

- SUBJECT:** Offense for sexual contact between correctional volunteers and inmates
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Hinojosa, Keel, Talton, Garcia, Green, Kitchen, Shields  
0 nays  
2 absent — Dunnam, Martinez Fischer
- WITNESSES:** For — None  
Against — None  
On — Gina DeBottis, Special Prosecution Unit
- BACKGROUND:** Penal Code, art. 21.01 defines “sexual contact” as any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person. “Sexual intercourse” means any penetration of the female sex organ by the male sex organ. “Deviate sexual intercourse” means any contact between any part of the genitals of one person and the mouth or anus of another person or the penetration of the genitals or the anus of another person with an object.
- Penal Code, art. 39.04 makes it a class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) for a peace officer or an official or employee of a correctional facility, to deny or impede an inmate in the exercise or enjoyment of any right, privilege, or immunity, knowing that his conduct is unlawful. It is a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for the peace officer or official or employee of a correctional facility to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with an inmate.
- DIGEST:** HB 2097 would amend Penal Code, art. 39.04 to add a person other than an employee who works for compensation at a correctional facility and a volunteer at a correctional facility to the list of persons who would be committing an offense if they knowingly impeded an inmate in the exercise or enjoyment of any right, privilege, or immunity, or they engaged in sexual contact, sexual intercourse, or deviate sexual intercourse with an inmate.

The bill would take effect on September 1, 2001.

**SUPPORTERS  
SAY:**

HB 2097 would ensure that contracted correctional employees and volunteers who engage in inappropriate sexual contact with offenders would be committing a criminal offense. Any sexual contact between a contracted correctional employee or a volunteer and an offender entrusted to their care is a serious breach of public trust that should be punished as a criminal offense. HB 2097 would ensure that these persons are held to the same level of accountability as correctional employees and peace officers who unlawfully have sexual relations with inmates.

HB 2097 is necessary because the Special Prosecution Unit, the agency that prosecutes violations of Penal Code, art. 39.04, has been unable to hold contracted medical and educational employees accountable for engaging in sexual relations with inmates. This bill would hold Windham School District employees, prison chaplains, and medical personnel from Texas Tech University Medical Science Center and the University of Texas Medical Branch who work with inmates to the same standards as regular correctional employees.

HB 2097 would not be burdensome on correctional agencies because they are used to handling numerous accusations by offenders. Correctional agencies simply would follow their established rules and procedures for handling offender complaints and accusations. Legitimate correctional activities would not become criminal offenses because HB 2097 would require that the contact be done with intent to arouse or gratify the sexual desire of any person.

**OPPONENTS  
SAY:**

HB 2097 could lead to a rash of accusations by offenders against contracted correctional employees and volunteers. The definition of sexual contact, for example, is broad and could be construed as possibly applying to many legitimate correctional activities or even to cases where an inmate initiated contact that was not reciprocated. An increase in accusations could create a burden on internal affairs officers who investigate accusations and could create unnecessary hardships for accused contracted correctional employees and volunteers.

HB 2097 could lead to severe punishment for volunteers who also were inmates' spouses. For example, if a woman volunteer had sexual contact – a

lesser level of contact than sexual intercourse – with her inmate husband, she could be charged with a state jail felony. The bill should include a defense to prosecution for volunteers who are married to or dating inmates.