

AN ACT

relating to the punishment for the offense of obscenity and to certain consequences related to convictions for certain sex offenses.

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

SECTION 1. Section 43.23, Penal Code, is amended by amending Subsections (b) and (d) and adding Subsections (h), (i), and (j) to read as follows:

(b) Except as provided by Subsection (h), an [An] offense under Subsection (a) is a state jail felony.

(d) Except as provided by Subsection (h), an [An] offense under Subsection (c) is a Class A misdemeanor.

(h) The 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:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

1 (3) an image created, adapted, or modified to be the
2 image of an identifiable child.

3 (i) In this section, "identifiable child" means a person,
4 recognizable as an actual person by the person's face, likeness, or
5 other distinguishing characteristic, such as a unique birthmark or
6 other recognizable feature:

7 (1) who was younger than 18 years of age at the time
8 the visual depiction was created, adapted, or modified; or

9 (2) whose image as a person younger than 18 years of
10 age was used in creating, adapting, or modifying the visual
11 depiction.

12 (j) An attorney representing the state who seeks an increase
13 in punishment under Subsection (h)(3) is not required to prove the
14 actual identity of an identifiable child.

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

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

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

20 (i) under Section 22.021 or 22.011, Penal
21 Code;

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

25 (iii) under Section 30.02, Penal Code,
26 punishable under Subsection (d) of that section, if the defendant
27 committed the offense with the intent to commit a felony described

1 by Subparagraph (i) or (ii) or a felony under Section 21.11 or
2 22.011, Penal Code; and

3 (B) the defendant has been previously convicted
4 of an offense:

5 (i) under Section 43.25 or 43.26, Penal
6 Code, or an offense under Section 43.23, Penal Code, punishable
7 under Subsection (h) of that section;

8 (ii) under Section 21.11, 22.011, 22.021,
9 or 25.02, Penal Code;

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

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

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

20 SECTION 3. Section 25.08(c), Penal Code, is amended to read
21 as follows:

22 (c) An offense under this section is a felony of the third
23 degree, except that the offense is a felony of the second degree if
24 the actor commits the offense with intent to commit an offense under
25 Section 43.25.

26 SECTION 4. Sections 43.25(a)(2) and (7), Penal Code, are
27 amended to read as follows:

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

6 (7) "Deviate sexual intercourse" and "sexual contact"
7 have the meanings assigned [~~has the meaning defined~~] by Section
8 43.01.

9 SECTION 5. Section 43.25(f), Penal Code, is amended to read
10 as follows:

11 (f) It is an affirmative defense to a prosecution under this
12 section that:

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

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

18 (2) [~~(3)~~] the conduct was for a bona fide educational,
19 medical, psychological, psychiatric, judicial, law enforcement, or
20 legislative purpose; or

21 (3) [~~(4)~~] the defendant is not more than two years
22 older than the child.

23 SECTION 6. Subchapter B, Chapter 43, Penal Code, is amended
24 by adding Section 43.27 to read as follows:

25 Sec. 43.27. DUTY TO REPORT. (a) For purposes of this
26 section, "visual material" has the meaning assigned by Section
27 43.26.

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

5 SECTION 7. Article 59.01(2), Code of Criminal Procedure, is
6 amended to read as follows:

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

9 (A) used in the commission of:

10 (i) any first or second degree felony under
11 the Penal Code;

12 (ii) any felony under Section 15.031(b),
13 21.11, 38.04, Subchapter B of Chapter 43, [43.25, or 43.26] or
14 Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

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

17 (B) used or intended to be used in the commission
18 of:

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

21 (ii) any felony under Chapter 483, Health
22 and Safety Code;

23 (iii) a felony under Chapter 153, Finance
24 Code;

25 (iv) any felony under Chapter 34, Penal
26 Code;

27 (v) a Class A misdemeanor under Subchapter

1 B, Chapter 365, Health and Safety Code, if the defendant has been
2 previously convicted twice of an offense under that subchapter; or

3 (vi) any felony under Chapter 152, Finance
4 Code;

5 (C) the proceeds gained from the commission of a
6 felony listed in Paragraph (A) or (B) of this subdivision or a crime
7 of violence; or

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

11 SECTION 8. Articles 62.01(5) and (6), Code of Criminal
12 Procedure, are amended to read as follows:

13 (5) "Reportable conviction or adjudication" means a
14 conviction or adjudication, regardless of the pendency of an
15 appeal, that is:

16 (A) a conviction for a violation of Section 21.11
17 (Indecency with a child), 22.011 (Sexual assault), 22.021
18 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),
19 Penal Code;

20 (B) a conviction for a violation of Section 43.05
21 (Compelling prostitution), 43.25 (Sexual performance by a child),
22 or 43.26 (Possession or promotion of child pornography), Penal
23 Code;

24 (C) a conviction for a violation of Section
25 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant
26 committed the offense with intent to violate or abuse the victim
27 sexually;

1 (D) a conviction for a violation of Section 30.02
2 (Burglary), Penal Code, if the offense is punishable under
3 Subsection (d) of that section and the defendant committed the
4 offense with intent to commit a felony listed in Paragraph (A) or
5 (C);

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

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

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

15 (H) an adjudication of delinquent conduct:

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

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

23 (I) a deferred adjudication for an offense listed
24 in:

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

26 (ii) Paragraph (E) if the papers in the case
27 contain an affirmative finding that the victim or intended victim

1 was younger than 17 years of age;

2 (J) a conviction under the laws of another state,
3 federal law, the laws of a foreign country, or the Uniform Code of
4 Military Justice for an offense containing elements that are
5 substantially similar to the elements of an offense listed under
6 Paragraph (A), (B), (C), (D), (E), or (G);

7 (K) an adjudication of delinquent conduct under
8 the laws of another state, or federal law, or the laws of a
9 foreign country based on a violation of an offense containing
10 elements that are substantially similar to the elements of an
11 offense listed under Paragraph (A), (B), (C), (D), (E), or (G);

12 (L) the second conviction under the laws of
13 another state, federal law, the laws of a foreign country, or the
14 Uniform Code of Military Justice for an offense containing elements
15 that are substantially similar to the elements of the offense of
16 indecent exposure; or

17 (M) the second adjudication of delinquent
18 conduct under the laws of another state, or federal law, or the
19 laws of a foreign country based on a violation of an offense
20 containing elements that are substantially similar to the elements
21 of the offense of indecent exposure.

22 (6) "Sexually violent offense" means any of the
23 following offenses committed by a person 17 years of age or older:

24 (A) an offense under Section 21.11(a)(1)
25 (Indecency with a child), 22.011 (Sexual assault), or 22.021
26 (Aggravated sexual assault), Penal Code;

27 (B) an offense under Section 43.25 (Sexual

1 performance by a child), Penal Code;

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

5 (D) an offense under Section 30.02 (Burglary),
6 Penal Code, if the offense is punishable under Subsection (d) of
7 that section and the defendant committed the offense with intent to
8 commit a felony listed in Paragraph (A) or (C) of Subdivision (5);
9 or

10 (E) an offense under the laws of another state,
11 federal law, the laws of a foreign country, or the Uniform Code of
12 Military Justice if the offense contains elements that are
13 substantially similar to the elements of an offense listed under
14 Paragraph (A), (B), (C), or (D).

15 SECTION 9. Article 62.0101(a), Code of Criminal Procedure,
16 is amended to read as follows:

17 (a) The department is responsible for determining for the
18 purposes of this chapter whether an offense under the laws of
19 another state, federal law, the laws of a foreign country, or the
20 Uniform Code of Military Justice contains elements that are
21 substantially similar to the elements of an offense under the laws
22 of this state.

23 SECTION 10. Articles 62.021(a) and (c), Code of Criminal
24 Procedure, are amended to read as follows:

25 (a) This article applies to a person who:

26 (1) is required to register as a sex offender under:

27 (A) the laws of another state with which the

1 department has entered into a reciprocal registration agreement;
2 [~~or~~]

3 (B) federal law or the Uniform Code of Military
4 Justice; or

5 (C) the laws of a foreign country; and

6 (2) is not otherwise required to register under this
7 chapter because:

8 (A) the person does not have a reportable
9 conviction for an offense under the laws of the other state, federal
10 law, the laws of the foreign country, or the Uniform Code of
11 Military Justice containing elements that are substantially
12 similar to an offense requiring registration under this chapter; or

13 (B) the person does not have a reportable
14 adjudication of delinquent conduct based on a violation of an
15 offense under the laws of the other state, [~~or~~] federal law, or the
16 laws of the foreign country containing elements that are
17 substantially similar to an offense requiring registration under
18 this chapter.

19 (c) The duty to register for a person described by
20 Subsection (a) expires on the date the person's duty to register
21 would expire under the laws of the other state or foreign country
22 had the person remained in that state or foreign country, under
23 federal law, or under the Uniform Code of Military Justice, as
24 applicable.

25 SECTION 11. (a) The change in law made by this Act applies
26 only to an offense committed on or after the effective date of this
27 Act. For purposes of this section, an offense is committed before

1 the effective date of this Act if any element of the offense occurs
2 before the effective date.

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

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

11 SECTION 13. This Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I certify that H.B. No. 236 was passed by the House on May 1, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 236 on May 30, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 236 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor