

SUBJECT: Revising affirmative defense for indecency with a child

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Leach, Simpson

0 nays

1 absent — Shaheen

WITNESSES: For — Will Francis, National Association of Social Workers-Texas Chapter; (*Registered, but did not testify*: Victor Cornell, American Civil Liberties Union of Texas; Donald Baker, Austin Police Department; Gary Tittle, Dallas Police Department; Chuck Smith, Equality Texas; Daniel Williams, Equality Texas; Thomas Ratliff, Harris/Fort Bend County Criminal Lawyers Association; Donald McKinney, Houston Police Department; Patricia Cummings, Texas Criminal Defense Lawyers Association; Sean Mannix, Texas Police Chiefs Association; Lon Craft, Texas Municipal Police Association; Eugene Silvas, Ysleta del Sur Pueblo; and six individuals)

Against — None

BACKGROUND: Penal Code, sec. 21.11 establishes the offense of indecency with a child. The offense must be committed against a child younger than 17 and can be committed either through sexual contact or through exposure.

It is an affirmative defense to prosecution for the offense that the person accused:

- was not more than three years older than the victim and of the opposite sex;
- did not use duress, force, or a threat against the victim; and
- at the time of the offense the person was not required to register for life under the state's sex offender registration law or did not have an offense for indecency with a child that required registration.

DIGEST:

HB 71 would remove the requirement from the affirmative defense to prosecution for indecency with a child that the person accused and the victim be of the opposite sex. The first component of the affirmative defense would be that the person accused was not more than three years older than the victim.

The bill would take effect September 1, 2015, and would apply to offenses committed on or after that date.