

SUBJECT: Expanding the definition of harassment by prisoners

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Allen, Hopson, Alonzo, Farrar, Haggerty
0 nays
2 absent — Mabry, Stick

WITNESSES: For — A. C. Berry Jr., Texas Probation Association; Earl Lloyd, Bell County Juvenile Probation
Against — None
On — Gary Johnson, Texas Department of Criminal Justice

BACKGROUND: In 1999, the 76th Legislature enacted HB 1713 by Ellis, which added section 22.11 to the Penal Code. This section created an offense of harassment by a person in a correctional or detention facility if that person caused another individual to come into contact with the blood, seminal fluid, feces, or urine of any person. An offense under this section is a third-degree felony and carries a penalty of two to 10 years in prison and an optional fine of up to \$10,000.

DIGEST: CSHB 274 would add vaginal fluid and saliva to the list of bodily fluids that appears in Section 22.11 of the Penal Code.
CSHB 274 also would add a subsection expanding the definition of “correctional or detention facility” to include facilities used to restrict juveniles held in custody.
The bill would take effect September 1, 2003, and apply to offenses committed after that date.

**SUPPORTERS
SAY:**

While the Penal Code currently helps protect prison and jail employees from some types of unsanitary bodily secretion and waste thrown by inmates, known as “chunking,” the law does not include the equally disgusting secretions of saliva and vaginal fluid. CSHB 274 simply would expand the list of bodily fluids covered by statute. Because saliva and vaginal fluids are as hazardous and sickening as those that are already outlawed, these two fluids need to be prohibited as well.

For many correctional employees, inmates who spit are a serious problem. Correctional officers often have to wear protective clothing to shield themselves from inmates’ saliva. Because “spitters” often know that their actions constitute only misdemeanor assault, they freely engage in this activity with near impunity. Many of the inmates who engage in this behavior have no accumulated “good time” credit that could reduce their sentence or allow them privileges, so they have nothing to lose. The threat of additional time behind bars is the only real deterrent to prevent many of these inmates from harassing employees in this manner.

Because many inmates are aware that saliva is not covered under the current statute, these individuals will spit on correctional officers, even while they refrain from other activities prohibited by law. Saliva and vaginal fluid pose a serious health risk to correctional employees, and CSHB 274 would help protect these public servants.

In addition to protecting the health of correctional officers, CSHB 274 would help officers maintain order and discipline by holding prisoners more accountable for their actions. A general reduction in insubordination among prisoners would improve prison safety and protect the well-being of all employees and prisoners.

Correctional officers at juvenile justice centers have stated that acts covered under section 22.11 of the Penal Code pose problems in their facilities as well. CSHB 274 would expand the prohibition of these disgusting activities to all juvenile justice and Texas Youth Commission facilities, where these protections also are needed. If the Legislature finds that the practice of harassment with bodily fluids should be prohibited among adult prisoners, this activity also should be outlawed for youthful offenders in all types of correctional as well as detention facilities.

CSHB 274 would protect anyone harassed in this manner, not just prison employees. For example, spitting on teachers, counselors, and other inmates would constitute a felony. CSHB 274 thus would encourage civility and respect among inmates and improve the environment at many state prisons.

CSHB 274 effectively would list all remaining bodily fluids that were not covered by the original statute. This bill would eliminate any ambiguity in the law regarding harassment by prohibiting all forms of this disgusting behavior by inmates.

OPPONENTS
SAY:

CSHB 274 would expand to a felony the scope of an offense that essentially is a disciplinary problem. While spitting is disgusting, a harsh penalty of two to 10 years additional confinement would be excessive. Prison officials may employ other punishments, such as a reduction of prison privileges or segregated confinement, to deter this behavior rather than adding to an inmate's time behind bars.

In most cases, CSHB 274 would be ineffective at curtailing harassment, because additional confinement largely is ineffective in deterring such behavior. Many prisoners in Texas do not think rationally, and additional jail time to punish these actions would not be effective. The state instead should focus on more effective and inexpensive measures that reward good behavior among inmates.

Spitting by prisoners often is symptomatic of inmate frustration with harsh prison conditions. If prison conditions were improved, the incidence of all activities covered by Section 22.11 would decrease. CSHB 274 would impose additional confinement on the most desperate inmates, thereby hurting morale and ignoring the underlying problem that helps cause this disgusting behavior.

OTHER
OPPONENTS
SAY:

CSHB 274 omits several bodily fluids that could be employed as tools of harassment, including mucous and vomit. This bill should be crafted, once and for all, to prohibit harassment by means of any conceivable bodily fluid; otherwise this statute will require amendment by future legislatures.

NOTES:

The committee substitute would expand the definition of correctional or detention facilities affected by this act to include juvenile justice centers or any facility operated by or under contract with the Texas Youth Commission.

A related bill, SB 729 by Staples, which would add the fluid or waste of an animal to the harassment offense under Penal Code, sec. 22.11, was reported favorably, without amendment, by the Senate Criminal Justice Committee on March 20.