

By: White

H.B. No. 79

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the offenses of the violation of civil rights of and  
3 improper sexual activity with individuals in custody; imposing a  
4 criminal penalty.

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

6 SECTION 1. Sections 39.04(a), (b), and (f), Penal Code, are  
7 amended to read as follows:

8 (a) An official of a correctional facility or juvenile  
9 facility, an employee of a correctional facility or juvenile  
10 facility, a person other than an employee who works for  
11 compensation at a correctional facility or juvenile facility, a  
12 volunteer at a correctional facility or juvenile facility, or a  
13 peace officer commits an offense if the person intentionally:

14 (1) denies or impedes a person in custody in the  
15 exercise or enjoyment of any right, privilege, or immunity knowing  
16 his conduct is unlawful; or

17 (2) engages in sexual contact, sexual intercourse, or  
18 deviate sexual intercourse with an individual in custody or, in the  
19 case of an individual in the custody of the Texas Juvenile Justice  
20 Department or placed in a juvenile facility [~~Youth Commission~~],  
21 employs, authorizes, or induces the individual to engage in sexual  
22 conduct or a sexual performance.

23 (b) An offense under Subsection (a)(1) is a Class A  
24 misdemeanor. An offense under Subsection (a)(2) is a state jail

1 felony, except that an offense under Subsection (a)(2) is a felony  
2 of the second degree if the offense is committed against:

3 (1) an individual in the custody of the Texas Juvenile  
4 Justice Department or placed in a juvenile facility [~~Youth~~  
5 ~~Commission~~]; or

6 (2) a juvenile offender detained in or committed to a  
7 correctional facility [~~the operation of which is financed primarily~~  
8 ~~with state funds~~].

9 (f) An employee of the Texas Department of Criminal Justice,  
10 the Texas Juvenile Justice Department [~~Youth Commission~~], or a  
11 local juvenile probation department commits an offense if the  
12 employee engages in sexual contact, sexual intercourse, or deviate  
13 sexual intercourse with an individual who the employee knows is  
14 under the supervision of the Texas Department of Criminal Justice,  
15 Texas Juvenile Justice Department [~~department, commission~~], or  
16 probation department but not in the custody of the Texas Department  
17 of Criminal Justice, Texas Juvenile Justice Department  
18 [~~department, commission~~], or probation department.

19 SECTION 2. Section 39.04(e), Penal Code, is amended by  
20 amending Subdivisions (1) and (2) and adding Subdivision (2-a) to  
21 read as follows:

22 (1) "Correctional facility" means[+  
23 [~~(A)~~] any place described by Section  
24 1.07(a)(14) [~~, or~~  
25 [~~(B)~~] a "secure correctional facility" or "secure  
26 detention facility" as defined by Section 51.02, Family Code].

27 (2) "Custody" means the detention, arrest, or

1 confinement of an adult offender, ~~[or]~~ the detention of a juvenile  
2 offender, or the commitment of a juvenile offender to a  
3 correctional facility or juvenile facility ~~[operated by or under a~~  
4 ~~contract with the Texas Youth Commission or a facility operated by~~  
5 ~~or under contract with a juvenile board]~~.

6           (2-a) "Juvenile facility" means a facility for the  
7 detention or placement of juveniles under juvenile court  
8 jurisdiction and that is operated wholly or partly by the Texas  
9 Juvenile Justice Department, a juvenile board, or another  
10 governmental unit or by a private vendor under a contract with the  
11 Texas Juvenile Justice Department, juvenile board, or governmental  
12 unit.

13           SECTION 3. This Act takes effect October 1, 2013.