

By: Wise

H.B. No. 64

A BILL TO BE ENTITLED

AN ACT

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relating to the prosecution and punishment of certain obscenity offenses and other offenses committed to further the commission of obscenity offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 25.08(c), Penal Code, is amended to read as follows:

(c) 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 2. Subdivisions (2) and (7), Section 43.25(a), Penal Code, are amended to read as follows:

(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned [~~has the meaning defined~~] by Section 43.01.

SECTION 3. Section 43.25(f), Penal Code, is amended to read as follows:

(f) It is an affirmative defense to a prosecution under this

1 section that:

2 (1) [~~the defendant, in good faith, reasonably believed~~
3 ~~that the child who engaged in the sexual conduct was 18 years of age~~
4 ~~or older,~~

5 [~~(2)~~] the defendant was the spouse of the child at the
6 time of the offense;

7 (2) [~~(3)~~] the conduct was for a bona fide educational,
8 medical, psychological, psychiatric, judicial, law enforcement, or
9 legislative purpose; or

10 (3) [~~(4)~~] the defendant is not more than two years
11 older than the child.

12 SECTION 4. Subchapter B, Chapter 43, Penal Code, is amended
13 by adding Section 43.27 to read as follows:

14 Sec. 43.27. DUTY TO REPORT. (a) For purposes of this
15 section, "visual material" has the meaning assigned by Section
16 43.26.

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

21 SECTION 5. Subdivision (2), Article 59.01, Code of
22 Criminal Procedure, is amended to read as follows:

23 (2) "Contraband" means property of any nature,
24 including real, personal, tangible, or intangible, that is:

25 (A) used in the commission of:
26 (i) any first or second degree felony under
27 the Penal Code;

1 (ii) any felony under Section 38.04,
2 Subchapter B of Chapter 43, or Chapters 29, 30, 31, 32, 33, 33A, or
3 35, Penal Code; or

4 (iii) any felony under The Securities Act
5 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

6 (B) used or intended to be used in the commission
7 of:

8 (i) any felony under Chapter 481, Health
9 and Safety Code (Texas Controlled Substances Act);

10 (ii) any felony under Chapter 483, Health
11 and Safety Code;

12 (iii) a felony under Chapter 153, Finance
13 Code;

14 (iv) any felony under Chapter 34, Penal
15 Code;

16 (v) a Class A misdemeanor under Subchapter
17 B, Chapter 365, Health and Safety Code, if the defendant has been
18 previously convicted twice of an offense under that subchapter; or

19 (vi) any felony under Chapter 152, Finance
20 Code;

21 (C) the proceeds gained from the commission of a
22 felony listed in Paragraph (A) or (B) of this subdivision or a crime
23 of violence; or

24 (D) acquired with proceeds gained from the
25 commission of a felony listed in Paragraph (A) or (B) of this
26 subdivision or a crime of violence.

27 SECTION 6. This Act takes effect September 1, 2003. The

1 change in law made by this Act applies only to an offense committed
2 on or after September 1, 2003. An offense committed before
3 September 1, 2001, is covered by the law in effect when the offense
4 was committed, and the former law is continued in effect for that
5 purpose. For purposes of this section, an offense was committed
6 before September 1, 2003, if any element of the offense occurred
7 before that date.