

BILL ANALYSIS

C.S.H.B. 436
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to Texas Court of Criminal Appeals Judge Cathy Cochran, "We are headed for a train wreck in Texas law because our bedrock procedural protections cannot adapt to the common factual scenario of an ongoing crime involving an abusive sexual relationship of a child under current penal provisions." *Dixon v. State*, 201 S.W.3d 731 (Tex. Crim. App. 2006) (Cochran, J., concurring). In that same opinion, she recommends that the legislature remedy the problem by establishing a crime that focuses on the pattern of abuse over a period of time by an adult against a young child. Consistent with that request, C.S.H.B. 436 establishes the new offense of continuous sexual abuse of a young child or children. This new penal law will better accommodate the testimony of young children, who are not able to testify about time, place and specific number of incidents of sexual abuse in the same manner as an adult. This same approach has been successful in other states, including California and New York.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Committee Substitute to House Bill 436 establishes Section 21.02 of the Penal Code entitled "Continuous Sexual Abuse of a Young Child or Children." Under this new section, a person commits an offense if during a period that is 90 days or more in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and, at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim of the offense is a child younger than 14 years old. Subsection (c) provides that, for the purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws: (1) aggravated kidnapping under Section 20.04(a)(4) if the defendant committed the offense with the intent to violate or abuse the victim sexually; (2) indecency with a child under Section 21.11(a)(1); (3) sexual assault under Section 22.011; (4) aggravated sexual assault under Section 22.021; (5) burglary under Section 30.02 if the offense is a felony of the first degree and the defendant committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4); and (6) sexual performance by a child under Section 43.25.

If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. However, the jury must agree unanimously that the defendant, during a period that is 90 days or more in duration, committed two or more acts of sexual abuse.

A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the alleged continuous sexual abuse of a child offense unless the offense listed in Subsection (c) is charged in the alternative, occurred outside the period in which the continuous sexual abuse of a child offense was committed, or is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b). The new section prohibits a defendant from being charged with more than one count of continuous sexual abuse of a child if all the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.

An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. For the purposes of this section, "child" has the meaning assigned by Section 22.011(c), Penal Code.

C.S.H.B. 436 amends Section 508.145 of the Government Code by adding that an inmate serving a sentence for Continuous Sexual Abuse of a Young Child or Children (21.02, Penal Code) is not eligible for parole until the inmate's actual calendar time served, without consideration for good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but never less than 25 years.

C.S.H.B. 436 amends Section 508.149(a) of the Government Code by adding that an inmate serving a sentence for or has previously been convicted of an offense under 21.02 of the Penal Code (Continuous Sexual Abuse of a Young Child or Children) is prohibited from being released to mandatory supervision.

C.S.H.B. 436 amends Section 4, Article 37.07 of the Code of Criminal Procedure by adding 21.02 of the Penal Code (Continuous Sexual Abuse of a Young Child or Children) to the list of offenses in Subsections (a) and (b) which are exempted from the application of this section. The bill adds Subsection (e) to Section 4, Article 37.07, Code of Criminal Procedure, which states that in the penalty phase of the trial under Section 21.02, Penal Code, in which the punishment is to be assessed by the jury, if the jury finds the defendant guilty the court shall charge the jury in writing with the stipulations of parole as indicated in the bill, including the fact that defendant will not be eligible for parole until actual time served, without consideration for good conduct time, equals one-half of the sentence imposed or 30 calendar years, whichever is less, or, if the defendant is sentence to a term of less than 50 years, the person will serve at least 25 years before becoming eligible for parole.

C.S.H.B. 436 amends Article 62.001(5) of the Code of Criminal Procedure by adding 21.02 of the Penal Code (Continuous Sexual Abuse of a Young Child or Children) and a violation of 33.021 of the Penal Code (Online Solicitation of a Minor) to the list of offenses in which "reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal is a conviction for or an adjudication for or based on the offenses listed above.

The bill makes additional conforming amendments to the Civil Practices and Remedies Code, Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, Occupations Code, and the Penal Code.

All amendments to the law made by C.S.H.B. 436 apply to an offense committed on or after September 1, 2007, except for the amendment to Section 841.002 of the Health and Safety Code (Definitions for Civil Commitment of Sexually Violent Predators), which applies only to an individual who on or after September 1, 2007, is serving a sentence in the Texas Department of Criminal Justice or is committed to the Department of State Health Services for an offense committed before, on or after the effective date of the bill.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends Subsection (b)(1) of the original to read in part that a person commits an offense if the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims. The original stated the person must have committed an offense listed in Subsection (c) more than once or committed more than one offense listed in Subsection (c), regardless of whether the offenses are committed against one or more victims.

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Subsection (c) of the original is changed from listing offenses which constituted elements of the offense described by Subsection (b) to define "act of sexual abuse." The substitute makes conforming changes to reflect the new definition of "act of sexual abuse".

Subsection (d) is amended by the substitute to read that if a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The original bill also required unanimous agreement on the person against whom the offenses were committed and did not include the words "exact date". The substitute also provides that the jury must agree unanimously that the defendant, during a period that is 90 days or more in duration, committed two or more acts of sexual abuse. The original required agreement that the defendant, during a period that is 90 days or more in duration, committed an offense listed in Subsection (c) more than one time or committed more than one offense.

In Subsection (e), the substitute provides that a defendant may not be convicted in the same criminal action of an offense listed in Subsection (c) if the victims are the same person. The original bill stated that the defendant may not be prosecuted in the same criminal action in such a situation. The substitute also adds Subsection (e)(3) to the original bill.

The substitute amends Section 1.02 of the original bill by providing that a defendant is not eligible for parole until the inmate's actual calendar time served, without consideration for good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but never less than 25 years. The original bill stated that defendant is not eligible for parole until the inmate's actual calendar time served, without consideration for good conduct time, equals 25 calendar years.

The substitute amends Section 4, Article 37.07 of the Code of Criminal Procedure to provide that the jury will be charged with the fact that a defendant will not become eligible for parole until actual time served, without consideration for good conduct time, equals one-half of the sentence imposed or 30 calendar years, whichever is less, or, if the defendant is sentence to a term of less than 50 years, the person will serve at least 25 years before becoming eligible for parole. The original stated that defendant will not be eligible for parole for 25 years.