

SENATE AMENDMENTS

2nd Printing

By: Reynolds

H.B. No. 3157

A BILL TO BE ENTITLED

AN ACT

relating to the criminal offenses of violation of civil rights of and improper sexual activity with persons in custody; increasing a criminal penalty.

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

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

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

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

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

(b) An offense under Subsection (a)(1) is a felony of the third degree [~~Class A misdemeanor~~]. An offense under Subsection

1 (a)(2) is a [~~state-jail~~] felony of the second degree, except that an
2 offense under Subsection (a)(2) is a felony of the first [~~second~~]
3 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 facility; or

6 (2) a juvenile offender detained in or committed to a
7 correctional facility.

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

16 SECTION 3. This Act takes effect September 1, 2021.

3rd Reading

ADOPTED
MAY 26 2021

Lately Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

1 Amend H.B. 3157 on third reading in SECTION 1 of the bill, in
2 amended Section 39.04(a), Penal Code (page 1, lines 30-31), by
3 striking "~~knowing his conduct is unlawful~~" and substituting
4 "knowing his conduct is unlawful".

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3157 by Reynolds (Relating to the criminal offenses of violation of civil rights of and improper sexual activity with persons in custody; increasing a criminal penalty.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code and increase the criminal penalty for violation of civil rights and improper sexual activity with persons in custody. Under the provisions of the bill, the criminal penalty for violation of civil rights would be increased to a third degree felony, and the punishment for improper sexual activity with persons in custody would be increased to a first degree felony. Under existing statute, violation of civil rights is punishable as a Class A misdemeanor and improper sexual activity with persons in custody is punishable as a state jail felony.

The Juvenile Justice Department and Department of Criminal Justice indicate the modifications outlined in the bill's provisions would not result in a significant fiscal impact. This analysis assumes implementing the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 644 Juvenile Justice Department, 696 Department of Criminal Justice

LBB Staff: JMc, CMA, DKN, LM, MP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 20, 2021

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3157 by Reynolds (Relating to the criminal offenses of violation of civil rights of and improper sexual activity with persons in custody; increasing a criminal penalty.), **As Engrossed**

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 12, 2021

TO: Honorable Nicole Collier, Chair, House Committee on Criminal Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3157 by Reynolds (Relating to the criminal offenses of violation of civil rights of and improper sexual activity with persons in custody; increasing a criminal penalty.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code and increase the criminal penalty for violation of civil rights and improper sexual activity with persons in custody. Under the provisions of the bill, the criminal penalty for violation of civil rights is increased to a third degree felony, and the punishment for improper sexual activity with persons in custody is increased to a first degree felony. Under existing statute, violation of civil rights is punishable as a Class A misdemeanor and improper sexual activity with persons in custody is punishable as a state jail felony.

The Juvenile Justice Department and Department of Criminal Justice indicate the modifications outlined in the bill's provisions would not result in a significant fiscal impact. This analysis assumes implementing the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3157 by Reynolds (Relating to the criminal offenses of violation of civil rights of and improper sexual activity with persons in custody; increasing a criminal penalty.), **As Passed 2nd House**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code as it relates to violations of civil rights and improper sexual activity with persons in custody. Under the provisions of the bill, certain individuals who engage in certain activities which violate the civil rights of an individual in custody or improper sexual activity with an individual in custody would commit a third, second, or first degree felony with punishment based on the specific circumstances of the offense. Under existing statute, engage in certain activities which violate the civil rights of an individual in custody or improper sexual activity with an individual in custody is punishable as a misdemeanor or felony with the punishment based on the specific circumstances of the offense.

A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years, a third degree felony is punishable by confinement in prison for a term of 2 to 10 years; a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felonies can be subject to an optional fine not to exceed \$10,000. A Class A misdemeanor is punishable by confinement in county jail for a term not to exceed one year and, in addition to confinement, an optional fine not to exceed \$4,000.

Increasing the penalty for an offense is expected to result in additional demands upon the correctional resources of counties or of the State due to an increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. From fiscal years 2018 through 2020, fewer than 10 individuals were arrested, fewer than 10 individuals were placed under supervision in the community, and fewer than 10 individuals were admitted to state correctional institutions for the violations of civil rights of and improper sexual activity with persons in custody. This analysis assumes implementing the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

Source

Agencies:

LBB Staff: JMc, CMA, LM, DKN, MP

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT
87TH LEGISLATIVE REGULAR SESSION

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TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Jerry McGinty, Director, Legislative Budget Board

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The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code as it relates to violations of civil rights and improper sexual activity with persons in custody. Under the provisions of the bill, violations of civil rights under certain conditions would be punishable as a third degree felony. Under current statute, violations of civil rights under certain conditions is punishable as a Class A misdemeanor. Under the provisions of the bill, improper sexual activity with persons in custody would be punishable as a first degree felony. Under current statute, improper sexual activity with persons in custody is punishable as a state jail felony.

A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years, a third degree felony is punishable by confinement in prison for a term of 2 to 10 years; a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felonies can be subject to an optional fine not to exceed \$10,000. A Class A misdemeanor is punishable by confinement in county jail for a term not to exceed one year and, in addition to confinement, an optional fine not to exceed \$4,000.

Creating an offense for which a criminal penalty is applied is expected to result in additional demands upon the correctional resources of counties or of the State due to an increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. In fiscal years 2018 through 2020, fewer than 10 individuals were arrested for the related offenses, fewer than 10 individuals were placed under supervision in the community per year for either offense, and fewer than 10 individuals were admitted to state correctional institutions for either of the offenses. This analysis assumes implementing the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

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A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years, a third degree felony is punishable by confinement in prison for a term of 2 to 10 years; a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felonies can be subject to an optional fine not to exceed \$10,000. A Class A misdemeanor is punishable by confinement in county jail for a term not to exceed one year and, in addition to confinement, an optional fine not to exceed \$4,000.

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