

SUBJECT: Revising conditions of sexual assault without consent

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Moody, Cook, Bhojani, Bowers, Darby, C. Morales, Schatzline
1 nays — Harrison
1 absent — Leach

WITNESSES: For — Tiffany Larsen, Harris County District Attorney; Lavinia Bertha Masters, Hope SAVES; Lindsay Richards, Williamson County District Attorneys Office (*Registered, but did not testify*: Eric Carcerano, Chambers County District Attorneys Office; Andy Kahan, Crime Stoppers Houston; Ray Hunt, HPOU; Juliana Gonzales, SAFE Alliance; Lindy Borchardt, Tarrant County Criminal District Attorney, Phil Sorrells; Heather Bellino, Texas Advocacy Project; Kristen Robison, Texas Association for Home Care and Hospice; Gabriella Fuentes, Texas Council on Family Violence; AJ Louderback, Texas Sheriffs Regional Alliance; Ashley Ford, The Arc of Texas; Cynthia Van Maanen, Travis County Democratic Party; and 13 individuals)

Against — None

On — Justin Wood, Children’s Advocacy Centers of Texas; Liz Boyce, Texas Association Against Sexual Assault

BACKGROUND: Penal Code 22.011(b) defines the circumstances and actions that constitute a sexual assault without consent.

Concerns have been raised that the current statutory definitions for what constitutes a sexual assault without consent do not sufficiently encompass the circumstances in which such assaults may occur.

DIGEST: HB 2696 would revise the provisions of Penal Code 22.011(b), regarding what would constitute a sexual assault without consent. The bill would

include the condition that the actor committing the assault reasonably should have known the other person was not able to consent for certain reasons. The circumstances by which a person was unable to consent would be revised to include that:

- the actor knew or reasonably should have known the other person was incapable either of appraising the nature of the act or of resisting the act; or
- the actor knew or reasonably should have known the other person was unaware that the sexual assault was occurring.

A sexual assault would be committed if the actor knew or reasonably should have known that the other person had withdrawn consent to the act and the actor persisted after consent was withdrawn, or if the other person was intoxicated such that the other person was incapable of consenting to the act.

The bill would remove as a circumstance that the actor intentionally impaired the other person's power to appraise or control their conduct by administering any substance without the other person's knowledge.

The bill would include the definition of "consent" from Penal Code ch. 1 in the provisions of sec. 22.011(c). "Consent" would mean assent in fact, whether express or apparent.

The change in law made by the bill would apply only to an offense committed on or after the effective date of the bill.

The bill would take effect September 1, 2023.