

SUBJECT: Prohibiting sexual activity between guardians and their wards

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Keel, Riddle, Denny, Escobar, Hodge, P. Moreno, Pena, Raymond, Reyna

0 nays

WITNESSES: None

BACKGROUND: Penal Code, sec. 25.02(a) prohibits sexual intercourse or deviate sexual intercourse between an individual and a person the individual knows to be his or her:

- ancestor or descendant by blood or adoption;
- stepchild or stepparent, while the marriage creating that relationship exists;
- parent's brother or sister of the whole or half blood;
- brother or sister of the whole or half blood or by adoption; or
- niece or nephew by whole or half blood or by adoption.

“Deviate sexual intercourse” means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person. “Sexual intercourse” means any penetration of the female sex organ by the male sex organ.

This offense is a third-degree felony, punishable by two to 10 years in jail and a fine not to exceed \$10,000.

Under Texas law, a guardian is a person appointed by a court who is responsible for the care of a person or property of a minor or an incapacitated adult. An incapacitated adult is someone who, because of physical or mental condition, is unable to care for himself or his financial affairs. A conservator is an individual with the rights and duties of a parent.

DIGEST: HB 1467 would prohibit sexual intercourse or deviate sexual intercourse between an individual and the person for whom the individual has been appointed guardian, conservator, or custodian by a court. This offense would be a third-degree felony.

This bill would take effect on September 1, 2005, and would apply only to offenses committed on or after this date.

SUPPORTERS SAY: Current law prohibits sexual intercourse between two family members but fails to address sexual intercourse between a person appointed guardian, conservator, or custodian by a court and his or her ward. The statute fails to address a child in the custody of an adult other than the parent. By extending the law to appointed guardians, conservators, or custodians, this bill would further the statute's aim of protecting children.

The author plans to offer a floor amendment to specify that the prohibition on sexual activity between guardian and ward would apply only to a minor in the guardian's care.

OPPONENTS SAY: The bill would criminalize consensual sexual intercourse between two adults. It is not uncommon for an individual to be appointed the guardian of his/her spouse or partner if the spouse or partner becomes physically or mentally incapacitated. By criminalizing sexual intercourse between a guardian and his/her ward, HB 1467 could make it a felony for a person to engage in consensual sexual intercourse with his or her spouse. The bill would be more appropriate if it were tailored to apply only to sexual intercourse with a child.

NOTES: The author plans to offer a floor amendment to specify that the prohibition on sexual activity between guardian and ward would apply only to a minor in the guardian's care.