

# MICROFILM DIVIDER

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DESCRIPTION

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*Dennis Hall*  
Operator's Signature

10/3/03  
Date

2003 HOUSE EDUCATION

HB 1392

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10/3/03  
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2003 HOUSE STANDING COMMITTEE MINUTES  
BILL/RESOLUTION NO. HB 1392

House Education Committee

Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1	x		4000-end
1		x	00-3190
Committee Clerk Signature <i>Sandra Siechner</i>			

Minutes: **Chairman Kelsch** opened HB 1392

**Rep. Delmore, District 43, SW Grand Forks**

In 2001 755 victims of sexual assault contacted the crisis centers throughout the state for services. This is not the total number of assaults, this is only those that are reported.

Drug facilitated sexual assaults occur in 55-76% of all sexual assault cases. In 93% drug facilitated sexual assaults the alcohol or drugs used by victims were used voluntarily. Do to the impairment of the drugs, evidence is rarely gathered, because victims do not have the wherewithal to report their assault, or they don't recognize the signs of assault until after the forensic evidence of drugs has left their system. By adding lines 15 and 19 to HB 1392, ND laws would be consistent for prosecution on these assaults, like most other states around the country.

**Jessica McSparron, Sexual Assault Program/Policy Coordinator for ND Council on Abused**

**Women's Services and ND Coalition Against Sexual Assault. See Attached Testimony**

**Ashley Walters, young lady who is victim of such assault, See Attached Testimony**

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**(5842) Rep. Herbel** Looking at some of the language, Unable to make reasonable judgment.

That gets kind of difficult to determine what a reasonable judgment after one drink or two, three.

Where does reasonable come in?

**McSparron:** Under the sexual assault statute, Reasons for sexual assault offense, is that the conduct is considered offensive. In the section on consent, those terms are not defined in statute. However it would be my determination, I'm not an attorney, that would be something for the jury to decide, on a case by case basis. Because again we don't have victims that show up at the hospital after an assault so that we can take a blood alcohol level and say .08 you are to intoxicated and that you can not consent to sex. At what point is a person unable to make a judgment, considered by the jury, and something that would be established in case law.

**Rep. Williams** Certainly a gray area, page 2 of testimony, only 3% using GHG and date rape drugs. At what point is the person unaware/unwilling to participate in a sexual act and secondly, is the perpetrator (flip tape ). I'm told that drugs increase the promiscuity. This bill, unfortunately, is pointed towards the male gender. There has to be responsibility on the part of the boy and the girl. And Prom parties where parents are also responsible when these things happen. I don't know how to state the question. Why is it that at the point when alcohol is involved and the female participants are probably guilty of being willing to do it. I will use the word guilt.

**McSparron:** When you take about sexual assault we do usually take in terms of females being victims and males being perpetrators, because 96% females are victims and 98% are male perpetrators by statistics. When a women is in a room or alone with a man, she most likely has an instinct of fear. Whether she knows you as a friend or not. When a man is in a room alone with a

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female, he is not afraid. Now there is no statement in this criminal code which would not allow for parents to take civil action. If parents wanted to find justice in the civil realm and they can do so, this bill doesn't address that in any way. Consent and the definition of consent is 'positive action' not passive. And I can withdraw my consent at any time during any action. If an individual is making sexual advances, flirting with someone, at any point during that time either party can withdraw consent if they no longer want to be involved. It is the responsibility of the other person to not violate their right. If they violate their right, that person committed the crime. Under the influence of a drug and unable to defend myself, the withdrawal of my consent is not diminished because of the other factors. When I withdraw my consent that should be the end. That person should not have the right to assault.

**Rep. Mueller** What is the difference between the her (Walter) circumstance and a rape? She was raped. Now it seems to me that we have laws on the books about this. In that instance it doesn't seem to me the state of mind has a whole lot to do with it, she was raped. She didn't want to have that happened, it happened, it is rape. I'm not drawing a close connection to the issue having to do with drugs.

**McSparron:** The perception of sexual assault that most of society has in which the act is truly offensive, is the masked perpetrator in the ally that jumps out and pulls the victim into the ally and assaults them. That is what society's version of rape is. That is not what the case in 99% of the time. Rape is a coercive act that happens over time. The perpetrator manipulates and maneuvers them, to make them more comfortable with being alone, to allow them access to the assault. Often times the perpetrator is not going to use a drug like GHB, because they already have victims that will voluntarily intoxicate themselves. As a society, especially the age ranges

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18-24 years old, alcohol consumption is one of the major factors in socialization. So you have an individual who in order to fit in with their peers, go out and drink, and you have perpetrators that know this, so they will go to bars to select and stock victims that are already intoxicated. How does this law go above and beyond what is already there? In the law the way that sexual assault and the way gross sexual imposition are defined, the very comprehensive, however, when it comes to prosecution, you have to be able to prove beyond a reasonable doubt the things that are listed in there.

**Rep. Sitte** Why would that not be rape in the case you have told us?

**McSparron:** The circumstances of all cases are difficult. The judgment of investigator and prosecutor in the process, varies on each case. This is a juvenile case, we can't get specifics on this case, it is sealed. I can talk in general terms of the circumstances of what happens in a sexual assault. In an instance like this, you have underage victim, who is intoxicated. Prosecution stand point, having to have someone get up on a stand, I rely on the believability of the victim to make that jury believe what happened. In cases of drug induced sexual assault in which the victim is passing in and out of a conscious state, may not be able to recall every thing that happened, and didn't report until months later. How do I explain all those things to a jury. In an instance to make them understand what has happened. With this law and expanding the ability to have another avenue to explain what happened to the jury.

**Rep. Herbel** We already have laws in place that address those situations. It appears to me that if we enact this, it puts all of the responsibility on the man completely. Am I reading that in this law, or not? It removes the consent issue if someone so decides, based on case laws. They need to address the consumption of the drugs and alcohol more so than this.

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**McSparron:** Under the current law, gross sexual imposition, read bill. Gave more examples of situations.

**Rep. Mueller** You have concern, this new section, sending a message that we don't want sent. That is that the consumption of alcohol is no longer going to be a deterrent in the court of law in being responsible, Does this open it up a little wider that what you want to about responsible drinking on the part ladies, in this instance?

**McSparron:** In the event of a sex assault, when sexual activity occurs, for it to be legal between two people there has to be consent. If not it is illegal. By adding this section to the law, which specifically states that the perpetrator knew that the victim was rendered mentally incapacitated or physically helpless by being under the influence of an intoxicant. If both parties are responsible to have consent before engaging in an act, would that perpetrator not have to have consent from the other party to have that act be considered legal.

**Jonathon Beyers, Attorney General's Office**

The attorney General's office is in support of this bill.

**(2057) Rep. Sitte** In the matter of two people who are both intoxicated, girls are offering themselves to men.

**Beyer:** This is to gender specific, if both are intoxicated that they both can be charged with the offense.

**Rep. Hawken:** If they are under aged, intoxicated individuals will not report it.

**Beyer:** Reporting of one could lead to prosecution on the other. I do want to point out that all of the questions relate to the fact that there is something short of someone being passed out that we would agree, that if a person gets to that point, we would look at them and say they are not

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capable of giving consent if someone had intercourse with them. Once you step back from being totally passed out where is that line drawn. It is going to be a gray area. The reason that we support the bill, it will at least plant the seed for someone in this situation, that they do need to take in to fact that the victim is to intoxicated and that they ought to be thinking is it to such a level that they can't give consent if they have intercourse.

**Rep. Williams** How many states have this verb age in their law?

**Beyer:** At least the new part of this, adding the word 'knowingly' as a definition and standard.

**Rep. Williams** Why are you supporting this, is there a hole in the current language.

**Beyer:** When I first started reviewing this with Jessica, I was aware that it would create a lot of questions, and this line drawn will be hard to grasp.

**Rep. Norland** In your experience with people that drink, is it not uncommon that people that drink and pass out don't remember what happened. Not just in a sexual act, drinking I general.

**Beyer:** That is true, this bill is not a cure all for the problem. Because they won't be able to recall any supporting testimony. This is where other people at the party would come in a testify what the situation was.

**Rep. Norland** What is the difference of just sleeping. unless you give them an alcohol test of some kind.

**Beyer:** That is the proof beyond a reasonable doubt.

**Rep. Meler** What is the maximum penalty for a juvenile rapist in law?

**Beyer:** In Juvenile, if you call them rapist, forcible gross sexual imposition, is one of those crimes that transfer to adult court, with a maximum of 20 years or 1,000 penalty.

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