

**SUBJECT:** Expanding circumstances that constitute the offense of sexual assault

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut

0 nays

**WITNESSES:** For — Kimberly Davignon, Tarrant County Criminal District Attorney Office; Deepika Modali; Hanna Senko; Bethany Swerdloff; (*Registered, but did not testify*: Philip Mack Furlow, 106th Judicial District Attorney; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; Brian Middleton, Fort Bend County District Attorney's Office; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers Union; Laura Nodolf, Midland County District Attorney's Office; Juliana Gonzales, SAFE Alliance; Jimmy Rodriguez, San Antonio Police Officers Association; Lindy Borchardt, for Tarrant County Criminal District Attorney Sharen Wilson; Katherine Strandberg, Texas Association Against Sexual Assault; Breall Baccus, Texas Council on Family Violence; Julie Wheeler, Travis County Commissioners Court; Julie Renken, Washington County District Attorney; Staley Heatly; Thomas Parkinson)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

**BACKGROUND:** Penal Code sec. 22.011 establishes the crime of sexual assault, which individuals commit if they intentionally or knowingly perform certain sexual acts on another person without the consent of that person. Sec. 22.011(b) lists the circumstances that constitute sexual assault without the consent of another person.

An offense generally is a second-degree felony (two to 20 years in prison

and an optional fine of up to \$10,000).

Concerns have been raised that the list of circumstances that constitute a lack of consent relating to the crime of sexual assault is incomplete, creating a gap in the criminal justice system that increases the difficulty for prosecutors to charge and obtain a conviction for incidents that clearly should qualify as sexual assault. This discourages victims from reporting their assaults, and some have suggested that by expanding the circumstances more victims would receive the justice they deserve.

**DIGEST:** HB 302 would expand the circumstances that constituted sexual assault without the consent of another person to include if the actor:

- knew the other person was intoxicated by any substance such that the other person was incapable of appraising the nature of the act;
- knew that the other person had withdrawn consent and the actor persisted after consent was withdrawn; or
- was a caregiver hired to assist the other person with daily activities and caused the other person to submit or participate by exploiting such dependency on the actor.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

**NOTES:** According to the Legislative Budget Board, the fiscal impact of the bill could not be determined. However, expanding the circumstances for a criminal offense would be expected to result in additional demands on state and local correctional resources.