

HOUSE BILL REPORT

SHB 1002

As Passed House:
February 7, 2019

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: House Committee on Public Safety (originally sponsored by Representatives Orwall, Mosbrucker, Goodman, Griffey, Lovick, Pellicciotti, Kraft, Valdez, Irwin, Jinkins, Macri, Wylie, Bergquist, Doglio, Ortiz-Self and Frame).

Brief History:

Committee Activity:

Public Safety: 1/15/19, 1/24/19 [DPS].

Floor Activity:

Passed House: 2/7/19, 96-0.

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Modifies the offense of Rape in the third degree.
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HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Jenny Aronson (786-7290). Kelly Leonard (786-7147).

Background:

Statutory Definition of "Consent".

As defined in the criminal code governing 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.

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.

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:

- 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 property rights of the victim.

Rape in the third degree is a class C felony.

Summary of Substitute Bill:

Language requiring that a victim's lack of consent was clearly expressed by the victim's words or conduct is removed from the current definition of Rape in the third degree.

Accordingly, 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 property rights of the victim.

The current statutory definition of "consent" is added to the section pertaining to Rape in the third degree.

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) Recent scholarship on neurobiology has greatly advanced the public's understanding of trauma and sexual violence. While victims are often asked whether they fought back enough, research indicates that tonic immobility causes many victims to freeze in traumatic situations such as rape. The current language defining Rape in the third degree does not align with this modern understanding of trauma.

This bill does not change the definition of "consent" or the burden of proof on the state, but clarifies circular language in the statute while deemphasizing the role of the victim's conduct. The "freely given consent" language in the chapter is the proper focus for the statutory definition. Further, this change is in line with recent advancements made through rape kit statutory reforms.

(Opposed) The removal of this language may be problematic in certain situations. In romantic relationships, consent is not necessarily affirmatively asked for during each sexual encounter. Additionally, where consent is given and then revoked, but that revocation is not

communicated to the other party, a person may not have any notice that this is no longer a consensual encounter. Situations in which someone is too afraid to indicate in any way that he or she does not consent may be more like Rape in the second degree than Rape in the third degree.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; David Ward, Legal Voice; Riddhi Mukhopadhyay, Sexual Violence Legal Services; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Opposed) Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.