

§ 3251 (10) “Incapable of consenting” means the person is:

(A) incapable of understanding ~~appraising~~ the nature of the sexual act ~~conduct at issue~~; or

(B) physically incapable of declining participation in, or 17 communicating unwillingness to engage in, the sexual act at issue.

§ 3252 (b)(2) No person shall engage in a sexual act with another person when the other person is incapable of consenting to the sexual act due to ~~substantial~~ impairment by alcohol, drugs, ~~or~~ other intoxicants, or mental, physical, or developmental impairment and that condition is known or reasonably should be known by the person.

§ 3254 (6)(E) knew or reasonably should have known that the other person was incapable of making a knowing and voluntary decision to engage in the sexual act with the actor because the person was ~~substantially~~ impaired by alcohol, drugs, or other intoxicants.