

BILL ANALYSIS

H.B. 3978
By: Moody
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that the conduct constituting the offenses of sexual assault and aggravated sexual assault is too narrow in scope and that the definition of consent in relation to these offenses needs to be clarified. H.B. 3978 seeks to address this issue by defining consent for purposes of both offenses, establishing that a certain state of mind of the actor is not a defense to prosecution, and by expanding the substances the administration of which constitutes aggravated sexual assault.

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. 3978 amends the Penal Code to expand the conditions under which sexual assault is considered to be without the consent of the other person to include the actor knowing that the other person has withdrawn consent to the act and the actor persisting in the act after consent is withdrawn. The bill changes one of such conditions from the actor having 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 to the other person having not consented and the actor knowing the other person is incapable of appraising the nature of the act. The bill establishes that it is not a defense to prosecution for sexual assault that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct. The bill defines "consent" for purposes of sexual assault and aggravated sexual assault as express consent demonstrated through words or actions indicating an active and voluntary agreement to participate in an act.

H.B. 3978 expands the type of substances the administration or provision of which to the victim of a sexual assault offense with the intent of facilitating the commission of the offense constitutes aggravated sexual assault from flunitrazepam, gamma hydroxybutyrate, or ketamine to any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act. The bill establishes that it is not a defense to prosecution for aggravated sexual assault that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.

EFFECTIVE DATE

September 1, 2017.