

By: Orr

H.B. No. 3018

A BILL TO BE ENTITLED

AN ACT

relating to penalties for repeat and habitual felony offenders.

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

SECTION 1. Section 12.42, Penal Code, is amended to read as follows:

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS. (a) The penalties provided by Subchapter C are enhanced for repeat offenders as follows:

(1)(A) If it is shown that a defendant on trial for a state jail felony has previously been convicted of a state jail felony offense, the minimum term of confinement is nine months.

(B) If it is shown that a defendant on trial for a state jail felony has previously been convicted of a felony other than a state jail felony, the minimum term of confinement is 12 months.

(C) If it is shown that a defendant on trial for a state jail felony has previously been twice convicted of felony offenses arising out of different criminal transactions, the defendant shall be punished and subsequently be considered for purposes of this section as though convicted of a felony of the third degree.

(2)(A) If it is shown that a defendant on trial for a felony of the third degree has previously been convicted of a state jail felony or a felony of the third degree, the minimum term of

1 confinement is four years.

2 (B) If it is shown that a defendant on trial for a  
3 felony of the third degree has previously been convicted of a second  
4 or first degree felony, the minimum term of confinement is five  
5 years and the maximum term of confinement is 20 years.

6 (C) If it is shown that a defendant on trial for a  
7 felony of the third degree has been twice convicted of felony  
8 offenses arising out of different criminal transactions, the  
9 defendant shall be punished and subsequently be considered for the  
10 purposes of this section as though convicted of a felony of the  
11 second degree, the punishment for which must be a minimum term of  
12 confinement of five years.

13 (3)(A) If it is shown that a defendant on trial for a  
14 felony of the second degree has previously been convicted of a state  
15 jail felony or a felony of the third degree, the minimum term of  
16 confinement is six years.

17 (B) If it is shown that a defendant on trial for a  
18 felony of the second degree has previously been convicted of a  
19 felony of the second or first degree, the defendant shall be  
20 punished and subsequently be considered for the purposes of this  
21 section as though convicted of a felony of the first degree.

22 (C) If it is shown that a defendant on trial for a  
23 felony of the second degree has been twice convicted of felony  
24 offenses arising out of different criminal transactions, the  
25 defendant shall be punished and subsequently be considered for the  
26 purposes of this section as though the defendant were convicted of a  
27 felony of the first degree, the punishment for which must be a

1 minimum term of confinement of 15 years.

2 (4)(A) If it is shown that a defendant on trial for a  
3 felony of the first degree has previously been convicted of a state  
4 jail felony or a felony of the third degree, the minimum term of  
5 confinement is 10 years.

6 (B) If it is shown that a defendant on trial for a  
7 felony of the first degree has previously been convicted of a felony  
8 of the second or first degree, the minimum term of confinement is 15  
9 years.

10 (C) If it is shown that a defendant on trial for a  
11 felony of the first degree has been twice convicted of felony  
12 offenses arising out of criminal transactions, the minimum term of  
13 confinement is 25 years.

14 (b) For the purposes of this section, except as provided by  
15 Subsection (c) and regardless of whether the imposition of sentence  
16 for the prior offense was suspended, until the judgment is set aside  
17 by a court as provided by law or on a pardon in accordance with  
18 Section 11, Article IV, Texas Constitution, a person is considered  
19 to be convicted of an offense if the offense was committed before  
20 the commission of the offense for which the defendant is on trial  
21 and a written judgment adjudicating the defendant's guilt is signed  
22 on or before the date the defendant is sentenced for the offense on  
23 trial. A judgment of conviction is not considered to be set aside  
24 by an order granting community supervision or an order entered  
25 under Section 20(a), Article 42.12, Code of Criminal Procedure, or  
26 another similar statute.

27 (c) A person whose punishment is determined under

1 Subsection (b) based on a prior conviction that is subsequently set  
2 aside shall be resentenced under the procedure prescribed in  
3 Article 44.29(b), Code of Criminal Procedure, within the range of  
4 punishment applicable to the offense as though the previous invalid  
5 conviction had never occurred.

6 (d) For the purposes of this section:

7 (1) a person convicted of a capital felony who is  
8 punished by imprisonment for life is considered to have been  
9 convicted of a felony of the first degree; and

10 (2) a person convicted of an offense punished under  
11 Section 12.35(c) is considered to have been convicted of a felony of  
12 the third degree.

13 (e) The sentence of a person punished under Section 12.35(c)  
14 may be further enhanced under Subsection (a)(2) as though the  
15 person were on trial for a felony of the third degree ~~[(a)(1) If it~~  
16 ~~is shown on the trial of a state jail felony punishable under~~  
17 ~~Section 12.35(a) that the defendant has previously been finally~~  
18 ~~convicted of two state jail felonies, on conviction the defendant~~  
19 ~~shall be punished for a third-degree felony.~~

20 ~~[(2) If it is shown on the trial of a state jail felony~~  
21 ~~punishable under Section 12.35(a) that the defendant has previously~~  
22 ~~been finally convicted of two felonies, and the second previous~~  
23 ~~felony conviction is for an offense that occurred subsequent to the~~  
24 ~~first previous conviction having become final, on conviction the~~  
25 ~~defendant shall be punished for a second-degree felony.~~

26 ~~[(3) If it is shown on the trial of a state jail felony~~  
27 ~~punishable under Section 12.35(c) or on the trial of a third-degree~~

1 ~~felony that the defendant has been once before convicted of a~~  
2 ~~felony, on conviction he shall be punished for a second-degree~~  
3 ~~felony.~~

4 ~~[(b) If it is shown on the trial of a second-degree felony~~  
5 ~~that the defendant has been once before convicted of a felony, on~~  
6 ~~conviction he shall be punished for a first-degree felony.~~

7 ~~[(c)(1) Except as provided by Subdivision (2), if it is~~  
8 ~~shown on the trial of a first-degree felony that the defendant has~~  
9 ~~been once before convicted of a felony, on conviction he shall be~~  
10 ~~punished by imprisonment in the institutional division of the Texas~~  
11 ~~Department of Criminal Justice for life, or for any term of not more~~  
12 ~~than 99 years or less than 15 years. In addition to imprisonment,~~  
13 ~~an individual may be punished by a fine not to exceed \$10,000.~~

14 ~~[(2) A defendant shall be punished by imprisonment in~~  
15 ~~the institutional division for life if:~~

16 ~~[(A) the defendant is convicted of an offense:~~

17 ~~[(i) under Section 22.021 or 22.011, Penal~~  
18 ~~Code,~~

19 ~~[(ii) under Section 20.04(a)(4), Penal~~  
20 ~~Code, if the defendant committed the offense with the intent to~~  
21 ~~violate or abuse the victim sexually, or~~

22 ~~[(iii) under Section 30.02, Penal Code,~~  
23 ~~punishable under Subsection (d) of that section, if the defendant~~  
24 ~~committed the offense with the intent to commit a felony described~~  
25 ~~by Subparagraph (i) or (ii) or a felony under Section 21.11 or~~  
26 ~~22.011, Penal Code, and~~

27 ~~[(B) the defendant has been previously convicted~~

1 ~~of an offense.~~

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

5 ~~[(ii) under Section 21.11, 22.011, 22.021,~~  
6 ~~or 25.02, Penal Code;~~

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

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

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

17 ~~[(d) If it is shown on the trial of a felony offense other~~  
18 ~~than a state jail felony punishable under Section 12.35(a) that the~~  
19 ~~defendant has previously been finally convicted of two felony~~  
20 ~~offenses, and the second previous felony conviction is for an~~  
21 ~~offense that occurred subsequent to the first previous conviction~~  
22 ~~having become final, on conviction he shall be punished by~~  
23 ~~imprisonment in the institutional division of the Texas Department~~  
24 ~~of Criminal Justice for life, or for any term of not more than 99~~  
25 ~~years or less than 25 years.~~

26 ~~[(e) A previous conviction for a state jail felony punished~~  
27 ~~under Section 12.35(a) may not be used for enhancement purposes~~

1 ~~under Subsection (b), (c), or (d).~~

2 ~~[(f) For the purposes of Subsections (a), (b), (c)(1), and~~  
3 ~~(e), an adjudication by a juvenile court under Section 54.03,~~  
4 ~~Family Code, that a child engaged in delinquent conduct on or after~~  
5 ~~January 1, 1996, constituting a felony offense for which the child~~  
6 ~~is committed to the Texas Youth Commission under Section~~  
7 ~~54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f),~~  
8 ~~Family Code, is a final felony conviction.~~

9 ~~[(g) For the purposes of Subsection (c)(2):~~

10 ~~[(1) a defendant has been previously convicted of an~~  
11 ~~offense listed under Subsection (c)(2)(B) if the defendant was~~  
12 ~~adjudged guilty of the offense or entered a plea of guilty or nolo~~  
13 ~~contendere in return for a grant of deferred adjudication,~~  
14 ~~regardless of whether the sentence for the offense was ever imposed~~  
15 ~~or whether the sentence was probated and the defendant was~~  
16 ~~subsequently discharged from community supervision; and~~

17 ~~[(2) a conviction under the laws of another state for~~  
18 ~~an offense containing elements that are substantially similar to~~  
19 ~~the elements of an offense listed under Subsection (c)(2)(B) is a~~  
20 ~~conviction of an offense listed under Subsection (c)(2)(B)].~~

21 SECTION 2. Section 4, Article 37.07, Code of Criminal  
22 Procedure, is amended by amending Subsections (b) and (c) and  
23 adding Subsection (d) to read as follows:

24 (b) In the penalty phase of the trial of a felony case in  
25 which the punishment is to be assessed by the jury rather than the  
26 court, if the offense is punishable as a felony of the first degree,  
27 if ~~[a prior conviction has been alleged for enhancement of~~

1 ~~punishment as provided by Section 12.42(b), (c), or (d), Penal~~  
2 ~~Code, or if]~~ the offense is a felony not designated as a capital  
3 felony or a felony of the first, second, or third degree and the  
4 maximum term of imprisonment that may be imposed for the offense is  
5 longer than 60 years, unless the offense of which the jury has found  
6 the defendant guilty is listed in Section 3g(a)(1), Article 42.12,  
7 of this code or the judgment contains an affirmative finding under  
8 Section 3g(a)(2), Article 42.12, of this code, the court shall  
9 charge the jury in writing as follows:

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

18 "It is also possible that the length of time for which the  
19 defendant will be imprisoned might be reduced by the award of  
20 parole.

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

27 "It cannot accurately be predicted how the parole law and



1 good conduct time might be applied to this defendant if he is  
2 sentenced to a term of imprisonment, because the application of  
3 these laws will depend on decisions made by prison and parole  
4 authorities.

5 "You may consider the existence of the parole law and good  
6 conduct time. However, you are not to consider the extent to which  
7 good conduct time may be awarded to or forfeited by this particular  
8 defendant. You are not to consider the manner in which the parole  
9 law may be applied to this particular defendant."

10 (c) In the penalty phase of the trial of a felony case in  
11 which the punishment is to be assessed by the jury rather than the  
12 court, if the offense is punishable as a felony of the second or  
13 third degree, if ~~[a prior conviction has been alleged for~~  
14 ~~enhancement as provided by Section 12.42(a), Penal Code, or if]~~ the  
15 offense is a felony not designated as a capital felony or a felony  
16 of the first, second, or third degree and the maximum term of  
17 imprisonment that may be imposed for the offense is 60 years or  
18 less, unless the offense of which the jury has found the defendant  
19 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or  
20 the judgment contains an affirmative finding under Section  
21 3g(a)(2), Article 42.12, of this code, the court shall charge the  
22 jury in writing as follows:

23 "Under the law applicable in this case, the defendant, if  
24 sentenced to a term of imprisonment, may earn time off the period of  
25 incarceration imposed through the award of good conduct time.  
26 Prison authorities may award good conduct time to a prisoner who  
27 exhibits good behavior, diligence in carrying out prison work

1 assignments, and attempts at rehabilitation. If a prisoner engages  
2 in misconduct, prison authorities may also take away all or part of  
3 any good conduct time earned by the prisoner.

4 "It is also possible that the length of time for which the  
5 defendant will be imprisoned might be reduced by the award of  
6 parole.

7 "Under the law applicable in this case, if the defendant is  
8 sentenced to a term of imprisonment, he will not become eligible for  
9 parole until the actual time served plus any good conduct time  
10 earned equals one-fourth of the sentence imposed. Eligibility for  
11 parole does not guarantee that parole will be granted.

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

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

22 (d) In the penalty phase of the trial of a felony case in  
23 which the punishment is to be assessed by the jury and in which a  
24 prior conviction has been alleged for enhancement of punishment as  
25 provided by Section 12.42, Penal Code, the court shall charge the  
26 jury in writing in the same manner as required by Subsections (b)  
27 and (c) of this section, except that the court shall include in the

1 charge the applicable minimum and maximum terms of confinement  
2 required by Section 12.42.

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

5 (c) On expiration of a community supervision period imposed  
6 under Subsection (a) of this section, if the judge has not proceeded  
7 to adjudication of guilt, the judge shall dismiss the proceedings  
8 against the defendant and discharge him. The judge may dismiss the  
9 proceedings and discharge a defendant, other than a defendant  
10 charged with an offense requiring the defendant to register as a sex  
11 offender under Chapter 62, [~~as added by Chapter 668, Acts of the~~  
12 ~~75th Legislature, Regular Session, 1997,~~] prior to the expiration  
13 of the term of community supervision if in the judge's opinion the  
14 best interest of society and the defendant will be served. The  
15 judge may not dismiss the proceedings and discharge a defendant  
16 charged with an offense requiring the defendant to register under  
17 Chapter 62 [~~, as added by Chapter 668, Acts of the 75th Legislature,~~  
18 ~~Regular Session, 1997]. A [Except as provided by Section 12.42(g),~~  
19 ~~Penal Code, a] dismissal and discharge under this section may not be  
20 deemed a conviction for the purposes of disqualifications or  
21 disabilities imposed by law for conviction of an offense. For any  
22 defendant who receives a dismissal and discharge under this  
23 section:~~

24 (1) upon conviction of a subsequent offense, the fact  
25 that the defendant had previously received community supervision  
26 with a deferred adjudication of guilt shall be admissible before  
27 the court or jury to be considered on the issue of penalty;

1           (2) if the defendant is an applicant for a license or  
2 is a licensee under Chapter 42, Human Resources Code, the Texas  
3 Department of Human Services may consider the fact that the  
4 defendant previously has received community supervision with a  
5 deferred adjudication of guilt under this section in issuing,  
6 renewing, denying, or revoking a license under that chapter; and

7           (3) if the defendant is a person who has applied for  
8 registration to provide mental health or medical services for the  
9 rehabilitation of sex offenders, the Interagency Council on Sex  
10 Offender Treatment may consider the fact that the defendant has  
11 received community supervision under this section in issuing,  
12 renewing, denying, or revoking a license or registration issued by  
13 that council.

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 purposes of  
19 this section, an offense was committed before the effective date of  
20 this Act if any element of the offense was committed before that  
21 date.

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