

SUBJECT: Offense for sexual contact between correctional employee, offender

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Wise
0 nays
3 absent — Green, Smith, Talton

WITNESSES: For — Linda Reeves, Texas Inmate Families Association
Against — None
On — Steve Robinson, Texas Youth Commission

BACKGROUND: An official or employee of a correctional facility or a peace officer who engages in sexual intercourse or deviate sexual intercourse with an individual in custody commits a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.

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: HB 3251 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.

HB 3251 would take effect September 1, 1999, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: HB 3251 would ensure that correctional employees who engage in inappropriate sexual contact with offenders would be committing a criminal offense. Any sexual contact between a correctional employee or a peace officer and an offender 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. HB 3251 would treat sexual contact the same way sexual intercourse between correctional employees and offenders currently is treated.

The 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 juvenile 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.

HB 3251 would not be burdensome on correctional agencies because they are used to handling numerous accusations by offenders. Correctional agencies would simply follow their established rules and procedures for handling offender complaints and accusations. Legitimate correctional activities would not become criminal offenses because HB 3251 would require that the contact be done with intent to arouse or gratify the sexual desire of any person.

**OPPONENTS
SAY:**

HB 3251 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. An increase in accusations could create a burden on internal affairs officers who investigate accusations and unnecessary hardships for accused correctional officers.

NOTES:

The companion bill, SB 894 by Ogden, has been reported favorably by the House Criminal Jurisprudence Committee.