

SUBJECT: Expanding circumstances that constitute offense of sexual assault

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Vasut
0 nays
2 absent — A. Johnson, Murr

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

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 that can increase the difficulty in prosecuting these cases for incidents that should qualify as sexual assault. Some have also suggested that Texas statutes on improper relationships and educator misconduct should be extended to circumstances outside the classroom and that this could be addressed by revising the circumstances relating to consent and the sexual assault statute.

DIGEST: CSSB 1164 would expand the circumstances under the sexual assault offense that define when an action occurred without the consent of another person. The revised circumstances would include if an individual:

- knew the other person was intoxicated such that the other person was incapable of appraising the nature of the act;
- knew that the other person had withdrawn consent to the act and the individual persisted after consent was withdrawn;
- was a coach or tutor who caused the other person to submit or participate by using their power or influence to exploit the other person's dependency on the individual; or
- was a caregiver hired to assist the other person with activities of daily life and caused the other person to submit or participate by exploiting the other person's dependency.

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