraphs (a) and (b) ~~are present~~.

23 (2) *Grading*. Sexual Assault in the Absence of Consent is a felony of the fifth degree
24 [*three-year maximum*], except that it is a felony of the fourth degree [*five-year maximum*]
25 when:

26 (a) the other person has, by words or actions, expressly communicated
27 unwillingness to submit to or perform the act, or the act is so sudden or unexpected
28 that the other person has no adequate opportunity to express unwillingness before the
29 act occurs; and

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1 (b) the actor is ~~aware of, yet recklessly disregards,~~reckless with respect to the
2 ~~risk that a~~attendant circumstance ~~described~~specified in paragraph (a) ~~existed at the~~
3 ~~time of the act of sexual penetration or oral sex.~~

4 (3) If applicable, the actor may raise an affirmative defense of Explicit Prior
5 Permission under Section 213.10.

6 SECTION 213.7. OFFENSIVE SEXUAL CONTACT BY PHYSICAL FORCE OR RESTRAINT OR BY
7 SURREPTITIOUS INCAPACITATION; OFFENSIVE SEXUAL CONTACT

8 (1) *Offensive Sexual Contact by Physical Force or Restraint or by Surreptitious*
9 *Incapacitation.* An actor is guilty of Offensive Sexual Contact by Physical Force or Restraint
10 or by Surreptitious Incapacitation when:

11 (a) the actor knowingly engages in an act of sexual contact with another person
12 or causes another person to submit to or perform an act of sexual contact ~~with any~~
13 ~~person~~; and

14 (b) the act is without effective consent because:

15 (i) the actor uses or explicitly or implicitly threatens to use physical
16 force or restraint against anyone, and that conduct causes the other person to
17 submit to or perform the act of sexual contact; or

18 (ii) at the time of the act of sexual contact the other person lacks
19 substantial capacity to appraise, control, or remember the person's own sexual
20 conduct or that of anyone else because of a substance administered to that
21 person, without that person's knowledge or consent; and the actor
22 administered the incapacitating substance for the purpose of causing that
23 incapacity or knows that it was surreptitiously administered by another for
24 that purpose; and

25 (c) the actor is ~~aware of, yet recklessly disregards, the risk that a circumstance~~
26 ~~described in paragraph (b) is present, and that the other person submitted to or~~
27 ~~performed the act of sexual contact because of a circumstance described~~reckless with
28 respect to the conduct, attendant circumstances, and results specified in paragraph
29 (b).

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Section 213.6. Sexual Assault in the Absence of Consent

1 **Offensive Sexual Contact by Physical Force or Restraint or by Surreptitious**
2 **Incapacitation is a felony of the fifth degree [*three-year maximum*].**

3 **(2) *Offensive Sexual Contact*. An actor is guilty of Offensive Sexual Contact when:**

4 **(a) the actor knowingly engages in an act of sexual contact with another person**
5 **or causes another person to submit to or perform an act of sexual contact ~~with~~**
6 **~~anyone~~; and**

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1 (b) the other person did not consent to that act, and the actor is ~~aware of, yet~~
2 ~~recklessly disregards, the risk that the other person did not~~reckless with respect to
3 the lack of consent ~~to that act~~; or

4 (c) ~~that~~the act is without effective consent because:

5 (i) the other person is unaware that such act is occurring, or is
6 physically unable to communicate lack of consent at the time of the act;² and
7 the actor is ~~aware of, yet recklessly disregards, the risk that~~reckless with
8 respect to whether the other person is in that condition at the time of the act;
9 or

10 (ii) the act would be an offense as defined by Section 213.3(2) or (3),
11 involving vulnerable or legally restricted persons, had the act been one of
12 sexual penetration or oral sex; or

13 (iii) the act would be an offense as defined by Section 213.4, involving
14 extortion, had the act been one of sexual penetration or oral sex; or

15 (iv) the act would be an offense as defined by Section 213.5, involving
16 prohibited deception, had the act been one of sexual penetration or oral sex.

17 Offensive Sexual Contact is a petty misdemeanor [*six-month maximum*].

18 (3) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
19 other person submitted to or performed the act of sexual contact ~~under~~in a circumstance
20 described in subsections (1)(b) or (2)(c). Submission, acquiescence, or words or conduct that
21 would otherwise indicate consent do not constitute effective consent when occurring ~~under~~in
22 a circumstance described in those subsections. If applicable, an actor charged with a
23 violation of subsections (1)(b)(i), (2)(b), or (2)(c)(iii) may raise an affirmative defense of
24 Explicit Prior Permission under Section 213.10.

25 SECTION 213.8. SEXUAL OFFENSES INVOLVING MINORS

26 (1) *Sexual Assault of a Minor.* An actor is guilty of Sexual Assault of a Minor when:

27 (a) the actor engages in an act of sexual penetration or oral sex with another
28 person or causes another person to submit to or perform an act of sexual penetration
29 or oral sex; and

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1 (b) the act is without effective consent because at the time of the act:

2 (i) the other person is younger than 16; and

3 (ii) the actor is more than five years older than the other person; and

4 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
5 with respect to the conduct, attendant circumstances ~~described, and results specified~~
6 in paragraphs (a) and (b) ~~exist~~.

7 Sexual Assault of a Minor is a felony of the fifth degree [*three-year maximum*] except
8 that it is a felony of the fourth degree [*five-year maximum*] when at the time of the act the
9 actor is 21 or older, and it is a felony of the third degree [*10-year maximum*] and a registrable
10 offense when at the time of the act the actor is 21 or older, the other person is younger than
11 12, and the actor is ~~aware of, yet recklessly disregards, the risk that~~reckless with respect to
12 whether the other person is younger than 12.

13 (2) *Incestuous Sexual Assault of a Minor*. An actor is guilty of Incestuous Sexual
14 Assault of a Minor when:

15 (a) the actor engages in an act of sexual penetration or oral sex with another
16 person or causes another person to submit to or perform an act of sexual penetration
17 or oral sex; and

18 (b) at the time of the act, the actor is 18 or older and the other person is
19 younger than 18; and

20 (c) the act is without effective consent because at the time of the act the actor
21 is:

22 (i) a parent or grandparent of the other person, including a biological,
23 step, adoptive, or foster parent or grandparent; or

24 (ii) the legal spouse, domestic partner, or sexual partner of a person
25 described by subparagraph (i); or

26 (iii) a legal guardian or de facto parent of the other person, who resides
27 intermittently or permanently in the same dwelling as the other person; and

28 (d) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
29 with respect to the conduct, attendant circumstances ~~described, and results specified~~
30 in paragraphs (a) ~~through, (b), and~~ (c) ~~exist~~.

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1 Incestuous Sexual Assault of a Minor is a felony of the third degree [*10-year*
2 *maximum*]. It is a registrable offense when at the time of the act the other person is younger
3 than 16.

4 (3) *Exploitative Sexual Assault of a Minor*. An actor is guilty of Exploitative Sexual
5 Assault of a Minor when:

6 (a) the actor engages in an act of sexual penetration or oral sex with another
7 person or causes another person to submit to or perform an act of sexual penetration
8 or oral sex; and

9 (b) the act is without effective consent because at the time of the act:

10 (i) the other person is younger than 18; and

11 (ii) the actor is more than five years older than the other person; and

12 (iii) the actor holds over the other person a formal position of authority
13 ~~over the other person~~, such as a teacher, employer, religious leader, treatment
14 provider, administrator, or coach; and

15 (c) the actor is ~~aware of, yet recklessly disregards, the risk that the~~reckless
16 with respect to the conduct, attendant circumstances ~~described, and results specified~~
17 in paragraphs (a) and (b) ~~exist~~.

18 Exploitative Sexual Assault of a Minor is a felony of the fifth degree [*three-year*
19 *maximum*]. It is a defense to a prosecution under Section 213.8(3) for the actor to prove by
20 a preponderance of the evidence that the actor's position of authority over the other person
21 did not impair the other person's ability to form an independent judgment about whether to
22 consent to the act of sexual penetration or oral sex.

23 (4) *Fondling a Minor*. An actor is guilty of Fondling a Minor when:

24 (a) the actor knowingly fondles another person, or knowingly causes another
25 person to submit to or perform an act of fondling ~~with anyone~~; and

26 (b) the act is without effective consent because at the time of the act:

27 (i) the other person is younger than 12 and the actor is more than five
28 years older than the other person; or

29 (ii) the other person is younger than 16 and the actor is more than seven
30 years older than the other person; and

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1 (c) the actor is ~~aware of, yet recklessly disregards,~~reckless with respect to the
2 ~~risk that the~~attendant circumstances described in paragraph (b)(i) or (ii) ~~exist~~.

3 *Grading.* Fondling a Minor is a felony of the fifth degree [*three-year maximum*], except
4 that it is a felony of the fourth degree [*five-year maximum*] when at the time of the act the
5 actor is 21 or older, the other person is younger than 12, and the actor is ~~aware of, yet~~
6 ~~recklessly disregards, the risk that~~reckless with respect to whether the other person is
7 younger than 12.

8 (5) *Aggravated Offensive Sexual Contact with a Minor.* An actor is guilty of Aggravated
9 Offensive Sexual Contact with a Minor when:

10 (a) the actor knowingly engages in an act of sexual contact with another person
11 or causes another person to submit to or perform an act of sexual contact; and

12 (b) the act is without effective consent because at the time of the act:

13 (i) the other person is younger than 18; and

14 (ii) the actor is more than five years older than the other person; and

15 (iii) the act, had it been an act of sexual penetration or oral sex, would
16 be an offense as defined by Section 213.1, 213.2, 213.3, 213.4, 213.5, or 213.8(2)
17 or (3); and

18 (c) the actor is ~~aware of, yet recklessly disregards,~~reckless with respect to the
19 ~~risk that the~~attendant circumstances described in paragraph (b)(i) and (ii) ~~exist~~.

20 Aggravated Offensive Sexual Contact with a Minor is a felony of the fourth degree
21 [*five-year maximum*].

22 (6) *Offensive Sexual Contact with a Minor.* An actor is guilty of Offensive Sexual
23 Contact with a Minor when:

24 (a) the actor knowingly engages with another person in, or causes another
25 person to submit to or perform:

26 (i) an act of sexual contact; or

27 (ii) an act involving the touching of the tongue of anyone to any body
28 part or object, when that act is for the purpose of anyone's sexual arousal,
29 sexual gratification, sexual humiliation, or sexual degradation; and

30 (b) the act is without effective consent because at the time of the act:

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Section 213.8. Sexual Offenses Involving Minors

1 (i) the other person is younger than 12, and the actor is more than five
2 years older than the other person; or

3 (ii) the other person is younger than 16, and the actor is more than
4 seven years older than the other person; and

5 (c) the actor is ~~aware of, yet recklessly disregards,~~reckless with respect to the
6 ~~risk that the~~attendant circumstances described in paragraph (b)(i) or (ii) ~~exist~~.

7 **Offensive Sexual Contact with a Minor is a misdemeanor [*one-year maximum*], except**
8 **that it is a felony of the fifth degree [*three-year maximum*] when at the time of the act the**

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1 actor is 21 or older, the other person is younger than 12, and the actor is ~~aware of, yet~~
2 ~~recklessly disregards, the risk that~~reckless with respect to whether the other person is
3 younger than 12.

4 (7) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when the
5 circumstances described in any of the subsections (1) through (6) exist at the time of the act.
6 Submission, acquiescence, or words or conduct that would otherwise indicate consent do not
7 constitute effective consent when occurring underin the circumstances described in any of
8 those subsections.

9 (8) *Calculation of ages.* The age of any person described in this Section is calculated
10 according to the “days-and-month” approach, which determines age by the day, month, and
11 year of that person’s birth, measured in whole numbers.

12 [(9) *Affirmative defense of marriage.* It is an affirmative defense to a charge under
13 subsections (1), (3), (4), and (6) of this Section, and to a charge under subsection (5)(~~dh~~) based
14 on an act that would be a violation of subsection (~~8~~)(3) had it been an act of sexual penetration
15 or oral sex, that the actor was the legal spouse of the other person at the time of the act of
16 sexual penetration, oral sex, fondling, or sexual contact.]

17 (10) In a juvenile court proceeding to adjudicate delinquency on the basis of conduct
18 that would constitute an offense under this Section, an actor younger than 14 may be
19 adjudicated delinquent only as a misdemeanor, regardless of the penalty authorized for that
20 conduct when it constitutes an offense under this Section.

21 SECTION 213.9. SEX TRAFFICKING

22 (1) *Sex Trafficking.* An actor is guilty of Sex Trafficking if the actor knowingly
23 recruits, entices, transports, transfers, harbors, provides, isolates, or maintains a person by
24 any means, with the purpose of facilitating a commercial sex act involving that person when:

- 25 (a) coercion is being, or will be, used to cause the person to submit to or
26 perform a commercial sex act, which therefore will be without effective consent; and
27 the actor knows that coercion is being or will be used to cause the person to submit to
28 or perform that commercial sex act; or

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1 (b) the person is younger than 18 and is being, or will be, caused to submit to
2 or perform a commercial sex act; and the actor is ~~aware of, yet recklessly disregards,~~
3 ~~the risk that~~ reckless with respect to whether the person is younger than 18 and is
4 being, or will be, caused to submit to or perform the commercial sex act.

5 (2) *Definitions.* For purposes of Section 213.9(1):

6 (a) “Coercion” means:

7 (i) using or threatening to use physical force or restraint against
8 anyone;

9 (ii) taking, destroying, or threatening to take or destroy the person’s
10 money, credit or debit card, passport, driver’s license, immigration document,
11 or other government-issued identification document, including a document
12 issued by a foreign government, or any travel document pertaining to the
13 person;

14 (iii) restricting or threatening to restrict the person’s access to a
15 substance that is a controlled substance under the federal Controlled
16 Substance Act, 21 U.S.C. § 801 et seq.;

17 (iv) administering or withholding a controlled substance in
18 circumstances that impair the person’s physical or mental ability to avoid,
19 evade, or flee from the actor;

20 (v) using a scheme, plan, deception, misrepresentation, or pattern of
21 behavior for the purpose of causing the person to believe that failing to submit
22 to or perform a commercial sex act would result in physical, psychological,
23 financial, or reputational harm to anyone that is sufficiently serious to cause
24 someone of ordinary resolution, who is of the same background, in the same
25 circumstances, and in the same physical and mental condition as that person,
26 to submit to or perform a commercial sex act in order to avoid incurring that
27 harm; or

28 (vi) any combination of these circumstances.

29 (b) “Commercial Sex Act” means any act of sexual penetration, oral sex, or
30 sexual contact performed in exchange, or the expectation of exchange, for money,
31 property, services, or any other thing of value given to or received by anyone.

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1 **(3) Grading. Sex Trafficking is a felony of the third degree [10-year maximum].**

Section 213.10. Affirmative Defense of Explicit Prior Permission

1 (4) *Effective consent.* Consent is ineffective under Section 213.0(2)(e)(iv) when ~~the~~
2 ~~circumstances~~a circumstance described in subsection (1) ~~are~~is present. Submission,
3 acquiescence, or words or conduct that would otherwise indicate consent do not constitute
4 effective consent when occurring under a circumstance described in that subsection. If
5 applicable, the actor may raise an affirmative defense of Explicit Prior Permission under
6 Section 213.10 when:

7 (a) a charge of Sex Trafficking is based on coercion under subsection (1)(a);
8 and

9 (b) the person giving such permission does so before that person has been
10 subjected to trafficking under subsection (1) and before that person has been
11 subjected to coercion under subsection (1)(a).

12 **SECTION 213.10. AFFIRMATIVE DEFENSE OF EXPLICIT PRIOR PERMISSION**

13 (1) Except as provided in subsection (3), it is an affirmative defense to a charge under
14 this Article that the actor reasonably believed that, in connection with the charged act of
15 sexual penetration, oral sex, or sexual contact, the other party personally gave the actor
16 explicit prior permission to use or threaten to use physical force or restraint, or to inflict or
17 threaten to inflict any harm otherwise proscribed by Sections 213.1, 213.2, 213.4, 213.7, or
18 213.9, or to ignore the absence of consent otherwise proscribed by Section 213.6.

19 (2) Permission is “explicit” under subsection (1) only when it is given orally or by
20 written agreement:

21 (a) specifying that the actor may ignore the other party’s expressions of
22 unwillingness or other absence of consent;

23 (b) identifying the specific forms and extent of force, restraint, or threats that
24 are permitted; and

25 (c) stipulating the specific words or gestures that will withdraw the permission.
26 Permission given by gestures or other nonverbal conduct signaling assent is not
27 “explicit” under subsection (1).

28 (3) The defense provided by this Section is unavailable when:

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1 (a) the act of sexual penetration, oral sex, or sexual contact occurs after the
2 explicit permission was withdrawn, and the actor is ~~aware of, yet recklessly~~
3 ~~disregards, the risk that~~reckless with respect to whether the permission was
4 withdrawn;

5 (b) the actor relies on permission to use force or restraint or ignore the absence
6 of consent at a time when the other party will be unconscious, asleep, or otherwise
7 unable to withdraw that permission;

8 (c) the actor recklessly engages in conduct that causes or risks serious bodily
9 ~~injury and in so doing is aware of, yet recklessly disregards, the risk of such~~ injury;
10 or

11 (d) at the time explicit permission is given, the other party is, and the actor is
12 ~~aware of, yet recklessly disregards, the risk that~~reckless with respect to whether the
13 other party is:

14 (i) younger than 18;

15 (ii) giving that permission while subjected to physical force or restraint;

16 (iii) giving that permission because of the use of or threat to use physical
17 force or restraint, or extortion as defined by Section 213.4, if that party does
18 not give the permission;

19 (iv) lacking substantial capacity to appraise or control ~~his or her~~that
20 party's conduct as a result of intoxication, whether voluntary or involuntary,
21 and regardless of the identity of the person who administered the intoxicants;

22 (v) incapacitated, vulnerable, or legally restricted, as defined by Section
23 213.3;

24 (vi) subject to prohibited deception, as defined by Section 213.5; or

25 (vii) subject to trafficking, as defined by Section 213.9(1).

26 SECTION 213.11. SENTENCING AND COLLATERAL CONSEQUENCES OF CONVICTION

27 (1) *Definitions.* For purposes of this Article:

28 (a) “sentencing consequences” are penalties, disabilities, or disadvantages that
29 are part of the sentence imposed by the court or by an agency authorized to set the

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[Section 213.10. Affirmative Defense of Explicit Prior Permission](#)

1 **terms of parole or post-release supervision in connection with conviction of an Article**
2 **213 offense; and**
3 **(b) “collateral consequences” are penalties, disabilities, or disadvantages,**

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1 however denominated, that are authorized or required by federal, state, or local law
2 as a direct result of an individual’s conviction of an Article 213 offense but are not
3 part of the sentence imposed by the court or by an agency authorized to set the terms
4 of parole or post-release supervision in connection with that conviction.

5 **(2) *General Rule.*** Sentencing procedure, the authorized disposition of a person
6 convicted of an Article 213 offense, sentencing consequences, and collateral consequences are
7 specified in Articles 6 and 7 of this Code,* and are subject to the additional requirements of
8 this Section.

9 **(3) *Additional Requirements for Sentencing Consequences.*** Notwithstanding any
10 contrary provisions of law, the conditions of any suspended sentence under Section 6.02(2),
11 any sentence to probation under Section 6.05, and any terms of parole or post-release
12 supervision under Section 6.13 must be eligible for early relief under Section 213.11J and
13 must not include:

14 **(a) a condition that:**

15 **(i) imposes an obligation to register with law enforcement that carries**
16 **requirements other than those authorized under Sections 213.11A-213.11G**
17 **and Section 213.11J;**

18 **(ii) permits access to the person’s registry information, except as**
19 **authorized under Section 213.11H; or**

20 **(iii) authorizes or permits any government official to notify a public or**
21 **private entity or individual, other than a government law-enforcement agency**
22 **or individual, that the person is registered with law enforcement or resides,**
23 **works, or studies in the locality;**

24 **(b) a condition that restricts the person’s occupation or employment, except as**
25 **required by state law or authorized under paragraph (d) of this subsection; or**

26 **(c) except as authorized under paragraph (d) of this subsection, a condition**
27 **that:**

28 **(i) requires the person to submit to GPS monitoring; or**

29 **(ii) restricts the person’s education, Internet access, or place of**

* MODEL PENAL CODE: SENTENCING, *Official Statutory Text* (May 24, 2017).

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1 residence.

2 (d) The court, and any agency authorized to set the terms of parole or post-
3 release supervision, may impose a condition, not required by state law, that restricts
4 the person's occupation or employment, or a condition specified in paragraph (c) of
5 this subsection, only if the court or agency determines that the condition is manifestly
6 required in the interest of public safety. That determination must be:

7 (i) made after due consideration of the nature of the offense; all other
8 circumstances of the case; the person's prior record; and the potential
9 negative impacts of the burden, restriction, requirement, or government
10 action on the person, on the person's family, and on the person's prospects for
11 rehabilitation and reintegration into society; and

12 (ii) accompanied by a written statement of the official setting the
13 condition, explaining the need for it, the evidentiary basis for the finding of
14 need, and the reasons why a more narrowly drawn condition would not
15 adequately meet that need.

16 (e) Any condition imposed under paragraph (d) must be:

17 (i) drawn as narrowly as possible to achieve the goal of public safety;
18 and

19 (ii) imposed only for a period not to exceed that permitted under
20 Section 213.11F for the duties to register and keep the registration current.

21 (4) *Additional Requirements for Collateral Consequences that are Applicable Primarily*
22 *to Persons Convicted of a Sexual Offense.* Notwithstanding any contrary provisions of law,
23 collateral consequences applicable primarily to persons convicted of a sexual offense,
24 including the obligation to register with law enforcement; associated duties; restrictions on
25 occupation and employment, education, and place of residence applicable primarily to
26 persons convicted of a sexual offense; and other collateral consequences applicable primarily
27 to persons convicted of a sexual offense, are authorized and their scope and implementation
28 are delineated as follows:

29 (a) The person's obligation to register for law-enforcement purposes is
30 governed by Section 213.11A.

31 (b) Notification of the person's obligation to register and associated duties

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[Section 213.11. Sentencing and Collateral Consequences of Conviction](#)

1 **is governed by Section 213.11B.**

2

Section 213.11A. Registration for Law-Enforcement Purposes

1 (c) The time of initial registration is governed by Section 213.11C.

2 (d) The information required upon registration is specified in Section
3 213.11D.

4 (e) The duty to keep registration current is specified in Section 213.11E.

5 (f) The duration of the registration requirements is specified in Section
6 213.11F.

7 (g) Penalties for failure to register are governed by Section 213.11G.

8 (h) Access to registry information is governed by Section 213.11H.

9 (i) Collateral consequences applicable primarily to persons convicted of a
10 sexual offense, other than the obligation to register for law-enforcement purposes
11 and restrictions on occupation and employment required by state law, are
12 governed by Section 213.11I.

13 (j) Standards and procedures for relief from the obligation to register,
14 associated duties, and other collateral consequences applicable specifically to
15 persons convicted of a sexual offense are governed by Section 213.11J.

16 (5) Retroactive Effect. As of the effective date of this Section, all prior registration
17 requirements and other collateral consequences applicable primarily to persons
18 convicted of a sexual offense, whether imposed by this or any other jurisdiction, are
19 subject to the requirements and limits of this Section and Sections 213.11A-J.

20 SECTION 213.11A. REGISTRATION FOR LAW-ENFORCEMENT PURPOSES

21 (1) ~~Offenses Committed~~ Convictions in This Jurisdiction

22 (a) Except as provided in subsection (3), every person convicted of an offense
23 that is designated a registrable offense in this Article must, in addition to any other
24 sanction imposed upon conviction, appear personally and register, at the time
25 specified in Section 213.11C, with the law-enforcement authority designated by law
26 in the [county] where the person resides. If the person who is required to register
27 under this subsection does not reside in this jurisdiction, but works in this
28 jurisdiction, registration must be accomplished in the [county] where the person

Section 213.11A. Registration for Law-Enforcement Purposes

1 works; if the person does not reside or work in this jurisdiction but is enrolled in a
 2 program of study in this jurisdiction, registration must be accomplished in the
 3 [county] where the person studies.

4 (b) Notwithstanding any other provision of law, no conviction for an offense
 5 under this Article, or for any other criminal offense in this jurisdiction, will require
 6 the person convicted to register with law enforcement or other governmental
 7 authority in a registry regime applicable primarily to persons convicted of a sexual
 8 offense, unless this Article designates that offense as a registrable offense.

(2) ~~Offenses Committed~~ Convictions in Other Jurisdictions

10 (a) *Duty to register and related duties.* Every person currently obliged to
 11 register with law enforcement or other public authority in another jurisdiction,
 12 because of a sexual offense ~~committed~~ conviction in that jurisdiction, who
 13 subsequently resides, works, or enrolls in a program of study in this jurisdiction, must
 14 register with the law-enforcement authority designated by law and comply with the
 15 requirements of Sections 213.11A-213.11G, provided that the conviction offense
 16 ~~committed~~ in the other jurisdiction is comparable to an offense that would be
 17 registrable under this Article if committed in this jurisdiction.

18 (b) *Place of registration.* If the person who is obliged to register under
 19 paragraph (a) resides in this jurisdiction, registration must be accomplished in the
 20 [county] where the person resides. If the person who is obliged to register under
 21 paragraph (a) does not reside in this jurisdiction, but works in this jurisdiction,
 22 registration must be accomplished in the [county] where the person works; if the
 23 person does not reside or work in this jurisdiction but is enrolled in a program of
 24 study this jurisdiction, registration must be accomplished in the [county] where the
 25 person studies.

(c) *Determining the comparability of ~~in-state and out-of-state~~ conviction offenses*
in other jurisdictions

28 (i) *Standard.* **An conviction offense ~~committed~~ in another jurisdiction**
 29 **is comparable to a registrable offense under this Article if and only if the**
 30 **elements of the ~~out-of-state~~ other jurisdiction's offense are no broader than the**
 31 **elements of that registrable offense. When, regardless of the conduct**

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Section 213.11A. Registration for Law-Enforcement Purposes

1 underlying the ~~out-of-state~~other jurisdiction's conviction, the ~~out-of-~~
2 ~~state~~other jurisdiction's offense can be committed by conduct that is not
3 sufficient to establish a registrable offense under this

Section 213.11B. Notification of the Obligation to Register and Associated Duties

1 Article, the two offenses are not comparable.

2 (ii) *Procedure.* Before determining that ~~ana conviction~~ offense
3 ~~committed~~ in another jurisdiction is comparable to a registrable offense under
4 this Article, the authority designated to make that determination must give the
5 person concerned notice and an opportunity to be heard on that question,
6 either orally or in writing.

7 (d) Notwithstanding any other provision of law, no conviction for a sexual
8 offense in another jurisdiction will require the offender to register with law
9 enforcement or other governmental authority in this jurisdiction, unless that
10 conviction currently requires the offender to register with law enforcement or other
11 governmental authority in ~~the~~that jurisdiction ~~where the offense was committed~~ and
12 the conviction is for an offense comparable to an offense that would be registrable
13 under this Article if committed in this jurisdiction.

14 (3) *Persons* ~~under~~Under the ~~age~~Age of 18. No person may be subject to the obligation
15 to register under subsection (1) of this Section, to other obligations or restrictions under this
16 Section, or to additional collateral consequences under Section 213.11I, on the basis of a
17 criminal conviction for an offense committed when the person was under the age of 18, or on
18 the basis of an adjudication of delinquency based on conduct when the person was under the
19 age of 18; provided, however, that this subsection (3) does not apply to a person convicted of
20 a criminal offense of Sexual Assault by Aggravated Physical Force or Restraint if the person
21 was at least 16 years old at the time of that offense.

22 SECTION 213.11B. NOTIFICATION OF THE OBLIGATION TO REGISTER AND ASSOCIATED DUTIES

23 (1) Before accepting a guilty plea, and at the time of sentencing after conviction
24 on a guilty plea or at trial, the sentencing judge must:

25 (a) inform the person who is subject to registration of the registration
26 requirement;

27 (b) explain the associated duties, including:

28 (i) the identity and location, or procedure for determining the identity
29 and location, of the law-enforcement agency where the person must appear to

Section 213.11B. Notification of the Obligation to Register and Associated Duties

1 register as required by Section 213.11A;

2 (ii) the duty to register with a law-enforcement agency in any locality
3 where the person subsequently resides, including the possible duty to register
4 with a law-enforcement agency or other government authority in another
5 jurisdiction to which the person subsequently moves;

6 (iii) the duty to report to that office or agency periodically in person, as
7 required by Section 213.11E(1); and

8 (iv) the duty to promptly notify at least one of the local jurisdictions
9 where the person is registered of any change in the registry information
10 pertaining to that person, as required by Section 213.11E(2);

11 (c) notify the person of the right to petition for relief from those duties as
12 provided in Section 213.11J;

13 (d) confirm that defense counsel has explained to that person those duties and
14 the right to petition for relief from those duties;

15 (e) confirm that the person understands those duties and that right;

16 (f) require the person to read and sign a form stating that defense counsel and
17 the sentencing judge have explained the applicable duties and the right to petition for
18 relief from those duties, and that the person understands those duties and that right;

19 (g) ensure that if the person convicted of a sexual offense cannot read or
20 understand the language in which the form is written, the person will be informed of
21 the pertinent information by other suitable means that the jurisdiction uses to
22 communicate with such individuals; and

23 (h) satisfy all other notification requirements applicable under Model Penal
24 Code: Sentencing, Section 7.04(1).

25 (2) At the time of sentencing, the convicted person shall receive a copy of the form
26 signed pursuant to subsection (1)(f) of this Section.

27 (3) If the convicted person is sentenced to a custodial sanction, an appropriate official
28 must, shortly before the person's release from custody, again inform the person of the
29 registration requirement, explain the associated rights and duties, including the right to
30 petition for relief from those duties, and require the person to read and sign a form stating

Section 213.11D. Information Required in Registration

1 that those rights and duties have been explained and that the person understands those rights
2 and duties. At the time of release from custody, the person concerned shall receive a copy of
3 that form.

4 **SECTION 213.11C. TIME OF INITIAL REGISTRATION**

5 **A person subject to registration must initially register:**

6 (a) if incarcerated after sentence is imposed, then within three business days
7 after release; or

8 (b) if not incarcerated after sentence is imposed, then not later than five
9 business days after being sentenced for the offense giving rise to the duty of
10 registration.

11 **SECTION 213.11D. INFORMATION REQUIRED IN REGISTRATION**

12 (1) A person subject to registration under Section 213.11A must provide the following
13 information to the appropriate official for inclusion in the law-enforcement registry:

14 (a) the name of the person (including any alias used by the person);

15 (b) the Social Security number, if any, of the person;

16 (c) the address of each place where the person resides or expects to reside;

17 (d) the name and address of any place where the person works or expects to
18 work;

19 (e) the name and address of any place where the person is a student or expects
20 to be a student;

21 (f) the license-plate number and a description of any vehicle owned or
22 regularly operated by the person.

23 (2) *Supplementary Information.* The local jurisdiction in which a person registers must
24 ensure that the following information is included in the registry for that person and kept up
25 to date:

26 (a) the text of the provision of law defining the sexual offense for which the
27 person is registered;

Section 213.11D. Information Required in Registration

1 (b) the person's criminal history, including the date and offense designation of
2 all convictions; and the person's parole, probation, or supervised-release status;

3 (c) any other information required by law.

4 (3) *Registrants Who Lack a Stable Residential Address.* If a person required to register
5 lacks a stable residential address, the person must, at the time of registration, report with as
6 much specificity as possible the principal place where the person sleeps, instead of the
7 information required under subsection (1)(c).

8 (4) The local jurisdiction in which a person registers must promptly provide the
9 information specified in subsections (1), (2), and (3) of this Section to an appropriate law-
10 enforcement authority in every other jurisdiction in which the registrant works or expects
11 to work and is enrolled or expects to enroll in a program of study.

12 (5) *Correction of Errors.* Each locality where a person registers and each locality that
13 receives information about a registrant pursuant to subsection (4) of this Section must
14 provide efficacious, reasonably accessible procedures for correcting erroneous registry
15 information. Each locality where a person registers must, at the time of registration, provide
16 the registrant instructions on how to use those procedures to seek correction of registry
17 information that the registrant believes to be erroneous.

18 SECTION 213.11E. DUTY TO KEEP REGISTRATION CURRENT

19 (1) ~~Periodic~~Annual Updates:

20 (a) A person who is required to register under Section 213.11A must, not less
21 frequently than once every year, appear in person in ~~at least one~~the jurisdiction where the
22 person is required to register under Section 213.11A, verify the current accuracy of the
23 information provided in compliance with Section 213.11D(1), allow the jurisdiction to take a
24 current photograph, and report any change in the identity of other jurisdictions in which the
25 person is required to register or in which the person works or is enrolled in a program of
26 study.

27 (b) Not less than 30 nor more than 45 days before the person's annual registration
28 date, the authority where the person is registered under Section 213.11A must alert the
29 registrant to the requirements of this Section by sending written notice to the person's

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Section 213.11D. Information Required in Registration

1 residential address.

Section 213.11E. Duty to Keep Registration Current

1 (c) In the case of registrants who lack a stable residential address, and therefore
2 report instead the principal place or places where they sleep, as provided in Section
3 213.11D(3), the authority where the person is registered under Section 213.11A must make
4 a good-faith effort to provide this written notice to the person at the location the person has
5 reported as the principal place where the person sleeps.

6 *(2) Change of Circumstances*

7 (a) Except as provided in paragraph (b) of this subsection, a person subject to
8 registration under Section 213.11A must, not later than five business days after each
9 change of name and each change in the location where the person resides, works, or
10 is enrolled in a program of study, notify ~~at least one~~the local jurisdiction specified in
11 Section 213.11A of:

12 (i) all changes in the information that the person is required to provide
13 under Section 213.11D, and

14 (ii) the identity of all other jurisdictions in which the person resides,
15 works, or is enrolled in a program of study.

16 (b) Registrants who lack a stable residential address, and therefore report
17 instead the principal place or places where they sleep, as provided in Section
18 213.11D(3), must confirm or update those locations once every 90 days but need not
19 do so more often.

20 (c) Each jurisdiction that maintains a registry of persons who have been
21 convicted of a sexual offense must permit registrants to notify the jurisdiction, by one
22 or more reliable, readily accessible methods of communication of the jurisdiction's
23 choosing, such as U.S. mail, submission of an appropriate form online, or otherwise,
24 of any change of name, residence, employment, student status, or vehicle regularly
25 used, and any change in the identity of all other jurisdictions in which the person
26 resides, works, or is enrolled in a program of study.

27 (d) Each jurisdiction where a person registers pursuant to Section 213.11A
28 must advise the registrant, at the time of registration, of the registrant's option to use
29 the means of communication established under subsection (2)(c), rather than
30 appearing personally for that purpose, if the registrant so chooses, other than for the

Section 213.11E. Duty to Keep Registration Current

annual in-person meeting requirement of subsection (1).

(3) The local jurisdiction notified of any changes pursuant to subsections (1) and (2) must promptly provide the registrant a written receipt confirming that the updated information has been provided, and must provide that information to all other jurisdictions in which the person resides, works, or is enrolled in a program of study.

SECTION 213.11F. DURATION OF REGISTRATION REQUIREMENT

(1) Ordinary Termination

(a) Subject to the provisions of subsection (32) of this Section and Section 213.11J, a person required to register must keep the registration current for a period of 15 years, beginning on the date when the registrant is released from custody after conviction for the offense giving rise to the registration requirement; or if the registrant is not sentenced to a term of incarceration, beginning on the date when the registrant was sentenced for that offense.

(2b) At the expiration of that 15-year period, the duty to keep that registration current will terminate; and the person who had been registered will not be subject to any further duties associated with that registration requirement; ~~and no public or private agency other than a government law enforcement agency shall thereafter be permitted access to the person's registry information.~~ The person will remain subject to any registration requirement that arises from conviction of any other sexual offense.

(c) In determining whether the 15-year period has been completed, that period shall include any time in which the person was registered, prior to the effective date of Sections 213.11 and 213.11A-J, for the offense giving rise to that registration requirement.

(32) ~~Early termination~~ Termination. If, during the first 10 years of the period during which a person is required to keep registration information current, the person:

(a) successfully completes any period of supervised release, probation, or parole, and satisfies any financial obligation such as a fine or restitution, other than

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Section 213.11E. Duty to Keep Registration Current

- 1 **a financial obligation that the person, despite good-faith effort, has been unable to**
2 **pay; and**
3 **(b) successfully completes any required sexual-offense treatment program;**
4 **and**

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1 (c) is not convicted of, or facing pending charges for, any subsequent offense
2 under this Article, or any subsequent sexual offense in another jurisdiction that would
3 be an offense under this Article if committed in this jurisdiction; then:

4 the duty to keep that registry information current will terminate; the person who had
5 been registered will not be subject to any further duties associated with that registration
6 requirement; and subsequent access to registry information will be governed by subsection
7 **(43)**.

8 **(43) Access to Registry Information ~~after~~After Termination.** When the person's
9 obligation to register and to keep registry information current terminates under subsection
10 **(21)** or **(32)**, subsequent access to registry information is limited as follows:

11 (a) Registry information recorded as of the date when termination takes effect
12 may remain available to any government law-enforcement agency seeking disclosure
13 of that information in compliance with Section 213.11H(1)(a).

14 (b) Except as provided in paragraph (a), no public or private agency may
15 thereafter be permitted access to registry information ~~concerning the person whose~~
16 ~~obligation to register and keep registry information public~~associated with a
17 registration requirement that has terminated.

18 **(54) Notice of Termination.** When a person's duty to register terminates under
19 subsection **(21)** or **(32)**, the law-enforcement agency in the local jurisdiction where the person
20 resides must:

21 (a) include in its registry a notice that the person's duty to register and all
22 duties associated with that registration requirement have terminated; and

23 (b) upon the person's request, notify all other jurisdictions where the person
24 is registered and where information about the registrant has been provided pursuant
25 to Section 213.11D(4) that the person's duty to register and all duties associated with
26 that registration requirement have terminated and that no public or private agency
27 other than a government law-enforcement agency shall thereafter be permitted to
28 have access to that registry information.

29 **(65) Certification.** When a person's duty to register terminates under subsection **(21)**
30 or **(32)**, the law-enforcement agency in the local jurisdiction where the person resides must,
31 upon request, provide that person a certificate attesting that person's duty to register and

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[Section 213.11F. Duration of Registration Requirement](#)

- 1 **all duties associated with that registration requirement have terminated.**

Section 213.11G. Failure to Register

1 SECTION 213.11G. FAILURE TO REGISTER

2 (1) *Offense of Failure to Register.* A person required to register under Section 213.11A
3 is guilty of Failure to Register, a misdemeanor, if that person knowingly fails to register as
4 required by Sections 213.11A, 213.11C, 213.11D, and 213.11E(1), or knowingly fails to
5 update a registration as required by Section 213.11E(2).

6 (2) *Affirmative Defense.* In a prosecution for Failure to Register under subsection (1)
7 of this Section, it is an affirmative defense that:

8 (a) circumstances beyond the control of the accused prevented the accused
9 from complying;

10 (b) the accused did not ~~voluntarily~~recklessly contribute to the creation of those
11 circumstances ~~in reckless disregard of the requirement to comply~~; and

12 (c) after those circumstances ceased to exist, the accused complied as soon as
13 reasonably feasible.

14 (3) Other Consequences of Not Meeting Registration Requirements. Failing to register
15 or to meet other registration requirements may not be a basis for revoking bail, probation,
16 parole, or other conditions of release from custody, unless the person who failed to do so has
17 been convicted under this Section of the offense of Failure to Register.

18 SECTION 213.11H. ACCESS TO REGISTRY INFORMATION

19 (1) *Confidentiality*

20 (a) Each law-enforcement agency with which a person is registered and each
21 law-enforcement agency that receives information about a registrant pursuant to
22 Section 213.11D(4) must exercise due diligence to ensure that all information about
23 the registrant remains confidential, except that relevant information about a specific
24 registrant must be made available to any government law-enforcement agency that
25 requests information to aid in the investigation of a specific criminal offense.

26 (b) Any disclosure pursuant to paragraph (a) must include a warning that:

27 (i) the law-enforcement agency receiving the information must exercise
28 due diligence to ensure that the information remains confidential;

29 (ii) such information may be disclosed and used as provided in

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1 paragraph (a), but otherwise must not be disclosed to any person or public or
2 private agency;

3 (iii) such information may be used only for the purpose requested;

4 (iv) such information may not be used to injure, harass, or commit a
5 crime against the registrant or anyone else; and

6 (v) any failure to comply with the confidentiality and use-limitation
7 requirements of paragraph (b) could result in civil or criminal penalties.

8 (2) *Unauthorized Disclosure of Registry Information.* An actor is guilty of
9 **Unauthorized Disclosure of Registry Information** if:

10 (a) the actor, having received registry information as provided in subsection
11 (1), knowingly or recklessly discloses that information, or permits that information to
12 be disclosed, to any person not authorized to receive it; or

13 (b) the actor obtains access to registry information by computer trespassing or
14 otherwise in violation of law and subsequently knowingly or recklessly discloses that
15 information, or permits that information to be disclosed, to any other person.

16 **Unauthorized Disclosure of Registry Information** is a felony of the fourth degree [*five-*
17 *year maximum*].

18 **SECTION 213.11I. ADDITIONAL COLLATERAL CONSEQUENCES OF CONVICTION**

19 (1) *Definition.* For purposes of this Section, the term “additional collateral
20 consequence” means any collateral consequence, as defined in Section 213.11(1)(b), that is
21 applicable primarily to persons convicted of a sexual offense, other than the obligation to
22 register with law enforcement specified in Section 213.11A, the associated duties and
23 restrictions specified in Sections 213.11C-213.11G, and any restriction on occupation or
24 employment required by state law. These additional collateral consequences include any
25 government-imposed program or restriction applicable primarily to persons convicted of a
26 sexual offense that restricts the convicted person’s occupation or employment except as
27 required by state law; limits the convicted person’s education, Internet access, or place of
28 residence; uses methods such as GPS monitoring to track the person’s movements; notifies
29 a community organization or entity or a private party that the person resides, works, or

Section 213.I. Additional Collateral Consequences of Conviction

1 studies in the locality; or permits a public or private agency, organization, or person to access
2 registry information, except as authorized by Section 213.11H. An “additional collateral
3 consequence” under this Section does not include a collateral consequence that applies to
4 persons convicted of many different offenses, such as any government-imposed limits on
5 ~~voting~~, jury service, access to public benefits, and other government-imposed penalties,
6 disabilities, and disadvantages that result from conviction of a wide variety of offenses,
7 including but not limited to sexual offenses.

8 *(2) Additional Collateral Consequences Precluded for Persons Not Required to Register.*

9 Notwithstanding any other provision of law, no person shall be subject to an additional
10 collateral consequence, as defined in subsection (1), unless that person has been convicted of
11 a registrable offense and is required to register with law enforcement under Section 213.11A.

12 *(3) Additional Collateral Consequences Precluded for Persons Required to Register.*

13 Notwithstanding any other provision of law, a person required to register with law
14 enforcement under Section 213.11A must not be subject to any government action notifying
15 a community organization or entity or a private party that the person resides, works, or
16 studies in the locality; and must not be subject to any government action permitting a public
17 or private agency, organization, or person to access registry information, except as
18 authorized by Section 213.11H.

19 *(4) Additional Collateral Consequences Available for Persons Required to Register.*

20 Notwithstanding any other provision of law, a person required to register with law
21 enforcement under Section 213.11A may be subject to an additional collateral consequence
22 not specified in subsection (3), but only if an official designated by law, after affording the
23 person notice and an opportunity to respond concerning the proposed additional collateral
24 consequence, determines that the additional collateral consequence is manifestly required in
25 the interest of public safety, after due consideration of:

26 (a) the nature of the offense;

27 (b) all other circumstances of the case;

28 (c) the person’s prior record; and

29 (d) the potential negative impacts of the burden, restriction, requirement, or
30 government action on the person, on the person’s family, and on the person’s
31 prospects for rehabilitation and reintegration into society.

Section 213.J. Discretionary Relief from Registration and Other Sentencing Consequences

1 **(5) *Limitations.*** The designated official who approves any additional collateral
2 consequence pursuant to subsection (4) of this Section must determine that the additional
3 collateral consequence:

4 **(a)** satisfies all applicable notification requirements set forth in Section
5 213.11B;

6 **(b)** is authorized by law;

7 **(c)** is drawn as narrowly as possible to achieve the goal of public safety;

8 **(d)** is accompanied by a written statement of the official approving the
9 additional collateral consequence, explaining the need for it, the evidentiary basis for
10 the finding of need, and the reasons why a more narrowly drawn restriction,
11 disability, or government action would not adequately meet that need; and

12 **(e)** is imposed only for a period not to exceed that permitted under Section
13 213.11F for the duties to register and keep the registration current.

14 **(6) *Confidentiality.*** In any proceeding under subsection (4) to consider whether to
15 impose an additional collateral consequence, the official responsible for making the
16 determination must insure that the identity of the registrant concerned remains confidential.

17 **(7) *Judicial Review.*** A person on whom an additional collateral consequence has been
18 **imposed under subsections (4) and (5) is entitled to judicial review in an appropriate court,**
19 **within the time and in accordance with the procedures provided by law for review of**
20 **decisions of administrative agencies in this jurisdiction.**

21 **SECTION 213.11J. DISCRETIONARY RELIEF FROM REGISTRATION AND OTHER SENTENCING**
22 **CONSEQUENCES AND COLLATERAL CONSEQUENCES**

23 **(1) *Petition for Discretionary Relief.*** At any time prior to the expiration of any
24 sentencing consequences imposed under Section 213.11(3) or any collateral consequences
25 applicable primarily to persons convicted of a sexual offense, including the obligation to
26 register, the obligation to comply with associated duties, restrictions on occupation or
27 employment required by state law, collateral consequences imposed under Section 213.11(4),
28 and additional collateral consequences imposed under Section 213.11I(4), the registrant may

Section 213.J. Discretionary Relief from Registration and Other Sentencing Consequences

1 petition the sentencing court, or other authority authorized by law, to order relief from all
2 or part of those consequences. If the obligation to register or other consequences arose from
3 an out-of-state conviction, the petition may be addressed to a court of general jurisdiction or
4 other authority of this state in the place where the person concerned is registered.

5 **(2) *Proceedings on Petition for Discretionary Relief.*** The authority to which the petition
6 is addressed may either dismiss the petition summarily, in whole or in part, or institute
7 proceedings to rule on the merits of the petition. If that authority chooses to entertain
8 submissions, hear argument, or take evidence prior to ruling on the merits of the petition, it
9 must give notice of the proceeding and an opportunity to participate in it to the prosecuting
10 attorney for the offense out of which the obligation to register or other consequence arose. If
11 the obligation to register or other consequence arose from an out-of-state conviction, notice
12 of the proceeding and an opportunity to participate in it must be addressed to the principal
13 prosecuting attorney in the jurisdiction of this state where the authority to which the petition
14 is addressed is located.

15 **(3) *Judgment on Proceedings for Discretionary Relief.*** Following proceedings for
16 discretionary relief under subsection (2), the authority to which the petition is addressed may
17 grant or deny relief, in whole or in part, from the obligation to register, any associated duties,
18 and any of the sentencing consequences or collateral consequences in question. When that
19 order terminates the registrant's obligation to register and to keep registry information
20 current, subsequent disclosure of registry information is governed by subsection (5) of this
21 Section. An order granting or denying relief following those proceedings must explain in
22 writing the reasons for granting or denying relief.

23 **(4) *Standard for Discretionary Relief.*** The authority to which the petition is addressed
24 must grant relief if it finds, after proceedings to rule on the merits pursuant to subsection
25 (2), that the sentencing consequence or collateral consequence in question is likely to impose
26 a substantial burden on the registrant's ability to reintegrate into law-abiding society, and
27 that public-safety considerations do not require continued imposition of the obligation, duty,
28 or consequence after due consideration of:

29 (a) the nature of the offense;

30 (b) all other circumstances of the case;

31 (c) the registrant's prior and subsequent record of criminal convictions, if any;

Section 213.J. Discretionary Relief from Registration and Other Sentencing Consequences

1 **and**

2 **(d) the potential negative impacts of the burden, restriction, or government**
3 **action on the registrant, on the registrant’s family, and on the registrant’s prospects**
4 **for rehabilitation and reintegration into society.**

5 **Relief must not be denied arbitrarily or for any punitive purpose.**

6 **(5) *Access to Registry Information after Discretionary Relief.* When an order of**
7 **discretionary relief terminates the person’s obligation to register and to keep registry**
8 **information current, all limits on access to registry information under Section 213.11H shall**
9 **remain in effect. Registry information recorded as of the date when discretionary relief takes**
10 **effect must remain available to any government law-enforcement agency seeking disclosure**
11 **of that information in compliance with Section 213.11H(1)(a) but must not otherwise be**
12 **disclosed.**

13 **(6) *Notice to Other Jurisdictions Concerning Discretionary Relief.***

14 **(a) When discretionary relief is granted to a person under this Section, the**
15 **authority granting the order of relief must, upon the person’s request, give notice of**
16 **that order to any other jurisdiction where the person concerned is registered or where**
17 **information about the person has been provided pursuant to Section 213.11D(4).**

18 **(b) When the other jurisdiction notified is a jurisdiction of this state, the notice**
19 **must specify that the other jurisdiction must extend the same relief from registration-**
20 **related duties and any other sentencing consequences or collateral consequences.**
21 **When that order terminates the registrant’s obligation to register and to keep registry**
22 **information current, that notice must also specify the limits on subsequent disclosure**
23 **of registry information applicable under subsection (5).**

24 **(7) *Proceedings Subsequent to Discretionary Relief.* An order of discretionary relief**
25 **granted under this Section does not preclude the authority to which the petition was**
26 **addressed from later revoking that order if, on the basis of the registrant’s subsequent**
27 **conduct or any other substantial change in circumstances, the authority finds by a**
28 **preponderance of the evidence that public-safety considerations, weighed against the burden**
29 **on the registrant’s ability to reintegrate into law-abiding society, no longer justify the order**
30 **of relief.**

Appendix B

[Section 213.J. Discretionary Relief from Registration and Other Sentencing Consequences](#)

1 **(8) Confidentiality.** In any proceedings under this Section to consider whether to grant
2 or deny discretionary relief, the official responsible for making the determination must
3 insure that the identity of the registrant concerned remains confidential.

Appendix B

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APPENDIX C

PERTINENT MODEL PENAL CODE PROVISIONS*

** Pertinent provisions of the 1962 Model Penal Code are reproduced below, numbered as they appear in that Code. These provisions of the 1962 Code are reproduced verbatim, except that the gendered language used in the 1962 Code has been replaced by gender-neutral terms used in the other parts of the 1962 Code, such as “the person” or “the actor.”*

1.12 Proof Beyond a Reasonable Doubt; Affirmative Defenses; Burden of Proving Fact When Not an Element of an Offense; Presumptions

(1) No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

(2) Subsection (1) of this Section does not:

(a) require the disproof of an affirmative defense unless and until there is evidence supporting such defense; or

(b) apply to any defense that the Code or another statute plainly requires the defendant to prove by a preponderance of evidence.

1.13 General Definitions

In this Code, unless a different meaning plainly is required:

(5) “conduct” means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) “actor” includes, where relevant, a person guilty of an omission;

(9) “element of an offense” means (i) such conduct or (ii) such attendant circumstances or (iii) such a result of conduct as

(a) is included in the description of the forbidden conduct in the definition of the offense; or

(b) establishes the required kind of culpability; or

- (c) negatives an excuse or justification for such conduct; or
 - (d) negatives a defense under the statute of limitations; or
 - (e) establishes jurisdiction or venue;
- (10) “material element of an offense” means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue, or to any other matter similarly unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence of a justification or excuse for such conduct;
- (11) “purposely” has the meaning specified in Section 2.02 and equivalent terms such as “with purpose,” “designed” or “with design” have the same meaning;
- (12) “intentionally” or “with intent” means purposely;
- (13) “knowingly” has the meaning specified in Section 2.02 and equivalent terms such as “knowing” or “with knowledge” have the same meaning;
- (14) “recklessly” has the meaning specified in Section 2.02 and equivalent terms such as “recklessness” or “with recklessness” have the same meaning;
- (15) “negligently” has the meaning specified in Section 2.02 and equivalent terms such as “negligence” or “with negligence” have the same meaning;
- (16) “reasonably believes” or “reasonable belief” designates a belief that the actor is not reckless or negligent in holding.

2.02 *General Requirements of Culpability*

(1) ***Minimum Requirements of Culpability.*** Except as provided in Section 2.05, a person is not guilty of an offense unless the person acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) ***Kinds of Culpability Defined.***

(a) **Purposely.**

A person acts purposely with respect to a material element of an offense when:

- (i) if the element involves the nature of the person’s conduct or a result thereof, it is the person’s conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, the person is aware of the existence of such circumstances or the person believes or hopes that they exist.

(b) Knowingly.

A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the person's conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of the person's conduct, the person is aware that it is practically certain that the person's conduct will cause such a result.

(c) Recklessly.

A person acts recklessly with respect to a material element of an offense when the person consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the person's conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently.

A person acts negligently with respect to a material element of an offense when the person should be aware of a substantial and unjustifiable risk that the material element exists or will result from the person's conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) *Culpability Required Unless Otherwise Provided.* When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) *Prescribed Culpability Requirement Applies to All Material Elements.* When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) *Substitutes for Negligence, Recklessness and Knowledge.* When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

2.03 *Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result*

(1) Conduct is the cause of a result when:

(a) it is an antecedent but for which the result in question would not have occurred; and

(b) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

(2) When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor unless:

(a) the actual result differs from that designed or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a [just]¹ bearing on the actor's liability or on the gravity of the actor's offense.

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which the actor should be aware unless:

(a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of the actor's offense.

(4) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

2.12 De Minimis Infractions

The Court shall dismiss a prosecution if, with regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or

(b) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

¹ The commentary at p. 261 n.16 explains: "The word 'just' is in brackets because of disagreement within the Institute over whether it is wise to put undefined questions of justice to the jury...."

The Court shall not dismiss a prosecution under subsection (3) of this Section without filing a written statement of its reasons.

4.10. *Immaturity Excluding Criminal Conviction; Transfer of Proceedings to Juvenile Court*²

(1) A person shall not be tried for or convicted of an offense if:

(a) at the time of the conduct charged to constitute the offense the person was less than sixteen years of age [, in which case the Juvenile Court shall have exclusive jurisdiction]; or

(b) at the time of the conduct charged to constitute the offense the person was sixteen or seventeen years of age, unless:

(i) the Juvenile Court has no jurisdiction over the person, or,

(ii) the Juvenile Court has entered an order waiving jurisdiction and consenting to the institution of criminal proceedings against the person.

(2) No court shall have jurisdiction to try or convict a person of an offense if criminal proceedings against the person are barred by Subsection (1) of this Section. When it appears that a person charged with the commission of an offense may be of such an age that criminal proceedings may be barred under Subsection (1) of this Section, the Court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the Court that the criminal proceeding is not barred upon such grounds. If the Court determines that the proceeding is barred, custody of the person charged shall be surrendered to the Juvenile Court, and the case, including all papers and processes relating thereto, shall be transferred.

210.0 Definitions

(2) “bodily injury” means physical pain, illness or any impairment of physical condition;

² This Section of the 1962 Code was not included in prior Drafts for this project, but it is pertinent now because of a Section 213.8 amendment that passed in June.

Appendix C

(3) “serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(4) “deadly weapon” means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.