

By: Miles

H.B. No. 2993

A BILL TO BE ENTITLED

1 AN ACT
2 relating to offenses involving violating the civil rights of a
3 person in custody and engaging in improper sexual activity with a
4 person in custody; providing certain enhanced penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 39.04, Penal Code, is amended by
7 amending Subsections (b) and (c) and adding Subsections (b-1),
8 (c-1), and (c-2) to read as follows:

9 (b) An offense under Subsection (a)(1) is a Class A
10 misdemeanor. An offense under Subsection (a)(2) is a state jail
11 felony, except that an offense under Subsection (a)(2) is:

12 (1) a felony of the second degree if the offense is
13 committed against:

14 (A) [~~(1)~~] an individual in the custody of the
15 Texas Youth Commission; or

16 (B) [~~(2)~~] a juvenile offender detained in or
17 committed to a correctional facility the operation of which is
18 financed primarily with state funds; or

19 (2) a felony of the first degree if, during a period
20 that is 30 or more days in duration, the person on two or more
21 occasions engages in conduct constituting an offense under
22 Subsection (a)(2), regardless of whether the conduct involves one
23 or more victims.

24 (b-1) If a jury is the trier of fact in a case in which the

1 state seeks to establish punishment under Subsection (b)(2),
2 members of the jury are not required to agree unanimously on which
3 specific conduct engaged in by the defendant constituted an offense
4 under Subsection (a)(2) or on which exact date or dates that conduct
5 occurred. The jury must agree unanimously that the defendant,
6 during a period that is 30 or more days in duration, on two or more
7 occasions engaged in conduct that constituted an offense under
8 Subsection (a)(2).

9 (c) This section shall not preclude prosecution for any
10 other offense set out in this code. If conduct constituting an
11 offense under this section also constitutes an offense under
12 another section of this code, the actor may be prosecuted under
13 either section or under both sections.

14 (c-1) A defendant may not be convicted in the same criminal
15 action of another offense the victim of which is an alleged victim
16 of an offense under Subsection (a)(2) for which the state seeks to
17 establish punishment under Subsection (b)(2), and an element of
18 which is any act or conduct that is alleged as an element of the
19 offense under Subsection (a)(2) for which the state seeks to
20 establish punishment under Subsection (b)(2), unless the other
21 offense:

- 22 (1) is charged in the alternative;
23 (2) occurred outside the period in which the offense
24 under Subsection (a)(2) is alleged to have occurred; or
25 (3) is considered by the trier of fact to be a lesser
26 included offense of the offense under Subsection (a)(2).

27 (c-2) A defendant may not be charged with more than one

1 count alleging the commission of an offense under Subsection (a)(2)
2 for which the state seeks to establish punishment under Subsection
3 (b)(2) if all of the specific conduct that is alleged to have been
4 engaged in involves a single victim.

5 SECTION 2. The change in law made by this Act applies only
6 to an offense committed on or after the effective date of this Act.
7 An offense committed before the effective date of this Act is
8 governed by the law in effect when the offense was committed, and
9 the former law is continued in effect for that purpose. For
10 purposes of this section, an offense was committed before the
11 effective date of this Act if any element of the offense occurred
12 before that date.

13 SECTION 3. This Act takes effect September 1, 2011.