

SUBJECT: Sexual coercion, indecent assault, possession of certain material offenses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Wilson

2 nays — Hefner, Lang

SENATE VOTE: On final passage, May 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2974:*

For — Michael Wood, Orrick, Herrington and Sutcliffe LLP; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Mike Gomez, Texas Municipal Police Association; William Mills, Sheriffs' Association of Texas)

Against — (*Registered, but did not testify*: Beth Bryant; Leah Lobsiger; Hans Maverick)

On — Jerry Meadors, Office of the Attorney General

DIGEST: CSSB 2238 would create new criminal offenses for sexual coercion, indecent assault, and possession and promotion of lewd visual material depicting a child. It also would make revisions to the sexual assault and aggravated sexual assault offenses, including changes related to consent.

**Sexual coercion.** The bill would create a crime called sexual coercion. It would be a crime to threaten another person, their property, or reputation, or to threaten to distribute or cause the distribution of intimate visual material of the other person if these actions were done with the intent to coerce another person either to engage in sexual conduct or to produce, provide, or distribute intimate visual material.

It also would be an offense to knowingly cause another to engage in sexual conduct or to produce, provide, or distribute intimate visual material by means of a threat against another's person, property, or

reputation, or to distribute or cause distribution of intimate visual material of the other person.

The offense would apply regardless of how a threat was communicated. An offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). Repeat offenses would be third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).

**Indecent assault.** The bill also would create the offense of indecent assault. It would be an offense to, without another's consent and with the intent to arouse or gratify the sexual desire of any person, take certain actions involving certain kinds of touching, exposing, or causing contact with blood or certain other body fluids. Offenses would be class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000).

Victims of indecent assault would be included with the victims of certain sex and trafficking offenses who are given rights in addition to those given to other crime victims. These rights would apply to victims of conduct for which convictions or grants of deferred adjudication were made on or after the bill's effective date, regardless of when the conduct occurred.

The bill would include victims of indecent assault with victims of certain other sex, stalking, and trafficking crimes who could apply to a court for protective orders without regard to the relationship between them and the alleged offender. The bill would add indecent assault to other current provisions relating to the orders, including ones making it an offense to violate the conditions of a protective order or a bond in such a case.

The bill also would allow magistrates to issue emergency protective orders for indecent assault in the same way they may issue them in cases involving certain trafficking and sex offenses. Indecent assault would be added to statutes related to the emergency protective orders in these cases.

These provisions would apply only to protective orders issued on or after

the bill's effective date.

**Possession, promotion of lewd visual material depicting a child.** The bill would create an offense for knowingly possessing, accessing with intent to view, or promoting visual material that:

- depicted in a certain way an unclothed, partially clothed, or clothed child who was younger than 18 when the material was created;
- appealed to the prurient interest in sex; and
- had no serious literary, artistic, political, or scientific value.

Offenses would be state-jail felonies. Repeat offenses would carry higher penalties. It would not be a defense to prosecution that the child consented to the creation of the material.

**Sexual assault.** The bill would expand the conditions under which sexual assault is considered to be without consent to include compelling someone to submit by coercion or by threatening harm. An assault also would be considered without consent if the other person had withdrawn consent and the actor persisted after consent was withdrawn. A person would be considered not to have consented if the person was incapable of appraising the nature of the act.

It would not be a defense to prosecution to mistakenly believe that the other person consented if a reasonable person should have known or understood that the other did not consent. The bill would eliminate a provision in current law specifically naming public servants.

**Aggravated sexual assault.** The bill would revise the current portion of the definition of aggravated sexual assault that involves administering certain substances to a victim with the intent of committing the offense. The bill would define the offense as administering any substance capable of impairing the victim, rather than list the names of substances.

It would not be a defense to prosecution to mistakenly believe that the other person consented if a reasonable person should have known or

understood that the other did not consent.

**Effective date.** The bill would take effect September 1, 2017, and changes to criminal offenses would apply only to offenses committed on or after that date. To the extent of any conflict, the bill would prevail over other acts of the 85th Legislature relating to nonsubstantive additions to and corrections in enacted codes.

**NOTES:**

CSSB 2238 adds certain provisions to the Senate-passed version, which included only provisions creating a new offense for sexual coercion.

A companion bill, HB 2974 by Dale, was withdrawn from the House's Local, Consent, and Resolutions Calendar on May 12.