

SUBJECT: Redefining "spouse" for sexual assault offense

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Place, Farrar, Pickett, Pitts, Solis
0 nays
4 absent — Talton, Greenberg, Hudson, Nixon

SENATE VOTE: On final passage, February 2 — 30-0

WITNESSES: None

BACKGROUND: The sexual assault provisions in Penal Code sec. 22.011 were revised in 1993 to remove "bodily injury" or "threat of bodily injury" from the required elements needed to prosecute a spouse for sexual assault.

Penal Code sec. 22.011(a)(2) makes it a criminal offense to have sex with a minor under the age of 17 who is not the spouse of the actor. "Spouse" is defined as a person legally married to another, except persons are not treated as spouses if they do not reside together or any action is pending for dissolution of the marriage or separate maintenance.

DIGEST: SB 286 would amend Penal Code sec. 22.011(c)(2) (sexual assault) to redefine "spouse" as a person who is legally married to another, eliminating the exceptions for married persons who do not reside together or are involved in a suit for divorce or separate maintenance. The bill would take effect September 1, 1995.

SUPPORTERS SAY: SB 286 would revise the Penal Code provision on sexual assault to reflect changes made when the Code was rewritten in 1993. The Senate Interim Committee on Domestic Violence recommended that the 74th Legislature modify the definition of "spouse" to eliminate a problem that could exist when a person is married to a minor spouse and they do not live in the same residence. Current law would prohibit consensual intercourse in such

a case, since it would meet the definitions of sexual assault if one spouse was age 17 or under.

SB 286 would delete language that is no longer necessary given the 1993 revisions to the Penal Code, which eliminated the requirements of bodily injury or threat of bodily for sexual assault by a spouse.

OPPONENTS
SAY:

No apparent opposition