

By: Deuell

S.B. No. 5

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,

beneficiary or settlor of a trust interested in such estate;

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

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

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

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

(F) arson;

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

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

(B) securing execution of document by deception;
or

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

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

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

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

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

(D) abandoning or endangering a child; or

(E) insurance fraud;

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

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

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

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

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

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

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

(a) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or if the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, unless the defendant has

1 been convicted of a capital felony or a sexually violent offense the
2 victim of which is younger than 14 years of age at the time the
3 offense is committed the court shall charge the jury in writing as
4 follows:

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

13 "It is also possible that the length of time for which the
14 defendant will be imprisoned might be reduced by the award of
15 parole.

16 "Under the law applicable in this case, if the defendant is
17 sentenced to a term of imprisonment, he will not become eligible for
18 parole until the actual time served equals one-half of the sentence
19 imposed or 30 years, whichever is less, without consideration of
20 any good conduct time he may earn. If the defendant is sentenced to
21 a term of less than four years, he must serve at least two years
22 before he is eligible for parole. Eligibility for parole does not
23 guarantee that parole will be granted.

24 "It cannot accurately be predicted how the parole law and
25 good conduct time might be applied to this defendant if he is
26 sentenced to a term of imprisonment, because the application of
27 these laws will depend on decisions made by prison and parole

1 authorities.

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

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

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

1 "It is also possible that the length of time for which the
2 defendant will be imprisoned might be reduced by the award of
3 parole.

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

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

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

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

22 SECTION 3. Section 2, Article 37.071, Code of Criminal
23 Procedure, is amended by adding Subsection (j) to read as follows:

24 (j) In a case punishable as a capital felony under Section
25 12.42(c)(3), Penal Code, the court may not submit the issue
26 described by Subsection (b)(2) to the jury.

27 SECTION 4. Section 508.145, Government Code, is amended by

1 amending Subsections (a), (c), and (d) and adding Subsection (b) to
2 read as follows:

3 (a) An inmate under sentence of death, ~~[or]~~ serving a
4 sentence of life imprisonment without parole, or serving a sentence
5 for an offense for which punishment is increased under Section
6 12.50, Penal Code, is not eligible for release on parole.

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

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

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

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

22 (d) Subject to Subsection (b), an ~~[An]~~ inmate serving a
23 sentence for an offense described by Section 3g(a)(1)(A), (C), (D),
24 (E), (F), (G), or (H), Article 42.12, Code of Criminal Procedure, or
25 for an offense for which the judgment contains an affirmative
26 finding under Section 3g(a)(2) of that article, is not eligible for
27 release on parole until the inmate's actual calendar time served,

1 without consideration of good conduct time, equals one-half of the
2 sentence or 30 calendar years, whichever is less, but in no event is
3 the inmate eligible for release on parole in less than two calendar
4 years.

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

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

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

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

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

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

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

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

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

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

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

1 (10) a first degree felony under Section 28.02, Penal
2 Code;

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

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

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

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

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

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

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

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

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

24 SECTION 7. Subchapter E, Chapter 841, Health and Safety
25 Code, is amended by adding Section 841.084 to read as follows:

26 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding
27 Section 841.146(c), a civilly committed person who is not indigent

1 is responsible for the cost of the tracking service required by
2 Section 841.082 and monthly shall pay to the council the amount that
3 the council determines will be necessary to defray the cost of
4 operating the service with respect to the person during the
5 subsequent month. The council immediately shall transfer the money
6 to the appropriate service provider.

7 SECTION 8. Section 1.07(a), Penal Code, is amended by
8 adding Subdivision (50) to read as follows:

9 (50) "Sexually violent offense" means any of the
10 following offenses:

11 (A) an offense under Section 21.11(a)(1)
12 (Indecency with a child), 22.011 (Sexual assault), or 22.021
13 (Aggravated sexual assault);

14 (B) an offense under Section 43.25 (Sexual
15 performance by a child);

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

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

23 SECTION 9. Section 12.42(c), Penal Code, is amended to read
24 as follows:

25 (c)(1) If ~~[Except as provided by Subdivision (2), if]~~ it is
26 shown on the trial of a first-degree felony that the defendant has
27 been once before convicted of a felony, on conviction he shall be

1 punished by imprisonment in the institutional division of the Texas
2 Department of Criminal Justice for life, or for any term of not more
3 than 99 years or less than 15 years. In addition to imprisonment,
4 an individual may be punished by a fine not to exceed \$10,000.

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

8 (A) the defendant is convicted of an offense:

9 (i) under Section 21.11, 22.021, or 22.011,
10 Penal Code;

11 (ii) under Section 20.04(a)(4), Penal Code,
12 if the defendant committed the offense with the intent to violate or
13 abuse the victim sexually; ~~[or]~~

14 (iii) under Section 30.02, Penal Code,
15 punishable under Subsection (d) of that section, if the defendant
16 committed the offense with the intent to commit a felony described
17 by Subparagraph (i) or (ii) ~~[or a felony under Section 21.11 or~~
18 ~~22.011, Penal Code]~~; or

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

20 (B) the defendant has been previously convicted
21 of an offense:

22 (i) under Section 43.25 or 43.26, Penal
23 Code, or an offense under Section 43.23, Penal Code, punishable
24 under Subsection (h) of that section;

25 (ii) under Section 21.11, 22.011, 22.021,
26 or 25.02, Penal Code;

27 (iii) under Section 20.04(a)(4), Penal

Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

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

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

(3) Notwithstanding Subdivision (1) or (2), a defendant shall be punished for a capital felony if it is shown on the trial of a sexually violent offense punishable as a felony of the first degree that:

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

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

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

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

SECTION 10. Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.50 to read as follows:

Sec. 12.50. PENALTY FOR CERTAIN SEX OFFENSES COMMITTED

1 AGAINST CHILD. (a) This section does not apply to a felony of the
2 first degree punishable under Section 12.42(c)(2) or (3).

3 (b) If it is shown on the trial of a sexually violent offense
4 punishable as a felony of the first degree that the victim is
5 younger than 14 years of age at the time the offense is committed,
6 the minimum term of imprisonment for the offense is increased to 25
7 years.

8 SECTION 11. Section 20.04(d), Penal Code, is amended to
9 read as follows:

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

17 SECTION 12. Section 21.11(d), Penal Code, is amended to
18 read as follows:

19 (d) An offense under Subsection (a)(1) is a felony of the
20 second degree, except that the offense is a felony of the first
21 degree if the victim is younger than 14 years of age at the time the
22 offense is committed. An [and an] offense under Subsection (a)(2)
23 is a felony of the third degree.

24 SECTION 13. Section 38.05, Penal Code, is amended by
25 amending Subsection (c) and adding Subsection (d) to read as
26 follows:

27 (c) Except as provided by Subsection (d), an [An] offense

1 under this section is a Class A misdemeanor.

2 (d) An ~~[, except that the]~~ offense under this section is a
3 felony of the third degree if the person who is harbored, concealed,
4 provided with a means of avoiding arrest or effecting escape, or
5 warned of discovery or apprehension is under arrest for, charged
6 with, or convicted of a felony, including an offense under Section
7 62.102, Code of Criminal Procedure, or is in custody or detention
8 for, is alleged in a petition to have engaged in, or has been
9 adjudicated as having engaged in delinquent conduct that violates a
10 penal law of the grade of felony, including an offense under Section
11 62.102, Code of Criminal Procedure, and the person charged under
12 this section knew that the person they harbored, concealed,
13 provided with a means of avoiding arrest or effecting escape, or
14 warned of discovery or apprehension is under arrest for, charged
15 with, or convicted of a felony, or is in custody or detention for,
16 is alleged in a petition to have engaged in, or has been adjudicated
17 as having engaged in delinquent conduct that violates a penal law of
18 the grade of felony.

19 SECTION 14. Sections 43.25(c) and (e), Penal Code, are
20 amended to read as follows:

21 (c) An offense under Subsection (b) is a felony of the
22 second degree, except that the offense is a felony of the first
23 degree if the victim is younger than 14 years of age at the time the
24 offense is committed.

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

1 committed.

2 SECTION 15. (a) Except as provided by Subsections (b) and
3 (c) of this section, the change in law made by this Act applies only
4 to an offense committed on or after September 1, 2007. An offense
5 committed before September 1, 2007, is covered by the law in effect
6 when the offense was committed, and the former law is continued in
7 effect for that purpose. For the purposes of this subsection, an
8 offense was committed before September 1, 2007, if any element of
9 the offense occurred before that date.

10 (b) The change in law made by this Act to Chapter 841, Health
11 and Safety Code, applies only to an individual who on or after
12 September 1, 2007, is serving a sentence in the Texas Department of
13 Criminal Justice or is committed to the Texas Department of Mental
14 Health and Mental Retardation for an offense committed before, on,
15 or after the effective date of this Act.

16 (c) The change in law made by this Act to Article 12.01, Code
17 of Criminal Procedure, does not apply to an offense if the
18 prosecution of that offense became barred by limitation before the
19 effective date of this Act. The prosecution of that offense remains
20 barred as if this Act had not taken effect.

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