

By: Kolkhorst

S.B. No. 1322

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to increasing the punishment for certain conduct  
3 constituting the offense of possession or promotion of child  
4 pornography.

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

6 SECTION 1. Section 43.25(g), Penal Code, is amended to read  
7 as follows:

8 (g) When it becomes necessary for the purposes of this  
9 section or Section 43.26 to make a determination regarding the age  
10 of [~~determine whether~~] a child who participated in sexual conduct  
11 [~~was younger than 18 years of age~~], the court or jury may make that  
12 [~~this~~] determination by any of the following methods:

- 13 (1) personal inspection of the child;
- 14 (2) inspection of the photograph or motion picture  
15 that shows the child engaging in the sexual performance;
- 16 (3) oral testimony by a witness to the sexual  
17 performance as to the age of the child based on the child's  
18 appearance at the time;
- 19 (4) expert medical testimony based on the appearance  
20 of the child engaging in the sexual performance; or
- 21 (5) any other method authorized by law or by the rules  
22 of evidence at common law.

23 SECTION 2. Sections 43.26(d) and (g), Penal Code, are  
24 amended to read as follows:

1 (d) An offense under Subsection (a) is a felony of the third  
2 degree, except that the offense is:

3 (1) a felony of the second degree if:

4 (A) it is shown on the trial of the offense that  
5 the person has been previously convicted one time of an offense  
6 under this section; or

7 (B) the child depicted in the visual material was  
8 younger than 14 years of age at the time the image was made [~~that~~  
9 ~~subsection~~]; and

10 (2) a felony of the first degree if it is shown on the  
11 trial of the offense that the person has been previously convicted  
12 two or more times of an offense under this section [~~that~~  
13 ~~subsection~~].

14 (g) An offense under Subsection (e) is a felony of the  
15 second degree, except that the offense is a felony of the first  
16 degree if it is shown on the trial of the offense that the person has  
17 been previously convicted of an offense under this section [~~that~~  
18 ~~subsection~~].

19 SECTION 3. The change in law made by this Act applies only  
20 to an offense committed on or after the effective date of this Act.  
21 An offense committed before the effective date of this Act is  
22 governed by the law in effect on the date the offense was committed,  
23 and the former law is continued in effect for that purpose. For  
24 purposes of this section, an offense was committed before the  
25 effective date of this Act if any element of the offense occurred  
26 before that date.

27 SECTION 4. This Act takes effect September 1, 2017.