

SUBJECT: Prohibiting sexual relations between school employees and students

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, P. Moreno, Pena, Talton
0 nays

WITNESSES: For — None
Against — None
On — Ted Melina Raab, Texas Federation of Teachers

BACKGROUND: Under Penal Code, section 21.11, sexual contact with a child under age 17 is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) and indecent exposure is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). It is an affirmative defense to prosecution if the actor was not more than three years older than the victim and of the opposite sex, and if, at the time of the offense, the offender was not required to register as a sex offender and did not have reportable conviction or adjudication for indecency with a child. A similar affirmative defense applies to sexual intercourse with a child under age 17, which is considered sexual assault under Penal Code, sec. 22.011 and is a second-degree felony.

Sexual contact is defined as any touching by a person, including touching through clothing, of the anus, breast, genitals or any part of the body of a child, with the intent to arouse or gratify the sexual desire of any person.

DIGEST: HB 532 would amend the Penal Code to make it a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for an employee of a public or private primary or secondary school to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with a person under 18 who was enrolled in a public or private primary or secondary school and who was not the employee's spouse. It would allow an offense under this section that also constituted an offense under another section to be prosecuted

under either or both sections.

It would be an affirmative defense to prosecution if the actor was not more than three years older than the victim and that at the time of the offense the victim was at least 14 years old and the actor was not required to register as a sex offender.

By January 1, 2004, the State Board for Educator Certification (SBEC) would be required to propose an amendment to the educator's code of ethics providing that the conduct outlined in the bill would be a violation of the code of ethics.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 532 would ensure that any school employee who engaged in inappropriate sexual conduct with a student between the ages of 17 and 18 would be committing a criminal offense. It would closely track existing statutes prohibiting indecency with a child and would establish appropriate criminal penalties for sexual misconduct by school employees that is not covered under current law. It also would allow a school employee to receive the harsher penalty under current law if the child in question was under the age of 17.

Sexual involvement between school employees and students is becoming increasingly prevalent in schools. Any sexual misconduct between school employees and students is a breach of public trust that should be punished as a criminal offense. The bill would send the strong message that this behavior is inappropriate for any school employee under any circumstances and would provide reassurance for older students as well as their parents.

This bill would allow for an employee, such as a 19-year-old groundskeeper, to mount an affirmative defense that a romantic relationship with a 17-year-old student was not criminal because the two were close in age. However, non-certified staff, including cafeteria workers and bus drivers, otherwise should be held to the same standards and face the same criminal penalties as professional staff. Certified teachers would face an additional consequence in that sexual misconduct with a student would violate SBEC's code of ethics and thus would place their certification in jeopardy.

OPPONENTS

HB 532 is overly broad and could lead to a rash of accusations by students

SAY: against school employees. The bill would apply to any school employee who had sexual contact with any student, even if the employee worked at a different school than the student attended.

The bill should apply only to teachers, school principals, coaches, and other school personnel who have some sort of supervisory role over students. Cafeteria workers and janitors are not entrusted with the same sort of authority over students, and should not be subject to punishment intended for those who have violated this trust.

The bill is unnecessary because the educator's code of ethics includes stricter prohibitions against this behavior, such as prohibitions against any romantic interaction. Teachers and other personnel who violated these prohibitions could lose their licenses, which would be a sufficient punishment for such behavior.

NOTES: The committee substitute differs from the bill as introduced by making it an affirmative defense to prosecution that the actor was not more than three years older than the victim and was not required to register as a sex offender, and that the victim was at least 14 years old.