

- SUBJECT:** Criminal offense for harassment by prisoners
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 8 ayes — Haggerty, Allen, Culberson, Ellis, Farrar, Gray, Lengefeld, Longoria
0 nays
1 absent — Staples
- WITNESSES:** For —Vondas “Bo” Phillips; Toby Tobias, American Federation of State and County Municipal Employees
Against — None
On —Allen Place; David P. Weeks, Walker County Criminal District Attorney
- BACKGROUND:** Under current law, persons incarcerated in secured correctional facilities who hurl bodily secretions and waste at other persons commit an offense that is prosecuted as misdemeanor assault. If the offense is committed against a public servant, the offense is a state jail felony. A secured correction facility is defined by the Penal Code to include municipal and county jails and facilities contracted or operated by Texas Department of Criminal Justice.
- DIGEST:** CSHB 1713 would amend the Penal Code to create a new offense of harassment by persons in correctional facilities. Persons confined at a secured correctional facility or a Texas Youth Commission (TYC) facility would commit an offense if, with intent to harass, alarm, or annoy, they caused another person to come into contact with the blood, seminal fluid, feces, or urine of any person.

If the victim was another inmate or prisoner, the offense would be a Class C misdemeanor, with a maximum penalty of a \$500 fine. If the victim was anyone else, the offense would be a third-degree felony, with a penalty of two to 10 years in prison and an optional fine of up to \$10,000.

CSHB 1713 would take effect September 1, 1999, and apply only to offenses committed on or after that date.

SUPPORTERS
SAY:

CSHB 1713 would help protect prison and jail employees from disgusting and unsanitary bodily secretion and waste thrown by inmates. This “chunking” by inmates has become such a problem that guards seldom patrol certain prison areas without the use of cumbersome protective raincoats. If exposed to a bodily secretion or waste, employees often face the inconvenience of preventive medical treatment.

CSHB 1713 is meant to deter prisoners from this conduct by stacking an additional two to 10 years on their sentences. The stacked sentence would not run concurrently with the other sentence. Many of the prison inmates who “chunk” do not have any accumulated “good time” credit for good behavior that may result in a reduction in their sentence or other prison privileges, so they have nothing to lose. As a result, prison officials have little leverage to deter bad behavior. The only alternative is to create the prospect of additional time behind bars as a deterrent.

CSHB 1713 would protect not just guards but anyone assaulted in this manner. For example, teachers and other professionals at the Texas Youth Commission also would receive coverage under the bill. CSHB 1713 also would help encourage civility among inmates by including other prison inmates in its scope, but the penalty would be lower to create a justifiable distinction and properly focus on preventing harassment of employees and others. Assaulting another inmate still could also be prosecuted as a misdemeanor offense.

By increasing the penalty for such conduct, CSHB 1713 would save the state the extra costs of having to relocate an inmate for the offense. Under current law, “chunking” is considered misdemeanor assault or a state jail felony depending on the victim. Those convicted of this offense typically are housed at the county jail or a state jail facility. If the offender is housed at a state correctional facility, the state has to transport the inmate to a different facility. Also, making the offense a third degree felony with a substantial penalty would help encourage district attorneys to take the time and expense of prosecuting this offense.

OPPONENTS
SAY:

CSHB 1713 would create a new criminal offense to solve what essentially is an internal discipline problem. While such “chunking” is disgusting, this conduct does not justify a harsh penalty of two to 10 years of added confinement. Prison officials may employ other punishment, such as a reduction of prison privileges or segregated confinement, to deter such behavior rather than stacking on additional prison time.

Chunking” often is symptomatic of inmate desperation caused by harsh prison living conditions. If progress were made in improving these conditions, added punitive measures would be unnecessary. CSHB 1713 could just make prison morale worse by making the most desperate inmates serve even longer.

NOTES:

The original bill would have applied only to conduct in Texas Department of Criminal Justice (TDCJ) facilities. The committee substitute would apply to any secured correctional facility and TYC facilities. In the original bill, the offense would have applied only to conduct directed at TDCJ employees, while the substitute would apply to any person. The substitute also made conduct directed at another inmate a Class C misdemeanor rather than a third degree felony.