

By: Uresti

H.B. No. 3192

A BILL TO BE ENTITLED

AN ACT

relating to the punishment and community supervision for certain offenses committed against a child, an elderly individual, or a disabled individual; increasing a criminal penalty.

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

SECTION 1. The heading to Article 42.015, Code of Criminal Procedure, is amended to read as follows:

Art. 42.015. FINDING OF AGE OR DISABILITY OF VICTIM.

SECTION 2. Article 42.015, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) In the trial of an offense under Section 22.01(a)(1), 22.011(a)(1), 22.02, or 22.021(a)(1)(A), Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was at the time of the offense a child, an elderly individual, or a disabled individual, as those terms are defined by Section 22.04, Penal Code.

SECTION 3. Subchapter K, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.515 to read as follows:

Art. 42A.515. COMMUNITY SUPERVISION FOR CERTAIN OFFENSES COMMITTED AGAINST CHILD VICTIM, ELDERLY VICTIM, OR DISABLED VICTIM. Notwithstanding Article 42A.302, a court granting community supervision to a defendant convicted of an offense under Section 21.11(a)(1), 22.011(a)(2), 22.021(a)(1)(B), or 22.04, Penal Code,

1 or an offense for which the court has made an affirmative finding  
2 under Article 42.015(c) shall require as a condition of community  
3 supervision that the defendant submit to 180 days confinement in a  
4 county jail.

5 SECTION 4. Section 22.01, Penal Code, is amended by  
6 amending Subsections (b), (b-1), (c), (d), and (f) and adding  
7 Subsection (b-2) to read as follows:

8 (b) An offense under Subsection (a)(1) is a Class A  
9 misdemeanor, except that the offense is a Class A misdemeanor with a  
10 minimum term of confinement of 180 days if the offense is committed  
11 against a child, an elderly individual, or a disabled individual.

12 (b-1) Notwithstanding Subsection (b), an offense under  
13 Subsection (a)(1) is a felony of the third degree if the offense is  
14 committed against:

15 (1) a person the actor knows is a public servant while  
16 the public servant is lawfully discharging an official duty, or in  
17 retaliation or on account of an exercise of official power or  
18 performance of an official duty as a public servant;

19 (2) a person whose relationship to or association with  
20 the defendant is described by Section 71.0021(b), 71.003, or  
21 71.005, Family Code, if:

22 (A) it is shown on the trial of the offense that  
23 the defendant has been previously convicted of an offense under  
24 this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11  
25 against a person whose relationship to or association with the  
26 defendant is described by Section 71.0021(b), 71.003, or 71.005,  
27 Family Code; or

1 (B) the offense is committed by intentionally,  
2 knowingly, or recklessly impeding the normal breathing or  
3 circulation of the blood of the person by applying pressure to the  
4 person's throat or neck or by blocking the person's nose or mouth;

5 (3) a person who contracts with government to perform  
6 a service in a facility as defined by Section 1.07(a)(14), Penal  
7 Code, or Section 51.02(13) or (14), Family Code, or an employee of  
8 that person:

9 (A) while the person or employee is engaged in  
10 performing a service within the scope of the contract, if the actor  
11 knows the person or employee is authorized by government to provide  
12 the service; or

13 (B) in retaliation for or on account of the  
14 person's or employee's performance of a service within the scope of  
15 the contract;

16 (4) a person the actor knows is a security officer  
17 while the officer is performing a duty as a security officer; or

18 (5) a person the actor knows is emergency services  
19 personnel while the person is providing emergency services.

20 (b-2) [~~(b-1)~~] Notwithstanding Subsections (b) and (b-1)(2)  
21 [~~Subsection (b)(2)~~], an offense under Subsection (a)(1) is a felony  
22 of the second degree if:

23 (1) the offense is committed against a person whose  
24 relationship to or association with the defendant is described by  
25 Section 71.0021(b), 71.003, or 71.005, Family Code;

26 (2) it is shown on the trial of the offense that the  
27 defendant has been previously convicted of an offense under this

1 chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a  
2 person whose relationship to or association with the defendant is  
3 described by Section 71.0021(b), 71.003, or 71.005, Family Code;  
4 and

5 (3) the offense is committed by intentionally,  
6 knowingly, or recklessly impeding the normal breathing or  
7 circulation of the blood of the person by applying pressure to the  
8 person's throat or neck or by blocking the person's nose or mouth.

9 (c) An offense under Subsection (a)(2) or (3) is a Class C  
10 misdemeanor, except that the offense is:

11 (1) a Class A misdemeanor if the offense is committed  
12 under Subsection (a)(3) against an elderly individual or disabled  
13 individual[, as those terms are defined by Section 22.04]; or

14 (2) a Class B misdemeanor if the offense is committed  
15 by a person who is not a sports participant against a person the  
16 actor knows is a sports participant either:

17 (A) while the participant is performing duties or  
18 responsibilities in the participant's capacity as a sports  
19 participant; or

20 (B) in retaliation for or on account of the  
21 participant's performance of a duty or responsibility within the  
22 participant's capacity as a sports participant.

23 (d) For purposes of Subsection (b-1) [~~(b)~~], the actor is  
24 presumed to have known the person assaulted was a public servant, a  
25 security officer, or emergency services personnel if the person was  
26 wearing a distinctive uniform or badge indicating the person's  
27 employment as a public servant or status as a security officer or

1 emergency services personnel.

2 (f) For the purposes of Subsections (b-1)(2)(A) [~~(b)(2)(A)~~]  
3 and (b-2)(2) [~~(b-1)(2)~~]:

4 (1) a defendant has been previously convicted of an  
5 offense listed in those subsections committed against a person  
6 whose relationship to or association with the defendant is  
7 described by Section 71.0021(b), 71.003, or 71.005, Family Code, if  
8 the defendant was adjudged guilty of the offense or entered a plea  
9 of guilty or nolo contendere in return for a grant of deferred  
10 adjudication, regardless of whether the sentence for the offense  
11 was ever imposed or whether the sentence was probated and the  
12 defendant was subsequently discharged from community supervision;  
13 and

14 (2) a conviction under the laws of another state for an  
15 offense containing elements that are substantially similar to the  
16 elements of an offense listed in those subsections is a conviction  
17 of the offense listed.

18 SECTION 5. Section 22.01(e), Penal Code, is amended by  
19 amending Subdivision (1) and adding Subdivision (2) to read as  
20 follows:

21 (1) "Child," "elderly individual," and "disabled  
22 individual" have the meanings assigned by Section 22.04.

23 (2) "Emergency services personnel" includes  
24 firefighters, emergency medical services personnel as defined by  
25 Section 773.003, Health and Safety Code, emergency room personnel,  
26 and other individuals who, in the course and scope of employment or  
27 as a volunteer, provide services for the benefit of the general

1 public during emergency situations.

2           SECTION 6. The changes in law made by this Act apply only to  
3 an offense committed on or after the effective date of this Act. An  
4 offense committed before the effective date of this Act is governed  
5 by the law in effect on the date the offense was committed, and the  
6 former law is continued in effect for that purpose. For purposes of  
7 this section, an offense was committed before the effective date of  
8 this Act if any element of the offense was committed before that  
9 date.

10           SECTION 7. This Act takes effect September 1, 2017.