

Amend HB 1808 on third reading as follows:

(1) Strike Section 22.021(a)(2)(A)(vi), Penal Code, from the bill and substitute the following:

(vi) with the intent of facilitating the commission of the offense, administers or provides [~~flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine~~] to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act [~~with the intent of facilitating the commission of the offense~~];

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 22.011, Penal Code, is amended by amending Subsection (b) and adding Subsection (e-1) to read as follows:

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

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

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

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

(A) unconscious;

(B) [or] physically unable to resist;

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

(D) unaware that the sexual assault is occurring;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) [~~the other person has not consented and the actor~~]

~~knows the other person is unaware that the sexual assault is occurring,~~

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

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

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

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

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

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

(9) the actor knows that the other person has withdrawn consent to the act and the actor persists in the act after consent is withdrawn.

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

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

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