



Senate Fiscal Agency  
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Senate Bill 236 (as enacted)  
Sponsor: Senator Jeff Irwin  
Senate Committee: Civil Rights, Judiciary, and Public Safety  
House Committee: Judiciary

**PUBLIC ACT 65 of 2023**

Date Completed: 9-13-24

**RATIONALE**

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, prosecutors can hold alleged perpetrators of rape legally accountable by demonstrating that the victim was mentally incapacitated; however, some people believe the Code's definition of "mentally incapacitated" is too narrow, only accounting for instances when an individual consumes a substance without the individual's consent. Accordingly, it has been suggested that the definition be modified to include instances of self-inflicted incapacitation, such as the willing consumption of alcohol.

**CONTENT**

**The bill amended Chapter LXXVI (Rape) of the Michigan Penal Code to modify the definition of "mentally incapacitated".**

The bill took effect on October 10, 2023.

Previously, "mentally incapacitated" meant that a person was rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance, *administered to that person without his or her consent*, or due to any *other* act committed to that person without his or her consent.

Under the bill, "mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic, alcohol, or other substance or due to any act committed to that person without the person's consent.

MCL 750.520a

**ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

**Supporting Argument**

Voluntarily consuming a substance to the point of mental incapacitation shouldn't eliminate a person's right to withhold consent from sexual activity. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, some sexual assaults occur because of a victim drinking alcohol to the point of mental incapacitation and so being unable to provide or withhold consent. Previous law did not include instances of self-inebriation within the definition of mental incapacitation, which prevented victims from holding perpetrators of sexual assault accountable in these instances. Self-inebriation to the point of mental incapacitation should not affect an individual's ability to seek redress or criminal accountability for criminal sexual assault. The bill's passage will ensure that victims of sexual assault can

seek necessary accountability in situations that they voluntarily consumed a substance that rendered them temporarily incapable of appraising or controlling their own conduct.

Legislative Analyst: Eleni Lionas

**FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.