

By: Deuell, et al. S.B. No. 5  
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Substitute by the following vote: Yeas 5, Nays 1, one present not  
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COMMITTEE SUBSTITUTE FOR S.B. No. 5 By: Deuell

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. This Act shall be known as the Jessica Lunsford  
Act.

SECTION 2. Article 12.01, Code of Criminal Procedure, is  
amended to read as follows:

Art. 12.01. FELONIES. 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 under Section 22.011(a)(2),  
Penal Code, or aggravated sexual assault under Section  
22.021(a)(1)(B), Penal Code;

(C) 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;

(D) indecenty with a child under Section  
21.11(a), Penal Code; or

(E) ~~[(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 (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 (5),  
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) 20 [ten] years from the 18th birthday of the victim of one of the following offenses, if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision [the offense];

[(A) indecency with a child under Section 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) three years from the date of the commission of the offense: all other felonies.

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

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

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

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

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

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

(b) 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 is punishable as a felony of the first degree, if a prior conviction has been alleged for enhancement of punishment as provided by Section 12.42(b), (c)(1) or (2), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is longer than 60 years, unless 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 the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, the court shall charge the jury in writing as follows:

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

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

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

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

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

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

SECTION 4. Section 2, Article 37.071, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and (g) and adding Subsection (j) to read as follows:

(a)(1) If a defendant is tried for a capital offense in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(c) ~~[of this code]~~, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court deems relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b), ~~[(c) or]~~ (e), or (j).

(2) Notwithstanding Subdivision (1), evidence may not

be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases that are not described by Subsection (j) and in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken.

(c) The state, as applicable, must prove each issue submitted under Subsection (b) or under Subsections (b)(1) and (j) [of this article] beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) or submitted under Subsections (b)(1) and (j) [of this Article].

(d) The court, as applicable, shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) or in deliberating the issues submitted under Subsections (b)(1) and (j) [of this article], it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer any issue submitted under Subsection (b) or Subsections (b)(1) and (j) [of this article] "yes" unless it agrees unanimously and it may not answer any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under Subsection (b) or Subsections (b)(1) and (j) [of this article].

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b) or, as applicable, Subsections (b)(1) and (j), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) or, as applicable, under Subsections (b)(1) and (j), and a negative finding on an issue submitted under Subsection (e)(1), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or, as applicable, under Subsections (b)(1) and (j) or an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or Subsections (b)(1) and (j) or Subsection (e), the court shall sentence the defendant to confinement in the institutional division of the Texas Department of Criminal Justice for life imprisonment without parole.

(j) In a case punishable as a capital felony under Section 12.42(c)(3), Penal Code, and in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, on conclusion of the presentation of the evidence and in addition to the issue described by Subsection (b)(1), the court shall submit to the jury the issue of whether the defendant actually engaged in the conduct prohibited by the offense of which the defendant was found guilty or did not actually engage in the conduct prohibited by that offense but intended that the offense be committed against the victim or another intended victim.

SECTION 5. Subsection (a), Article 44.251, Code of Criminal Procedure, is amended to read as follows:

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the ~~[institutional division of the]~~ Texas Department of Criminal Justice for life without parole if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b) or, if applicable, under Sections 2(b)(1) and (j), Article 37.071.

SECTION 6. Subchapter C, Chapter 499, Government Code, is amended by adding Section 499.054 to read as follows:

Sec. 499.054. SEX OFFENDER TREATMENT PROGRAM. (a) In this section, "sex offender treatment program" means a comprehensive treatment program that:

(1) psychologically evaluates inmates who are serving a sentence for an offense described by Section 12.42(c)(2), Penal Code;

(2) addresses the motivation and psychosocial education of inmates described by Subdivision (1); and

(3) provides relapse prevention training for inmates described by Subdivision (1), including interruption of cognitive and behavioral patterns that have led the inmate to commit criminal offenses.

(b) The department shall establish a sex offender treatment program to treat inmates who are serving a sentence for an offense punishable under Section 12.50 or 12.42(c)(2), Penal Code, and who are not eligible for release on parole. The department shall require an inmate described by this subsection to participate in and complete the sex offender treatment program before being released from the department.

(c) The department may establish a sex offender treatment program to treat inmates other than those inmates described by Subsection (b).

SECTION 7. Section 508.145, Government Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (b) to read as follows:

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

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

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

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

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

(d) Subject to Subsection (b), an [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 in less than two calendar years.

SECTION 8. Subsection (a), Section 508.149, Government Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. Section 841.082, Health and Safety Code, is amended by adding Subsection (b) to read as follows:

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

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

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

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

SECTION 10. Subchapter E, Chapter 841, Health and Safety Code, is amended by adding Section 841.084 to read as follows:

Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding Section 841.146(c), a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Section 841.082 and monthly shall pay to the council the amount that the council determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The council immediately shall transfer the money to the appropriate service provider.

SECTION 11. Subsection (a), Section 1.07, Penal Code, is amended by adding Subdivision (50) to read as follows:

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

(A) an offense under Section 22.011 (Sexual assault) or 22.021 (Aggravated sexual assault);

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

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

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

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

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

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

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

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

(iii) 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 (i) or (ii) ~~[or a felony under Section 21.11 or 22.011, Penal Code]; or~~

(iv) under Section 43.25, Penal Code; and  
(B) the defendant has been previously convicted of an offense:

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

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

(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 13. 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 AGAINST CHILD. (a) This section does not apply to a felony of the

first degree punishable under Section 12.42(c)(2) or (3).

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

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

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

SECTION 15. Section 38.05, Penal Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Except as provided by Subsection (d), an [An] offense under this section is a Class A misdemeanor.

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

SECTION 16. Subsections (c) and (e), Section 43.25, Penal Code, are amended to read as follows:

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

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

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

(b) The change in law made by this Act to Chapter 841, Health and Safety Code, 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 this Act.

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

SECTION 18. This Act takes effect September 1, 2007.

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