

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 61
RAPE

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

(1) Where the victim is under the age of sixteen (16) years, the perpetrator is eighteen (18) years of age or older, and the victim is not lawfully married to the perpetrator.

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

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

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

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

(6) Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.

(7) Where the victim is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

- (a) Was unconscious or asleep;
- (b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(8) Where the victim submits under the belief that the person committing the act is the victim's spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

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

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

The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise

provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.

Males and females are both capable of committing the crime of rape as defined in this section.

[18-6101, added 1972, ch. 336, sec. 1, p. 961; am. 1977, ch. 208, sec. 1, p. 573; am. 1994, ch. 83, sec. 1, p. 197; am. 1994, ch. 135, sec. 1, p. 307; am. 2000, ch. 218, sec. 1, p. 606; am. 2003, ch. 280, sec. 1, p. 756; am. 2010, ch. 235, sec. 7, p. 547; am. 2010, ch. 352, sec. 1, p. 920; am. 2011, ch. 27, sec. 1, p. 67; am. 2016, ch. 296, sec. 1, p. 828; am. 2021, ch. 172, sec. 1, p. 479.]

18-6102. PROOF OF PHYSICAL ABILITY. No conviction for rape can be had against one who was under the age of fourteen (14) years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

[18-6102, added 1972, ch. 336, sec. 1, p. 962.]

18-6103. PENETRATION. Any sexual penetration, however slight, is sufficient to complete the crime of rape.

[18-6103, added 1972, ch. 336, sec. 1, p. 962; am. 2022, ch. 122, sec. 1, p. 434.]

18-6104. PUNISHMENT FOR RAPE. Rape is punishable by imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence.

[18-6104, added 1972, ch. 336, sec. 1, p. 962.]

18-6105. EVIDENCE OF PREVIOUS SEXUAL CONDUCT OF PROSECUTING WITNESS. In prosecutions for the crime of rape, evidence of the prosecuting witness' previous sexual conduct shall not be admitted nor reference made thereto in the presence of the jury, except as provided hereinafter. The defendant may make application to the court before or during the trial for the admission of evidence concerning the previous sexual conduct of the prosecuting witness. Upon such application the court shall conduct a hearing out of the presence of the jury as to the relevancy of such evidence of previous sexual conduct and shall limit the questioning and control the admission and exclusion of evidence upon trial. Nothing in this section shall limit the right of either the state or the accused to impeach credibility by the showing of prior felony convictions.

[18-6105, added 1977, ch. 208, sec. 2, p. 574.]

18-6106. RESTITUTION TO VICTIM. Persons convicted of offenses covered under this chapter may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act.

[18-6106, added 1977, ch. 208, sec. 3, p. 574.]

18-6110. SEXUAL CONTACT WITH A PRISONER. (1) It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender, as those terms are defined in section 18-101A, Idaho Code.

(2) It is a felony for any supervising officer, as that term is defined in section 18-101A, Idaho Code, to knowingly have sexual contact with any parolee or probationer, as those terms are defined in section 18-101A, Idaho Code, who is not the person's spouse.

(3) For the purposes of this section "sexual contact" means sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact or oral-anal contact, between persons of the same or opposite sex.

(4) Any person found guilty of sexual contact with a prisoner or juvenile offender is punishable by imprisonment in the state prison for a term not to exceed life.

[18-6110, added 1993, ch. 222, sec. 1, p. 759; am. 2000, ch. 272, sec. 9, p. 792; am. 2003, ch. 37, sec. 1, p. 157; am. 2005, ch. 177, sec. 2, p. 548; am. 2008, ch. 60, sec. 2, p. 152; am. 2009, ch. 116, sec. 1, p. 373.]

CHAPTER 62
RELIGIOUS MEETINGS -- SUNDAY REST -- [REPEALED]