

Crimes (Drug Rape) Amendment Bill

Member's Bill

Explanatory note

This amendment grew out of current perceived inadequacies in the Crimes Act 1961 governing drug rape.

Background

The past 10 years have seen an increase in drug-facilitated rape, both in New Zealand and overseas. The increasing popularity and accessibility of the Internet has facilitated the spread of information on the drugs commonly associated with drug rape. As a result, would-be perpetrators are gaining more information about drugs and how to commit these crimes. Drug rape is a crime which is very hard to legislate against, as it is very difficult to prove. The drugs leave a person's system very quickly and the victims themselves are often unsure of the exact events due to the effects of the drugs. However, it is hoped that by amending current legislation, some improvement may be made to protect victims and punish perpetrators.

Statistics

The incidences of drug rape have escalated in recent years, both in New Zealand and overseas, as has their publicity. Statistics, however, are very difficult to obtain due to the low level of reporting and the fact that few police departments specify the nature of rape when compiling statistics. There have also been relatively few convictions. New Zealand has had reported incidences of drug rape in Queenstown, Wellington and Auckland where women were targeted in bars. Police are aware of groups of men who trade stories and photos over the Internet of their attacks. Currently there is an extremely high profile case in America where the heir to the Max Factor estate is charged with 88 counts of rape and other indecent

acts after allegedly drugging at least six women and videotaping himself having sex with them when they appear drugged or unconscious.

Cases

As yet, there have been no convictions for drug rape in New Zealand. A recent court case in Wellington, *R vs. Hooker*, failed to convict a man on rape charges. This case highlights the evidential difficulties associated with prosecutions for sexual violation in cases of alleged drug-facilitated rape. This does not send a strong message to would-be perpetrators or foster security amongst women. While evidential difficulties may still arise in some cases, a specific statutory position dealing with the issue of consent may assist prosecutions. There needs to be a strong message sent that drug-facilitated rape, as with all instances of rape, is totally unacceptable and will be dealt with harshly.

The Crimes Act

Introducing legislation that will enable prosecutors to perform their jobs will be an important step in working against drug rape. Legislation needs to take into account the specific factors of drug rape such as:

- (a) The victim may be conscious but can still be unaware of the act or the nature of the act:
- (b) The victim may be prevented from resisting due to the nature of the drug:
- (c) Because the victim did not fight off her attacker or specifically state her opposition to the act does not itself constitute consent:
- (d) Consent must be given knowingly and voluntarily and drugs used in drug-facilitated rape impair the victim's ability to reason or know the exact nature of the act:
- (e) The reasonableness of an accused's belief in consent given the effects of the drugs or other substances consumed by the victim, and the circumstances in which that consumption occurred, particularly when administered by the accused or known to have been administered to the victim.

Therefore, it is proposed that the Crimes Act be amended.

Dianne Yates

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Crimes (Drug Rape) Amendment Act **2003**.
- (2) In this Act, the Crimes Act 1961¹ is called "the principal Act".

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¹ 1961 No 43

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to amend the Crimes Act 1961 to include under matters that do not constitute consent to sexual connection the fact that a person is prevented from physically resisting by an intoxicating, anaesthetic, controlled or illegal substance, or hypnotic drug.

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4 Matters that do not constitute consent to sexual connection

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- (1) Section 128A(2) of the principal Act is amended by adding the following paragraph:

“(c) the fact that a person is prevented from physically resisting by an intoxicating, anaesthetic, controlled or illegal substance, or hypnotic drug.”

5 New section 129B inserted

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The principal Act is amended by inserting, after section 129A, the following section:

“129B Disabling with intent to commit sexual violation

Every one is liable to imprisonment for a term not exceeding 10 years who, wilfully and without lawful justification or excuse, stupefies or renders unconscious any other person with the intent to commit sexual violation.”

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