

SUBJECT: Harassment offense in correctional facilities using animal waste

COMMITTEE: Corrections — favorable, without amendment

VOTE: 4 ayes — Allen, Hopson, Alonzo, Haggerty
0 nays
3 absent — Farrar, Mabry, Stick

SENATE VOTE: On final passage, March 27 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Under Penal Code sec. 22.11 it is an offense under harassment by a person in a correctional facility or a Texas Youth Commission facility to cause another individual to come into contact with the blood, seminal fluid, urine, or feces of any person. To qualify as an offense, this action must have been taken with the intent to harass, alarm, or annoy another person. The offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000)

DIGEST: SB 729 would expand the offense of harassment by a person in an adult correctional or Texas Youth Commission facility to include causing contact with the blood, seminal fluid, urine, or feces of an animal.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: SB 729 is needed to facilitate the prosecution of the current offense of harassment by a person in a correctional facility. While the Penal Code currently helps protect prison and jail employees from some types of unsanitary bodily secretions and waste thrown by inmates, known as “chunking,” the law requires that prosecutors prove that the substance thrown came from a person. The analysis necessary to prove this can be time consuming and expensive.

SB 729 would solve this problem by also criminalizing the use of animal feces or bodily fluids as tools of harassment. This would make proving the

elements of the offense easier, but would not change the fundamental nature of the offense. Because current law requires that the person committing the offense have the intent to harass, alarm, or annoy the other person, SB 729 would not criminalize innocent actions, such as an inmate accidentally getting waste products on a corrections officer while cleaning up after a Texas Department of Criminal Justice (TDCJ) horse or dog. However, if an inmate intentionally used animal waste to harass another person, it rightly would be covered by the statute.

**OPPONENTS
SAY:**

SB 729 could broaden the current law so much that an innocent action, such as an inmate accidentally bringing animal waste into contact with a corrections officer while tending to TDCJ animals, could lead unfairly to threatened or actual prosecution.

NOTES:

On March 31, the House approved a related bill, HB 274 by Keel, which would add saliva and vaginal fluid to the list of bodily fluids that could be used for harassment and also would expand the definition of “correctional or detention facility” to include facilities used to restrict juveniles held in custody. HB 274 has been referred to the Senate Criminal Justice Committee.