

By: Deuell

S.B. No. 68

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~~ (5), or (6); 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 ~~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:

5 (A) except as provided by Subdivision (6),
6 indecency with a child under Section 21.11[~~(a)(1) or (2)~~], Penal
7 Code; or

8 (B) except as provided by Subdivision (1) or (6),
9 sexual assault under Section 22.011(a)(2), Penal Code, or
10 aggravated sexual assault under Section 22.021(a)(1)(B), Penal
11 Code; ~~or~~

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

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

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

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

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

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

1 (a) In the penalty phase of the trial of a felony case in
2 which the punishment is to be assessed by the jury rather than the
3 court, if the offense of which the jury has found the defendant
4 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or
5 if the judgment contains an affirmative finding under Section
6 3g(a)(2), Article 42.12, of this code, unless the defendant has
7 been convicted of a capital felony or a sexually violent offense the
8 victim of which is younger than 14 years of age at the time the
9 offense is committed, the court shall charge the jury in writing as
10 follows:

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

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

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

1 before he is eligible for parole. Eligibility for parole does not
2 guarantee that parole will be granted.

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

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

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

26 "Under the law applicable in this case, the defendant, if
27 sentenced to a term of imprisonment, may earn time off the period of

1 incarceration imposed through the award of good conduct time.
2 Prison authorities may award good conduct time to a prisoner who
3 exhibits good behavior, diligence in carrying out prison work
4 assignments, and attempts at rehabilitation. If a prisoner engages
5 in misconduct, prison authorities may also take away all or part of
6 any good conduct time earned by the prisoner.

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

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

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

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

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

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

4 (a) An inmate under sentence of death, ~~[or]~~ serving a
5 sentence of life imprisonment without parole, or serving a sentence
6 for an offense for which punishment is increased under Section
7 12.50, Penal Code, is not eligible for release on parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Code;

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

3 Code;

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

5 Code;

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

7 Code;

8 (13) a first degree felony under Section 30.02, Penal

9 Code; ~~or~~

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

12 or

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

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

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

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

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

22 and

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

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

27 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding

1 Section 841.146(c), a civilly committed person who is not indigent
2 is responsible for the cost of the tracking service required by
3 Section 841.082 and monthly shall pay to the council the amount that
4 the council determines will be necessary to defray the cost of
5 operating the service with respect to the person during the
6 subsequent month. The council immediately shall transfer the money
7 to the appropriate service provider.

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

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

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

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

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

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

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

26 (c)(1) If [~~Except as provided by Subdivision (2), if~~] it is
27 shown on the trial of a first-degree felony that the defendant has

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

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

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

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

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

15 (iii) under Section 30.02, Penal Code,
16 punishable under Subsection (d) of that section, if the defendant
17 committed the offense with the intent to commit a felony described
18 by Subparagraph (i) or (ii) ~~[or a felony under Section 21.11 or~~
19 ~~22.011, Penal Code]; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Sec. 12.50. PENALTY FOR CERTAIN SEX OFFENSES COMMITTED
2 AGAINST CHILD. (a) This section does not apply to a felony of the
3 first degree punishable under Section 12.42(c)(2) or (3).

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

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

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

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

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

25 SECTION 13. Sections 43.25(c) and (e), Penal Code, are
26 amended to read as follows:

27 (c) An offense under Subsection (b) is a felony of the

1 second degree, except that the offense is a felony of the first
2 degree if the victim is younger than 14 years of age at the time the
3 offense is committed.

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

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

16 (b) The change in law made by this Act to Chapter 841, Health
17 and Safety Code, applies only to an individual who on or after
18 September 1, 2007, is serving a sentence in the Texas Department of
19 Criminal Justice or is committed to the Department of State Health
20 Services for an offense committed before, on, or after the
21 effective date of this Act.

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

27 SECTION 15. This Act takes effect September 1, 2007.