

By: Collier

H.B. No. 403

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prosecution of the criminal offense of sexual
3 assault.

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

5 SECTION 1. Section [22.011\(b\)](#), Penal Code, is amended to
6 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 unconscious or physically unable to
18 resist;

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

23 (5) the other person has not consented and the actor
24 knows the other person is unaware that the sexual assault is

1 occurring;

2 (6) the actor has intentionally impaired the other
3 person's power to appraise or control the other person's conduct by
4 administering any substance without the other person's knowledge;

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

9 (8) the actor is a public servant who coerces the other
10 person to submit or participate;

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

15 (10) the actor is a clergyman who causes the other
16 person to submit or participate by exploiting the other person's
17 emotional dependency on the clergyman in the clergyman's
18 professional character as spiritual adviser;

19 (11) the actor is an employee of a facility where the
20 other person is a resident, unless the employee and resident are
21 formally or informally married to each other under Chapter 2,
22 Family Code;

23 (12) the actor is a health care services provider who,
24 in the course of performing an assisted reproduction procedure on
25 the other person, uses human reproductive material from a donor
26 knowing that the other person has not expressly consented to the use
27 of material from that donor;

1 (13) the actor is a coach or tutor who causes the other
2 person to submit or participate by using the actor's power or
3 influence to exploit the other person's dependency on the actor;
4 ~~[or]~~

5 (14) the actor is a caregiver hired to assist the other
6 person with activities of daily life and causes the other person to
7 submit or participate by exploiting the other person's dependency
8 on the actor; or

9 (15) the actor is a mental health services provider, a
10 health care services provider, or a person who purports to be a
11 health care services provider and:

12 (A) the actor creates or confirms a false
13 impression of law or fact that the actor knows or has reason to
14 believe is false; and

15 (B) the other person submits or participates on
16 the basis of the false impression.

17 SECTION 2. Section 22.011(c)(3), Penal Code, is amended to
18 read as follows:

19 (3) "Health care services provider" means a person who
20 is licensed, certified, or otherwise authorized by the laws of this
21 state to provide health care services in the ordinary course of
22 business or practice of a profession, including:

23 (A) a physician licensed under Subtitle B, Title
24 3, Occupations Code;

25 (B) a chiropractor licensed under Chapter 201,
26 Occupations Code;

27 (C) a physical therapist licensed under Chapter

1 453, Occupations Code;

2 (D) a physician assistant licensed under Chapter
3 204, Occupations Code; or

4 (E) a registered nurse, a vocational nurse, or an
5 advanced practice nurse licensed under Chapter 301, Occupations
6 Code.

7 SECTION 3. The changes in law made by this Act apply only to
8 an offense committed on or after the effective date of this Act. An
9 offense committed before the effective date of this Act is governed
10 by the law in effect when the offense was committed, and the former
11 law is continued in effect for that purpose. For purposes of this
12 section, an offense was committed before the effective date of this
13 Act if any element of the offense occurred before that date.

14 SECTION 4. This Act takes effect September 1, 2023.