

By: West

H.B. No. 236

A BILL TO BE ENTITLED

AN ACT

1
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.