SUBJECT: Enhancement of punishment for unlawful restraint of public servant

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Hinojosa, Dunnam, Keel, Talton, Garcia, Green, Kitchen, Shields

0 nays

1 absent — Martinez Fischer

WITNESSES: For — None

Against — Larry Sauer, American Civil Liberties Union of Texas

On — Gina DeBottis, Special Prosecution Unit

BACKGROUND: Under Penal Code, ch. 20, "restrain" means to restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person.

Restraint is "without consent" if it is accomplished by force, intimidation, or deception; or any means, including acquiescence of the victim, if:

- the victim is a child who is less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting as guardian has not agreed to the movement or confinement; or
- the victim is a child at least 14 and younger than 17 years of age, the victim is taken outside of the state and outside a 120-mile radius from the victim's residence, and the parent, guardian, or person acting as guardian has not agreed to the movement.

Penal Code, sec. 20.02 provides a class A misdemeanor offense (punishable by up to one year in jail and/or a maximum fine of $4,000) for unlawful restraint if a person intentionally or knowingly restrains another. The offense is a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to $10,000) if the person restrained was a child under 17, and a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to $10,000) if the actor recklessly exposed the victim to

substantial risk of serious bodily injury.

It is an affirmative defense to prosecution that the actor was restraining a relative who was a child under 14 with the intent of assuming lawful control of the child. It also is an affirmative defense to prosecution that the person restrained was at least 14 and younger than 17, the actor was not more than three years older than the child, and the actor did not restrain the child by force, intimidation, or deception.

It is not an offense to detain or move another during a lawful arrest or during detention of someone lawfully arrested.

DIGEST:

HB 2098 would amend Penal Code, sec. 20.02(c) to create a third-degree felony offense for restraining an individual the actor knows is a public servant:

- while the public servant was lawfully discharging an official duty;
- in retaliation; or
- because of the public servant's performance of an official duty or exercise of official power.

The bill would take effect on September 1, 2001 and would apply to offenses committed after that date.

SUPPORTERS SAY:

HB 2098 is necessary to protect prison guards. Recently, an inmate in an Amarillo prison unit locked himself in a room with a female employee and broke the key off in the lock to keep others out. He did not threaten or harm the employee, but he kept her under unlawful restraint for several hours. Officials could charge him only with a class A misdemeanor.

The current punishment of a class A misdemeanor is not adequate to deter uncooperative or retaliative inmates from restraining guards. Many inmates are larger than the unarmed men and women guarding them and could overpower a correctional officer. Often, the worst punishment the inmate suffers is a loss of "good time." If this legislation were enacted, the threat of real punishment for restraining a guard would be an effective tool for inmate management.

OPPONENTS SAY:

Unlawful restraint already carries a penalty of up to a year in jail. “Public officials” is a broad category that includes more than prison guards, and the third-degree felony offense HB 2098 introduces could be inappropriate in some situations. If the goal is to protect prison officials, the bill should apply only to inmates who unlawfully restrain prison employees.