

By: Moody

H.B. No. 3978

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offenses of sexual assault and aggravated sexual assault.

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

SECTION 1. 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;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against 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

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

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

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

13           SECTION 3. Section 22.021, Penal Code, is amended by  
14 amending Subsection (a) and adding Subsection (d-1) to read as  
15 follows:

16           (a) A person commits an offense:

17               (1) if the person:

18                   (A) intentionally or knowingly:

19                       (i) causes the penetration of the anus or  
20 sexual organ of another person by any means, without that person's  
21 consent;

22                       (ii) causes the penetration of the mouth of  
23 another person by the sexual organ of the actor, without that  
24 person's consent; or

25                       (iii) causes the sexual organ of another  
26 person, without that person's consent, to contact or penetrate the  
27 mouth, anus, or sexual organ of another person, including the

1 actor; or

2 (B) intentionally or knowingly:

3 (i) causes the penetration of the anus or  
4 sexual organ of a child by any means;

5 (ii) causes the penetration of the mouth of  
6 a child by the sexual organ of the actor;

7 (iii) causes the sexual organ of a child to  
8 contact or penetrate the mouth, anus, or sexual organ of another  
9 person, including the actor;

10 (iv) causes the anus of a child to contact  
11 the mouth, anus, or sexual organ of another person, including the  
12 actor; or

13 (v) causes the mouth of a child to contact  
14 the anus or sexual organ of another person, including the actor; and

15 (2) if:

16 (A) the person:

17 (i) causes serious bodily injury or  
18 attempts to cause the death of the victim or another person in the  
19 course of the same criminal episode;

20 (ii) by acts or words places the victim in  
21 fear that any person will become the victim of an offense under  
22 Section 20A.02(a)(3), (4), (7), or (8) or that death, serious  
23 bodily injury, or kidnapping will be imminently inflicted on any  
24 person;

25 (iii) by acts or words occurring in the  
26 presence of the victim threatens to cause any person to become the  
27 victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or

1 to cause the death, serious bodily injury, or kidnapping of any  
2 person;

3 (iv) uses or exhibits a deadly weapon in the  
4 course of the same criminal episode;

5 (v) acts in concert with another who  
6 engages in conduct described by Subdivision (1) directed toward the  
7 same victim and occurring during the course of the same criminal  
8 episode; or

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

16 (B) the victim is younger than 14 years of age; or

17 (C) the victim is an elderly individual or a  
18 disabled individual.

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

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

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

27 SECTION 5. The change in law made by this Act applies only

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

8 SECTION 6. This Act takes effect September 1, 2017.