

SENATE BILL REPORT

SHB 1002

As of March 14, 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: Passed House: 2/07/19, 96-0.

Committee Activity: Law & Justice: 2/25/19.

Brief Summary of Bill

- Eliminates the evidentiary requirement that the victim clearly expressed their lack of consent by words or conduct in order to prove rape in the third degree.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

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.

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 the property rights of the victim.

Rape in the third degree is a class C felony and a seriousness 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

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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.

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

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A large percentage of sexual assaults are never reported and even those that are, are never brought to trial. This bill is part of the effort to bring a more trauma informed system and moving the burden away from victims.

Victims experience fight, flight, or freeze. If the victim experiences freeze, otherwise known as tonic immobility, the victim is often viewed as if they did not do enough to resist. Victims have been told that they do not have a case because they did not say no or scream and charges are never brought. This results in another layer of shame for the victim.

This bill would send the message that consent means exactly what the definition says—that consent be clearly expressed by words or conduct. If the case is one of the few that are actually reported, a survivor should not be told that they did not do enough.

We disagree that this change would result in significantly more rape 3 cases. The bill removes a narrow part of the total sphere of rape 3 cases where tonic immobility or something of that nature was involved. These cases are some of the most difficult to process and file.

Passage of this bill would send a message to survivors that it is not their fault they have been raped or that they did not fight back. There is no other crime where we require the victim to actively say no to the criminal conduct.

CON: This bill is tremendously overly broad and has the potential to result in significant unintended consequences. If you take out the affirmative requirement that there be some form of expressed lack of consent, it could be used to substantiate rape in a previously consenting relationship. Married individuals may have established a course of conduct yet when one person changes their mind, without some physical manifestation that there is consent, the conduct will now be rape. This statute is subject to substantial mischief and has extreme consequences. A conviction of rape 3 will result in the person being a registered sex offender for a minimum of ten years. This bill should be more narrowly drawn so that it does not result in unintended consequences.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Leah Griffin, citizen; Rebecca Faust, citizen; Russell Brown, Washington Association of Prosecuting Attorneys; David Ward, Legal Voice; Sara Mooney, Sexual Violence Legal Services; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; James McMahan, Washington Association of Sheriffs and Police Chiefs.

CON: David Allen, Washington Association of Criminal Defense Attorneys and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: No one.