

By: Hilderbran, Darby, Rose, Walle

H.B. No. 4255

Substitute the following for H.B. No. 4255:

By: Rose

C.S.H.B. No. 4255

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the protection of children by enforcing compulsory
3 public school attendance requirements, ensuring reports of abuse or
4 neglect, protecting children from abuse and neglect, and ensuring
5 that births are reported and to the prosecution of the offense of
6 bigamy; providing criminal penalties.

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

8 SECTION 1. Article 12.01, Code of Criminal Procedure, as
9 amended by Chapters 285 (H.B. 716), 593 (H.B. 8), 640 (H.B. 887),
10 and 841 (H.B. 959), Acts of the 80th Legislature, Regular Session,
11 2007, is reenacted and amended to read as follows:

12 Art. 12.01. FELONIES. Except as provided in Article 12.03,
13 felony indictments may be presented within these limits, and not
14 afterward:

15 (1) no limitation:

16 (A) murder and manslaughter;

17 (B) sexual assault under Section 22.011(a)(2),
18 Penal Code, or aggravated sexual assault under Section
19 22.021(a)(1)(B), Penal Code;

20 (C) sexual assault, if during the investigation
21 of the offense biological matter is collected and subjected to
22 forensic DNA testing and the testing results show that the matter
23 does not match the victim or any other person whose identity is
24 readily ascertained;

1 (D) continuous sexual abuse of young child or
2 children under Section 21.02, Penal Code;

3 (E) indecency with a child under Section 21.11,
4 Penal Code; or

5 (F) an offense involving leaving the scene of an
6 accident under Section 550.021, Transportation Code, if the
7 accident resulted in the death of a person;

8 (2) ten years from the date of the commission of the
9 offense:

10 (A) theft of any estate, real, personal or mixed,
11 by an executor, administrator, guardian or trustee, with intent to
12 defraud any creditor, heir, legatee, ward, distributee,
13 beneficiary or settlor of a trust interested in such estate;

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

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

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

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

23 (F) arson;

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

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

- 1 (B) securing execution of document by deception;
2 (C) a violation under Sections 162.403(22)-(39),
3 Tax Code;
4 (D) false statement to obtain property or credit
5 under Section 32.32, Penal Code;
6 (E) money laundering;
7 (F) [~~(D)~~] credit card or debit card abuse under
8 Section 32.31, Penal Code;
9 (G) [~~(F)~~] fraudulent use or possession of
10 identifying information under Section 32.51, Penal Code; or
11 (H) bigamy under Section 25.01, Penal Code,
12 except as provided by Subdivision (6);

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

- 15 (A) theft or robbery;
16 (B) except as provided by Subdivision (5),
17 kidnapping or burglary;
18 (C) injury to an elderly or disabled individual
19 that is not punishable as a felony of the first degree under Section
20 22.04, Penal Code;
21 (D) abandoning or endangering a child; or
22 (E) insurance fraud;

23 (5) if the investigation of the offense shows that the
24 victim is younger than 17 years of age at the time the offense is
25 committed, 20 years from the 18th birthday of the victim of one of
26 the following offenses:

- 27 (A) sexual performance by a child under Section

1 43.25, Penal Code;

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

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

10 (6) ~~[(5)]~~ ten years from the 18th birthday of the
11 victim of the offense:

12 (A) ~~[indecentcy with a child under Section~~
13 ~~21.11(a)(1) or (2), Penal Code;~~

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

18 ~~[(C)]~~ injury to a child under Section 22.04,
19 Penal Code; or

20 (B) bigamy under Section 25.01, Penal Code, if
21 the investigation of the offense shows that the person, other than
22 the legal spouse of the defendant, whom the defendant marries or
23 purports to marry or with whom the defendant lives under the
24 appearance of being married is younger than 18 years of age at the
25 time the offense is committed; or

26 (7) ~~[(6)]~~ three years from the date of the commission
27 of the offense: all other felonies.

1 SECTION 2. Sections 25.091(a) and (b), Education Code, are
2 amended to read as follows:

3 (a) A peace officer serving as an attendance officer has the
4 following powers and duties concerning enforcement of compulsory
5 school attendance requirements:

6 (1) to investigate each case of a violation of
7 compulsory school attendance requirements referred to the peace
8 officer;

9 (2) to enforce compulsory school attendance
10 requirements by:

11 (A) referring a student to a juvenile court or
12 filing a complaint against a student in a county, justice, or
13 municipal court if the student has unexcused absences for the
14 amount of time specified under Section 25.094 or under Section
15 51.03(b)(2), Family Code; and

16 (B) filing a complaint in a county, justice, or
17 municipal court against a parent who violates Section 25.093;

18 (3) to serve court-ordered legal process;

19 (4) to review school attendance records for compliance
20 by each student investigated by the officer;

21 (5) to maintain an investigative record on each
22 compulsory school attendance requirement violation and related
23 court action and, at the request of a court, the board of trustees
24 of a school district, or the commissioner, to provide a record to
25 the individual or entity requesting the record;

26 (6) to make a home visit or otherwise contact the
27 parent of a student who is in violation of compulsory school

1 attendance requirements, except that a peace officer may not enter
2 a residence without the permission of the parent of a student
3 required under this subchapter to attend school or of the tenant or
4 owner of the residence except to lawfully serve court-ordered legal
5 process on the parent; [~~and~~]

6 (7) to make a home visit or otherwise contact the
7 parent of the student who is the subject of an ongoing investigation
8 under Chapter 261, Family Code, and who is in violation of
9 compulsory school attendance requirements, except that a peace
10 officer may not enter a residence without the effective consent of
11 the student required under this subchapter to attend school or the
12 permission of the parent of the student or of the tenant or owner of
13 the residence except to lawfully serve court-ordered legal process
14 on the parent or to execute a search warrant; and

15 (8) to take a student into custody with the permission
16 of the student's parent or in obedience to a court-ordered legal
17 process.

18 (b) An attendance officer employed by a school district who
19 is not commissioned as a peace officer has the following powers and
20 duties with respect to enforcement of compulsory school attendance
21 requirements:

22 (1) to investigate each case of a violation of the
23 compulsory school attendance requirements referred to the
24 attendance officer;

25 (2) to enforce compulsory school attendance
26 requirements by:

27 (A) referring a student to a juvenile court or

1 filing a complaint against a student in a county, justice, or
2 municipal court if the student has unexcused absences for the
3 amount of time specified under Section 25.094 or under Section
4 51.03(b)(2), Family Code; and

5 (B) filing a complaint in a county, justice, or
6 municipal court against a parent who violates Section 25.093;

7 (3) to monitor school attendance compliance by each
8 student investigated by the officer;

9 (4) to maintain an investigative record on each
10 compulsory school attendance requirement violation and related
11 court action and, at the request of a court, the board of trustees
12 of a school district, or the commissioner, to provide a record to
13 the individual or entity requesting the record;

14 (5) to make a home visit or otherwise contact the
15 parent of a student who is in violation of compulsory school
16 attendance requirements, except that the attendance officer may not
17 enter a residence without permission of the parent or of the owner
18 or tenant of the residence;

19 (6) to make a home visit or otherwise contact the
20 parent of a student who is the subject of an ongoing investigation
21 under Chapter 261, Family Code, and who is in violation of
22 compulsory school attendance requirements, except that the
23 attendance officer may not enter a residence without effective
24 consent of the student required under this subchapter to attend
25 school or the permission of the parent of the student or of the
26 owner or tenant of the residence except to accompany a peace officer
27 who is executing a search warrant;

1 (7) at the request of a parent, to escort a student
2 from any location to a school campus to ensure the student's
3 compliance with compulsory school attendance requirements; and

4 (8) [~~(7)~~] if the attendance officer has or is informed
5 of a court-ordered legal process directing that a student be taken
6 into custody and the school district employing the officer does not
7 employ its own police department, to contact the sheriff,
8 constable, or any peace officer to request that the student be taken
9 into custody and processed according to the legal process.

10 SECTION 3. Section 25.091(c), Education Code, is amended by
11 adding Subdivision (3) to read as follows:

12 (3) "Effective consent" does not include consent given
13 by a person who by reason of youth is known by the person to whom
14 consent is given to be unable to make a reasonable decision.

15 SECTION 4. Section 25.093, Education Code, is amended by
16 amending Subsections (a), (c), and (g) and adding Subsection (c-1)
17 to read as follows:

18 (a) If a warning notice is issued as required by Section
19 25.095(b) [~~25.095(a)~~], the parent with criminal negligence fails to
20 require the child to attend school as required by law, and the child
21 has absences for the amount of time specified under Section 25.094,
22 the parent commits an offense.

23 (c) Except as provided by Subsection (c-1), an [~~A~~] offense
24 under Subsection (a) is a Class A [~~C~~] misdemeanor. Each day the
25 child remains out of school may constitute a separate offense. Two
26 or more offenses under Subsection (a) may be consolidated and
27 prosecuted in a single action. If the court orders deferred

1 disposition under Article 45.051, Code of Criminal Procedure, the
2 court may require the defendant to provide personal services to a
3 charitable or educational institution as a condition of the
4 deferral.

5 (c-1) If a parent has been previously convicted of an
6 offense under Subsection (a), a subsequent offense under that
7 subsection is a felony of the third degree.

8 (g) If a parent refuses to obey a court order entered under
9 this section, the court may punish the parent for contempt of court
10 under Section 21.002, Government Code. Notwithstanding Section
11 21.002(b) or (c), Government Code, the punishment for contempt of
12 court for a parent who refuses to obey a court order entered under
13 this section is a fine of not more than \$1,000, confinement in the
14 county jail for not more than six months, or both a fine and
15 confinement in jail.

16 SECTION 5. Section 25.094(e), Education Code, is amended to
17 read as follows:

18 (e) An offense under this section is a Class B [~~C~~]
19 misdemeanor.

20 SECTION 6. Section 261.109, Family Code, is amended by
21 amending Subsection (b) and adding Subsection (c) to read as
22 follows:

23 (b) Except as provided by Subsection (c), an [~~A~~] offense
24 under this section is a Class B misdemeanor, unless it is shown on
25 the trial of the offense that the person has previously been
26 convicted under this section, in which event the offense is a Class
27 A misdemeanor.

1 (c) An offense under this section committed by a person who
2 is a professional as defined by Section 261.101(b) is a Class A
3 misdemeanor, unless it is shown on the trial of the offense that the
4 person has previously been convicted under this section, in which
5 event the offense is a state jail felony.

6 SECTION 7. Section 262.001, Family Code, is amended by
7 amending Subsection (b) and adding Subsection (c) to read as
8 follows:

9 (b) In determining the reasonable efforts, if any, that are
10 required to be made with respect to preventing or eliminating the
11 need to remove a child from the child's home or to make it possible
12 to return a child to the child's home, the child's health and safety
13 is the paramount concern.

14 (c) In making a determination under Subsection (b), the
15 court may find that based on the circumstances no reasonable
16 efforts would prevent or eliminate the need to remove a child and
17 that the department satisfied the requirements of Subsection (b)
18 even though the department made no efforts to prevent or eliminate
19 the need to remove a child.

20 SECTION 8. Section 262.1015(b), Family Code, is amended to
21 read as follows:

22 (b) A court may issue a temporary restraining order in a
23 suit by the department for the removal of an alleged perpetrator
24 under Subsection (a) if the department's petition states facts
25 sufficient to satisfy the court that:

26 (1) there is an immediate danger to the physical
27 health or safety of the child or the child has been a victim of

1 sexual abuse;

2 (2) there is no time, consistent with the physical
3 health or safety of the child, for an adversary hearing;

4 (3) the child is not in danger of abuse from a parent
5 or other adult with whom the child will continue to reside in the
6 residence of the child; ~~and~~

7 (4) the parent or other adult with whom the child will
8 continue to reside in the child's home is likely to:

9 (A) make a reasonable effort to monitor the
10 residence; and

11 (B) report to the department and the appropriate
12 law enforcement agency any attempt by the alleged perpetrator to
13 return to the residence; and

14 (5) the issuance of the order is in the best interest
15 of the child.

16 SECTION 9. Section 262.102(b), Family Code, is amended to
17 read as follows:

18 (b) In determining whether the circumstances described by
19 Subsections (a)(1) and (2) exist ~~[there is an immediate danger to~~
20 ~~the physical health or safety of a child]~~, the court shall ~~[may]~~
21 consider whether the child's household includes a person who has:

22 (1) abused or neglected another child in a manner that
23 caused serious injury to or the death of the other child; or

24 (2) sexually abused another child.

25 SECTION 10. Subchapter B, Chapter 262, Family Code, is
26 amended by adding Section 262.116 to read as follows:

27 Sec. 262.116. PROHIBITION ON ACCOMPANYING CHILD. If the

1 department takes possession of a child under this chapter by
2 removing the child from an adult entitled to possession of the
3 child, the department may not allow that adult to accompany or
4 remain with the child after the child is in the department's
5 custody.

6 SECTION 11. Section 195.004, Health and Safety Code, is
7 amended by amending Subsection (d) and adding Subsection (d-1) to
8 read as follows:

9 (d) Except as provided by Subsection (d-1), an [An] offense
10 under this section is a Class C misdemeanor.

11 (d-1) An offense under this section for failure to perform a
12 duty required by Section 192.003 is a Class A misdemeanor.

13 SECTION 12. Section 25.01, Penal Code, is amended by
14 amending Subsection (e) and adding Subsection (f) to read as
15 follows:

16 (e) Except as provided by Subsection (f), an [An] offense
17 under this section is a felony of the third degree~~[, except that if~~
18 ~~at the time of the commission of the offense, the person whom the~~
19 ~~actor marries or purports to marry or with whom the actor lives~~
20 ~~under the appearance of being married is:~~

21 ~~[(1) 16 years of age or older, the offense is a felony~~
22 ~~of the second degree, or~~

23 ~~[(2) younger than 16 years of age, the offense is a~~
24 ~~felony of the first degree].~~

25 (f) If it is shown at the trial of the offense that at the
26 time of the commission of the offense the person whom the actor
27 marries or purports to marry or with whom the actor lives under the

1 appearance of being married is 17 years of age or younger, the
2 offense is:

3 (1) a felony of the second degree if the actor is 17
4 years of age or younger; or

5 (2) a felony of the first degree if the actor is 18
6 years of age or older.

7 SECTION 13. Section 25.091, Education Code, as amended by
8 this Act, applies beginning with the 2009-2010 school year.

9 SECTION 14. The changes in law made by this Act to Sections
10 25.093 and 25.094, Education Code, Section 261.109, Family Code,
11 Section 195.004, Health and Safety Code, and Section 25.01, Penal
12 Code, apply only to an offense committed on or after the effective
13 date of this Act. An offense committed before the effective date of
14 this Act is governed by the law in effect when the offense was
15 committed, and the former law is continued in effect for that
16 purpose. For purposes of this section, an offense is committed
17 before the effective date of this Act if any element of the offense
18 occurs before that date.

19 SECTION 15. The change in law made by this Act to Article
20 12.01, Code of Criminal Procedure, does not apply to an offense if
21 the prosecution of that offense becomes barred by limitation before
22 the effective date of this Act. The prosecution of that offense
23 remains barred as if this Act had not taken effect.

24 SECTION 16. The change in law made by this Act to Section
25 262.1015(b), Family Code, applies only to a petition for a
26 temporary restraining order in a suit by the Department of Family
27 and Protective Services filed on or after the effective date of this

1 Act. A petition filed before the effective date of this Act is
2 governed by the law in effect on the date the petition was filed,
3 and the former law is continued in effect for that purpose.

4 SECTION 17. To the extent of any conflict, this Act prevails
5 over another Act of the 81st Legislature, Regular Session, 2009,
6 relating to nonsubstantive additions to and corrections in enacted
7 codes.

8 SECTION 18. This Act takes effect September 1, 2009.