

By: Parker

H.B. No. 2979

Substitute the following for H.B. No. 2979:

By: Herrero

C.S.H.B. No. 2979

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prosecution and punishment of certain offenses
3 involving injury to a child, elderly individual, or disabled
4 individual.

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

6 SECTION 1. Section 3g(a), Article 42.12, Code of Criminal
7 Procedure, is amended to read as follows:

8 (a) The provisions of Section 3 of this article do not
9 apply:

10 (1) to a defendant adjudged guilty of an offense
11 under:

- 12 (A) Section 19.02, Penal Code (Murder);
13 (B) Section 19.03, Penal Code (Capital murder);
14 (C) Section 21.11(a)(1), Penal Code (Indecency
15 with a child);
16 (D) Section 20.04, Penal Code (Aggravated
17 kidnapping);
18 (E) Section 22.021, Penal Code (Aggravated
19 sexual assault);
20 (F) Section 29.03, Penal Code (Aggravated
21 robbery);

22 (G) Chapter 481, Health and Safety Code, for
23 which punishment is increased under:

24 (i) Section 481.140, Health and Safety

1 Code; or

2 (ii) Section 481.134(c), (d), (e), or (f),
3 Health and Safety Code, if it is shown that the defendant has been
4 previously convicted of an offense for which punishment was
5 increased under any of those subsections;

6 (H) Section 22.011, Penal Code (Sexual assault);

7 (I) Section 22.04(a)(1) or (2), Penal Code
8 (Injury to a child, elderly individual, or disabled individual), if
9 the offense is punishable as a felony of the first degree and the
10 victim of the offense is a child;

11 (J) Section 43.25, Penal Code (Sexual
12 performance by a child);

13 (K) Section 15.03, Penal Code, if the offense is
14 punishable as a felony of the first degree;

15 (L) Section 43.05, Penal Code (Compelling
16 prostitution); or

17 (M) Section 20A.02, Penal Code (Trafficking of
18 persons); or

19 (2) to a defendant when it is shown that a deadly
20 weapon as defined in Section 1.07, Penal Code, was used or exhibited
21 during the commission of a felony offense or during immediate
22 flight therefrom, and that the defendant used or exhibited the
23 deadly weapon or was a party to the offense and knew that a deadly
24 weapon would be used or exhibited. On an affirmative finding under
25 this subdivision, the trial court shall enter the finding in the
26 judgment of the court. On an affirmative finding that the deadly
27 weapon was a firearm, the court shall enter that finding in its

1 judgment.

2 SECTION 2. Section 4(d), Article 42.12, Code of Criminal
3 Procedure, is amended to read as follows:

4 (d) A defendant is not eligible for community supervision
5 under this section if the defendant:

6 (1) is sentenced to a term of imprisonment that
7 exceeds 10 years;

8 (2) is convicted of a state jail felony for which
9 suspension of the imposition of the sentence occurs automatically
10 under Section 15(a);

11 (3) does not file a sworn motion under Subsection (e)
12 of this section or for whom the jury does not enter in the verdict a
13 finding that the information contained in the motion is true;

14 (4) is convicted of an offense for which punishment is
15 increased under Section 481.134(c), (d), (e), or (f), Health and
16 Safety Code, if it is shown that the defendant has been previously
17 convicted of an offense for which punishment was increased under
18 any one of those subsections;

19 (5) is convicted of an offense listed in Section
20 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger
21 than 14 years of age at the time the offense was committed;

22 (6) is convicted of an offense listed in Section
23 3g(a)(1)(D), if the victim of the offense was younger than 14 years
24 of age at the time the offense was committed and the actor committed
25 the offense with the intent to violate or abuse the victim sexually;

26 (7) is convicted of an offense listed in Section
27 3g(a)(1)(I) or (J) [~~3g(a)(1)(J)~~]; or

1 (8) is adjudged guilty of an offense under Section
2 19.02, Penal Code.

3 SECTION 3. Section 508.145, Government Code, is amended by
4 adding Subsection (e-1) to read as follows:

5 (e-1) An inmate serving a sentence under Section 22.03,
6 Penal Code, is not eligible for release on parole until the inmate's
7 actual calendar time served plus good conduct time equals one-half
8 of the sentence imposed or 30 years, whichever is less.

9 SECTION 4. Chapter 22, Penal Code, is amended by adding
10 Section 22.03 to read as follows:

11 Sec. 22.03. CONTINUOUS PHYSICAL ABUSE OF CHILD, ELDERLY
12 INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

13 (1) "Act of physical abuse" means any act that
14 violates Section 22.02 (aggravated assault) or Section 22.04(a)(1)
15 or (2) (injury to a child, elderly individual, or disabled
16 individual).

17 (2) "Child," "elderly individual," and "disabled
18 individual" have the meanings assigned by Section 22.04(c).

19 (b) A person commits an offense if:

20 (1) during a period that is 30 or more days in
21 duration, the person commits two or more acts of physical abuse,
22 regardless of whether the acts of physical abuse are committed
23 against one or more victims; and

24 (2) at the time of the commission of each of the acts
25 of physical abuse, the actor is 17 years of age or older and the
26 victim of the act of physical abuse is a child, elderly individual,
27 or disabled individual.

1 (c) If a jury is the trier of fact, members of the jury are
2 not required to agree unanimously on which specific acts of
3 physical abuse were committed by the defendant or the exact date
4 when those acts were committed. The jury must agree unanimously
5 that the defendant, during a period that is 30 or more days in
6 duration, committed two or more acts of physical abuse.

7 (d) A defendant may not be convicted in the same criminal
8 action of an offense under Section 22.02 or 22.04(a)(1) or (2) the
9 victim of which is the same victim as a victim of the offense
10 alleged under Subsection (b) unless the offense under Section 22.02
11 or 22.04(a)(1) or (2):

12 (1) is charged in the alternative;

13 (2) occurred outside the period in which the offense
14 alleged under Subsection (b) was committed; or

15 (3) is considered by the trier of fact to be a lesser
16 included offense of the offense alleged under Subsection (b).

17 (e) A defendant may not be charged with more than one count
18 under Subsection (b) if all of the underlying acts of the alleged
19 abuse are alleged to have been committed against a single victim.

20 (f) An offense under this section is a felony of the first
21 degree, punishable by imprisonment in the Texas Department of
22 Criminal Justice for life or for any term of not more than 99 years
23 or less than 25 years.

24 SECTION 5. The change in law made by this Act applies only
25 to an offense committed on or after the effective date of this Act.
26 An offense committed before the effective date of this Act is
27 governed by the law in effect on the date the offense was committed,

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

5 SECTION 6. This Act takes effect September 1, 2013.