

SUBJECT: Adding federal immigration facilities to definition of correctional facility

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson

0 nays

1 absent — Leach

WITNESSES: For — (*Registered, but did not testify:* Jennifer Allmon, the Texas Catholic Conference of Bishops; Teresa Beckmeyer; Marla Flint; Jeffrey Knoll)

Against — None

BACKGROUND: Penal Code, sec. 39.04 makes it a crime for certain officials and others involved with correctional facilities to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with someone in custody or to deny a person in custody a right, privilege, or immunity knowing that it is illegal to do so. This applies to officials or employees of correctional facilities, anyone other than employees working at correctional facilities for pay, volunteers at these facilities, and peace officers.

In sec. 39.04, "correctional facilities" means secure correctional and detention facilities defined under juvenile justice provisions in the Family Code and any place described in Penal Code, sec. 1.07(a)(14). Penal Code, sec. 1.07 defines correctional facilities as places designated by law to confine persons arrested for, charged with, or convicted of criminal offenses, including the following places:

- city and county jails;
- facilities operated by or for the Texas Department of Criminal Justice; and
- certain facilities operated by local community supervision and corrections (probation) departments.

Code of Criminal Procedure, art. 18.20, sec. 8B governs the detection of cell phone or wireless communication devices in correctional and detention facilities. In this section, correctional facility carries the same definition as in Penal Code, sec. 39.04(e).

DIGEST: HB 511 would expand the definition of correctional facilities in Penal Code, sec. 39.04(e), which governs civil rights violations and improper sexual activity with those in custody, to include places designated for the detention of persons suspected of violating a provision of the federal Immigration and Nationality Act.

The bill also would revise the definition of correctional facility in Code of Criminal Procedure, art. 18.20, sec. 8B, which governs the detection of cell phone and wireless communication devices in correctional facilities. Sec. 8B would refer to Penal Code, sec. 1.07(a)(14) and Family Code, ch. 51 (Juvenile Justice Code), instead of referencing Penal Code, sec. 39.04(e) for the definition of correctional facility.

The bill would take effect September 1, 2015, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: HB 511 would ensure that those confined in Texas for violations of federal immigration law had the same civil rights protections and protections from sexual misconduct as those in other correctional facilities in the state. While the state has a specific criminal offense for engaging in sex with someone in custody or denying a person in custody certain rights, the crime must occur in a correctional facility that meets definitions in the Penal Code. However, these definitions do not include facilities that detain persons suspected of violating federal immigration law.

HB 511 would address this problem by broadening the definition of correctional facility to include facilities detaining persons under federal immigration law. Those housed in such facilities in Texas have the same vulnerability as those in other correctional facilities and should be protected by the same laws.

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The bill also would harmonize references to the definition of correctional facility in Code of Criminal Procedure, section Art. 18.20, sec. 8B, which addresses the detection of cell phone or wireless communication devices, with other provisions in the statutes by referring to the general definition sections in the Penal Code and Juvenile Justice Code.

OPPONENTS SAY: No apparent opposition.

NOTES: The Senate companion bill, SB 509 by Rodríguez, was referred to the Senate Criminal Justice Committee on February 11.