

By: Zedler, Menendez

H.B. No. 1714

Substitute the following for H.B. No. 1714:

By: Pena

C.S.H.B. No. 1714

A BILL TO BE ENTITLED

AN ACT

relating to the offense of murder of a child.

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

SECTION 1. Chapter 19, Penal Code, is amended by adding Section 19.021 to read as follows:

Sec. 19.021. MURDER OF A CHILD. (a) A person commits an offense if:

(1) he intentionally or knowingly commits or attempts to commit injury to a child as defined under Section 22.04(a)(1), (2), or (3);

(2) the individual injured is a child; and

(3) in the course of and in the furtherance of the commission or attempt or in immediate flight from the commission or attempt, he commits or attempts to commit an act that is clearly dangerous to human life that causes the death of a child.

(b) In this section, "child" means a person 14 years of age or younger.

(c) An offense under this section is a felony of the first degree.

(d) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 2. Section 4(d), Article 42.12, Code of Criminal

Procedure, is amended to read as follows:

(d) A defendant is not eligible for community supervision under this section if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years;

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code;

(3) does not file a sworn motion under Subsection (e) of the this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true; ~~or~~

(4) is adjudged guilty of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which the punishment was increased under any one of those subsections; or

(5) is adjudged guilty of an offense under Section 19.021, Penal Code.

SECTION 3. Section 3g.(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense under:

(A) Section 19.02, Penal Code (Murder); and  
Section 19.021, Penal Code (Murder of a Child);

(B) Section 19.03, Penal Code (Capital murder);

(C) Section 21.11(a)(1), Penal Code (Indecency with a child);

(D) Section 20.04, Penal Code (Aggravated kidnapping);

(E) Section 22.021, Penal Code (Aggravated sexual assault);

(F) Section 29.03, Penal Code (Aggravated robbery);

(G) Chapter 481, Health and Safety Code, for which punishment is increased under:

(i) Section 481.140, Health and Safety Code; or

(ii) Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections; or

(H) Section 22.011, Penal Code (Sexual assault); or

(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07, Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight there from, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its

1 judgment.

2 (b) If there is an affirmative finding under Subsection  
3 (a)(2) in the trial of a felony of the second degree or higher that  
4 the deadly weapon used or exhibited was a firearm and the defendant  
5 is granted community supervision, the court may order the defendant  
6 confined in the institutional division of the Texas Department of  
7 Criminal Justice for not less than 60 and not more than 120 days. At  
8 any time after the defendant has served 60 days in the custody of  
9 the institutional division, the sentencing judge, on his own motion  
10 or on motion of the defendant, may order the defendant released to  
11 community supervision. The institutional division shall release  
12 the defendant to community supervision after he has served 120  
13 days.

14 SECTION 4. The change in law made by this Act applies only  
15 to an offense committed on or after the effective date of this Act.  
16 An offense committed before the effective date of this Act is  
17 covered by the law in effect when the offense was committed, and the  
18 former law is continued in effect for that purpose. For the purposes  
19 of this section, an offense is committed before the effective date  
20 of this Act if any element of the offense occurs before the  
21 effective date.

22 SECTION 5. This Act takes effect September 1, 2005.