

By: Meyer, Thompson of Harris, Parker, Dale,
Moody

H.B. No. 1808

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and punishment of certain trafficking
and sexual offenses; creating a criminal offense.

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

SECTION 1. Section 20A.02(b), Penal Code, is amended to
read as follows:

(b) Except as otherwise provided by this subsection, an
offense under this section is a felony of the second degree. An
offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense
under Subsection (a)(5), (6), (7), or (8), regardless of whether
the actor knows the age of the child at the time of [~~the actor~~
~~commits~~] the offense; or

(2) the commission of the offense results in the death
of the person who is trafficked.

SECTION 2. Section 21.02(b), Penal Code, is amended to read
as follows:

(b) A person commits an offense if:

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

(2) at the time of the commission of each of the acts
of sexual abuse, the actor is 17 years of age or older and the victim

1 is a child younger than 14 years of age, regardless of whether the
2 actor knows the age of the victim at the time of the offense.

3 SECTION 3. Section 21.11(a), Penal Code, is amended to read
4 as follows:

5 (a) A person commits an offense if, with a child younger
6 than 17 years of age, whether the child is of the same or opposite
7 sex and regardless of whether the person knows the age of the child
8 at the time of the offense, the person:

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

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

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

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

17 SECTION 4. (a) This section takes effect only if the Act of
18 the 85th Legislature, Regular Session, 2017, relating to
19 nonsubstantive additions to and corrections in enacted codes
20 becomes law.

21 (b) Section 21.16(g), Penal Code, as added by Chapter 852
22 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015,
23 is amended to read as follows:

24 (g) An offense under this section is a state jail felony
25 [~~Class A misdemeanor~~].

26 (c) Chapter 21, Penal Code, is amended by adding Section
27 21.18 to read as follows:

1 Sec. 21.18. SEXUAL COERCION. (a) In this section:

2 (1) "Intimate visual material" means the visual
3 material described by Section 21.16(b)(1) or (c).

4 (2) "Sexual conduct" has the meaning assigned by
5 Section 43.25.

6 (b) A person commits an offense if the person intentionally
7 threatens, including by coercion or extortion, to commit an offense
8 under Chapter 43 or Section 20A.02(a)(3), (4), (7), or (8), 21.02,
9 21.08, 21.11, 21.12, 21.15, 21.16, 21.17, 22.011, or 22.021 to
10 obtain, in return for not committing the threatened offense or in
11 connection with the threatened offense, any of the following
12 benefits:

13 (1) intimate visual material;

14 (2) an act involving sexual conduct causing arousal or
15 gratification; or

16 (3) a monetary benefit or other benefit of value.

17 (c) A person commits an offense if the person intentionally
18 threatens, including by coercion or extortion, to commit an offense
19 under Chapter 19 or 20 or Section 20A.02(a)(1), (2), (5), or (6) to
20 obtain, in return for not committing the threatened offense or in
21 connection with the threatened offense, either of the following
22 benefits:

23 (1) intimate visual material; or

24 (2) an act involving sexual conduct causing arousal or
25 gratification.

26 (d) This section applies to a threat regardless of how that
27 threat is communicated, including a threat transmitted through

1 e-mail or an Internet website, social media account, or chat room
2 and a threat made by other electronic or technological means.

3 (e) An offense under this section is a state jail felony,
4 except that the offense is a felony of the third degree if it is
5 shown on the trial of the offense that the defendant has previously
6 been convicted of an offense under this section.

7 SECTION 5. (a) This section takes effect only if the Act of
8 the 85th Legislature, Regular Session, 2017, relating to
9 nonsubstantive additions to and corrections in enacted codes does
10 not become law.

11 (b) Section 21.16(g), Penal Code, as added by Chapter 852
12 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015,
13 is amended to read as follows:

14 (g) An offense under this section is a state jail felony
15 ~~[Class A misdemeanor]~~.

16 (c) Chapter 21, Penal Code, is amended by adding Section
17 21.18 to read as follows:

18 Sec. 21.18. SEXUAL COERCION. (a) In this section:

19 (1) "Intimate visual material" means the visual
20 material described by Section 21.16(b)(1) or (c), as added by
21 Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular
22 Session, 2015.

23 (2) "Sexual conduct" has the meaning assigned by
24 Section 43.25.

25 (b) A person commits an offense if the person intentionally
26 threatens, including by coercion or extortion, to commit an offense
27 under Chapter 43 or Section 20A.02(a)(3), (4), (7), or (8), 21.02,

1 21.08, 21.11, 21.12, 21.15, 21.16, as added by Chapter 852 (S.B.
2 1135), Acts of the 84th Legislature, Regular Session, 2015, 21.16,
3 as added by Chapter 676 (H.B. 207), Acts of the 84th Legislature,
4 Regular Session, 2015, 22.011, or 22.021 to obtain, in return for
5 not committing the threatened offense or in connection with the
6 threatened offense, any of the following benefits:

7 (1) intimate visual material;

8 (2) an act involving sexual conduct causing arousal or
9 gratification; or

10 (3) a monetary benefit or other benefit of value.

11 (c) A person commits an offense if the person intentionally
12 threatens, including by coercion or extortion, to commit an offense
13 under Chapter 19 or 20 or Section 20A.02(a)(1), (2), (5), or (6) to
14 obtain, in return for not committing the threatened offense or in
15 connection with the threatened offense, either of the following
16 benefits:

17 (1) intimate visual material; or

18 (2) an act involving sexual conduct causing arousal or
19 gratification.

20 (d) This section applies to a threat regardless of how that
21 threat is communicated, including a threat transmitted through
22 e-mail or an Internet website, social media account, or chat room
23 and a threat made by other electronic or technological means.

24 (e) An offense under this section is a state jail felony,
25 except that the offense is a felony of the third degree if it is
26 shown on the trial of the offense that the defendant has previously
27 been convicted of an offense under this section.

1 SECTION 6. Section 22.011(a), Penal Code, is amended to
2 read as follows:

3 (a) A person commits an offense if [~~the person~~]:

4 (1) the person intentionally or knowingly:

5 (A) causes the penetration of the anus or sexual
6 organ of another person by any means, without that person's
7 consent;

8 (B) causes the penetration of the mouth of
9 another person by the sexual organ of the actor, without that
10 person's consent; or

11 (C) causes the sexual organ of another person,
12 without that person's consent, to contact or penetrate the mouth,
13 anus, or sexual organ of another person, including the actor; or

14 (2) regardless of whether the person knows the age of
15 the child at the time of the offense, the person intentionally or
16 knowingly:

17 (A) causes the penetration of the anus or sexual
18 organ of a child by any means;

19 (B) causes the penetration of the mouth of a
20 child by the sexual organ of the actor;

21 (C) causes the sexual organ of a child to contact
22 or penetrate the mouth, anus, or sexual organ of another person,
23 including the actor;

24 (D) causes the anus of a child to contact the
25 mouth, anus, or sexual organ of another person, including the
26 actor; or

27 (E) causes the mouth of a child to contact the

1 anus or sexual organ of another person, including the actor.

2 SECTION 7. Section 22.011, Penal Code, is amended by
3 amending Subsection (b) and adding Subsection (e-1) to read as
4 follows:

5 (b) A sexual assault under Subsection (a)(1) is without the
6 consent of the other person if:

7 (1) the actor compels the other person to submit or
8 participate by the use of physical force, ~~or~~ violence, or
9 coercion;

10 (2) the actor compels the other person to submit or
11 participate by threatening to use force or violence against the
12 other person or to cause harm to the other person, and the other
13 person believes that the actor has the present ability to execute
14 the threat;

15 (3) the other person has not consented and the actor
16 knows the other person is:

17 (A) unconscious;

18 (B) ~~or~~ physically unable to resist;

19 (C) incapable of appraising the nature of the
20 act; or

21 (D) unaware that the sexual assault is occurring;

22 (4) the actor knows that as a result of mental disease
23 or defect the other person is at the time of the sexual assault
24 incapable either of appraising the nature of the act or of resisting
25 it;

26 (5) ~~[the other person has not consented and the actor~~
27 ~~knows the other person is unaware that the sexual assault is~~

1 ~~occurring,~~

2 ~~[(6) the actor has intentionally impaired the other~~
3 ~~person's power to appraise or control the other person's conduct by~~
4 ~~administering any substance without the other person's knowledge,~~

5 ~~[(7)]~~ the actor compels the other person to submit or
6 participate by threatening to use force or violence against any
7 person, and the other person believes that the actor has the ability
8 to execute the threat;

9 (6) ~~[(8) the actor is a public servant who coerces the~~
10 ~~other person to submit or participate,~~

11 ~~[(9)]~~ the actor is a mental health services provider
12 or a health care services provider who causes the other person, who
13 is a patient or former patient of the actor, to submit or
14 participate by exploiting the other person's emotional dependency
15 on the actor;

16 (7) ~~[(10)]~~ the actor is a clergyman who causes the
17 other person to submit or participate by exploiting the other
18 person's emotional dependency on the clergyman in the clergyman's
19 professional character as spiritual adviser; ~~[or]~~

20 (8) ~~[(11)]~~ the actor is an employee of a facility
21 where the other person is a resident, unless the employee and
22 resident are formally or informally married to each other under
23 Chapter 2, Family Code; or

24 (9) the actor knows that the other person has
25 withdrawn consent to the act and the actor persists in the act after
26 consent is withdrawn.

27 (e-1) It is not a defense to prosecution under this section

1 that the actor mistakenly believed that the other person consented
2 to the conduct if a reasonable person should have known or
3 understood that the other person did not consent to the conduct.

4 SECTION 8. Section 22.021(a), Penal Code, is amended to
5 read as follows:

6 (a) A person commits an offense:

7 (1) if the person:

8 (A) intentionally or knowingly:

9 (i) causes the penetration of the anus or
10 sexual organ of another person by any means, without that person's
11 consent;

12 (ii) causes the penetration of the mouth of
13 another person by the sexual organ of the actor, without that
14 person's consent; or

15 (iii) causes the sexual organ of another
16 person, without that person's consent, to contact or penetrate the
17 mouth, anus, or sexual organ of another person, including the
18 actor; or

19 (B) regardless of whether the person knows the
20 age of the child at the time of the offense, intentionally or
21 knowingly:

22 (i) causes the penetration of the anus or
23 sexual organ of a child by any means;

24 (ii) causes the penetration of the mouth of
25 a child by the sexual organ of the actor;

26 (iii) causes the sexual organ of a child to
27 contact or penetrate the mouth, anus, or sexual organ of another

1 person, including the actor;

2 (iv) causes the anus of a child to contact
3 the mouth, anus, or sexual organ of another person, including the
4 actor; or

5 (v) causes the mouth of a child to contact
6 the anus or sexual organ of another person, including the actor; and

7 (2) if:

8 (A) the person:

9 (i) causes serious bodily injury or
10 attempts to cause the death of the victim or another person in the
11 course of the same criminal episode;

12 (ii) by acts or words places the victim in
13 fear that any person will become the victim of an offense under
14 Section [20A.02\(a\)\(3\)](#), (4), (7), or (8) or that death, serious
15 bodily injury, or kidnapping will be imminently inflicted on any
16 person;

17 (iii) by acts or words occurring in the
18 presence of the victim threatens to cause any person to become the
19 victim of an offense under Section [20A.02\(a\)\(3\)](#), (4), (7), or (8) or
20 to cause the death, serious bodily injury, or kidnapping of any
21 person;

22 (iv) uses or exhibits a deadly weapon in the
23 course of the same criminal episode;

24 (v) acts in concert with another who
25 engages in conduct described by Subdivision (1) directed toward the
26 same victim and occurring during the course of the same criminal
27 episode; or

1 (vi) with the intent of facilitating the
2 commission of the offense, administers or provides [~~flunitrazepam,~~
3 ~~otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine~~] to
4 the victim of the offense any substance capable of impairing the
5 victim's ability to appraise the nature of the act or to resist the
6 act [~~with the intent of facilitating the commission of the~~
7 ~~offense~~];

8 (B) the victim is younger than 14 years of age,
9 regardless of whether the person knows the age of the victim at the
10 time of the offense; or

11 (C) the victim is an elderly individual or a
12 disabled individual.

13 SECTION 9. Section 22.021, Penal Code, is amended by adding
14 Subsection (d-1) to read as follows:

15 (d-1) It is not a defense to prosecution under this section
16 that the actor mistakenly believed that the other person consented
17 to the conduct if a reasonable person should have known or
18 understood that the other person did not consent to the conduct.

19 SECTION 10. Section 43.02, Penal Code, as amended by
20 Chapters 332 (H.B. 10) and 1273 (S.B. 825), Acts of the 84th
21 Legislature, Regular Session, 2015, is amended by reenacting
22 Subsection (c) and reenacting and amending Subsection (c-1) to read
23 as follows:

24 (c) An offense under Subsection (a) is a Class B
25 misdemeanor, except that the offense is:

26 (1) a Class A misdemeanor if the actor has previously
27 been convicted one or two times of an offense under Subsection (a);

1 or

2 (2) a state jail felony if the actor has previously
3 been convicted three or more times of an offense under Subsection
4 (a).

5 (c-1) An offense under Subsection (b) is a Class B
6 misdemeanor, except that the offense is:

7 (1) a Class A misdemeanor if the actor has previously
8 been convicted one or two times of an offense under Subsection (b);

9 (2) a state jail felony if the actor has previously
10 been convicted three or more times of an offense under Subsection
11 (b); or

12 (3) a felony of the second degree if the person
13 solicited is:

14 (A) younger than 18 years of age, regardless of
15 whether the actor knows the age of the person solicited at the time
16 of [the actor commits] the offense;

17 (B) represented to the actor as being younger
18 than 18 years of age; or

19 (C) believed by the actor to be younger than 18
20 years of age.

21 SECTION 11. Section 43.03(b), Penal Code, is amended to
22 read as follows:

23 (b) An offense under this section is a Class A misdemeanor,
24 except that the offense is:

25 (1) a state jail felony if the actor has been
26 previously convicted of an offense under this section; or

27 (2) a felony of the second degree if the actor engages

1 in conduct described by Subsection (a)(1) or (2) involving a person
2 younger than 18 years of age engaging in prostitution, regardless
3 of whether the actor knows the age of the person at the time of [~~the~~
4 ~~actor commits~~] the offense.

5 SECTION 12. Section 43.04(b), Penal Code, is amended to
6 read as follows:

7 (b) An offense under this section is a felony of the third
8 degree, except that the offense is a felony of the first degree if
9 the prostitution enterprise uses as a prostitute one or more
10 persons younger than 18 years of age, regardless of whether the
11 actor knows the age of the person at the time of [~~the actor commits~~]
12 the offense.

13 SECTION 13. Section 43.05(a), Penal Code, is amended to
14 read as follows:

15 (a) A person commits an offense if the person knowingly:

16 (1) causes another by force, threat, or fraud to
17 commit prostitution; or

18 (2) causes by any means a child younger than 18 years
19 to commit prostitution, regardless of whether the actor knows the
20 age of the child at the time of [~~the actor commits~~] the offense.

21 SECTION 14. Section 43.25, Penal Code, is amended by
22 amending Subsections (c) and (e) and adding Subsection (h) to read
23 as follows:

24 (c) An offense under Subsection (b) is a felony of the
25 second degree, except that the offense is a felony of the first
26 degree if the victim is younger than 14 years of age at the time the
27 offense is committed, regardless of whether the actor knows the age

1 of the victim at the time of the offense.

2 (e) An offense under Subsection (d) is a felony of the third
3 degree, except that the offense is a felony of the second degree if
4 the victim is younger than 14 years of age at the time the offense is
5 committed, regardless of whether the actor knows the age of the
6 victim at the time of the offense.

7 (h) Conduct under this section constitutes an offense
8 regardless of whether the actor knows the age of the victim at the
9 time of the offense.

10 SECTION 15. Section 43.251, Penal Code, is amended by
11 amending Subsection (c) and adding Subsection (d) to read as
12 follows:

13 (c) An offense under this section is a felony of the second
14 degree, except that the offense is a felony of the first degree if
15 the victim [~~child~~] is younger than 14 years of age at the time the
16 offense is committed, regardless of whether the actor knows the age
17 of the victim at the time of the offense.

18 (d) Conduct under this section constitutes an offense
19 regardless of whether the actor knows the age of the victim at the
20 time of the offense.

21 SECTION 16. The changes in law made by this Act apply only
22 to an offense committed on or after the effective date of this Act.
23 An offense committed before the effective date of this Act is
24 governed by the law in effect on the date the offense was committed,
25 and the former law is continued in effect for that purpose. For
26 purposes of this section, an offense was committed before the
27 effective date of this Act if any element of the offense occurred

1 before that date.

2 SECTION 17. This Act takes effect September 1, 2017.