

By: Anderson

H.B. No. 205

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain sex offenses committed against a child.

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

SECTION 1. Section 508.145, Government Code, is amended by amending Subsection (d) and adding Subsections (g) and (h) to read as follows:

(d) An inmate serving a sentence for an offense described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), or (H), Article 42.12, Code of Criminal Procedure, or for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole:

(1) in less than two calendar years, if the inmate is serving a sentence for an offense other than an offense described by Section 3g(a)(1)(C), (D), or (E); or

(2) in less than 25 calendar years, if the inmate is serving a sentence for an offense described by Section 3g(a)(1)(C), (D), or (E).

(g) An inmate serving a sentence for an offense punishable as a felony of the first degree as described by any of the following

1 laws is not eligible for release on parole until the inmate's actual
2 calendar time served, without consideration of good conduct time,
3 equals 25 calendar years:

4 (1) Section 20.04(e), Penal Code;

5 (2) Section 21.08(c), Penal Code;

6 (3) Section 21.11(f), Penal Code;

7 (4) Section 22.021(f), Penal Code;

8 (5) Section 25.02(d), Penal Code;

9 (6) Section 30.02(e), Penal Code;

10 (7) Section 43.23(1), Penal Code;

11 (8) Section 43.25(i), Penal Code; or

12 (9) Section 43.26(i), Penal Code.

13 (h) An inmate serving a life sentence under Section
14 12.42(c)(3), Penal Code, is not eligible for release on parole
15 until the inmate's actual calendar time served, without
16 consideration of good conduct time, equals 25 calendar years.

17 SECTION 2. Section 508.146(a), Government Code, is amended
18 to read as follows:

19 (a) An inmate, other than an inmate who is serving a
20 sentence of death or life without parole, ~~[or an inmate]~~ who has a
21 reportable conviction or adjudication under Chapter 62, Code of
22 Criminal Procedure, or who is serving a sentence for a felony of the
23 first degree as described by Section 21.08 or 43.23, Penal Code, may
24 be released on medically recommended intensive supervision on a
25 date designated by a parole panel described by Subsection (e),
26 except that an inmate with an instant offense that is an offense
27 described in Section 3g, Article 42.12, Code of Criminal Procedure,

1 may only be considered if a medical condition of terminal illness or
2 long-term care has been diagnosed, if:

3 (1) the Texas Correctional Office on Offenders with
4 Medical or Mental Impairments, in cooperation with the Correctional
5 Managed Health Care Committee, identifies the inmate as being
6 elderly, physically disabled, mentally ill, terminally ill, or
7 mentally retarded or having a condition requiring long-term care;

8 (2) the parole panel determines that, based on the
9 inmate's condition and a medical evaluation, the inmate does not
10 constitute a threat to public safety; and

11 (3) the Texas Correctional Office on Offenders with
12 Medical or Mental Impairments, in cooperation with the pardons and
13 paroles division, has prepared for the inmate a medically
14 recommended intensive supervision plan that requires the inmate to
15 submit to electronic monitoring, places the inmate on
16 super-intensive supervision, or otherwise ensures appropriate
17 supervision of the inmate.

18 SECTION 3. Section 508.149(a), Government Code, is amended
19 to read as follows:

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

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

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

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

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

4 (5) a [~~second degree felony or a third degree~~] felony
5 under Section 21.08 or 21.11, Penal Code;

6 (6) a second degree felony under Section 22.011, Penal
7 Code;

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

10 (8) a first degree felony under Section 22.021, Penal
11 Code;

12 (9) a first degree felony under Section 22.04, Penal
13 Code;

14 (10) a first degree felony under Section 28.02, Penal
15 Code;

16 (11) a second degree felony under Section 29.02, Penal
17 Code;

18 (12) a first degree felony under Section 29.03, Penal
19 Code;

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

22 (14) a felony for which the punishment is increased
23 under Section 481.134 or Section 481.140, Health and Safety Code;
24 or

25 (15) a first degree felony under Section 25.02, 43.23,
26 43.25, or 43.26, Penal Code.

27 SECTION 4. Section 5(d), Article 42.12, Code of Criminal

1 Procedure, is amended to read as follows:

2 (d) In all other cases the judge may grant deferred
3 adjudication unless:

4 (1) the defendant is charged with an offense:

5 (A) under Section 49.04, 49.05, 49.06, 49.07, or
6 49.08, Penal Code; or

7 (B) for which punishment may be increased under
8 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
9 is shown that the defendant has been previously convicted of an
10 offense for which punishment was increased under any one of those
11 subsections; ~~or~~

12 (2) the defendant:

13 (A) is charged with an offense under Section
14 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
15 victim, or a felony described by Section 13B(b) of this article; and

16 (B) has previously been placed on community
17 supervision for any offense under Paragraph (A) of this
18 subdivision; or

19 (3) the defendant is charged with an offense
20 punishable as a felony of the first degree by a term of imprisonment
21 as described by:

22 (A) Section 20.04(e), Penal Code;

23 (B) Section 21.08(c), Penal Code;

24 (C) Section 21.11(f), Penal Code;

25 (D) Section 22.021(f), Penal Code;

26 (E) Section 25.02(d), Penal Code;

27 (F) Section 30.02(e), Penal Code;

- 1 (G) Section 43.23(1), Penal Code;
- 2 (H) Section 43.25(i), Penal Code; or
- 3 (I) Section 43.26(i), Penal Code.

4 SECTION 5. Section 12.42(c), Penal Code, is amended by
5 amending Subdivision (1) and adding Subdivision (3) to read as
6 follows:

7 (1) Except as provided by Subdivision (2) or (3), if it
8 is shown on the trial of a first-degree felony that the defendant
9 has been once before convicted of a felony, on conviction he shall
10 be punished by imprisonment in [~~the institutional division of~~] the
11 Texas Department of Criminal Justice for life, or for any term of
12 not more than 99 years or less than 15 years. In addition to
13 imprisonment, an individual may be punished by a fine not to exceed
14 \$10,000.

15 (3) If it is shown on the trial of an offense
16 punishable as a first-degree felony by a term of imprisonment as
17 described by Section 20.04(e), 21.08(c), 21.11(f), 22.021(f),
18 25.02(d), 30.02(e), 43.23(1), 43.25(i), or 43.26(i) that the
19 defendant has been once before convicted of a felony, on conviction
20 the defendant may be punished by imprisonment in the Texas
21 Department of Criminal Justice for life, instead of for the term
22 prescribed for the offense. In addition to imprisonment, an
23 individual may be punished by a fine not to exceed \$10,000.

24 SECTION 6. Section 20.04, Penal Code, is amended by adding
25 Subsection (e) to read as follows:

26 (e) If it is shown on the trial of an offense under
27 Subsection (a)(4) that the victim is younger than 13 years of age

1 and that the actor committed the offense with the intent to violate
2 or abuse the victim sexually, on conviction the defendant shall be
3 punished by imprisonment in the Texas Department of Criminal
4 Justice for any term of not more than 99 years or less than 25 years.
5 Subsection (d) does not apply to an offense punishable under this
6 subsection.

7 SECTION 7. Section 21.08, Penal Code, is amended by
8 amending Subsection (b) and adding Subsection (c) to read as
9 follows:

10 (b) An offense under this section is a Class B misdemeanor,
11 unless it is shown on the trial of the offense that the other person
12 who is present is younger than 13 years of age, in which event an
13 offense under this section is a felony of the first degree.

14 (c) On conviction of an offense punishable as a felony of
15 the first degree under Subsection (b), the defendant shall be
16 punished by imprisonment in the Texas Department of Criminal
17 Justice for any term of not more than 99 years or less than 25 years.

18 SECTION 8. Section 21.11, Penal Code, is amended by
19 amending Subsection (d) and adding Subsections (e) and (f) to read
20 as follows:

21 (d) Except as provided by Subsection (e), an [Aa] offense
22 under Subsection (a)(1) is a felony of the second degree and an
23 offense under Subsection (a)(2) is a felony of the third degree.

24 (e) An offense under this section is a felony of the first
25 degree if the victim is younger than 13 years of age.

26 (f) On conviction of an offense punishable as a felony of
27 the first degree under Subsection (e), the defendant shall be

1 punished by imprisonment in the Texas Department of Criminal
2 Justice for any term of not more than 99 years or less than 25 years.

3 SECTION 9. Section 22.021, Penal Code, is amended by adding
4 Subsection (f) to read as follows:

5 (f) If it is shown on the trial of an offense under this
6 section that the victim is younger than 13 years of age, on
7 conviction the defendant shall be punished by imprisonment in the
8 Texas Department of Criminal Justice for any term of not more than
9 99 years or less than 25 years.

10 SECTION 10. Section 25.02, Penal Code, is amended by
11 amending Subsection (c) and adding Subsection (d) to read as
12 follows:

13 (c) An offense under this section is a felony of the third
14 degree, unless:

15 (1) the offense is committed under Subsection (a)(6),
16 in which event the offense is a felony of the second degree; or

17 (2) it is shown on the trial of an offense under this
18 section that the victim is younger than 13 years of age, in which
19 event the offense is a felony of the first degree.

20 (d) On conviction of an offense punishable as a felony of
21 the first degree under Subsection (c)(2), the defendant shall be
22 punished by imprisonment in the Texas Department of Criminal
23 Justice for any term of not more than 99 years or less than 25 years.

24 SECTION 11. Section 30.02, Penal Code, is amended by adding
25 Subsection (e) to read as follows:

26 (e) If it is shown on the trial of an offense punishable
27 under Subsection (d) that the actor committed the offense with the

1 intent to commit a felony for which punishment may be enhanced under
2 Section 12.42(c)(3) and that the intended victim of that felony is
3 younger than 13 years of age, on conviction the defendant shall be
4 punished by imprisonment in the Texas Department of Criminal
5 Justice for any term of not more than 99 years or less than 25 years.

6 SECTION 12. Section 43.23, Penal Code, is amended by
7 amending Subsections (b), (d), and (j) and adding Subsections (k)
8 and (l) to read as follows:

9 (b) Except as provided by Subsections [~~Subsection~~] (h) and
10 (k), an offense under Subsection (a) is a state jail felony.

11 (d) Except as provided by Subsections [~~Subsection~~] (h) and
12 (k), an offense under Subsection (c) is a Class A misdemeanor.

13 (j) An attorney representing the state who seeks an increase
14 in punishment under Subsection (h)(3) or (k)(3) is not required to
15 prove the actual identity of an identifiable child.

16 (k) The punishment for an offense under Subsection (a) or
17 (c) is increased to the punishment for a felony of the first degree
18 if it is shown on the trial of the offense that obscene material
19 that is the subject of the offense visually depicts activities
20 described by Section 43.21(a)(1)(B) engaged in by:

21 (1) a child younger than 13 years of age at the time
22 the image of the child was made;

23 (2) an image that to a reasonable person would be
24 virtually indistinguishable from the image of a child younger than
25 13 years of age; or

26 (3) an image created, adapted, or modified to be the
27 image of an identifiable child younger than 13 years of age.

1 (1) On conviction of an offense punishable as a felony of
2 the first degree under Subsection (k), the defendant shall be
3 punished by imprisonment in the Texas Department of Criminal
4 Justice for any term of not more than 99 years or less than 25 years.

5 SECTION 13. Section 43.25, Penal Code, is amended by
6 amending Subsections (c), (e), and (g) and adding Subsections (h)
7 and (i) to read as follows:

8 (c) Except as provided by Subsection (h), an [An] offense
9 under Subsection (b) is a felony of the second degree.

10 (e) Except as provided by Subsection (h), an [An] offense
11 under Subsection (d) is a felony of the third degree.

12 (g) When it becomes necessary for the purposes of this
13 section or Section 43.26 to determine the age of [~~whether~~]
14 who participated in sexual conduct [~~was younger than 18 years of~~
15 ~~age~~], the court or jury may make this determination by any of the
16 following methods:

17 (1) personal inspection of the child;

18 (2) inspection of the photograph or motion picture
19 that shows the child engaging in the sexual performance;

20 (3) oral testimony by a witness to the sexual
21 performance as to the age of the child based on the child's
22 appearance at the time;

23 (4) expert medical testimony based on the appearance
24 of the child engaging in the sexual performance; or

25 (5) any other method authorized by law or by the rules
26 of evidence at common law.

27 (h) If it is shown on the trial of an offense under

1 Subsection (b) or (d) that the victim is younger than 13 years of
2 age, the offense is a felony of the first degree.

3 (i) On conviction of an offense punishable as a felony of
4 the first degree under Subsection (h), the defendant shall be
5 punished by imprisonment in the Texas Department of Criminal
6 Justice for any term of not more than 99 years or less than 25 years.

7 SECTION 14. Section 43.26, Penal Code, is amended by
8 amending Subsections (d) and (g) and adding Subsections (h) and (i)
9 to read as follows:

10 (d) Except as provided by Subsection (h), an [An] offense
11 under Subsection (a) is a felony of the third degree.

12 (g) Except as provided by Subsection (h), an [An] offense
13 under Subsection (e) is a felony of the second degree.

14 (h) An offense under Subsection (a) or (e) is a felony of the
15 first degree if:

16 (1) the material visually depicts a child younger than
17 13 years of age at the time the image of the child was made; and

18 (2) the actor knows that the material depicts the
19 child as described by Subdivision (1).

20 (i) On conviction of an offense punishable as a felony of
21 the first degree under Subsection (h), the defendant shall be
22 punished by imprisonment in the Texas Department of Criminal
23 Justice for any term of not more than 99 years or less than 25 years.

24 SECTION 15. The change in law made by this Act applies only
25 to an offense committed on or after September 1, 2007. An offense
26 committed before September 1, 2007, is covered by the law in effect
27 when the offense was committed, and the former law is continued in

1 effect for that purpose. For the purposes of this section, an
2 offense was committed before September 1, 2007, if any element of
3 the offense occurred before that date.

4 SECTION 16. This Act takes effect September 1, 2007.