

By: Kolkhorst

S.B. No. 1322

A BILL TO BE ENTITLED

AN ACT

relating to increasing the punishment for the offense of possession or promotion of child pornography; changing parole eligibility.

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

SECTION 1. Article 42.01, Code of Criminal Procedure, is amended by adding Section 12 to read as follows:

Sec. 12. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0151.

SECTION 2. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0151 to read as follows:

Art. 42.0151. FINDING REGARDING CHILD PORNOGRAPHY. In the trial of an offense under Section 43.26, 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 the child depicted in the visual material was younger than six years of age at the time the image was made.

SECTION 3. Section 508.145(a), Government Code, is amended to read as follows:

(a) An inmate is not eligible for release on parole if the inmate is:

- (1) under sentence of death;
- (2) [7] serving a sentence of life imprisonment without parole;

1 (3) serving a sentence for an offense for which the
2 judgment contains an affirmative finding under Article 42.0151,
3 Code of Criminal Procedure;

4 (4) [✓] serving a sentence for an offense under
5 Section 21.02, Penal Code; or

6 (5) [~~✓~~] serving a sentence for an offense under
7 Section 22.021, Penal Code, that is punishable under Subsection (f)
8 of that section [~~is not eligible for release on parole~~].

9 SECTION 4. Section 43.25(g), Penal Code, is amended to read
10 as follows:

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

16 (1) personal inspection of the child;

17 (2) inspection of the photograph or motion picture
18 that shows the child engaging in the sexual performance;

19 (3) oral testimony by a witness to the sexual
20 performance as to the age of the child based on the child's
21 appearance at the time;

22 (4) expert medical testimony based on the appearance
23 of the child engaging in the sexual performance; or

24 (5) any other method authorized by law or by the rules
25 of evidence at common law.

26 SECTION 5. Sections 43.26(d) and (g), Penal Code, are
27 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 Subsection (a); 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 Subsection (a) [~~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:

17 (1) it is shown on the trial of the offense that the
18 person has been previously convicted of an offense under Subsection
19 (e); or

20 (2) the child depicted in the visual material was
21 younger than 14 years of age at the time the image was made [~~that~~
22 ~~subsection~~].

23 SECTION 6. The change in law made by this Act applies only
24 to an offense committed on or after the effective date of this Act.
25 An offense committed before the effective date of this Act is
26 governed by the law in effect on the date the offense was committed,
27 and the former law is continued in effect for that purpose. For

1 purposes of this section, an offense was committed before the
2 effective date of this Act if any element of the offense occurred
3 before that date.

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