

## **BILL ANALYSIS**

Senate Research Center  
79R12996 RMB-D

C.S.S.B. 893  
By: Carona  
Criminal Justice  
4/14/2005  
Committee Report (Substituted)

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Current, Texas law does not contain a legal defense to the offense of indecency with a child. Since Section 21.11, Penal Code, is a strict liability offense, there are occasionally fact specific cases where circumstances and facts necessitate such a defense.

C.S.S.B. 893 reinstates a limited affirmative defense to the offense under Sections 21.11 and 22.001, Penal Code relating to indecency with a child and sexual assault of a child. The limited mistake of fact defense provides that it is a defense to the prosecution if the victim was the opposite sex of the actor; the victim was 15 years of age or older and the actor was younger than 20 years of age; and the actor through mistake formed a reasonable belief that the victim was not more than three years younger than the actor.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 21.11, Penal Code, by adding Subsection (b-1), as follows:

(b-1) Provides that it is a defense to prosecution under this section (indecency with a child) that the victim was the opposite sex of the actor; the victim was 15 years of age or older and the actor was younger than 20 years of age at the time of the offense; the actor did not use duress, force, or a threat against the victim at the time of the offense; and the actor through mistake formed a reasonable belief that the victim was not more than three years younger than the actor.

SECTION 2. Amends Section 22.011, Penal Code, by adding Subsection (d-1), as follows:

(d-1) Provides that it is a defense to prosecution under this section (sexual assault) that the victim was the opposite sex of the actor; the victim was 15 years of age or older and the actor was younger than 20 years of age at the time of the offense; the actor did not use duress, force, or a threat against the victim at the time of the offense; and the actor through mistake formed a reasonable belief that the victim was not more than three years younger than the actor.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.