

BILL ANALYSIS

H.B. 2696
By: Howard
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to the Institute for Domestic Violence and Sexual Assault research, approximately nine percent of sexual assault survivors in Texas report their assault. Of those, approximately three percent pursue a criminal case and of that three percent less than one percent of cases result in a prosecution. Prosecutors often cite current state law on consent as a barrier to prosecution for many survivors. Current law defines sexual assault as an act in which a person compels another to submit to participate by use of force, violence, or coercion; an act in which a person is threatened with violence or force to participate in a sexual act; or a sexual act in which a person knows the other person is unconscious or physically unable to resist. This definition does not encompass the many different situations in which an assault can occur. Over the last few years, the Sexual Assault Survivors' Task Force has worked with stakeholders and experts from across the state to transform Texas' response to sexual violence. Part of their work has been to develop an updated definition of consent that can be used by prosecutors to prosecute sexual assault.

H.B. 2696 continues and supports this work by updating state law on consent to reflect the experiences of survivors. Among other changes, the legislation clarifies that a person commits sexual assault if they know, or reasonably should know, that the other person is incapable either of appraising the nature of the act or resisting to the act or the person is unaware that an assault is occurring and would allow flexibility in the law for situations in which the person is intoxicated or is incapable of giving consent. H.B. 2696 would help survivors of sexual violence if they choose to pursue a case through the criminal justice system and will give prosecutors the tools they need when prosecuting these cases.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2696 amends the Penal Code to revise the circumstances under which a sexual assault is considered to be without the consent of the other person as follows:

- with respect to the circumstances in which the other person has not consented and the actor knows the other person is unconscious, physically unable to resist, or unaware that the sexual assault is occurring, removes the condition that the other person has not consented and specifies that the circumstances apply when the actor knows or reasonably should know the other person is in such a state;

- with respect to the circumstances when the actor knows that as a result of mental disease or defect the other person is at the time of the assault incapable either of appraising the nature of the act or of resisting it, removes the condition that the other person's inability to appraise or resist is a result of mental disease or defect and specifies that the circumstances apply when the actor knows or reasonably should know the other person is incapable of such an appraisal or resistance;
- adds as a circumstance that the actor knows or reasonably should know that the other person has withdrawn consent to the act and the actor persists after consent is withdrawn;
- adds as a circumstance that the actor knows or reasonably should know the other person is intoxicated by any substance such that the other person is incapable of consenting to the act; and
- removes as a circumstance that 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.

H.B. 2696 amends the Occupations Code to make a conforming change.

H.B. 2696 applies only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, including any element of the offense, that occurred before that date.

EFFECTIVE DATE

September 1, 2023.