

By: Miles

H.B. No. 266

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(A) ~~[(1)]~~ an individual in the custody of the Texas Juvenile Justice Department ~~[Youth Commission]~~; or

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

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

(A) an individual in the custody of the Texas

1 Juvenile Justice Department; or

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

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

14 (c) This section shall not preclude prosecution for any
15 other offense set out in this code. If conduct constituting an
16 offense under this section also constitutes an offense under
17 another section of this code, the actor may be prosecuted under
18 either section or under both sections.

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

27 (1) is charged in the alternative;

1 (2) occurred outside the period in which the offense
2 under Subsection (a)(2) is alleged to have occurred; or

3 (3) is considered by the trier of fact to be a lesser
4 included offense of the offense under Subsection (a)(2).

5 (c-2) A defendant may not be charged with more than one
6 count alleging the commission of an offense under Subsection (a)(2)
7 for which the state seeks to establish punishment under Subsection
8 (b)(2) if all of the specific conduct that is alleged to have been
9 engaged in involves a single victim.

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

18 SECTION 3. This Act takes effect September 1, 2015.