

- SUBJECT:** Enhanced penalty for sexual assault against certain family members
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco
- 0 nays
- WITNESSES:** For — Jennifer Sawyer, Dallas County District Attorney’s Office; Scott Say, Lamb County and District Attorney; (*Registered, but did not testify:* Jennifer Tharp, Comal County Criminal District Attorney; M Paige Williams, Dallas County District Attorney’s Office; Frederick Frazier, Dallas Police Association, State FOP; Jose Carlos Gonzalez, Gonzalez & Associates Homeland Security; Jessica Anderson, Houston Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Vincent Giardino, Tarrant County Criminal District Attorney's Office)
- Against — (*Registered, but did not testify:* Mary Sue Molnar, Texas Voices for Reason and Justice)
- BACKGROUND:** Penal Code sec. 22.011 establishes the crime of sexual assault. Under sec. 22.011(f) offenses are second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000), except that offenses are first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the victim was someone the defendant was prohibited from marrying, purporting to marry, or living with under the appearance of marriage under the bigamy statute.
- Sec. 22.011(e) establishes an affirmative defense to prosecution under the sexual assault statute in certain cases if the defendant was not more than three years older than the victim at the time of the offense and the victim was a child at least 14 years old and was not someone whom the defendant was prohibited from marrying under the state's bigamy laws.
- Sec 25.02 establishes the crime of prohibited sexual conduct with certain

family members, also referred to as incest.

Some have suggested that the intent of current law governing sexual assault offenses would be clearer if it referred to family members under the incest statute rather than the bigamy statute, which could be taken to mean that the person who committed the assault had to be married at the time of the assault to be prosecuted.

DIGEST:

HB 667 would raise the penalty for sexual assault from a second degree felony to a first degree felony if the victim was a person with whom the defendant was prohibited from engaging in sex under Penal Code sec. 25.02, which prohibits sexual conduct with certain family members.

The current affirmative defense to prosecution under the sexual assault statute that applies in certain cases when the victim was a child of at least 14 years old and there is no more than a three-year age gap between the victim and defendant would be revised so that it could not be used if the victim was someone with whom the defendant was prohibited from engaging in sex under the state's incest laws.

HB 667 would be known as Melissa's Law.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date.