

By: West, Allen, Crabb, Casteel, Wise,  
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H.B. No. 236

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the punishment for the offense of obscenity and to  
3 certain consequences related to a conviction for an offense  
4 involving obscenity.

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

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

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

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

13 (h) The punishment for an offense under Subsection (a) is  
14 increased to the punishment for a felony of the third degree and the  
15 punishment for an offense under Subsection (c) is increased to the  
16 punishment for a state jail felony if it is shown on the trial of the  
17 offense that obscene material that is the subject of the offense  
18 visually depicts activities described by Section 43.21(a)(1)(B)  
19 engaged in by:

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

22 (2) an image that to a reasonable person would be  
23 virtually indistinguishable from the image of a child younger than  
24 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. Article 62.01(5), Code of Criminal Procedure, is  
21 amended to read as follows:

22 (5) "Reportable conviction or adjudication" means a  
23 conviction or adjudication, regardless of the pendency of an  
24 appeal, that is:

25 (A) a conviction for a violation of Section 21.11  
26 (Indecency with a child), 22.011 (Sexual assault), 22.021  
27 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),

1 Penal Code;

2 (B) a conviction for a violation of Section 43.05  
3 (Compelling prostitution), 43.25 (Sexual performance by a child),  
4 or 43.26 (Possession or promotion of child pornography), Penal  
5 Code, or a conviction for a violation of Section 43.23 (Obscenity),  
6 Penal Code, if the offense is punishable under Subsection (h) of  
7 that section;

8 (C) a conviction for a violation of Section  
9 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant  
10 committed the offense with intent to violate or abuse the victim  
11 sexually;

12 (D) a conviction for a violation of Section 30.02  
13 (Burglary), Penal Code, if the offense is punishable under  
14 Subsection (d) of that section and the defendant committed the  
15 offense with intent to commit a felony listed in Paragraph (A) or  
16 (C);

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

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

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

26 (H) an adjudication of delinquent conduct:

27 (i) based on a violation of one of the

1 offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the  
2 order in the hearing contains an affirmative finding that the  
3 victim or intended victim was younger than 17 years of age, one of  
4 the offenses listed in Paragraph (E); or

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

7 (I) a deferred adjudication for an offense listed  
8 in:

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

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

13 (J) a conviction under the laws of another state,  
14 federal law, or the Uniform Code of Military Justice for an offense  
15 containing elements that are substantially similar to the elements  
16 of an offense listed under Paragraph (A), (B), (C), (D), (E), or  
17 (G);

18 (K) an adjudication of delinquent conduct under  
19 the laws of another state or federal law based on a violation of an  
20 offense containing elements that are substantially similar to the  
21 elements of an offense listed under Paragraph (A), (B), (C), (D),  
22 (E), or (G);

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

27 (M) the second adjudication of delinquent

1 conduct under the laws of another state or federal law based on a  
2 violation of an offense containing elements that are substantially  
3 similar to the elements of the offense of indecent exposure.

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

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

10 (1) a sexually violent offense;

11 (2) an offense under Section 25.02, 43.05(a)(2), or  
12 43.26, Penal Code, or an offense punishable under Section 43.23(h),  
13 Penal Code;

14 (3) an offense under Section 21.11(a)(2), Penal Code,  
15 if before or after the person is convicted or adjudicated for the  
16 offense under Section 21.11(a)(2), Penal Code, the person receives  
17 or has received another reportable conviction or adjudication,  
18 other than an adjudication of delinquent conduct, for an offense or  
19 conduct that requires registration under this chapter; or

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

23 (A) the judgment in the case contains an  
24 affirmative finding under Article 42.015, [~~as added by Chapter~~  
25 ~~1193, Acts of the 76th Legislature, Regular Session, 1999,~~] or for a  
26 deferred adjudication, the papers in the case contain an  
27 affirmative finding that the victim or intended victim was younger

1 than 17 years of age; and

2 (B) before or after the person is convicted or  
3 adjudicated for the offense under Section 20.02, 20.03, or 20.04,  
4 Penal Code, the person receives or has received another reportable  
5 conviction or adjudication, other than an adjudication of  
6 delinquent conduct, for an offense or conduct that requires  
7 registration under this chapter.

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

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

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