

## **BILL ANALYSIS**

Senate Research Center  
78R17923 GWK-D

C.S.H.B. 236  
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Criminal Justice  
5-23-2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Section 43.21 of the Penal Code defines obscenity as material that the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex, depicts or describes patently offensive representations of ultimate sex acts or other lewd exhibitions, and taken as a whole, lacks serious literary, artistic, political, and scientific value. However, there is no enhanced penalty for promotion or wholesale promotion of obscene material depicting a child. C.S.H.B. 236 is aimed at strengthening Texas' obscenity law in regard to material that depicts images of children.

### **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 43.23, Penal Code, by amending Subsections (b) and (d) and adding Subsections (h), (i), and (j), as follows:

- (b) Establishes that an offense under Subsection (a) is a state jail felony, except as provided by Subsection (h). Makes a nonsubstantive change.
- (d) Establishes that an offense under Subsection (c) is a Class A misdemeanor, except as provided by Subsection (h). Makes a nonsubstantive change.
- (h) Specifies that punishment for an offense under Subsection (a) is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection (c) is increased to the punishment for a state jail felony if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by: a child younger than 18 years of age at the time the image of the child was made; an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or an image created, adapted, or modified to be the image of an identifiable child.
- (i) Defines "identifiable child."
- (j) Provides that an attorney representing the state who seeks an increase in punishment under Subsection (h)(3) is not required to prove the actual identity of an identifiable child.

SECTION 2. Amends Section 12.42(c)(2), Penal Code, to require the defendant to be punished by imprisonment in the institutional division for life if the defendant has been previously convicted of an offense under Section 43.25, 43.26, Penal Code, or an offense under Section 43.23, Penal Code, punishable under Subsection (h) of that section.

SECTION 3. Amends Section 25.08(c), Penal Code, to provide that an offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 43.25.

SECTION 4. Amends Sections 43.25(a)(2) and (7), Penal Code, to redefine “sexual conduct” “deviate sexual intercourse” and “sexual contact.”

SECTION 5. Amends Section 43.25(f), Penal Code, to delete text providing that it is an affirmative defense to a prosecution if the defendant, in good faith, reasonably believed that the child who engaged in the sexual conduct was 18 years of age or older.

SECTION 6. Amends Subchapter B, Chapter 43, Penal Code, by adding Section 43.27, as follows:

Sec. 43.27. DUTY TO REPORT. (a) Defines “visual material.”

(b) Requires a business that develops or processes visual material and determines that the material may be evidence of a criminal offense under this subchapter to report the existence of the visual material to a local law enforcement agency.

SECTION 7. Amends Article 59.01 (2), Code of Criminal Procedure, to redefine “contraband.”

SECTION 8. Amends Article 62.01(5) and (6), Code of Criminal Procedure, to redefine “reportable conviction or adjudication” and “sexually violent offense.”

SECTION 9. Amends Article 62.0101(a), Code of Criminal Procedure, to provide that the department is responsible for determining for the purposes of this chapter whether an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice contains elements that are substantially similar to the elements of an offense under the laws of this state.

SECTION 10. Amends Articles 62.021(a) and (c), Code of Criminal Procedure, to make conforming changes.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Provides that the change in law made by this Act in amending Articles 62.01, 62.0101, and 62.021, Code of Criminal Procedure, applies to a person subject to registration under Chapter 62, Code of Criminal Procedure, for an offense or conduct committed before, on, or after the effective date of this Act.

SECTION 13. Effective date: September 1, 2003.