

SUBJECT: Creating an offense for indecency with a disabled individual

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Farrar, Greenberg, Pickett, Pitts
0 nays
3 absent — Hudson, Nixon, Solis

WITNESSES: For — None
Against — None
On — Rob Kepple, Texas District and County Attorneys Association

DIGEST: HB 2037 would create an offense for engaging without consent in sexual contact with a disabled individual who is not the persons spouse.

The contact would be without consent if:

- the person compelled the disabled individual to submit or participate by the use of physical force or through the threat of force if the disabled individual believed the person could carry out the threat;
- the disabled individual had not consented and the person knew the disabled individual was unconscious or physically unable to resist;
- the person knew that as the result of mental disease or defect that the disabled individual was incapable of appraising the nature of the act or of resisting it;
- the disabled individual did not consent and the person knew the disabled individual was unaware of the sexual contact;
- the person knew that the disabled individual submits or participates because of the erroneous belief that the person is their spouse;
- the person had impaired the disabled individual's power to appraise or control their conduct by administering any substance without the disabled individual's knowledge; or

- the person compelled the disabled individual to submit or participate by threatening to use force against any person, and the disabled individual believes the person can carry out the threat.

Indecency with a disabled individual would be a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000.

HB 2037 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 2037 would fill a gap in the Penal Code that can hinder the prosecution of persons who have sexual contact with a disabled individual.

Current offenses such as indecency and public lewdness are often difficult to use or do not adequately cover the situation in cases of persons who have sexual contact with a disabled individual. Often these cases take place in private or involve patients with diseases such as Alzheimer disease who cannot testify in court. The offenses which might possibly apply in these cases are only Class A misdemeanors punishable by a maximum of one year in jail and an optional fine of up to \$4,000, an inadequate penalty for this horrific offense. Making the offense a second degree felony would give it the same penalty as sexual assault.

The offense created by this bill would mirror the current offense of indecency with a child and recognize that disabled persons are especially vulnerable and deserve protections. Engaging in sexual contact without the consent of a disabled individuals is particularly reprehensible because disabled individuals are often at the mercy of others and cannot flee, seek aid or give informed consent. A specific provision for engaging in unauthorized sexual contact with a disabled individuals is needed to ensure these offenders are prosecuted and punished.

**OPPONENTS
SAY:**

There is no need for a specific offense for indecency with a disabled individual. When the Penal Code was revised in 1993 the Legislature established broad categories of offenses, eliminated many special provisions and decided there should not be varied treatment of victims subject to similar harm. Although child victims sometimes warranted additional protection, other classes of victims were covered by the broad statues. The

offenses described by HB 2037 are covered by other statutes including public lewdness, assault and sexual assault.

Making sexual contact (touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person) a second-degree felony with a possible 20-year prison sentence is too harsh of a punishment and would be out of line with other Penal Code offenses for similar offenses.

NOTES:

HB 2628 by McDonald and SB 1132 by West would create an offense for sexual contact with an elderly or disabled individual. HB 2628 has been referred to the House Criminal Jurisprudence Committee, and SB 1132 has been referred to the Senate Criminal Justice Committee.