

BILL ANALYSIS

H.B. 2993
By: Miles
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current statute, an official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer who intentionally engages in certain improper sexual activity with an individual in custody commits a state jail felony offense. The penalty is enhanced to a second degree felony if the offense is committed against an individual in the custody of the Texas Youth Commission or a juvenile offender detained in or committed to a primarily state-funded correctional facility. There is concern, however, that the relevant statute does not address punishment for a person who repeatedly commits the offense of improper sexual activity with a person in custody during a period of 30 or more days. H.B. 2993 seeks to address this issue by enhancing the penalty for the offense for such repeat offenders.

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

H.B. 2993 amends the Penal Code to enhance from a state jail felony to a felony of the first degree the penalty for the offense of improper sexual activity with a person in custody if, during a period that is 30 or more days in duration, the actor on two or more occasions engages in conduct constituting the offense, regardless of whether the conduct involves one or more victims. The bill establishes that, if a jury is the trier of fact in a case in which the state seeks to establish the enhanced punishment, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted the criteria of the offense or on which exact date or dates that conduct occurred. The bill requires such a jury to agree unanimously that the defendant, during a period that is 30 or more days in duration, on two or more occasions engaged in conduct that constituted the offense.

H.B. 2993 prohibits a defendant from being convicted in the same criminal action of another offense the victim of which is an alleged victim of improper sexual activity with a person in custody for which the state seeks to establish the enhanced punishment, and an element of which is any act or conduct that is alleged as an element of that offense for which the state seeks to establish the enhanced punishment unless the other offense is charged in the alternative, occurred outside the period in which the offense of improper sexual activity with a person in custody is alleged to have occurred, or is considered by the trier of fact to be a lesser included offense of the offense of improper sexual activity with a person in custody. The bill prohibits a defendant, if all of the specific conduct that is alleged to have been engaged in involves a single victim, from being charged with more than one count alleging the commission of improper sexual activity with a person in custody for which the state seeks to establish the enhanced punishment. The bill authorizes an actor, if conduct constituting an offense of violation of the civil rights of a person in custody or improper sexual activity with a person in custody also constitutes an offense under another Penal Code provision, to be prosecuted under either provision or both provisions.

EFFECTIVE DATE

September 1, 2011.