SUBJECT: Improper sexual activity with persons in custody or under supervision

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Wise

0 nays

3 absent — Green, Smith, Talton

WITNESSES: None

BACKGROUND: Penal Code, sec. 39.04 makes it a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to $10,000, for an official or employee of a correctional facility or a peace officer to engage in sexual intercourse or deviate sexual intercourse with an individual in custody.

The Penal Code defines sexual contact as any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

DIGEST: CSHB540 would make it a state jail felony for an official or employee of a correctional facility or a peace officer to engage in sexual contact with an individual in custody.

CSHB 540 also would make it a state jail felony for an employee of TDCJ to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who is not the employee's spouse and who the employee knew was under TDCJ's supervision but not in TDCJ's custody.

CSHB 540 would take effect September 1, 1999, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 540 is necessary to ensure that correctional employees who engage in inappropriate sexual contact with offenders could be charged with a criminal offense and that the law would be broad enough to cover persons supervised by TDCJ, not just those in its custody.

Any sexual contact between correctional employees or peace officers and the offenders entrusted to their care is a serious abuse of public office and a breach of public trust that should be punished as a criminal offense. CSHB 540 would treat sexual contact the same way sexual intercourse between correctional employees and offenders is treated now.

Deficiencies in current law were brought to light when it was discovered that Texas Youth Commission employees had engaged in consensual sexual contact with juvenile offenders age 17 or older. If the offender was younger than 17, laws covering illegal sexual contact with children would have made the sexual contact a criminal offense. However, since the juvenile offender was at least 17 years old, no criminal offense had been committed.

CSHB 540 would not be burdensome on correctional agencies because they are used to handling numerous accusations by offenders. Correctional agencies simply would follow their established rules and procedures for handling offender complaints and accusations. Legitimate correctional activities would not become criminal offenses because CSHB 540 would require that the contact occur with intent to arouse or gratify the sexual desire of any person.

It is equally wrong for TDCJ employees to engage in sexual relations with parolees. These persons are under the supervision of TDCJ, and it is a breach of public trust and a security risk for those who are charged with supervising them to engage in an inappropriate relationship with them. All TDCJ employees, not just those directly supervising parolees, should be subject to CSHB 540 because the agency, not an individual person, is responsible for the supervision.

CSHB 540 would treat these actions the same way that improper sexual activity with persons in custody is treated. CSHB 540 would not turn innocent mistakes into crimes, because TDCJ employees would have to know that the person was under the department's supervision.

OPPONENTS SAY:

By adding sexual contact to the current statute, CSHB 540 could lead to a rash of accusations by offenders against correctional employees. The definition of sexual contact is broad and could be construed as possibly applying to many legitimate correctional activities, such as strip searches. Such an increase in

accusations could create a burden on internal affairs officers who investigate accusations and unnecessary hardships for accused correctional officers.

CSHB 540 could go too far in prohibiting all TDCJ employees from having a sexual relationship with parolees. Some employees such as administrative or professional staff may have nothing to do with a parolee's supervision and would pose no security or other risk if they engaged in a sexual relationship with a parolee. It could be better to draw the bill more narrowly to apply only to those directly supervising parolees.

NOTES:

The committee substitute added the requirement that a TDCJ employee would have to know that the other person was under the supervision of the department.

A related bill, SB 894 by Ogden, would make it a state jail felony for an official or employee of a correctional facility or a peace officer to engage in sexual contact with an individual in custody. SB 894 passed the Senate on the Local and Uncontested Calendar on April 8. When the House considered SB 894, in lieu of HB 3251 by Allen, on third reading on May 4, it adopted an amendment by Rep. Smith including the same provision as in HB 540 prohibiting TDCJ employees from sexual contact or intercourse with individuals known to be under TDCJ supervision, then passed the bill by nonrecord vote.