

# HOUSE BILL REPORT

## HB 2465

---

**As Passed House:**  
February 8, 2018

**Title:** An act relating to modifying the offense of rape in the third degree.

**Brief Description:** Modifying the offense of rape in the third degree.

**Sponsors:** Representatives Orwall, McCabe, Griffey, Harmsworth and Haler.

**Brief History:**

**Committee Activity:**

Public Safety: 1/16/18, 1/25/18 [DP].

**Floor Activity:**

Passed House: 2/8/18, 97-0.

**Brief Summary of Bill**

- Modifies the crime of Rape in the third degree.

---

### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Staff:** Kelly Leonard (786-7147).

**Background:**

In the context of Rape and other sex offenses, "consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

*Rape in the Third Degree.* A person commits Rape in the third degree when, under circumstances not constituting Rape in the first or second degrees, such person engages in sexual intercourse with another person:

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- where the victim did not consent to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or
- where there is threat of substantial unlawful harm to the property rights of the victim.

Rape in the third degree is a class C felony and a level V offense.

**Summary of Bill:**

Rape in the third degree is modified by removing the language requiring that lack of consent was clearly expressed by the victim's words or conduct. Instead, a person commits Rape in the third degree when, under circumstances not constituting Rape in the first or second degrees, such person engages in sexual intercourse with another person:

- where the victim did not consent to sexual intercourse with the perpetrator; or
- where there is threat of substantial unlawful harm to the property rights of the victim.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill is a positive step forward to recognize the true nature of sexual assault and its impact on survivors. This bill properly refocuses the issue on actual consent. Some people believe that rape is not rape unless a victim resists enough. Scientific research in the field of neurobiology proves otherwise. Some victims are unable to resist or express lack of consent due to intoxication, and sometimes it is due to fear. Some victims freeze in the face of trauma. This is called tonic immobility, and it is a very common reaction to sexual assault. However, our laws do not reflect this, and instead inappropriately place the burden on victims to show resistance. Many survivors then blame themselves. It should not be the survivor's burden to show they resisted. Instead, sexual contact should be in the context of freely given agreement.

This bill would be a very positive change, but it is less legally significant than it appears. The crime references the definition of consent in the criminal code, which is not very different than the current phrasing being removed. The key change would be to remove the requirement for a victim to "clearly express" lack of consent, which results in criminal cases focusing on whether a victim's lack of consent was "clear enough." If there is no consent, then the argument on whether it was "clear enough" should not matter. This bill will not create a presumption of rape. This is about whether or not the defendant had consent or not.

(Opposed) None.

**Persons Testifying:** Representative Orwall, prime sponsor; Priya Walia, Legal Voice; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; and Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying: None.**