

By: West, Allen, Crabb, Casteel, Wise,
et al.

H.B. No. 235

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution and punishment of the offense of
3 obscene display or distribution and to certain consequences of a
4 conviction for that offense.

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

6 SECTION 1. Section 43.22, Penal Code, is amended to read as
7 follows:

8 Sec. 43.22. OBSCENE DISPLAY OR DISTRIBUTION. (a) A person
9 commits an offense if he intentionally or knowingly displays or
10 distributes an obscene photograph, drawing, or similar visual
11 representation or other obscene material and is reckless about
12 whether a person is present who will be offended or alarmed by the
13 display or distribution.

14 (b) A person commits an offense if he intentionally or
15 knowingly displays or distributes an obscene photograph, drawing,
16 or similar visual representation or other obscene material and
17 knows that a child younger than 18 years of age is present during
18 the display or distribution.

19 (c) Conduct constituting an offense under this section and
20 Section 43.24 may be prosecuted under either section.

21 (d) It is an affirmative defense to prosecution under
22 Subsection (b) that at the time of the offense the actor was the
23 spouse of the victim or that:

24 (1) the victim at the time of the offense was 14 years

1 of age or older; and

2 (2) the actor at the time of the offense:

3 (A) was not more than three years older than the
4 victim and of the opposite sex;

5 (B) did not use duress, force, or a threat
6 against the victim; and

7 (C) was not required under Chapter 62, Code of
8 Criminal Procedure, to register for life as a sex offender.

9 (e) An offense under Subsection (a) [~~this section~~] is a
10 Class C misdemeanor. An offense under Subsection (b) is a state jail
11 felony.

12 SECTION 2. Section 12.42(c)(2), Penal Code, is amended to
13 read as follows:

14 (2) A defendant shall be punished by imprisonment in
15 the institutional division for life if:

16 (A) the defendant is convicted of an offense:

17 (i) under Section 22.021 or 22.011, Penal
18 Code;

19 (ii) under Section 20.04(a)(4), Penal Code,
20 if the defendant committed the offense with the intent to violate or
21 abuse the victim sexually; or

22 (iii) under Section 30.02, Penal Code,
23 punishable under Subsection (d) of that section, if the defendant
24 committed the offense with the intent to commit a felony described
25 by Subparagraph (i) or (ii) or a felony under Section 21.11 or
26 22.011, Penal Code; and

27 (B) the defendant has been previously convicted

1 of an offense:

2 (i) under Section 43.22(b), 43.25, or
3 43.26, Penal Code;

4 (ii) under Section 21.11, 22.011, 22.021,
5 or 25.02, Penal Code;

6 (iii) under Section 20.04(a)(4), Penal Code,
7 if the defendant committed the offense with the intent to violate or
8 abuse the victim sexually;

9 (iv) under Section 30.02, Penal Code,
10 punishable under Subsection (d) of that section, if the defendant
11 committed the offense with the intent to commit a felony described
12 by Subparagraph (ii) or (iii); or

13 (v) under the laws of another state
14 containing elements that are substantially similar to the elements
15 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

16 SECTION 3. Article 62.01(5), Code of Criminal Procedure, is
17 amended to read as follows:

18 (5) "Reportable conviction or adjudication" means a
19 conviction or adjudication, regardless of the pendency of an
20 appeal, that is:

21 (A) a conviction for a violation of Section 21.11
22 (Indecency with a child), 22.011 (Sexual assault), 22.021
23 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),
24 Penal Code;

25 (B) a conviction for a violation of Section 43.05
26 (Compelling prostitution), 43.22(b) (Obscene display or
27 distribution), 43.25 (Sexual performance by a child), or 43.26

1 (Possession or promotion of child pornography), Penal Code;

2 (C) a conviction for a violation of Section
3 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant
4 committed the offense with intent to violate or abuse the victim
5 sexually;

6 (D) a conviction for a violation of Section 30.02
7 (Burglary), Penal Code, if the offense is punishable under
8 Subsection (d) of that section and the defendant committed the
9 offense with intent to commit a felony listed in Paragraph (A) or
10 (C);

11 (E) a conviction for a violation of Section 20.02
12 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated
13 kidnapping), Penal Code, if the judgment in the case contains an
14 affirmative finding under Article 42.015;

15 (F) the second conviction for a violation of
16 Section 21.08 (Indecent exposure), Penal Code;

17 (G) a conviction for an attempt, conspiracy, or
18 solicitation, as defined by Chapter 15, Penal Code, to commit an
19 offense listed in Paragraph (A), (B), (C), (D), or (E);

20 (H) an adjudication of delinquent conduct:

21 (i) based on a violation of one of the
22 offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the
23 order in the hearing contains an affirmative finding that the
24 victim or intended victim was younger than 17 years of age, one of
25 the offenses listed in Paragraph (E); or

26 (ii) for which two violations of the
27 offense listed in Paragraph (F) are shown;

1 (I) a deferred adjudication for an offense listed
2 in:

3 (i) Paragraph (A), (B), (C), (D), or (G); or

4 (ii) Paragraph (E) if the papers in the case
5 contain an affirmative finding that the victim or intended victim
6 was younger than 17 years of age;

7 (J) a conviction under the laws of another state,
8 federal law, or the Uniform Code of Military Justice for an offense
9 containing elements that are substantially similar to the elements
10 of an offense listed under Paragraph (A), (B), (C), (D), (E), or
11 (G);

12 (K) an adjudication of delinquent conduct under
13 the laws of another state or federal law based on a violation of an
14 offense containing elements that are substantially similar to the
15 elements of an offense listed under Paragraph (A), (B), (C), (D),
16 (E), or (G);

17 (L) the second conviction under the laws of
18 another state, federal law, or the Uniform Code of Military Justice
19 for an offense containing elements that are substantially similar
20 to the elements of the offense of indecent exposure; or

21 (M) the second adjudication of delinquent
22 conduct under the laws of another state or federal law based on a
23 violation of an offense containing elements that are substantially
24 similar to the elements of the offense of indecent exposure.

25 SECTION 4. Article 62.12(a), Code of Criminal Procedure, as
26 amended by Chapters 211 and 1297, Acts of the 77th Legislature,
27 Regular Session, 2001, is reenacted and amended to read as follows:

1 (a) The duty to register for a person ends when the person
2 dies if the person has a reportable conviction or adjudication,
3 other than an adjudication of delinquent conduct, for:

4 (1) a sexually violent offense;

5 (2) an offense under Section 25.02, 43.05(a)(2),
6 43.22(b), or 43.26, Penal Code;

7 (3) an offense under Section 21.11(a)(2), Penal Code,
8 if before or after the person is convicted or adjudicated for the
9 offense under Section 21.11(a)(2), Penal Code, the person receives
10 or has received another reportable conviction or adjudication,
11 other than an adjudication of delinquent conduct, for an offense or
12 conduct that requires registration under this chapter; or

13 (4) an offense under Section 20.02, 20.03, or 20.04,
14 Penal Code, or an attempt, conspiracy, or solicitation to commit
15 one of those offenses, if:

16 (A) the judgment in the case contains an
17 affirmative finding under Article 42.015, [~~as added by Chapter~~
18 ~~1193, Acts of the 76th Legislature, Regular Session, 1999,~~] or for a
19 deferred adjudication, the papers in the case contain an
20 affirmative finding that the victim or intended victim was younger
21 than 17 years of age; and

22 (B) before or after the person is convicted or
23 adjudicated for the offense under Section 20.02, 20.03, or 20.04,
24 Penal Code, the person receives or has received another reportable
25 conviction or adjudication, other than an adjudication of
26 delinquent conduct, for an offense or conduct that requires
27 registration under this chapter.

1 SECTION 5. (a) The change in law made by this Act applies
2 only to an offense committed on or after the effective date of this
3 Act. For purposes of this section, an offense is committed before
4 the effective date of this Act if any element of the offense occurs
5 before the effective date.

6 (b) An offense committed before the effective date of this
7 Act is covered by the law in effect when the offense was committed,
8 and the former law is continued in effect for that purpose.

9 SECTION 6. This Act takes effect September 1, 2003.