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## SCS0970A-2 Amendment - Modification to Mentally Incapacitated Definition in Criminal Sexual Conduct Laws

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The **SCS0970A-2 amendment** is drafted as a potential amendment to the SCS0970A-1 delete-everything amendment (i.e., Chair Limmer’s proposed Judiciary and Public Safety funding bill). The amendment modifies the definition of “mentally incapacitated” in the criminal sexual conduct laws.

### Background

Under the criminal sexual conduct laws, a person who is under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to the person without the person’s agreement, is considered to be mentally incapacitated and legally lacks the judgment to give a reasoned consent to sexual relations. An offender who engages in sexual relations with such a person can be found guilty of criminal sexual conduct in the first, second, third, or fourth degree, depending on the specific circumstances involved.

In a recent case (State v. Khalil), the Minnesota Supreme Court unanimously held that the mentally incapacitated definition requires that the intoxicating substance be given to the victim without the victim’s agreement. Thus, a victim who is voluntarily intoxicated does not fall within the provision’s protection. This was a statutory interpretation case. The court analyzed and construed the mentally incapacitated definition as written in statute. The case did not involve any type of constitutional determination. Thus, the Legislature is free to change the definition if it so chooses.

The **SCS0970A-2 amendment** amends the definition to add a new clause providing that a person who is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person’s conduct is mentally incapacitated. Thus, an offender who engages in sexual relations with such a person may be held criminally liable for the conduct. The new language does not require that the intoxicating substance be administered without the person’s consent, so it applies to voluntary intoxication cases.