

IN THE SENATE

SENATE BILL NO. 1089, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO RAPE; AMENDING SECTION 18-6101, IDAHO CODE, TO REVISE A PROVI-  
2 SION REGARDING RAPE WHERE THE VICTIM IS UNDER THE AGE OF SIXTEEN AND TO  
3 REVISE A PROVISION REGARDING RAPE WHERE THE VICTIM IS SIXTEEN OR SEVEN-  
4 TEEN YEARS OF AGE; AND REPEALING SECTION 18-6107, IDAHO CODE, RELATING  
5 TO RAPE OF A SPOUSE.  
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 18-6101, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 18-6101. RAPE DEFINED. Rape is defined as the penetration, however  
11 slight, of the oral, anal or vaginal opening with a penis accomplished under  
12 any one (1) of the following circumstances:

13 (1) Where the victim is under the age of sixteen (16) years and, the per-  
14 petrator is eighteen (18) years of age or older, and the victim is not law-  
15 fully married to the perpetrator.

16 (2) Where the victim is sixteen (16) or seventeen (17) years of age and,  
17 the perpetrator is three (3) years or more older than the victim, and the vic-  
18 tim is not lawfully married to the perpetrator.

19 (3) Where the victim is incapable, through any unsoundness of mind, due  
20 to any cause including, but not limited to, mental illness, mental disabil-  
21 ity or developmental disability, whether temporary or permanent, of giving  
22 legal consent.

23 (4) Where the victim resists but the resistance is overcome by force or  
24 violence.

25 (5) Where the victim is prevented from resistance by the infliction,  
26 attempted infliction, or threatened infliction of bodily harm, accompanied  
27 by apparent power of execution; or is unable to resist due to any intoxicat-  
28 ing, narcotic, or anaesthetic substance.

29 (6) Where the victim is prevented from resistance due to an objectively  
30 reasonable belief that resistance would be futile or that resistance would  
31 result in force or violence beyond that necessary to accomplish the prohib-  
32 ited contact.

33 (7) Where the victim is at the time unconscious of the nature of the act.  
34 As used in this section, "unconscious of the nature of the act" means inca-  
35 pable of resisting because the victim meets one (1) of the following condi-  
36 tions:

37 (a) Was unconscious or asleep;

38 (b) Was not aware, knowing, perceiving, or cognizant that the act oc-  
39 curred.

40 (8) Where the victim submits under the belief that the person commit-  
41 ting the act is the victim's spouse, and the belief is induced by artifice,

1 pretense or concealment practiced by the accused, with intent to induce such  
2 belief.

3 (9) Where the victim submits under the belief that the person commit-  
4 ting the act is someone other than the accused, and the belief is induced by  
5 artifice, pretense or concealment practiced by the accused, with the intent  
6 to induce such belief.

7 (10) Where the victim submits under the belief, instilled by the actor,  
8 that if the victim does not submit, the actor will cause physical harm to some  
9 person in the future; or cause damage to property; or engage in other con-  
10 duct constituting a crime; or accuse any person of a crime or cause criminal  
11 charges to be instituted against the victim; or expose a secret or publicize  
12 an asserted fact, whether true or false, tending to subject any person to ha-  
13 tred, contempt or ridicule.

14 The provisions of subsections (1) and (2) of this section shall not af-  
15 fect the age requirements in any other provision of law, unless otherwise  
16 provided in any such law. Further, for the purposes of subsection (2) of this  
17 section, in determining whether the perpetrator is three (3) years or more  
18 older than the victim, the difference in age shall be measured from the date  
19 of birth of the perpetrator to the date of birth of the victim.

20 Males and females are both capable of committing the crime of rape as de-  
21 fined in this section.

22 SECTION 2. That Section [18-6107](#), Idaho Code, be, and the same is hereby  
23 repealed.