

1-1 By: West, et al. (Senate Sponsor - Shapiro) H.B. No. 236
1-2 (In the Senate - Received from the House May 2, 2003;
1-3 May 6, 2003, read first time and referred to Committee on Criminal
1-4 Justice; May 24, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-6 May 24, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 236 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the punishment for the offense of obscenity and to
1-11 certain consequences related to convictions for certain sex
1-12 offenses.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 43.23, Penal Code, is amended by
1-15 amending Subsections (b) and (d) and adding Subsections (h), (i),
1-16 and (j) to read as follows:

1-17 (b) Except as provided by Subsection (h), an [An] offense
1-18 under Subsection (a) is a state jail felony.

1-19 (d) Except as provided by Subsection (h), an [An] offense
1-20 under Subsection (c) is a Class A misdemeanor.

1-21 (h) The punishment for an offense under Subsection (a) is
1-22 increased to the punishment for a felony of the third degree and the
1-23 punishment for an offense under Subsection (c) is increased to the
1-24 punishment for a state jail felony if it is shown on the trial of the
1-25 offense that obscene material that is the subject of the offense
1-26 visually depicts activities described by Section 43.21(a)(1)(B)
1-27 engaged in by:

1-28 (1) a child younger than 18 years of age at the time
1-29 the image of the child was made;

1-30 (2) an image that to a reasonable person would be
1-31 virtually indistinguishable from the image of a child younger than
1-32 18 years of age; or

1-33 (3) an image created, adapted, or modified to be the
1-34 image of an identifiable child.

1-35 (i) In this section, "identifiable child" means a person,
1-36 recognizable as an actual person by the person's face, likeness, or
1-37 other distinguishing characteristic, such as a unique birthmark or
1-38 other recognizable feature:

1-39 (1) who was younger than 18 years of age at the time
1-40 the visual depiction was created, adapted, or modified; or

1-41 (2) whose image as a person younger than 18 years of
1-42 age was used in creating, adapting, or modifying the visual
1-43 depiction.

1-44 (j) An attorney representing the state who seeks an increase
1-45 in punishment under Subsection (h)(3) is not required to prove the
1-46 actual identity of an identifiable child.

1-47 SECTION 2. Section 12.42(c)(2), Penal Code, is amended to
1-48 read as follows:

1-49 (2) A defendant shall be punished by imprisonment in
1-50 the institutional division for life if:

1-51 (A) the defendant is convicted of an offense:

1-52 (i) under Section 22.021 or 22.011, Penal
1-53 Code;

1-54 (ii) under Section 20.04(a)(4), Penal Code,
1-55 if the defendant committed the offense with the intent to violate or
1-56 abuse the victim sexually; or

1-57 (iii) under Section 30.02, Penal Code,
1-58 punishable under Subsection (d) of that section, if the defendant
1-59 committed the offense with the intent to commit a felony described
1-60 by Subparagraph (i) or (ii) or a felony under Section 21.11 or
1-61 22.011, Penal Code; and

1-62 (B) the defendant has been previously convicted
1-63 of an offense:

2-1 (i) under Section 43.25 or 43.26, Penal
2-2 Code, or an offense under Section 43.23, Penal Code, punishable
2-3 under Subsection (h) of that section;

2-4 (ii) under Section 21.11, 22.011, 22.021,
2-5 or 25.02, Penal Code;

2-6 (iii) under Section 20.04(a)(4), Penal
2-7 Code, if the defendant committed the offense with the intent to
2-8 violate or abuse the victim sexually;

2-9 (iv) under Section 30.02, Penal Code,
2-10 punishable under Subsection (d) of that section, if the defendant
2-11 committed the offense with the intent to commit a felony described
2-12 by Subparagraph (ii) or (iii); or

2-13 (v) under the laws of another state
2-14 containing elements that are substantially similar to the elements
2-15 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

2-16 SECTION 3. Section 25.08(c), Penal Code, is amended to read
2-17 as follows:

2-18 (c) An offense under this section is a felony of the third
2-19 degree, except that the offense is a felony of the second degree if
2-20 the actor commits the offense with intent to commit an offense under
2-21 Section 43.25.

2-22 SECTION 4. Sections 43.25(a)(2) and (7), Penal Code, are
2-23 amended to read as follows:

2-24 (2) "Sexual conduct" means sexual contact, actual or
2-25 simulated sexual intercourse, deviate sexual intercourse, sexual
2-26 bestiality, masturbation, sado-masochistic abuse, or lewd
2-27 exhibition of the genitals, the anus, or any portion of the female
2-28 breast below the top of the areola.

2-29 (7) "Deviate sexual intercourse" and "sexual contact"
2-30 have the meanings assigned [~~has the meaning defined~~] by Section
2-31 43.01.

2-32 SECTION 5. Section 43.25(f), Penal Code, is amended to read
2-33 as follows:

2-34 (f) It is an affirmative defense to a prosecution under this
2-35 section that:

2-36 (1) [~~the defendant, in good faith, reasonably believed~~
2-37 ~~that the child who engaged in the sexual conduct was 18 years of age~~
2-38 ~~or older,~~

2-39 [~~(2)~~] the defendant was the spouse of the child at the
2-40 time of the offense;

2-41 (2) [~~(3)~~] the conduct was for a bona fide educational,
2-42 medical, psychological, psychiatric, judicial, law enforcement, or
2-43 legislative purpose; or

2-44 (3) [~~(4)~~] the defendant is not more than two years
2-45 older than the child.

2-46 SECTION 6. Subchapter B, Chapter 43, Penal Code, is amended
2-47 by adding Section 43.27 to read as follows:

2-48 Sec. 43.27. DUTY TO REPORT. (a) For purposes of this
2-49 section, "visual material" has the meaning assigned by Section
2-50 43.26.

2-51 (b) A business that develops or processes visual material
2-52 and determines that the material may be evidence of a criminal
2-53 offense under this subchapter shall report the existence of the
2-54 visual material to a local law enforcement agency.

2-55 SECTION 7. Article 59.01(2), Code of Criminal Procedure, is
2-56 amended to read as follows:

2-57 (2) "Contraband" means property of any nature,
2-58 including real, personal, tangible, or intangible, that is:

2-59 (A) used in the commission of:
2-60 (i) any first or second degree felony under
2-61 the Penal Code;

2-62 (ii) any felony under Section 15.031(b),
2-63 21.11, 38.04, Subchapter B of Chapter 43, [43.25, or 43.26] or
2-64 Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

2-65 (iii) any felony under The Securities Act
2-66 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

2-67 (B) used or intended to be used in the commission
2-68 of:

2-69 (i) any felony under Chapter 481, Health

3-1 and Safety Code (Texas Controlled Substances Act);
 3-2 (ii) any felony under Chapter 483, Health
 3-3 and Safety Code;
 3-4 (iii) a felony under Chapter 153, Finance
 3-5 Code;
 3-6 (iv) any felony under Chapter 34, Penal
 3-7 Code;
 3-8 (v) a Class A misdemeanor under Subchapter
 3-9 B, Chapter 365, Health and Safety Code, if the defendant has been
 3-10 previously convicted twice of an offense under that subchapter; or
 3-11 (vi) any felony under Chapter 152, Finance
 3-12 Code;
 3-13 (C) the proceeds gained from the commission of a
 3-14 felony listed in Paragraph (A) or (B) of this subdivision or a crime
 3-15 of violence; or
 3-16 (D) acquired with proceeds gained from the
 3-17 commission of a felony listed in Paragraph (A) or (B) of this
 3-18 subdivision or a crime of violence.
 3-19 SECTION 8. Articles 62.01(5) and (6), Code of Criminal
 3-20 Procedure, are amended to read as follows:
 3-21 (5) "Reportable conviction or adjudication" means a
 3-22 conviction or adjudication, regardless of the pendency of an
 3-23 appeal, that is:
 3-24 (A) a conviction for a violation of Section 21.11
 3-25 (Indecency with a child), 22.011 (Sexual assault), 22.021
 3-26 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),
 3-27 Penal Code;
 3-28 (B) a conviction for a violation of Section 43.05
 3-29 (Compelling prostitution), 43.25 (Sexual performance by a child),
 3-30 or 43.26 (Possession or promotion of child pornography), Penal
 3-31 Code;
 3-32 (C) a conviction for a violation of Section
 3-33 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant
 3-34 committed the offense with intent to violate or abuse the victim
 3-35 sexually;
 3-36 (D) a conviction for a violation of Section 30.02
 3-37 (Burglary), Penal Code, if the offense is punishable under
 3-38 Subsection (d) of that section and the defendant committed the
 3-39 offense with intent to commit a felony listed in Paragraph (A) or
 3-40 (C);
 3-41 (E) a conviction for a violation of Section 20.02
 3-42 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated
 3-43 kidnapping), Penal Code, if the judgment in the case contains an
 3-44 affirmative finding under Article 42.015;
 3-45 (F) the second conviction for a violation of
 3-46 Section 21.08 (Indecent exposure), Penal Code;
 3-47 (G) a conviction for an attempt, conspiracy, or
 3-48 solicitation, as defined by Chapter 15, Penal Code, to commit an
 3-49 offense listed in Paragraph (A), (B), (C), (D), or (E);
 3-50 (H) an adjudication of delinquent conduct:
 3-51 (i) based on a violation of one of the
 3-52 offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the
 3-53 order in the hearing contains an affirmative finding that the
 3-54 victim or intended victim was younger than 17 years of age, one of
 3-55 the offenses listed in Paragraph (E); or
 3-56 (ii) for which two violations of the
 3-57 offense listed in Paragraph (F) are shown;
 3-58 (I) a deferred adjudication for an offense listed
 3-59 in:
 3-60 (i) Paragraph (A), (B), (C), (D), or (G); or
 3-61 (ii) Paragraph (E) if the papers in the case
 3-62 contain an affirmative finding that the victim or intended victim
 3-63 was younger than 17 years of age;
 3-64 (J) a conviction under the laws of another state,
 3-65 federal law, the laws of a foreign country, or the Uniform Code of
 3-66 Military Justice for an offense containing elements that are
 3-67 substantially similar to the elements of an offense listed under
 3-68 Paragraph (A), (B), (C), (D), (E), or (G);
 3-69 (K) an adjudication of delinquent conduct under

4-1 the laws of another state, ~~[or]~~ federal law, or the laws of a
 4-2 foreign country based on a violation of an offense containing
 4-3 elements that are substantially similar to the elements of an
 4-4 offense listed under Paragraph (A), (B), (C), (D), (E), or (G);

4-5 (L) the second conviction under the laws of
 4-6 another state, federal law, the laws of a foreign country, or the
 4-7 Uniform Code of Military Justice for an offense containing elements
 4-8 that are substantially similar to the elements of the offense of
 4-9 indecent exposure; or

4-10 (M) the second adjudication of delinquent
 4-11 conduct under the laws of another state, ~~[or]~~ federal law, or the
 4-12 laws of a foreign country based on a violation of an offense
 4-13 containing elements that are substantially similar to the elements
 4-14 of the offense of indecent exposure.

4-15 (6) "Sexually violent offense" means any of the
 4-16 following offenses committed by a person 17 years of age or older:

4-17 (A) an offense under Section 21.11(a)(1)
 4-18 (Indecency with a child), 22.011 (Sexual assault), or 22.021
 4-19 (Aggravated sexual assault), Penal Code;

4-20 (B) an offense under Section 43.25 (Sexual
 4-21 performance by a child), Penal Code;

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

4-25 (D) an offense under Section 30.02 (Burglary),
 4-26 Penal Code, if the offense is punishable under Subsection (d) of
 4-27 that section and the defendant committed the offense with intent to
 4-28 commit a felony listed in Paragraph (A) or (C) of Subdivision (5);
 4-29 or

4-30 (E) an offense under the laws of another state,
 4-31 federal law, the laws of a foreign country, or the Uniform Code of
 4-32 Military Justice if the offense contains elements that are
 4-33 substantially similar to the elements of an offense listed under
 4-34 Paragraph (A), (B), (C), or (D).

4-35 SECTION 9. Article 62.0101(a), Code of Criminal Procedure,
 4-36 is amended to read as follows:

4-37 (a) The department is responsible for determining for the
 4-38 purposes of this chapter whether an offense under the laws of
 4-39 another state, federal law, the laws of a foreign country, or the
 4-40 Uniform Code of Military Justice contains elements that are
 4-41 substantially similar to the elements of an offense under the laws
 4-42 of this state.

4-43 SECTION 10. Articles 62.021(a) and (c), Code of Criminal
 4-44 Procedure, are amended to read as follows:

4-45 (a) This article applies to a person who:

4-46 (1) is required to register as a sex offender under:

4-47 (A) the laws of another state with which the
 4-48 department has entered into a reciprocal registration agreement;
 4-49 ~~[or]~~

4-50 (B) federal law or the Uniform Code of Military
 4-51 Justice; or

4-52 (C) the laws of a foreign country; and

4-53 (2) is not otherwise required to register under this
 4-54 chapter because:

4-55 (A) the person does not have a reportable
 4-56 conviction for an offense under the laws of the other state, federal
 4-57 law, the laws of the foreign country, or the Uniform Code of
 4-58 Military Justice containing elements that are substantially
 4-59 similar to an offense requiring registration under this chapter; or

4-60 (B) the person does not have a reportable
 4-61 adjudication of delinquent conduct based on a violation of an
 4-62 offense under the laws of the other state, ~~[or]~~ federal law, or the
 4-63 laws of the foreign country containing elements that are
 4-64 substantially similar to an offense requiring registration under
 4-65 this chapter.

4-66 (c) The duty to register for a person described by
 4-67 Subsection (a) expires on the date the person's duty to register
 4-68 would expire under the laws of the other state or foreign country
 4-69 had the person remained in that state or foreign country, under

5-1 federal law, or under the Uniform Code of Military Justice, as
5-2 applicable.

5-3 SECTION 11. (a) The change in law made by this Act applies
5-4 only to an offense committed on or after the effective date of this
5-5 Act. For purposes of this section, an offense is committed before
5-6 the effective date of this Act if any element of the offense occurs
5-7 before the effective date.

5-8 (b) An offense committed before the effective date of this
5-9 Act is covered by the law in effect when the offense was committed,
5-10 and the former law is continued in effect for that purpose.

5-11 SECTION 12. The change in law made by this Act in amending
5-12 Articles 62.01, 62.0101, and 62.021, Code of Criminal Procedure,
5-13 applies to a person subject to registration under Chapter 62, Code
5-14 of Criminal Procedure, for an offense or conduct committed before,
5-15 on, or after the effective date of this Act.

5-16 SECTION 13. This Act takes effect September 1, 2003.

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