

By: Kolkhorst
(Miller)

S.B. No. 1322

A BILL TO BE ENTITLED

AN ACT

1
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.