

By: Turner

H.B. No. 265

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prosecution of the offenses of sexual assault and
3 aggravated sexual assault.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 22.011(b), Penal Code, as effective
6 September 1, 2017, is amended to read as follows:

7 (b) A sexual assault under Subsection (a)(1) is without the
8 consent of the other person if:

9 (1) the actor compels the other person to submit or
10 participate by the use of physical force, violence, or coercion;

11 (2) the actor compels the other person to submit or
12 participate by threatening to use force or violence against the
13 other person or to cause harm to the other person, and the other
14 person believes that the actor has the present ability to execute
15 the threat;

16 (3) the other person has not consented and the actor
17 knows the other person is:

18 (A) unconscious;

19 (B) [~~or~~] physically unable to resist;

20 (C) incapable of appraising the nature of the
21 act; or

22 (D) unaware that the sexual assault is occurring;

23 (4) the actor knows that as a result of mental disease
24 or defect the other person is at the time of the sexual assault

1 incapable either of appraising the nature of the act or of resisting
2 it;

3 (5) ~~[the other person has not consented and the actor~~
4 ~~knows the other person is unaware that the sexual assault is~~
5 ~~occurring;~~

6 ~~[(6) the actor has intentionally impaired the other~~
7 ~~person's power to appraise or control the other person's conduct by~~
8 ~~administering any substance without the other person's knowledge;~~

9 ~~[(7)]~~ the actor compels the other person to submit or
10 participate by threatening to use force or violence against any
11 person, and the other person believes that the actor has the ability
12 to execute the threat;

13 (6) ~~[(8)]~~ the actor is a public servant who coerces
14 the other person to submit or participate;

15 (7) ~~[(9)]~~ the actor is a mental health services
16 provider or a health care services provider who causes the other
17 person, who is a patient or former patient of the actor, to submit
18 or participate by exploiting the other person's emotional
19 dependency on the actor;

20 (8) ~~[(10)]~~ the actor is a clergyman who causes the
21 other person to submit or participate by exploiting the other
22 person's emotional dependency on the clergyman in the clergyman's
23 professional character as spiritual adviser; ~~[or]~~

24 (9) ~~[(11)]~~ the actor is an employee of a facility
25 where the other person is a resident, unless the employee and
26 resident are formally or informally married to each other under
27 Chapter 2, Family Code; or

1 (10) the actor knows that the other person has
2 withdrawn consent to the act and the actor persists in the act after
3 consent is withdrawn.

4 SECTION 2. Section 22.011(c), Penal Code, is amended by
5 adding Subdivision (6) to read as follows:

6 (6) Notwithstanding Section 1.07, "consent" means
7 express consent demonstrated through words or actions indicating an
8 active and voluntary agreement to participate in an act.

9 SECTION 3. Section 22.011, Penal Code, is amended by adding
10 Subsection (e-1) to read as follows:

11 (e-1) It is not a defense to prosecution under this section
12 that the actor mistakenly believed that the other person consented
13 to the conduct if a reasonable person should have known or
14 understood that the other person did not consent to the conduct.

15 SECTION 4. Section 22.021(b), Penal Code, is amended by
16 adding Subdivision (4) to read as follows:

17 (4) Notwithstanding Section 1.07, "consent" has the
18 meaning assigned by Section 22.011.

19 SECTION 5. Section 22.021, Penal Code, is amended by adding
20 Subsection (d-1) to read as follows:

21 (d-1) It is not a defense to prosecution under this section
22 that the actor mistakenly believed that the other person consented
23 to the conduct if a reasonable person should have known or
24 understood that the other person did not consent to the conduct.

25 SECTION 6. The change in law made by this Act applies only
26 to an offense committed on or after the effective date of this Act.
27 An offense committed before the effective date of this Act is

1 governed by the law in effect on the date the offense was committed,
2 and the former law is continued in effect for that purpose. For
3 purposes of this section, an offense was committed before the
4 effective date of this Act if any element of the offense occurred
5 before that date.

6 SECTION 7. This Act takes effect December 1, 2017.