

SUBJECT: Attorney general prosecution of certain offenses with local consent

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway,  
Talton

0 nays

2 absent — Moreno, Pierson

SENATE VOTE: On final passage, March 22 — 30-0

WITNESSES: No public hearing

DIGEST: CSSB 563 would give the attorney general concurrent jurisdiction to prosecute certain offenses involving state property and abuse of office if the attorney general had the consent of the local prosecutor.

The attorney general would have concurrent jurisdiction with the consenting local prosecutor to prosecute any Penal Code offense with an element that occurred on state property and any offenses that involved the use, unlawful appropriation, or misapplication of state property, including state funds. The attorney general also would have concurrent jurisdiction, with consent of the local prosecutor, to prosecute any abuse of office offenses under Penal Code, ch. 39.

The bill would raise the current penalties for the offenses of violation of the civil rights of a person in custody and improper sexual activity with a person in custody if the victim were a juvenile offender in a correctional facility financed primarily with state funds. The penalty would be raised from a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for violating the civil rights of a person in custody and from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a third-degree felony for improper sexual activity with a person in custody. These penalties would apply only to offenses committed on or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSSB 563 would respect the full authority of local prosecutors while giving them another tool to help prosecute certain kinds of cases that involve d state property or that had statewide implications by allowing prosecutors to ask the attorney general for assistance in these cases. This would help address the problem some prosecutors may have in taking on these kinds of cases due to a lack of resources or expertise. Having this option could have helped during the recent scandal involving the lack of prosecution of crimes occurring in Texas Youth Commission facilities.

Local prosecutors currently are responsible for prosecuting most crimes occurring in their jurisdictions. One exception is the attorney general's authority to prosecute certain types of Medicaid theft and fraud cases with the consent of the local prosecutor. CSSB 563 would extend this same authorization to offenses on state property, the unlawful appropriation of state property, the misapplication of state property, and abuse of office. It would be appropriate to make state resources available in these cases because the state has a direct interest in crimes occurring on its property, in the unlawful appropriating or misapplying of state property, and in offenses involving abuse of office, which includes offenses by state officials, officers, and employees.

CSSB 563 would not infringe on the authority of local prosecutors. The attorney general could prosecute the cases authorized by the bill only upon the invitation and consent of the local prosecutors.

CSSB 563 could help address a problem that may have contributed to the recent scandal involving allegations of sexual abuse and other crimes in Texas Youth Commission facilities. Often, when crimes in state facilities are not prosecuted, it is due to a lack of local prosecutorial resources. CSSB 563 would give prosecutors additional resources if they wanted to use them in these types of cases.

Increasing the penalty for certain offenses involving the civil rights of a person in custody and improper sexual activity with a person in custody if the victim was a juvenile offender in a correctional facility would make the penalty for this crime more accurately reflect its seriousness. The recent problems involving the Texas Youth Commission have shown that

juvenile offenders deserve special protections due to their vulnerability while in state custody.

OPPONENTS  
SAY:

The state should be cautious about expanding the ability for the attorney general to be called in to help with prosecutions. Under the Texas Constitution, local prosecutors have responsibility for representing the state, and expanding the circumstances under which a state official could be called in for prosecutions could lead to efforts to expand this type of authority. Parts of CSSB 563 that would allow prosecutions by the attorney general if any element of an offense occurred on state property could be too broad.

NOTES:

The committee substitute added provisions allowing the attorney general to prosecute crimes in which any element occurred on state property, as well as those involving the misapplication of state property and abuse of office. It also added the provisions dealing with violations of the civil rights of a person in custody and improper sexual activity with a person in custody.

SB 103 by Hinojosa, as approved by the House on May 8, also contains provisions that would increase penalties for certain offenses involving the civil rights of persons in custody and improper sexual activity with persons in custody if the victim was a juvenile offender in TYC custody. The Senate refused to concur in House amendments to SB 103 and has requested a conference committee.