

AN ACT

relating to an affirmative defense to prosecution for certain sex offenses.

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

SECTION 1. Section 21.11, Penal Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) A person commits an offense if, with a child younger than 17 years of age [~~and not the person's spouse~~], whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.

SECTION 2. Section 21.12, Penal Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

1 (a) An employee of a public or private primary or secondary
2 school commits an offense if the employee engages in:

3 (1) sexual contact, sexual intercourse, or deviate
4 sexual intercourse with a person who is enrolled in a public or
5 private primary or secondary school at which the employee works
6 ~~[and who is not the employee's spouse]~~; or

7 (2) conduct described by Section 33.021, with a person
8 described by Subdivision (1), regardless of the age of that person.

9 (b-1) It is an affirmative defense to prosecution under this
10 section that the actor was the spouse of the enrolled person at the
11 time of the offense.

12 SECTION 3. Section 22.011(c)(1), Penal Code, is amended to
13 read as follows:

14 (1) "Child" means a person younger than 17 years of age
15 ~~[who is not the spouse of the actor]~~.

16 SECTION 4. Section 22.011(e), Penal Code, is amended to
17 read as follows:

18 (e) It is an affirmative defense to prosecution under
19 Subsection (a)(2):

20 (1) that the actor was the spouse of the child at the
21 time of the offense; or

22 (2) that:

23 (A) [~~(1)~~] the actor was not more than three years
24 older than the victim and at the time of the offense:

25 (i) [~~(A)~~] was not required under Chapter
26 62, Code of Criminal Procedure, to register for life as a sex
27 offender; or

1 (ii) [~~(B)~~] was not a person who under
2 Chapter 62, Code of Criminal Procedure, had a reportable conviction
3 or adjudication for an offense under this section; and

4 (B) [~~(2)~~] the victim:

5 (i) [~~(A)~~] was a child of 14 years of age or
6 older; and

7 (ii) [~~(B)~~] was not a person whom the actor
8 was prohibited from marrying or purporting to marry or with whom the
9 actor was prohibited from living under the appearance of being
10 married under Section 25.01.

11 SECTION 5. Section 39.04, Penal Code, is amended by
12 amending Subsection (f) and adding Subsection (h) to read as
13 follows:

14 (f) An employee of the Texas Department of Criminal Justice,
15 the Texas Youth Commission, or a local juvenile probation
16 department commits an offense if the employee engages in sexual
17 contact, sexual intercourse, or deviate sexual intercourse with an
18 individual [~~who is not the employee's spouse and~~] who the employee
19 knows is under the supervision of the department, commission, or
20 probation department but not in the custody of the department,
21 commission, or probation department.

22 (h) It is an affirmative defense to prosecution under
23 Subsection (f) that the actor was the spouse of the individual at
24 the time of the offense.

25 SECTION 6. The change in law made by this Act applies only
26 to an offense committed on or after the effective date of this Act.
27 An offense committed before the effective date of this Act is

1 covered by the law in effect when the offense was committed, and the
2 former law is continued in effect for that purpose. For purposes of
3 this section, an offense was committed before the effective date of
4 this Act if any element of the offense occurred before that date.

5 SECTION 7. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 549 was passed by the House on April 24, 2009, by the following vote: Yeas 138, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 549 was passed by the Senate on May 18, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor