86R23245 KJE-D

By:  Wu, King of Hemphill, Hinojosa, Metcalf H.B. No. 1357

Substitute the following for H.B. No. 1357:

By:  Hunter C.S.H.B. No. 1357

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of and punishment for the criminal offense of failure to report certain sexual offenses committed against a child; increasing criminal penalties.

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

SECTION 1.  Section 38.17, Penal Code, is amended to read as follows:

Sec. 38.17.  FAILURE TO [~~STOP OR~~] REPORT CERTAIN [~~AGGRAVATED~~] SEXUAL OFFENSES COMMITTED AGAINST A [~~ASSAULT OF~~] CHILD. (a) In this section, "sexual offense against a child" means conduct that constitutes an offense under:

(1)  Section 20A.02(a)(7) or (8) (Trafficking of Persons);

(2)  Section 20A.03 (Continuous Trafficking of Persons), if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(7) or (8);

(3)  Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(4)  Section 21.11 (Indecency with a Child);

(5)  Section 22.011(a)(2) (Sexual Assault of a Child);

(6)  Section 22.021(a)(1)(B) (Aggravated Sexual Assault of a Child);

(7)  Section 43.05(a)(2) (Compelling Prostitution); or

(8)  Section 43.25 (Sexual Performance by a Child).

(b)  A person 18 years of age or older[~~, other than a person who has a relationship with a child described by Section 22.04(b),~~] commits an offense if the person:

(1)  knows that another person has committed a sexual offense against a child [~~the actor observes the commission or attempted commission of an offense prohibited by Section 21.02 or 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child~~]; and

(2)  [~~the actor~~] fails to [~~assist the child or~~] immediately report the commission of the offense to a [~~peace officer or~~] law enforcement agency or to the Department of Family and Protective Services[~~; and~~

[~~(3)  the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death~~].

(c) [~~(b)~~]  An offense under this section is a state jail felony, except that the offense is:

(1)  except as provided by Subdivision (2), a felony of the third degree if it is shown on the trial of the offense that the actor also engaged in conduct intended to hinder the investigation or prosecution of the sexual offense against a child, including by:

(A)  altering, destroying, or concealing any record, document, or thing to impair its verity, legibility, or availability as evidence in the investigation or prosecution;

(B)  interfering with the willingness of a witness to the offense to report the offense to, or cooperate in the investigation or prosecution of the offense with, a law enforcement agency or the Department of Family and Protective Services or otherwise preventing the report by or cooperation of the witness;

(C)  harboring or concealing the person who committed the offense;

(D)  providing or aiding in providing the person who committed the offense with a means to avoid investigation or arrest, including by assisting the person in relocating to another area; or

(E)  providing false information regarding the offense to a law enforcement agency or to the Department of Family and Protective Services; or

(2)  a felony of the second degree if:

(A)  the actor engaged in conduct described by Subdivision (1);

(B)  the person who committed the sexual offense against a child commits a subsequent sexual offense against a child; and

(C)  the actor's failure to report the sexual offense against a child enabled or facilitated the person's commission of the subsequent offense [~~Class A misdemeanor~~].

(d)  For purposes of this section, the actor is presumed to have known that another person has committed a sexual offense against a child if:

(1)  the child tells the actor that the other person has engaged in conduct that constitutes an offense listed in Subsection (a); or

(2)  the actor engaged in conduct described by Subsection (c)(1) with respect to the offense.

(e)  It is a defense to prosecution under this section that the actor complied with a duty to report the sexual offense against a child to a law enforcement agency or to the Department of Family and Protective Services as required by other law.

(f)  It is an affirmative defense to prosecution under this section that the actor promptly reported the sexual offense against a child to a professional, as defined by Section 261.101(b), Family Code, or to a family violence center, as defined by Section 93.001, Family Code.

(g)  It is an exception to the application of this section that the actor was a victim of any offense committed by the person who the actor knows has committed the sexual offense against a child.

(h)  If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

SECTION 2.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3.  This Act takes effect September 1, 2019.