

By: Farrar

H.B. No. 3561

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the criminal offense of continuous sexual assault.

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

SECTION 1. Chapter 22, Penal Code, is amended by adding Section 22.022 to read as follows:

Sec. 22.022. CONTINUOUS SEXUAL ASSAULT. (a) A person commits an offense if, during a period that is 30 or more days in duration, the person commits two or more acts of sexual assault, regardless of whether the acts of sexual assault are committed against one or more victims.

(b) For purposes of this section, "act of sexual assault" means any act that is a violation of Section 22.011 or 22.021.

(c) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual assault were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual assault.

(d) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (b) the victim of which is the same victim as a victim of the offense alleged under Subsection (a) unless the offense listed in Subsection (b):

(1) is charged in the alternative;

1           (2) occurred outside the period in which the offense  
2 alleged under Subsection (a) was committed; or

3           (3) is considered by the trier of fact to be a lesser  
4 included offense of the offense alleged under Subsection (a).

5           (e) A defendant may not be charged with more than one count  
6 under Subsection (a) if all of the specific acts of sexual assault  
7 that are alleged to have been committed are alleged to have been  
8 committed against a single victim.

9           (f) An offense under this section is a felony of the first  
10 degree, punishable by imprisonment in the Texas Department of  
11 Criminal Justice for life, or for any term of not more than 99 years  
12 or less than 25 years.

13           (g) If conduct that constitutes an offense under this  
14 section also constitutes an offense under Section 21.02, the actor  
15 may be prosecuted under this section or Section 21.02.

16           SECTION 2. Article 12.01, Code of Criminal Procedure, is  
17 amended to read as follows:

18           Art. 12.01. FELONIES. Except as provided in Article 12.03,  
19 felony indictments may be presented within these limits, and not  
20 afterward:

21           (1) no limitation:

22                   (A) murder and manslaughter;

23                   (B) sexual assault under Section 22.011(a)(2),  
24 Penal Code, or aggravated sexual assault under Section  
25 22.021(a)(1)(B), Penal Code;

26                   (C) sexual assault or continuous sexual assault,  
27 if:

1 (i) during the investigation of the offense  
2 biological matter is collected and subjected to forensic DNA  
3 testing and the testing results show that the matter does not match  
4 the victim or any other person whose identity is readily  
5 ascertained; or

6 (ii) probable cause exists to believe that  
7 the defendant has committed the same or a similar sexual offense  
8 against five or more victims;

9 (D) continuous sexual abuse of young child or  
10 children under Section 21.02, Penal Code;

11 (E) indecency with a child under Section 21.11,  
12 Penal Code;

13 (F) an offense involving leaving the scene of an  
14 accident under Section 550.021, Transportation Code, if the  
15 accident resulted in the death of a person;

16 (G) trafficking of persons under Section  
17 20A.02(a)(7) or (8), Penal Code;

18 (H) continuous trafficking of persons under  
19 Section 20A.03, Penal Code; or

20 (I) compelling prostitution under Section  
21 43.05(a)(2), Penal Code;

22 (2) ten years from the date of the commission of the  
23 offense:

24 (A) theft of any estate, real, personal or mixed,  
25 by an executor, administrator, guardian or trustee, with intent to  
26 defraud any creditor, heir, legatee, ward, distributee,  
27 beneficiary or settlor of a trust interested in such estate;

1 (B) theft by a public servant of government  
2 property over which he exercises control in his official capacity;

3 (C) forgery or the uttering, using or passing of  
4 forged instruments;

5 (D) injury to an elderly or disabled individual  
6 punishable as a felony of the first degree under Section 22.04,  
7 Penal Code;

8 (E) sexual assault or continuous sexual assault,  
9 except as provided by Subdivision (1);

10 (F) arson;

11 (G) trafficking of persons under Section  
12 20A.02(a)(1), (2), (3), or (4), Penal Code; or

13 (H) compelling prostitution under Section  
14 43.05(a)(1), Penal Code;

15 (3) seven years from the date of the commission of the  
16 offense:

17 (A) misapplication of fiduciary property or  
18 property of a financial institution;

19 (B) securing execution of document by deception;

20 (C) a felony violation under Chapter 162, Tax  
21 Code;

22 (D) false statement to obtain property or credit  
23 under Section 32.32, Penal Code;

24 (E) money laundering;

25 (F) credit card or debit card abuse under Section  
26 32.31, Penal Code;

27 (G) fraudulent use or possession of identifying

1 information under Section 32.51, Penal Code;

2 (H) exploitation of a child, elderly individual,  
3 or disabled individual under Section 32.53, Penal Code;

4 (I) Medicaid fraud under Section 35A.02, Penal  
5 Code; or

6 (J) bigamy under Section 25.01, Penal Code,  
7 except as provided by Subdivision (6);

8 (4) five years from the date of the commission of the  
9 offense:

10 (A) theft or robbery;

11 (B) except as provided by Subdivision (5),  
12 kidnapping or burglary;

13 (C) injury to an elderly or disabled individual  
14 that is not punishable as a felony of the first degree under Section  
15 22.04, Penal Code;

16 (D) abandoning or endangering a child; or

17 (E) insurance fraud;

18 (5) if the investigation of the offense shows that the  
19 victim is younger than 17 years of age at the time the offense is  
20 committed, 20 years from the 18th birthday of the victim of one of  
21 the following offenses:

22 (A) sexual performance by a child under Section  
23 43.25, Penal Code;

24 (B) aggravated kidnapping under Section  
25 20.04(a)(4), Penal Code, if the defendant committed the offense  
26 with the intent to violate or abuse the victim sexually; or

27 (C) burglary under Section 30.02, Penal Code, if

1 the offense is punishable under Subsection (d) of that section and  
2 the defendant committed the offense with the intent to commit an  
3 offense described by Subdivision (1)(B) or (D) of this article or  
4 Paragraph (B) of this subdivision;

5 (6) ten years from the 18th birthday of the victim of  
6 the offense:

7 (A) trafficking of persons under Section  
8 20A.02(a)(5) or (6), Penal Code;

9 (B) injury to a child under Section 22.04, Penal  
10 Code; or

11 (C) bigamy under Section 25.01, Penal Code, if  
12 the investigation of the offense shows that the person, other than  
13 the legal spouse of the defendant, whom the defendant marries or  
14 purports to marry or with whom the defendant lives under the  
15 appearance of being married is younger than 18 years of age at the  
16 time the offense is committed; or

17 (7) three years from the date of the commission of the  
18 offense: all other felonies.

19 SECTION 3. Article 42A.054(a), Code of Criminal Procedure,  
20 is amended to read as follows:

21 (a) Article 42A.053 does not apply to a defendant adjudged  
22 guilty of an offense under:

23 (1) Section 15.03, Penal Code, if the offense is  
24 punishable as a felony of the first degree;

25 (2) Section 19.02, Penal Code (Murder);

26 (3) Section 19.03, Penal Code (Capital Murder);

27 (4) Section 20.04, Penal Code (Aggravated

1 Kidnapping);  
2 (5) Section 20A.02, Penal Code (Trafficking of  
3 Persons);  
4 (6) Section 21.11(a)(1), Penal Code (Indecency with a  
5 Child);  
6 (7) Section 22.011, Penal Code (Sexual Assault);  
7 (8) Section 22.021, Penal Code (Aggravated Sexual  
8 Assault);  
9 (9) Section 22.022, Penal Code (Continuous Sexual  
10 Assault);  
11 (10) Section 22.04(a)(1), Penal Code (Injury to a  
12 Child, Elderly Individual, or Disabled Individual), if:  
13 (A) the offense is punishable as a felony of the  
14 first degree; and  
15 (B) the victim of the offense is a child;  
16 (11) [~~10~~] Section 29.03, Penal Code (Aggravated  
17 Robbery);  
18 (12) [~~11~~] Section 30.02, Penal Code (Burglary), if:  
19 (A) the offense is punishable under Subsection  
20 (d) of that section; and  
21 (B) the actor committed the offense with the  
22 intent to commit a felony under Section 21.02, 21.11, 22.011,  
23 22.021, 22.022, or 25.02, Penal Code;  
24 (13) [~~12~~] Section 43.05, Penal Code (Compelling  
25 Prostitution);  
26 (14) [~~13~~] Section 43.25, Penal Code (Sexual  
27 Performance by a Child); or

1            (15) [~~14~~] Chapter 481, Health and Safety Code, for  
2 which punishment is increased under:

3            (A) Section 481.140 of that code (Use of Child in  
4 Commission of Offense); or

5            (B) Section 481.134(c), (d), (e), or (f) of that  
6 code (Drug-free Zones) if it is shown that the defendant has been  
7 previously convicted of an offense for which punishment was  
8 increased under any of those subsections.

9            SECTION 4. Articles 62.001(5) and (6), Code of Criminal  
10 Procedure, are amended to read as follows:

11            (5) "Reportable conviction or adjudication" means a  
12 conviction or adjudication, including an adjudication of  
13 delinquent conduct or a deferred adjudication, that, regardless of  
14 the pendency of an appeal, is a conviction for or an adjudication  
15 for or based on:

16            (A) a violation of Section 21.02 (Continuous  
17 sexual abuse of young child or children), 21.09 (Bestiality), 21.11  
18 (Indecency with a child), 22.011 (Sexual assault), 22.021  
19 (Aggravated sexual assault), 22.022 (Continuous sexual assault),  
20 or 25.02 (Prohibited sexual conduct), Penal Code;

21            (B) a violation of Section 43.05 (Compelling  
22 prostitution), 43.25 (Sexual performance by a child), or 43.26  
23 (Possession or promotion of child pornography), Penal Code;

24            (B-1) a violation of Section 43.02  
25 (Prostitution), Penal Code, if the offense is punishable under  
26 Subsection (c-1)(3) of that section;

27            (C) a violation of Section 20.04(a)(4)



1 (Aggravated kidnapping), Penal Code, if the actor committed the  
2 offense or engaged in the conduct with intent to violate or abuse  
3 the victim sexually;

4 (D) a violation of Section 30.02 (Burglary),  
5 Penal Code, if the offense or conduct is punishable under  
6 Subsection (d) of that section and the actor committed the offense  
7 or engaged in the conduct with intent to commit a felony listed in  
8 Paragraph (A) or (C);

9 (E) a violation of Section 20.02 (Unlawful  
10 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),  
11 Penal Code, if, as applicable:

12 (i) the judgment in the case contains an  
13 affirmative finding under Article 42.015; or

14 (ii) the order in the hearing or the papers  
15 in the case contain an affirmative finding that the victim or  
16 intended victim was younger than 17 years of age;

17 (F) the second violation of Section 21.08  
18 (Indecent exposure), Penal Code, but not if the second violation  
19 results in a deferred adjudication;

20 (G) an attempt, conspiracy, or solicitation, as  
21 defined by Chapter 15, Penal Code, to commit an offense or engage in  
22 conduct listed in Paragraph (A), (B), (C), (D), (E), (K), or (L);

23 (H) a violation of the laws of another state,  
24 federal law, the laws of a foreign country, or the Uniform Code of  
25 Military Justice for or based on the violation of an offense  
26 containing elements that are substantially similar to the elements  
27 of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E),

1 (G), (J), (K), or (L), but not if the violation results in a  
2 deferred adjudication;

3 (I) the second violation of the laws of another  
4 state, federal law, the laws of a foreign country, or the Uniform  
5 Code of Military Justice for or based on the violation of an offense  
6 containing elements that are substantially similar to the elements  
7 of the offense of indecent exposure, but not if the second violation  
8 results in a deferred adjudication;

9 (J) a violation of Section 33.021 (Online  
10 solicitation of a minor), Penal Code;

11 (K) a violation of Section 20A.02(a)(3), (4),  
12 (7), or (8) (Trafficking of persons), Penal Code; or

13 (L) a violation of Section 20A.03 (Continuous  
14 trafficking of persons), Penal Code, if the offense is based partly  
15 or wholly on conduct that constitutes an offense under Section  
16 20A.02(a)(3), (4), (7), or (8) of that code.

17 (6) "Sexually violent offense" means any of the  
18 following offenses committed by a person 17 years of age or older:

19 (A) an offense under Section 21.02 (Continuous  
20 sexual abuse of young child or children), 21.11(a)(1) (Indecency  
21 with a child), 22.011 (Sexual assault), ~~or~~ 22.021 (Aggravated  
22 sexual assault), or 22.022 (Continuous sexual assault), Penal Code;

23 (B) an offense under Section 43.25 (Sexual  
24 performance by a child), Penal Code;

25 (C) an offense under Section 20.04(a)(4)  
26 (Aggravated kidnapping), Penal Code, if the defendant committed the  
27 offense with intent to violate or abuse the victim sexually;

1 (D) an offense under Section 30.02 (Burglary),  
2 Penal Code, if the offense is punishable under Subsection (d) of  
3 that section and the defendant committed the offense with intent to  
4 commit a felony listed in Paragraph (A) or (C) of Subdivision (5);  
5 or

6 (E) an offense under the laws of another state,  
7 federal law, the laws of a foreign country, or the Uniform Code of  
8 Military Justice if the offense contains elements that are  
9 substantially similar to the elements of an offense listed under  
10 Paragraph (A), (B), (C), or (D).

11 SECTION 5. Section 3.03(b), Penal Code, is amended to read  
12 as follows:

13 (b) If the accused is found guilty of more than one offense  
14 arising out of the same criminal episode, the sentences may run  
15 concurrently or consecutively if each sentence is for a conviction  
16 of:

17 (1) an offense:

18 (A) under Section 49.07 or 49.08, regardless of  
19 whether the accused is convicted of violations of the same section  
20 more than once or is convicted of violations of both sections; or

21 (B) for which a plea agreement was reached in a  
22 case in which the accused was charged with more than one offense  
23 listed in Paragraph (A), regardless of whether the accused is  
24 charged with violations of the same section more than once or is  
25 charged with violations of both sections;

26 (2) an offense:

27 (A) under Section 33.021 or an offense under

1 Section 21.02, 21.11, 22.011, 22.021, 22.022, 25.02, or 43.25  
2 committed against a victim younger than 17 years of age at the time  
3 of the commission of the offense regardless of whether the accused  
4 is convicted of violations of the same section more than once or is  
5 convicted of violations of more than one section; or

6 (B) for which a plea agreement was reached in a  
7 case in which the accused was charged with more than one offense  
8 listed in Paragraph (A) committed against a victim younger than 17  
9 years of age at the time of the commission of the offense regardless  
10 of whether the accused is charged with violations of the same  
11 section more than once or is charged with violations of more than  
12 one section;

13 (3) an offense:

14 (A) under Section 21.15 or 43.26, regardless of  
15 whether the accused is convicted of violations of the same section  
16 more than once or is convicted of violations of both sections; or

17 (B) for which a plea agreement was reached in a  
18 case in which the accused was charged with more than one offense  
19 listed in Paragraph (A), regardless of whether the accused is  
20 charged with violations of the same section more than once or is  
21 charged with violations of both sections;

22 (4) an offense for which the judgment in the case  
23 contains an affirmative finding under Article 42.0197, Code of  
24 Criminal Procedure;

25 (5) an offense:

26 (A) under Section 20A.02 or 43.05, regardless of  
27 whether the accused is convicted of violations of the same section

1 more than once or is convicted of violations of both sections; or

2 (B) for which a plea agreement was reached in a  
3 case in which the accused was charged with more than one offense  
4 listed in Paragraph (A), regardless of whether the accused is  
5 charged with violations of the same section more than once or is  
6 charged with violations of both sections; or

7 (6) an offense:

8 (A) under Section 22.04(a)(1) or (2) or Section  
9 22.04(a-1)(1) or (2) that is punishable as a felony of the first  
10 degree, regardless of whether the accused is convicted of  
11 violations of the same section more than once or is convicted of  
12 violations of more than one section; or

13 (B) for which a plea agreement was reached in a  
14 case in which the accused was charged with more than one offense  
15 listed in Paragraph (A) and punishable as described by that  
16 paragraph, regardless of whether the accused is charged with  
17 violations of the same section more than once or is charged with  
18 violations of more than one section.

19 SECTION 6. This Act takes effect September 1, 2019.