

BILL ANALYSIS

C.S.H.B. 3073
By: Howard
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to the Rape, Abuse & Incest National Network, based on 2012-2014 data from the FBI, out of every 1,000 instances of rape, approximately 13 cases are referred to prosecutors and 7 cases lead to a felony conviction. The bill author has informed the committee that a barrier to prosecution for rape is the statutory language regarding nonconsent for purposes of the offense of sexual assault, which does not provide a clear definition of nonconsensual conduct or address common victim responses to a sexual assault. Accordingly, the bill author has proposed changes to that language, which reflects recent policy recommendations of the Sexual Assault Survivors' Task Force in the Office of the Governor in its November 2024 Biennial Report to the Texas Legislature. C.S.H.B. 3073 aims to help prosecutors hold perpetrators of sexual assault accountable and protect victims in circumstances not expressly covered in statute by revising the language regarding the circumstances under which a sexual assault is considered to be without the consent of the other person to add certain circumstances, among other changes.

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

C.S.H.B. 3073 amends the Penal Code to revise the circumstances under which a sexual assault is considered to be without the consent of the other person for purposes of the conduct constituting the offense as follows:

- adds as a circumstance that the actor knows the other person has withdrawn consent to the act and the actor persists in the act;
- 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
- 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 but adds as a circumstance that the actor knows or reasonably should know that the other person cannot consent because of intoxication or impairment by any substance.

C.S.H.B. 3073 defines "consent" by reference as assent in fact, whether express or apparent.

C.S.H.B. 3073 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3073 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and substitute revise the circumstances under which a sexual assault is considered to be without the consent of the other person, but the versions differ as follows:

- whereas the introduced added as a circumstance that the actor knows the other person is incapable of appraising the nature of the act or of resisting it, the substitute does not add this circumstance; and
- whereas the introduced removed as a circumstance that 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, the substitute does not remove this circumstance.

Whereas the introduced amended the Occupations Code to make a conforming change, the substitute does not.