

SUBJECT: First-degree felony for continuous sexual abuse of TYC youth

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Gallego, Aliseda, Carter, Christian, Rodriguez, Zedler
0 nays
3 absent — Hartnett, Burkett, Y. Davis

WITNESSES: For — David Babb, The Prison Show, KPFT Radio – Houston; Torie Camp, Texas Association Against Sexual Assault; (*Registered, but did not testify*), Jason Sabo, Children at Risk
Against — None
On — Adrienne McFarland, Attorney General’s Office

BACKGROUND: Under Penal Code, sec. 39.04 it is a crime for an official, employee, or volunteer of a correctional facility or for a peace officer to engage in sexual conduct, sexual intercourse, or deviate sexual intercourse with a person in custody. This crime is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). In the case of persons in the custody of the Texas Youth Commission, it also is an offense to employ, authorize, or induce a person to engage in sexual conduct or sexual performance. Both offenses are a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if committed against a person committed to the Texas Youth Commission or a juvenile offender in a correctional facility financed primarily with state funds.

Penal Code, sec. 21.02 makes the continuous sexual abuse of a young child or children a crime. The offense is committed if a person at least 17 years old commits two or more specified “acts of sexual abuse,” regardless of the number of victims, against a child younger than 14, over a period of 30 or more days. The offense is a first-degree felony punishable by a term of 25 years to life, and offenders are not eligible for parole.

DIGEST: HB 2993 would amend the offense of improper sexual activity with a person in custody to make it a first-degree felony if the offense involved two or more occasions of the illegal sexual activity during a period of 30 days or more, regardless of the number of victims.

If a jury tried the case, it would not have to agree unanimously on which specific acts of sexual abuse were committed or the exact date on which they were committed. The jury would have to agree unanimously that during the 30-day-plus period, the person committed at least two acts of sexual abuse. The same offenses could not be used to convict persons for both the continuous sexual abuse offense established by bill and the individual offenses unless certain conditions were met.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2993 is necessary to make Texas' punishment for repeated sexual abuse of all youths in juvenile correctional facilities appropriately fit the crime and to help protect all youths in these facilities. Current Texas law makes continuous sexual abuse of a young child a first-degree felony, and this includes young children in TYC. However, the statute does not cover similar sexual abuse committed against older youths in TYC, which might be only a second-degree felony under the crime of improper sexual activity with persons in custody. This punishment is inadequate for such a crime.

Texas has a serious problem with the sexual assaults of youths in correctional facilities. According to a U.S. Department of Justice Report, youths in many Texas facilities are sexually victimized well above the national average, and specific Texas facilities ranked as some of the worst facilities. The problem may be even worse due to unreported crimes.

HB 2993 would help address this problem. Allowing a series of crimes to be prosecuted as one offense would give prosecutors more flexibility than under existing laws, allow prosecutors to present a more accurate picture of a predator, and allow more appropriate punishments than considering each incident individually.

It would be appropriate to expand continuous sexual abuse laws to cover older youths in TYC and other juvenile facilities because they represent an especially vulnerable population. They are under the control of TYC

officials, might fear retaliation for accusing an official of a crime, are not able to flee a predator who works at facility, and might be less capable of outcry than older youths in the free world. The state has a special responsibility to protect those under its custody and to punish those who sexually abuse youths in TYC.

HB 2993 would track language in the state's offense for continuous sexual abuse of a young child. It would import the same language for the time period of more than 30 days for the actions to take place, jury findings relating to the multiple offenses, and double jeopardy.

**OPPONENTS
SAY:**

HB 2993 would expand the state's law on the continuous sexual abuse of a young child beyond its intent. That law was carefully crafted to address the problem of sexual predators who prey on young children. It also created protections for children younger than 14 years old, the threshold Texas uses in other statutes for special treatment, at least in part because young children may be under the control of adults and be less capable of outcry and of remembering dates of specific incidents. Expanding the continuous sexual abuse statute to older youths in TYC could give these youths protections not afforded to others. Sexual crimes committed in TYC are serious offenses that carry tough penalties under current law that should be enforced.

**OTHER
OPPONENTS
SAY:**

While it might be appropriate to expand the continuous sexual abuse of a young child law to cover all youths in TYC, HB 2993 would go too far in expanding the offense to include sexual activity with individuals in custody without limiting it to youth correctional facilities.

NOTES:

Rep. Miles plans to offer a floor amendment to narrow the applicability of the offense defined in HB 2993 to apply only to individuals in the custody of the Texas Youth Commission or juvenile offenders detained in or committed to a correctional facility financed primarily with state funds.