

PROTECTING THE RIGHT TO SAY NO

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The Precedent at Present

In 1979, the Supreme Court of North Carolina heard the case *State v. Way* (State v. Way, 2018). The case centered around Beverly Hester's allegations of Donnie Way raping her. The jury asked the judge for clarification about whether consent could be revoked. The judge's affirmative response led to a second-degree rape conviction for Way. Way's appeal of the conviction landed the case in front of the state Supreme Court. The court sided with Way. In describing their justification for a new trial for Way, the Court stated, "If the actual penetration is accomplished with the woman's consent, the accused is not guilty of rape." Though the Court followed up by saying, "Although he may be guilty of another crime [besides rape] because of his subsequent actions," the dangerous precedent was set. The common law for North Carolina now holds that consent cannot be revoked after penetration (Lyon, 2004). This precedent leaves North Carolina with a loophole. In 2018, it is unique to have such a loophole still on the books. In fact, North Carolina is the only state in America where consent cannot be revoked once penetration begins (Senator, 2018).

The Lasting Effects of State v. Way

The North Carolina Supreme Court made its decision in *Way* nearly forty years ago, but just as it stopped Donnie Way from being brought to justice, it continues to prevent rapists from being fully prosecuted. As recently as 2017, the precedent's ramifications were felt by Amy Guy (WRAL, 2017). Amy Guy had an encounter with her husband, Jonathan Guy, that began consensually. However, Jonathan became violent and Amy subsequently revoked her consent. Explaining the incident, Amy said, "I began crying and asked him to stop." Yet, Jonathan persisted. When the case came to court, the prosecution's rape charge did not hold. The court found Jonathan guilty of a misdemeanor assault, deviating down from the original second-degree rape charge. Because of *Way*, Jonathan only served a 10-month jail sentence.

"I began crying and asked him to stop"

-Amy Guy

Under North Carolina's current laws, consent cannot be revoked once a penetrative act begins.

How To Protect Victims of Sexual Assault

In order to ensure victims of sexual assault see their perpetrators properly punished, new legislation is required. Senate Bill 801 eliminates the state's loophole and protects the right to revoke consent, declaring:

A person who consents to vaginal intercourse or to a sexual act can withdraw that consent at any time during the course of that vaginal intercourse or sexual act. A defendant who continues the act of vaginal intercourse after consent is withdrawn is deemed to have committed the act of vaginal intercourse by force and against the will of the other person.

Creating Senate Bill 801

Senate Bill 553 similarly attempted to close the revoked consent loophole in 2017, but the Senate never voted on the legislation. The bill's sponsor Senator Jackson explained how there was national support for the bill once the public learned about North Carolina's current loophole; but at that point, it was the end of the General Assembly session (Senator, 2018). Senator Jackson then proposed Senate Bill 801 in 2018. Senate Bill 801 goes even further than Senate Bill 553 to protect victims by ensuring the right to revoke consent in all sexual acts, not just penetrative acts.

How To Help



Call your Senator

Tell your elected policymaker that revocable consent is important to you. Insist for Senate Bill 801 to be voted on. You can find your senator's contact information here: <https://tinyurl.com/ContactNC>



Spread the Word

Many are surprised when they hear about the North Carolina loophole. Tell others about the flawed common law and explain how Senate Bill 801 must be implemented to protect the right to revoke consent.

Questions Answered

Q: Does North Carolina really need this bill?

Absolutely. Not only does the loophole allow for perpetrators of rape to be given lighter convictions, but it also makes it harder for cases to be properly investigated. A study of North Carolina police departments found that officers stop investigating cases when "assaults do not meet the definition of sexual assault established by the law" since the departments are assessed by their rate of closing cases (Lord, 2001). Senate Bill 801 will put North Carolina in line with all 49 other states, allowing for cases of revoked consent to appropriately be investigated and prosecuted as the sexual assault cases they are.

Q: Will this result in people being falsely accused?

As of now, evidence suggests that false rape allegations are overestimated based on cases with insufficient evidence being grouped into the same category as false accusations (Flowe, 2007). Since Senate Bill 801 would allow for cases of revoked consent to be fully investigated as rape cases, one can expect the rate of false accusations to actually decrease.

Q: Does this bill discriminate against men?

The language of Senate Bill 801 provides equal rights for survivors of sexual assault no matter their gender or sex. Not only does it allow people engaged in vaginal intercourse to revoke consent, but it allows for those involved in any sexual act to revoke consent. Courts today are less likely to find women guilty of sexual assault, partly due to the gendered legal language that surrounds sexual assault laws (Emmers-Sommer, 2015). Senate Bill 801 would hold women and men equally accountable for violations of consent.

Intervention In Other States

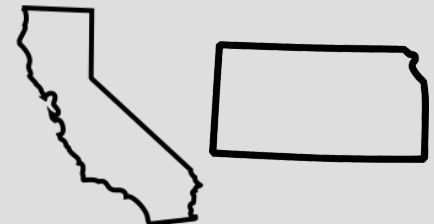


In *State v. Robinson*, Maine marked a state judiciary's early attempt to define revoked consent as rape (Lyon, 2004).

The Maine Supreme Court even criticized North Carolina's governing precedent stating, "The Way opinion's misparaphrase of the jury instruction, so as to disregard entirely the critical element of compulsion, and its avoidance of any relevant analysis whatever turn into a mere ipse dixit [unproven statement]" (Justia, 2018).



Illinois introduced a "No Means No" Act back in 2003 (Lyon, 2004). The act establishes a person's ability to revoke consent even after a sexual encounter has begun.



California and Kansas have used their court systems to set precedent for consent to be revoked even when no force is involved (Lyon, 2004).

Do not let criminals go unpunished.

Demand that Senate Bill 801 be voted on in the General Assembly.

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