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## OLR Bill Analysis

### sHB 7396

#### ***AN ACT CONCERNING PARITY BETWEEN SEXUAL ASSAULT IN THE CASE OF A SPOUSAL OR COHABITATING RELATIONSHIP AND OTHER CRIMES OF SEXUAL ASSAULT AND CONCERNING THE INVESTIGATION OF A FAMILY VIOLENCE CRIME.***

#### **SUMMARY**

This bill repeals the law that specifically criminalizes sexual assault in a spousal or cohabiting relationship but simultaneously subjects married individuals to penalties for other sexual assault offenses. It does so by repealing exemptions for married individuals from the definitions of “sexual intercourse” and “sexual contact” in the sexual offenses statutes.

Under current law, it is a class B felony, punishable by up to 20 years in prison, a \$15,000 fine, or both, for a spouse or cohabitor to compel the other spouse or cohabitor to engage in sexual intercourse by the use of force or threatened use of force that reasonably causes the other person to fear physical injury. Under the bill, a spouse may be charged, depending on the circumstances, with first or third degree sexual assault, aggravated first degree sexual assault, second degree sexual assault, or third degree sexual assault with a firearm for compelling his or her spouse to submit to sexual contact or intercourse by force or threatened force (i.e., the actions for which he or she may be charged with sexual assault in a spousal or cohabiting relationship under current law).

The bill also narrows the exceptions to the law that requires a peace officer, in responding to a family violence complaint made by two or more opposing parties, to arrest the person the officer believes is the dominant aggressor (see BACKGROUND).

Additionally, the bill makes numerous minor, technical, and

conforming changes.

EFFECTIVE DATE: October 1, 2019, except provision pertaining to family violence arrests is effective July 1, 2019.

### **SEXUAL ASSAULT OF A SPOUSE**

Due to the bill's changes to the definitions of sexual intercourse and sexual contact as described above, the bill adds the following offenses to those for which a spouse who commits sexual assault may be charged:

1. first degree sexual assault, which is a class B felony with a two year mandatory minimum sentence, if he or she compels his or her spouse to engage in sexual intercourse by the use of force against the spouse or a third person, or by a threat of such force that causes the spouse to fear physical personal injury or injury to a third person;
2. aggravated first degree sexual assault, a class B felony with a five year mandatory minimum sentence, if he or she commits first degree sexual assault and, while doing so (a) uses, is armed with and threatens to use a dangerous weapon; (b) injures his or her spouse intending to seriously and permanently disfigure or disable him or her; (c) recklessly engages in conduct creating a risk of death to the spouse under circumstances evincing an extreme indifference to human life; or (d) is aided by two or more persons actually present;
3. second degree sexual assault, a class C felony punishable by up to ten years in prison, up to a \$10,000 fine, or both, if he or she engages in sexual intercourse with his or her spouse who is (a) physically helpless or (b) impaired because of mental disability or disease to the extent that he or she is unable to consent to intercourse;
4. third degree sexual assault, which is a class D felony, punishable by up to five years in prison, up to a \$5,000 fine, or both if he or she uses or threatens to use force to compel his or her spouse to

submit to sexual contact;

5. third degree sexual assault with a firearm, which is a class C felony, with a two year mandatory minimum prison sentence and a combined prison and special parole period of ten years for committing third degree sexual assault while using, armed with and threatening to use, or displaying or representing by words or conduct that he or she has a firearm; or
6. fourth degree sexual assault, a class A misdemeanor, punishable by up to one year in prison, up to a \$2,000 fine, or both, for subjecting the spouse to sexual contact without the spouse's consent or if the spouse is (a) physically helpless or (b) mentally incapacitated or impaired because of mental disability or disease to the extent that he or she is unable to consent to such contact.

#### **FAMILY VIOLENCE ARRESTS**

Existing law generally requires a peace officer, in responding to a family violence complaint made by two or more opposing parties, to arrest the person the officer believes is the dominant aggressor. Under the bill, this does not apply to the following, unless they are family or household members: (1) college or university students residing in on- or off-campus housing owned, managed, or operated by the institution or (2) tenants who live together in a residential rental property. Currently, it does not apply to college or university roommates in on-campus housing or such tenants, unless they are in a dating relationship.

For these purposes, "family or household members" include:

1. spouses or former spouses;
2. parents or their children; or
3. individuals (a) related by blood or marriage, (b) who have a child in common regardless of whether they are or have been married or have lived together at any time, and (c) in, or who have recently been in, a dating relationship.

**BACKGROUND**

***Family Violence***

By law, “family violence” is an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury, or assault, including stalking or a pattern of threatening, between family or household members. It does not include verbal abuse or argument unless there is present danger and the likelihood that physical violence will occur (CGS § 46b-38a(1)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 37    Nay 0    (04/10/2019)