

By: Phillips

H.B. No. 1761

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the eligibility of certain repeat sex offenders for  
3 release on parole.

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

5 SECTION 1. Sections 4(a) and (b), Article 37.07, Code of  
6 Criminal Procedure, are amended to read as follows:

7 (a) (1) Except as provided by Subdivision (2), in [In] the  
8 penalty phase of the trial of a felony case in which the punishment  
9 is to be assessed by the jury rather than the court, if the offense  
10 of which the jury has found the defendant guilty is listed in  
11 Section 3g(a)(1), Article 42.12, ~~[of this code]~~ or if the judgment  
12 contains an affirmative finding under Section 3g(a)(2), Article  
13 42.12, ~~[of this code, unless the defendant has been convicted of a~~  
14 ~~capital felony]~~ the court shall charge the jury in writing as  
15 follows:

16 "Under the law applicable in this case, the defendant, if  
17 sentenced to a term of imprisonment, may earn time off the period of  
18 incarceration imposed through the award of good conduct time.  
19 Prison authorities may award good conduct time to a prisoner who  
20 exhibits good behavior, diligence in carrying out prison work  
21 assignments, and attempts at rehabilitation. If a prisoner engages  
22 in misconduct, prison authorities may also take away all or part of  
23 any good conduct time earned by the prisoner.

24 "It is also possible that the length of time for which the

1 defendant will be imprisoned might be reduced by the award of  
2 parole.

3 "Under the law applicable in this case, if the defendant is  
4 sentenced to a term of imprisonment, he will not become eligible for  
5 parole until the actual time served equals one-half of the sentence  
6 imposed or 30 years, whichever is less, without consideration of  
7 any good conduct time he may earn. If the defendant is sentenced to  
8 a term of less than four years, he must serve at least two years  
9 before he is eligible for parole. Eligibility for parole does not  
10 guarantee that parole will be granted.

11 "It cannot accurately be predicted how the parole law and  
12 good conduct time might be applied to this defendant if he is  
13 sentenced to a term of imprisonment, because the application of  
14 these laws will depend on decisions made by prison and parole  
15 authorities.

16 "You may consider the existence of the parole law and good  
17 conduct time. However, you are not to consider the extent to which  
18 good conduct time may be awarded to or forfeited by this particular  
19 defendant. You are not to consider the manner in which the parole  
20 law may be applied to this particular defendant."

21 (2) Subdivision (1) does not apply to:

22 (A) a capital felony case; or

23 (B) a felony case in which a prior conviction has  
24 been alleged for enhancement of punishment as provided by Section  
25 12.42(c)(2), Penal Code, if the judgment or the papers in the case,  
26 as applicable, for the offense of which the jury has found the  
27 defendant guilty and any offense used to support the enhancement

1 contain an affirmative finding that the victim or intended victim  
2 was younger than 17 years of age at the time of the offense.

3 (b)(1) Except as provided by Subdivision (2), in [In] the  
4 penalty phase of the trial of a felony case in which the punishment  
5 is to be assessed by the jury rather than the court, if the offense  
6 is punishable as a felony of the first degree, if a prior conviction  
7 has been alleged for enhancement of punishment as provided by  
8 Section 12.42(b), (c), or (d), Penal Code, or if the offense is a  
9 felony not designated as a capital felony or a felony of the first,  
10 second, or third degree and the maximum term of imprisonment that  
11 may be imposed for the offense is longer than 60 years, [~~unless the~~  
12 ~~offense of which the jury has found the defendant guilty is listed~~  
13 ~~in Section 3g(a)(1), Article 42.12, of this code or the judgment~~  
14 ~~contains an affirmative finding under Section 3g(a)(2), Article~~  
15 ~~42.12, of this code,~~] the court shall charge the jury in writing as  
16 follows:

17 "Under the law applicable in this case, the defendant, if  
18 sentenced to a term of imprisonment, may earn time off the period of  
19 incarceration imposed through the award of good conduct time.  
20 Prison authorities may award good conduct time to a prisoner who  
21 exhibits good behavior, diligence in carrying out prison work  
22 assignments, and attempts at rehabilitation. If a prisoner engages  
23 in misconduct, prison authorities may also take away all or part of  
24 any good conduct time earned by the prisoner.

25 "It is also possible that the length of time for which the  
26 defendant will be imprisoned might be reduced by the award of  
27 parole.

1 "Under the law applicable in this case, if the defendant is  
2 sentenced to a term of imprisonment, he will not become eligible for  
3 parole until the actual time served plus any good conduct time  
4 earned equals one-fourth of the sentence imposed or 15 years,  
5 whichever is less. Eligibility for parole does not guarantee that  
6 parole will be granted.

7 "It cannot accurately be predicted how the parole law and  
8 good conduct time might be applied to this defendant if he is  
9 sentenced to a term of imprisonment, because the application of  
10 these laws will depend on decisions made by prison and parole  
11 authorities.

12 "You may consider the existence of the parole law and good  
13 conduct time. However, you are not to consider the extent to which  
14 good conduct time may be awarded to or forfeited by this particular  
15 defendant. You are not to consider the manner in which the parole  
16 law may be applied to this particular defendant."

17 (2) Subdivision (1) does not apply to a felony case if:

18 (A) the felony is listed in Section 3g(a)(1),  
19 Article 42.12;

20 (B) the judgment in the case contains an  
21 affirmative finding under Section 3g(a)(2), Article 42.12; or

22 (C) a prior conviction has been alleged for  
23 enhancement of punishment as provided by Section 12.42(c)(2), Penal  
24 Code, and the judgment or the papers in the case, as applicable, for  
25 the offense of which the jury has found the defendant guilty and any  
26 offense used to support the enhancement contain an affirmative  
27 finding that the victim or intended victim was younger than 17 years

1 of age at the time of the offense.

2 SECTION 2. Article 42.015, Code of Criminal Procedure, is  
3 amended to read as follows:

4 Art. 42.015. FINDING OF AGE OF VICTIM. In the trial of an  
5 offense under Section 20.02, 20.03, or 20.04, Penal Code, an  
6 offense listed in Section 12.42(c)(2), Penal Code, or an attempt,  
7 conspiracy, or solicitation to commit an offense described by this  
8 article [~~one of those offenses~~], the judge shall make an  
9 affirmative finding of fact and enter the affirmative finding in  
10 the judgment in the case if the judge determines that the victim or  
11 intended victim was younger than 17 years of age at the time of the  
12 offense.

13 SECTION 3. Section 5(e), Article 42.12, Code of Criminal  
14 Procedure, is amended to read as follows:

15 (e) If a judge places on community supervision under this  
16 section a defendant charged with an offense under Section 20.02,  
17 20.03, or 20.04, Penal Code, an offense listed in Section  
18 12.42(c)(2), Penal Code, or an attempt, conspiracy, or solicitation  
19 to commit an offense described by this subsection [~~one of those~~  
20 ~~offenses~~], the judge shall make an affirmative finding of fact and  
21 file a statement of that affirmative finding with the papers in the  
22 case if the judge determines that the victim or intended victim was  
23 younger than 17 years of age at the time of the offense.

24 SECTION 4. Section 508.145(c), Government Code, is amended  
25 to read as follows:

26 (c) An inmate serving a life sentence under Section  
27 12.42(c)(2), Penal Code, is not eligible for release on parole if

1 the judgment or the papers in the case, as applicable, for the  
2 offense of which the defendant was convicted and any offense used to  
3 support enhanced punishment under that subdivision contain an  
4 affirmative finding that the victim or intended victim was younger  
5 than 17 years of age at the time of the offense. In the absence of  
6 an affirmative finding described by this subsection, an ~~An~~ inmate  
7 -serving a life sentence under Section 12.42(c)(2), Penal Code, is  
8 not eligible for release on parole until the actual calendar time  
9 the inmate has served, without consideration of good conduct time,  
10 equals 35 calendar years.

11 SECTION 5. The change in law made by this Act applies only  
12 to an offense committed on or after the effective date of this Act.  
13 An offense committed before the effective date of this Act is  
14 covered by the law in effect when the offense was committed, and the  
15 former law is continued in effect for that purpose. For purposes of  
16 this section, an offense was committed before the effective date of  
17 this Act if any element of the offense was committed before that  
18 date.

19 SECTION 6. This Act takes effect September 1, 2005.