

BILL ANALYSIS

C.S.H.B. 1482
By: Pitts
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2004, an Ellis County doctor was found to have been sexually gratifying himself by placing his genetic material on the bodies of patients he had placed under anesthesia for medical procedures. Because current law requires evidence of penetration of the mouth, anus, or sexual organ to prove an allegation of sexual assault, and since none was alleged in this case, the doctor could not be charged with sexual assault.

C.S.H.B. 1482 creates the offense of assault with bodily fluids and provides penalties for such an offense.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1482 amends the Penal Code to create the offense of assault with bodily fluids for a person who, with the intent to assault, harass, or alarm, causes another person to contact the blood, seminal fluid, vaginal fluid, urine, or feces of the actor, any other person, or an animal; with the intent to arouse or gratify the sexual desire of any person, causes another person, without that person's consent, to contact the blood, seminal fluid, vaginal fluid, urine, or feces of the actor, any other person, or an animal; or with the intent to arouse or gratify the sexual desire of any person, causes a child to contact the blood, seminal fluid, vaginal fluid, urine, or feces of the actor, any other person, or an animal. The bill establishes penalties for this offense ranging from a Class A misdemeanor to a felony in the second degree depending upon the intent of the offense and the age of the victim of the offense. The bill increases the penalty for an offense committed with the intent to sexually arouse or gratify the actor or any other person to the next higher category of offense if it is shown at trial of the offense that, at the time of the commission of the offense, the actor was a peace officer, a corrections officer employed by a secure correctional facility, a health care services provider, a mental health services provider, or an employee of a nursing home, custodial care home, or other institution licensed by the Department of Aging and Disability Services. The bill establishes an affirmative defense to prosecution for an offense involving a child in which the actor was not more than three years older than the victim and, at the time of the offense was not required to register for life as a sex offender under the sex offender registration program or was not a person who had a reportable conviction or adjudication for an offense of assault with bodily fluids under the sex offender registration program and the victim was a child of 14 years of age or older and was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married by state laws prohibiting bigamy. The bill establishes that if the conduct that constitutes the offense of assault with bodily fluids also constitutes another offense, the actor may be prosecuted for either offense or both.

C.S.H.B. 1482 adds an offense of assault with bodily fluids involving a child, with the intent to

sexually arouse or gratify a person, to the offenses for which sentences for an accused found guilty of more than one offense arising out of the same criminal episode may run concurrently or consecutively. The bill adds a conviction of an offense of assault with bodily fluids involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, to the convictions for which a defendant is required to be punished by life imprisonment in the Texas Department of Criminal Justice if the defendant is found to have been previously convicted of certain offenses. The bill adds the intent to commit an offense of assault with bodily fluids involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, to the conditions that constitute an offense of criminal solicitation of a minor. The bill adds an offense of assault with bodily fluids with the intent to assault, harass, or alarm to the offenses for which a victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct constitutes a defense to prosecution under certain circumstances.

C.S.H.B. 1482 amends the Code of Criminal Procedure to include a person who is indicted for or who waives indictment for an offense of assault with bodily fluids involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, among the persons required to undergo testing for acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The bill adds an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the list of offenses for which the oral testimony of a child who is the victim of the offense may be recorded if the court determines that a child younger than 13 years of age would be unable to testify in the presence of the defendant about the offense.

C.S.H.B. 1482 reenacts and amends Section 3g(a), Article 42.12, Code of Criminal Procedure, as amended by Chapters 405 (S.B. 877) and 593 (H.B. 8), Acts of the 80th Legislature, Regular Session, 2007, to make a person convicted of an offense of assault with bodily fluids, either involving a child or a person other than a child, with the intent to sexually arouse or gratify a person ineligible for judge ordered community supervision.

C.S.H.B. 1482 makes a person convicted of an offense of assault with bodily fluids, either involving a child or a person other than a child, with the intent to sexually arouse or gratify a person ineligible for deferred adjudication. The bill adds an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the offenses for which a judge who places a defendant on community supervision is required to establish a child safety zone applicable to the defendant. The bill adds an offense of assault with bodily fluids involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, to the definition of "reportable conviction or adjudication" and "sexually violent offense" for purposes of the sex offender registration program. The bill includes a person convicted of an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, among the persons required to pay a \$100 court cost on conviction of the offense.

C.S.H.B. 1482 amends the Education Code to include a student who has been convicted of or placed on deferred adjudication for an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, among the students whom the board of trustees of a school district is required to transfer to another campus or school district under certain circumstances. The bill adds an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, to the offenses for which a student is required to be expelled from a school if the student engages in conduct that contains the elements of the offense while on school property or while attending a school-sponsored or school-related activity on or off of school property.

C.S.H.B. 1482 amends the Family Code to add conduct believed to constitute an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the conduct for which a court or a guardian ad litem or attorney ad litem for a minor seeking an abortion without parental consent is required to report to the proper authorities. The bill adds

an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the exception to the confidentiality of information regarding sexual abuse of a minor seeking an abortion.

C.S.H.B. 1482 adds the conviction or deferred adjudication of a conservator of an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the offenses involving the abuse of a child that justify modification of an existing order relating to conservatorship or possession of or access to a child. The bill adds an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the offenses committed by a parent for which a court in a suit affecting the parent-child relationship, upon finding clear and convincing evidence of the offense, may order termination of the parent-child relationship. The bill adds an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the offenses committed by a parent for which a court may order the termination of the parent-child relationship if the court finds that the victim of the offense became pregnant with the parent's child as a result of the offense and that the termination is in the best interest of the child. The bill includes an assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, in the definition of "abuse" for purposes of an investigation into a report of child abuse. The bill includes a parent who has engaged in conduct against a child that would constitute an offense of assault with bodily fluids among the parents whom a court may find to have subjected a child to aggravated circumstances in an adversary hearing for the protection of the child.

C.S.H.B. 1482 amends the Government Code to add a defendant who is indicted or waives indictment for an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, to the list of defendants who are required to provide DNA to a law enforcement agency for creation of a DNA record.

C.S.H.B. 1482 includes an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, in the definition of "sexual assault" for purposes of sexual assault prevention and crisis services.

C.S.H.B. 1482 adds an inmate convicted of an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person, to the inmates for which a physician employed or retained by the Department of Criminal Justice may perform an orchiectomy if the inmate has previously been convicted of one or more specified sexual or assaultive offenses or offenses against the family. The bill adds an inmate who was convicted of an offense of assault with bodily fluids, involving a child, with the intent to sexually arouse or gratify a person, to the inmates whose release on parole requires an extraordinary vote by the Board of Pardons and Paroles. The bill makes an inmate serving a sentence for an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, ineligible for release on parole until the sentence is served and in no event in less than two calendar years. The bill includes an inmate serving a sentence for or previously convicted of a felony offense of assault with bodily fluids among the inmates who are prohibited from being released to mandatory supervision. The bill extends the applicability of a child safety zone to a releasee serving a sentence for an offense of assault with bodily fluids involving a child, with the intent to sexually arouse or gratify a person. The bill includes a releasee convicted of an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, among the releasees required to pay a parole supervision fee of \$5 each month during the period of parole supervision.

C.S.H.B. 1482 amends the Health and Safety Code to include a resident of a convalescent or nursing home who has been the victim of an act or attempted act of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, among the residents for whom the appropriate agency is required to begin an investigation of a report or allegation of the complaint within 24 hours. The bill adds a person who has been convicted of an offense of assault with bodily fluids, involving a child or a person

other than a child, with the intent to sexually arouse or gratify a person, to the list of persons barred from employment in certain facilities serving the elderly or persons with disabilities. The bill includes an offense of assault with bodily fluids, involving a child or a person other than a child, with the intent to sexually arouse or gratify a person, in the definition of "sexually violent offense" for purposes of civil commitment of sexually violent predators and makes the inclusion in the definition applicable to an individual committed to the Department of State Health Services or the Department of Aging and Disability Services for an offense committed before, on, or after the effective date of the bill. The bill defines "child."

C.S.H.B. 1482 establishes that, to the extent of any conflict, the provisions of this bill prevail over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1482 differs from the original by removing saliva from the bodily fluids included in the conduct that constitutes an offense with bodily fluids. The substitute adds a provision not included in the original establishing that, to the extent of any conflict, the provisions of the bill prevail over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.