

**SUBJECT:** Creating the offense of continuous sexual abuse of a disabled person

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco

0 nays

**WITNESSES:** For — (*Registered, but did not testify*: Justin Berry, Austin Police Association; Eric Carcerano, Chambers County District Attorney's Office; Dennis Borel, Coalition of Texans with Disabilities; Frederick Frazier, Dallas Police Association State FOP; Matthew Williamson, Dallas Police Department; Clay Taylor, Department of Public Safety Officers Association; Quint Balkcom, Game Warden Peace Officers Association; Tiana Sanford, Montgomery County District Attorney's Office; Christopher Lutton, San Antonio Police Department; AJ Louderback and Micah Harmon, Sheriffs' Association of Texas; Amy Bresnen, Texas Family Law Foundation; Noel Johnson, Texas Municipal Police Association; Farha Ahmed; Rhonda Kuykendall; Aimee Mobley Turney)

Against — Worth Carroll, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Shea Place, Texas Criminal Defense Lawyers Association; Mary Elizabeth; Larissa Rodionov)

On — (*Registered, but did not testify*: Craig Schiebel)

**BACKGROUND:** Penal Code sec. 21.02(b) makes it an offense for a person 17 years of age or older to commit two or more acts of sexual abuse against a victim younger than 14 years of age, regardless of whether the sexual abuse is committed against one or more victims, during a period of 30 days or more. The actor commits an offense regardless of whether the actor knows the age of the victim at the time of the offense.

Sec. 21.02(c) defines an "act of sexual abuse" as:

- aggravated kidnapping, committed with the intent to violate or abuse the victim sexually;
- indecency with a child involving certain kinds of contact, if committed in a manner other than touching;
- sexual assault or aggravated sexual assault;
- burglary, if committed in a habitation and with the intent to commit any of the previous offenses;
- sexual performance by a child;
- human trafficking; and
- compelling prostitution.

The offense of continuous sexual abuse against a child is a first-degree felony (life in prison or a sentence of 25 to 99 years and an optional fine of up to \$10,000).

Concerned parties have noted that the continued sexual abuse of the elderly is more common than is reported and that these individuals are vulnerable and unable to provide consent.

**DIGEST:**

CSHB 3177 would expand the criminal offense of continuous sexual abuse of a child to include sexual abuse of a disabled individual. The bill would define a "disabled individual" as a person:

- with a developmental disability, intellectual disability, or traumatic brain injury; or
- who was otherwise unable to provide self-care by reason of age or physical or mental disease, defect, or injury.

The bill also would expand the definition of an act of sexual abuse that could constitute the offense of continuous sexual abuse to include:

- knowingly trafficking and forcing a person, including a child, to engage in, promote, or compel prostitution;
- knowingly trafficking and forcing a child to engage in, or become the victim of, sexual crimes; and

- receiving a benefit from one of these actions, or engaging in sexual conduct with a trafficked person;

The bill would make it an affirmative defense to prosecution if an actor was not more than 5 years older than any victim of the offense.

The bill would amend relevant statutes that refer to the continuous sexual abuse of a child to include individuals with a disability. These codes include the Civil Practice and Remedies Code, the Code of Criminal Procedure, the Education Code, the Family Code, the Government Code, the Health and Safety Code, the Occupations Code, the Property Code, and the portion of the Penal Code relating to human trafficking.

The bill would take effect September 1, 2019, and would apply only to an offense committed on or after the effective date.