

TESTIMONY IN SUPPORT OF BILL HB0412 - FAVORABLE  
Criminal Law - Sexual Crimes - Consent and Second-Degree Rape

TO: Chair Clippinger, Vice Chair Moon, and  
members of the Judiciary Committee

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Consent is the underpinning of our concept of assault. It is one of the ethical foundations of our culture that both parties must consent to sexual contact, or else it is a violation of a person's body and freedom.

Yet "consent" currently has no legal definition. Our laws rely instead on other tests to prove assault, specific behaviors which are easier to examine in a courtroom. But by examining external behaviors, we take the emphasis off of consent. We put the victim's *response* on trial, instead of the perpetrator's attack.

Consent is inherently an internal decision, and people do not always express it visibly. In extreme situations like assault, victims do not always fight, scream, or run. Many do not resist at all, fearing further violence<sup>1</sup>. Some people freeze. Many survivors report being in total shock during the assault, and said they did not know what to do<sup>2</sup>. Several survivors have said they began to talk during their assaults, talking almost constantly, unable to stop themselves. Some survivors were incapacitated and were unconscious during their assaults.

None of these behaviors should be mistaken for consent. They are just some of the widely varied responses we have to extremely stressful situations. They are largely involuntary, and our laws should not require survivors to have any specific "pre-approved" response to their assault.

Our laws create a system that emphasizes the wrong things. If a person does not wish to have sexual contact, then it should be considered assault regardless of how they responded to it. Consent is the ethical cornerstone of assault and it ought to be the legal cornerstone as well.

I urge the committee to report favorably on HB0412.

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<sup>1</sup> Krakauer, Jon. *Missoula: Rape and the Justice System in a College Town*. Anchor Books, 2016. pp. 279-282.

<sup>2</sup> Hopper, James. "Why many rape victims don't fight or yell." *The Washington Post*. June 23, 2015.  
<https://www.washingtonpost.com/news/grade-point/wp/2015/06/23/why-many-rape-victims-dont-fight-or-yell/>