

Fact Sheet on House Bill 3564

Romeo and Juliet Fair Defense Act

Equality Texas Supports HB 3564

Bill Number:	House Bill 3564
Unofficial Name:	Romeo and Juliet Fair Defense Act
Bill Author:	Representative Garnet Coleman
Short description:	Would make the affirmative defense of age-appropriate dating available to all young couples, not just straight kids.
Committee Assignment:	Criminal Jurisprudence
Current Status:	Set for hearing 4/1/09.

SUPPORTIVE STATEMENTS:

This is not about nature vs. nurture. This is not about right vs. wrong. Older gay/lesbian kids are going to date--just like straight kids. They should have the defense against prosecution for "heavy petting"--just like straight kids.

"Heavy petting" is classified as a crime for minors under Texas law. It is classified as "indecent with a child." Currently, there is a defense to prosecution for straight kids. This defense is not available to gay or lesbian kids.

If you're a gay kid that dates, the law may force you to register as a sex offender for the rest of your life. Even the possibility that gays and lesbians might be arrested as sex offenders will keep some kids from seeking appropriate medical exams and treatment.

This bill merely treats all kids equally.

QUICK FACTS:

Currently, the Texas Penal Code treats young gay and lesbian kids as sex offenders. Penal Code Section 21 prohibits "sexual contact" with a minor. "Sexual contact" includes heavy petting between fully clothed kids.

The Penal Code provides an affirmative defense if the actor "was not more than three years older than the victim **and of the opposite sex.**"

This bill merely strikes the requirement that kids have to be of the opposite sex to use the affirmative defense.

Current law is probably unconstitutional because it treats same-sex dating vastly differently than straight dating. Such a difference in private conduct was determined to be unconstitutional in *Lawrence v. Texas*. Having different punishment for minor kids based upon sexual orientation is probably unconstitutional under *Limon v. Kansas*.

This bill will not change the fact that all kids that date would have to prove the affirmative defense to defeat prosecution. It just treats straight and gay/lesbian kids the same.

HB 3564 would only strike the bolded language shown on the reverse of this page.

TEXAS PENAL CODE

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact;

or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim ~~and of the opposite sex~~;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 472, ch. 202, Sec. 3, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 1028, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1415, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 739, Sec. 2, eff. Sept. 1, 2001.