

By: Huffman

S.B. No. 1772

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the prosecution and punishment of certain offenses
3 committed against juveniles in custody; imposing a criminal
4 penalty.

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

6 SECTION 1. Section 39.04, Penal Code, is amended to read as
7 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 exercise or
15 enjoyment of any right, privilege, or immunity knowing his conduct
16 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 justice facility operated by or
21 under contract with a juvenile board ~~Texas Youth Commission~~,
22 employs, authorizes, or induces the individual to engage in sexual
23 conduct or a sexual performance.

24 (b) An offense under Subsection (a)(1) is a Class A

1 misdemeanor. An offense under Subsection (a)(2) is a state jail
2 felony, except that an offense under Subsection (a)(2) is a felony
3 of the second degree if the offense is committed against:

4 (1) an individual in the custody of the Texas Juvenile
5 Justice Department or placed in a juvenile justice facility
6 operated by or under contract with a juvenile board ~~Texas Youth~~
7 ~~Commission~~; or

8 (2) a juvenile offender detained in or committed to a
9 correctional facility the operation of which is financed primarily
10 with state funds.

11 (c) This section shall not preclude prosecution for any
12 other offense set out in this code.

13 (d) The Attorney General of Texas shall have concurrent
14 jurisdiction with law enforcement agencies to investigate
15 violations of this statute involving serious bodily injury or
16 death.

17 (e) In this section:

18 (1) "Correctional facility" means:

19 (A) any place described by Section 1.07(a)(14); or

20 (B) a "secure correctional facility" or "secure detention
21 facility" as defined by Section 51.02, Family Code.

22 (2) "Custody" means the detention, arrest, or confinement
23 of an adult offender or the detention or the commitment of a
24 juvenile offender to a facility operated by or under a contract with
25 the Texas Juvenile Justice Department or a facility operated by or
26 under contract with a juvenile board ~~Texas Youth Commission~~.

27 (3) "Sexual contact," "sexual intercourse," and "deviate

1 sexual intercourse" have the meanings assigned by Section 21.01.

2 (4) "Sexual conduct" and "performance" have the meanings
3 assigned by Section 43.25.

4 (5) "Sexual performance" means any performance or part
5 thereof that includes sexual conduct by an individual.

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

14 (g) An offense under Subsection (f) is a state jail felony.

15 (h) It is an affirmative defense to prosecution under
16 Subsection (f) that the actor was the spouse of the individual at
17 the time of the offense.

18 SECTION 2. This Act takes effect immediately if it receives
19 a vote of two-thirds of all members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2013.