

SUBJECT: Increasing punishment for improper sexual activity with person in custody

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut

0 nays

WITNESSES: For — Brian Hawthorne, Sheriffs' Association of Texas; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Quint Balkcom, Game Warden Peace Officer's Association; Ray Hunt, Houston Police Officers' Union; Kristen Lenau, Texas Association Against Sexual Assault; John Wilkerson, Texas Municipal Police Association; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Penal Code sec. 39.04 (a)(2) makes it an offense to engage in improper sexual activity with a person in custody or under supervision. The offense can be committed by officials of correctional facilities or juvenile facilities, employees of these facilities, other persons who work at these facilities, volunteers at the facilities, or peace officers.

The offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) unless committed against an individual in the Texas Juvenile Justice Department or a juvenile in a correctional facility, in which case it is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

DIGEST: HB 376 would increase to a second degree felony the penalty for improper sexual activity with a person in custody who is not in a juvenile facility or

a juvenile in a correctional facility.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 376 would make the punishment for improper sexual activity with a person in custody better fit the crime by increasing the punishment to a second-degree felony. This is a serious crime that warrants a more serious felony punishment than that set under current law.

The bill would establish the same punishment for improper sexual activity with a person in custody as that for sexual assault and the punishment currently set in Penal Code sec. 21.12 for improper relationships between an educator and a student. Offenses involving those in custody and students both involve situations with an imbalance of power in which true consent cannot be given and should carry the same punishment. HB 376 is consistent with the state's duty to protect those in custody. The bill would both deter the crime and ensure that if the crime occurred, it would be appropriately punished.

**CRITICS
SAY:**

HB 376 is unnecessary because the offense of improper sexual activity with a person in custody already is punished as a felony and circumstances involving rape would fall under the sexual assault statutes, which generally are second-degree felonies.