

SUBJECT: Penalties for violating civil rights, sexual activity with persons 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 Middleton, Fort Bend County District Attorney's Office; Laura Nodolf, Midland County District Attorney's Office; (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Tom Maddox, Sheriffs Association of Texas; Katherine Strandberg, Texas Association Against Sexual Assault; Rachana Chhin, Texas Catholic Conference; Thomas Parkinson)

Against — None

BACKGROUND: Penal Code sec. 39.04(a)(2) makes it an offense to violate the civil rights of a person in custody and for improper sexual activity with a person in custody.

It is an offense to deny or impede a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful. Offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000).

It also is an offense to engage in improper sexual activity with an individual in custody. These offenses are state-jail felonies (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).

Concerns have been raised that the current penalties associated with violating the civil rights of a person in custody and for improper sexual

activity with a person in custody do not reflect the seriousness of the crimes.

DIGEST: HB 3157 would increase the penalties for violating the civil rights of a person in custody and for improper sexual activity with a person in custody.

Offenses involving violating the civil rights of a person in custody would be increased to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). For these offenses, the bill would remove the condition of having to know that conduct was unlawful.

Offenses involving improper sexual activity with someone in custody would be increased to second-degree felonies, with those committed against an individual in the Texas Juvenile Justice Department or a juvenile in a correctional facility being raised to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

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