

By: Wu

H.B. No. 500

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).

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

4 (1) knows that another person has committed a sexual
5 offense against a child [~~the actor observes the commission or~~
6 ~~attempted commission of an offense prohibited by Section 21.02 or~~
7 ~~22.021(a)(2)(B) under circumstances in which a reasonable person~~
8 ~~would believe that an offense of a sexual or assaultive nature was~~
9 ~~being committed or was about to be committed against the child]; and~~

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

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

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

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

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

26 (B) interfering with the willingness of a witness
27 to the sexual offense to report that offense to, or cooperate in the

1 investigation or prosecution of the offense with, a law enforcement
2 agency or the Department of Family and Protective Services or
3 otherwise preventing the report by or cooperation of the witness;

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

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

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

13 (2) a felony of the second degree if:

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

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

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

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

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

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

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

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

12 (g) It is an exception to the application of this section
13 that:

14 (1) the person who the actor knows has committed the
15 sexual offense against a child has previously been convicted of any
16 of the following offenses committed against the actor:

17 (A) an offense listed in Article 42A.054(a), Code
18 of Criminal Procedure; or

19 (B) an offense under Section 22.01 (Assault) or
20 22.02 (Aggravated Assault); or

21 (2) at the time of the actor's act of omission
22 described by Subsection (b)(2) or at any time before that act
23 occurred, the person who the actor knows has committed the sexual
24 offense against a child was the subject of an order issued to
25 protect the actor:

26 (A) under Subchapter A, Chapter 7B, Code of
27 Criminal Procedure, Article 17.292, Code of Criminal Procedure,

1 Section 6.504, Family Code, Chapter 83, Family Code, Chapter 85,
2 Family Code, or Subchapter F, Chapter 261, Family Code; or
3 (B) by another jurisdiction as provided by
4 Chapter 88, Family Code.

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

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

16 SECTION 3. This Act takes effect September 1, 2021.