

By: Riddle

H.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.

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

SECTION 1. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

Art. 12.01. FELONIES. (a) Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(C) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee,

1 beneficiary or settlor of a trust interested in such estate;

2 (B) theft by a public servant of government
3 property over which he exercises control in his official capacity;

4 (C) forgery or the uttering, using or passing of
5 forged instruments;

6 (D) injury to a child, elderly individual, or
7 disabled individual punishable as a felony of the first degree
8 under Section 22.04, Penal Code;

9 (E) sexual assault, except as provided by
10 Subdivision (1) or (6) [~~(5)~~]; or

11 (F) arson;

12 (3) seven years from the date of the commission of the
13 offense:

14 (A) misapplication of fiduciary property or
15 property of a financial institution;

16 (B) securing execution of document by deception;

17 or

18 (C) a violation under Sections 162.403(22)-(39),
19 Tax Code;

20 (4) five years from the date of the commission of the
21 offense:

22 (A) theft or [~~burglary~~] robbery;

23 (B) except as provided by Subdivision (6),
24 kidnapping or burglary;

25 (C) injury to a child, elderly individual, or
26 disabled individual that is not punishable as a felony of the first
27 degree under Section 22.04, Penal Code;

1 (D) abandoning or endangering a child; or

2 (E) insurance fraud;

3 (5) ten years from the 18th birthday of the victim of
4 the offense of ~~+~~

5 [~~(A)~~] indecency with a child under Section
6 21.11(a)(2) [~~21.11(a)(1) or (2)~~], Penal Code; ~~or~~

7 [~~(B) except as provided by Subdivision (1),~~
8 ~~sexual assault under Section 22.011(a)(2), Penal Code, or~~
9 ~~aggravated sexual assault under Section 22.021(a)(1)(B), Penal~~
10 ~~Code; or]~~

11 (6) except as provided by Subdivision (1), 20 years
12 from the 18th birthday of the victim of a sexually violent offense,
13 if the investigation of the offense shows that the victim is younger
14 than 17 years of age at the time the offense is committed; or

15 (7) three years from the date of the commission of the
16 offense: all other felonies.

17 (b) For purposes of this article, "sexually violent
18 offense" has the meaning assigned by Section 1.07, Penal Code.

19 SECTION 2. Section 2, Article 37.071, Code of Criminal
20 Procedure, is amended by adding Subsection (j) to read as follows:

21 (j) In a case punishable as a capital felony under Section
22 12.42(c)(3), Penal Code, the court may not submit the issue
23 described by Subsection (b)(2) to the jury.

24 SECTION 3. Section 4, Article 37.07, Code of Criminal
25 Procedure, is amended by amending Subsections (a) and (b) and
26 adding Subsection (e) to read as follows:

27 (a) In the penalty phase of the trial of a felony case in

1 which the punishment is to be assessed by the jury rather than the
2 court, if the offense of which the jury has found the defendant
3 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or
4 if the judgment contains an affirmative finding under Section
5 3g(a)(2), Article 42.12, of this code, unless the defendant has
6 been convicted of a capital felony or of a sexually violent offense
7 the victim of which is younger than 14 years of age at the time the
8 offense is committed, the court shall charge the jury in writing as
9 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 equals one-half of the sentence
24 imposed or 30 years, whichever is less, without consideration of
25 any good conduct time he may earn. If the defendant is sentenced to
26 a term of less than four years, he must serve at least two years
27 before he is eligible for parole. Eligibility for parole does not

1 guarantee that parole will be granted.

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

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

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

1 "Under the law applicable in this case, the defendant, if
2 sentenced to a term of imprisonment, may earn time off the period of
3 incarceration imposed through the award of good conduct time.
4 Prison authorities may award good conduct time to a prisoner who
5 exhibits good behavior, diligence in carrying out prison work
6 assignments, and attempts at rehabilitation. If a prisoner engages
7 in misconduct, prison authorities may also take away all or part of
8 any good conduct time earned by the prisoner.

9 "It is also possible that the length of time for which the
10 defendant will be imprisoned might be reduced by the award of
11 parole.

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

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

23 "You may consider the existence of the parole law and good
24 conduct time. However, you are not to consider the extent to which
25 good conduct time may be awarded to or forfeited by this particular
26 defendant. You are not to consider the manner in which the parole
27 law may be applied to this particular defendant."

1 (e) In this article, "sexually violent offense" has the
2 meaning assigned by Section 1.07, Penal Code.

3 SECTION 4. Section 508.145, Government Code, is amended by
4 adding Subsection (b) and amending Subsections (c) and (d) to read
5 as follows:

6 (b) Notwithstanding Subsection (c) or (d), an inmate is not
7 eligible for release on parole if the inmate is serving a sentence:

8 (1) for an offense for which punishment is increased
9 under Section 12.42(c)(2), Penal Code, and the victim of which is
10 younger than 14 years of age at the time the offense is committed;
11 or

12 (2) for an offense described by Section 3g(a)(1)(C),
13 (D), or (E), Article 42.12, Code of Criminal Procedure, the victim
14 of which is younger than 14 years of age at the time the offense is
15 committed.

16 (c) Subject to Subsection (b), an [An] inmate serving a
17 sentence under Section 12.42(c)(2), Penal Code, is not eligible for
18 release on parole until the actual calendar time the inmate has
19 served, without consideration of good conduct time, equals 35
20 calendar years.

21 (d) Subject to Subsection (b), an [An] inmate serving a
22 sentence for an offense described by Section 3g(a)(1)(A), (C), (D),
23 (E), (F), (G), or (H), Article 42.12, Code of Criminal Procedure, or
24 for an offense for which the judgment contains an affirmative
25 finding under Section 3g(a)(2) of that article, is not eligible for
26 release on parole until the inmate's actual calendar time served,
27 without consideration of good conduct time, equals one-half of the

1 sentence or 30 calendar years, whichever is less, but in no event is
2 the inmate eligible for release on parole in less than two calendar
3 years.

4 SECTION 5. Section 508.149(a), Government Code, is amended
5 to read as follows:

6 (a) An inmate may not be released to mandatory supervision
7 if the inmate is serving a sentence for or has been previously
8 convicted of:

9 (1) an offense for which the judgment contains an
10 affirmative finding under Section 3g(a)(2), Article 42.12, Code of
11 Criminal Procedure;

12 (2) a first degree felony or a second degree felony
13 under Section 19.02, Penal Code;

14 (3) a capital felony under Section 19.03, Penal Code;

15 (4) a first degree felony or a second degree felony
16 under Section 20.04, Penal Code;

17 (5) an offense [~~a second degree felony or a third~~
18 ~~degree felony~~] under Section 21.11, Penal Code;

19 (6) a [~~second degree~~] felony under Section 22.011,
20 Penal Code;

21 (7) a first degree felony or a second degree felony
22 under Section 22.02, Penal Code;

23 (8) a first degree felony under Section 22.021, Penal
24 Code;

25 (9) a first degree felony under Section 22.04, Penal
26 Code;

27 (10) a first degree felony under Section 28.02, Penal

1 Code;

2 (11) a second degree felony under Section 29.02, Penal
3 Code;

4 (12) a first degree felony under Section 29.03, Penal
5 Code;

6 (13) a first degree felony under Section 30.02, Penal
7 Code; ~~[or]~~

8 (14) a felony for which the punishment is increased
9 under Section 481.134 or Section 481.140, Health and Safety Code;
10 or

11 (15) a first degree felony under Section 43.25, Penal
12 Code.

13 SECTION 6. Section 841.082, Health and Safety Code, is
14 amended by adding Subsection (b) to read as follows:

15 (b) A tracking service to which a person is required to
16 submit under Subsection (a)(5) must:

17 (1) track the person's location in real time;

18 (2) be able to provide a real-time report of the
19 person's location to the case manager at the case manager's request;
20 and

21 (3) periodically provide a cumulative report of the
22 person's location to the case manager.

23 SECTION 7. Section 1.07(a), Penal Code, is amended by
24 adding Subdivision (50) to read as follows:

25 (50) "Sexually violent offense" means any of the
26 following offenses:

27 (A) an offense under Section 21.11(a)(1)

1 (Indecency with a child), 22.011 (Sexual assault), or 22.021
2 (Aggravated sexual assault);

3 (B) an offense under Section 43.25 (Sexual
4 performance by a child);

5 (C) an offense under Section 20.04(a)(4)
6 (Aggravated kidnapping), if the defendant committed the offense
7 with intent to violate or abuse the victim sexually; or

8 (D) an offense under Section 30.02 (Burglary), if
9 the offense is punishable under Subsection (d) of that section and
10 the defendant committed the offense with intent to commit an
11 offense described by Paragraph (A) or (C).

12 SECTION 8. Section 12.42(c), Penal Code, is amended to read
13 as follows:

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

21 (2) Notwithstanding Subdivision (1), a [A] defendant
22 shall be punished by imprisonment in the institutional division for
23 life if:

24 (A) the defendant is convicted of an offense:
25 (i) under Section 21.11, 22.021, or 22.011,
26 Penal Code;

27 (ii) under Section 20.04(a)(4), Penal Code,

1 if the defendant committed the offense with the intent to violate or
2 abuse the victim sexually; ~~[or]~~

3 (iii) under Section 30.02, Penal Code,
4 punishable under Subsection (d) of that section, if the defendant
5 committed the offense with the intent to commit a felony described
6 by Subparagraph (i) or (ii) ~~[or a felony under Section 21.11 or~~
7 ~~22.011, Penal Code]~~; or

8 (iv) under Section 43.25, Penal Code; and

9 (B) the defendant has been previously convicted
10 of an offense:

11 (i) under Section 43.25 or 43.26, Penal
12 Code, or an offense under Section 43.23, Penal Code, punishable
13 under Subsection (h) of that section;

14 (ii) under Section 21.11, 22.011, 22.021,
15 or 25.02, Penal Code;

16 (iii) under Section 20.04(a)(4), Penal
17 Code, if the defendant committed the offense with the intent to
18 violate or abuse the victim sexually;

19 (iv) under Section 30.02, Penal Code,
20 punishable under Subsection (d) of that section, if the defendant
21 committed the offense with the intent to commit a felony described
22 by Subparagraph (ii) or (iii); or

23 (v) under the laws of another state
24 containing elements that are substantially similar to the elements
25 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

26 (3) Notwithstanding Subdivision (1) or (2), a
27 defendant shall be punished for a capital felony if it is shown on

1 the trial of a sexually violent offense punishable as a felony of
2 the first degree that:

3 (A) the victim of the offense is younger than 14
4 years of age at the time the offense is committed; and

5 (B) the defendant has previously been finally
6 convicted of:

7 (i) a sexually violent offense, the victim
8 of which was younger than 14 years of age at the time that offense
9 was committed; or

10 (ii) an offense under the laws of another
11 state containing elements that are substantially similar to the
12 elements of a sexually violent offense, the victim of which was
13 younger than 14 years of age at the time that offense was committed.

14 SECTION 9. Section 20.04(d), Penal Code, is amended to read
15 as follows:

16 (d) At the punishment stage of a trial, the defendant may
17 raise the issue as to whether he voluntarily released the victim in
18 a safe place. If the defendant proves the issue in the affirmative
19 by a preponderance of the evidence, the offense is a felony of the
20 second degree. This subsection does not apply if the victim of the
21 offense is younger than 14 years of age at the time the offense is
22 committed.

23 SECTION 10. Section 21.11(d), Penal Code, is amended to
24 read as follows:

25 (d) An offense under Subsection (a)(1) is a felony of the
26 second degree, except that the offense is a felony of the first
27 degree if the victim is younger than 14 years of age at the time the

1 offense is committed. An [~~and an~~] offense under Subsection (a)(2)
2 is a felony of the third degree.

3 SECTION 11. Sections 43.25(c) and (e), Penal Code, are
4 amended to read as follows:

5 (c) An offense under Subsection (b) is a felony of the
6 second degree, except that the offense is a felony of the first
7 degree if the victim is younger than 14 years of age at the time the
8 offense is committed.

9 (e) An offense under Subsection (d) is a felony of the third
10 degree, except that the offense is a felony of the first degree if
11 the victim is younger than 14 years of age at the time the offense is
12 committed.

13 SECTION 12. (a) Except as provided by Subsections (b) and
14 (c), the change in law made by this Act applies only to an offense
15 committed on or after September 1, 2007. An offense committed
16 before September 1, 2007, is covered by the law in effect when the
17 offense was committed, and the former law is continued in effect for
18 that purpose. For the purposes of this section, an offense was
19 committed before September 1, 2007, if any element of the offense
20 occurred before that date.

21 (b) The change in law made by this Act to Section 841.082,
22 Health and Safety Code, applies only to an individual who on or
23 after September 1, 2007, is serving a sentence in the Texas
24 Department of Criminal Justice or is committed to the Department of
25 State Health Services for an offense committed before, on, or after
26 the effective date of this Act.

27 (c) The change in law made by this Act to Article 12.01, Code

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1 of Criminal Procedure, does not apply to an offense if the
2 prosecution of that offense became barred by limitation before the
3 effective date of this Act. The prosecution of that offense remains
4 barred as if this Act had not taken effect.

5 SECTION 13. This Act takes effect September 1, 2007.