

BILL ANALYSIS

Senate Research Center

S.B. 129
By: Springer
Criminal Justice
7/7/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Nothing in history has transformed the character and practice of child sexual exploitation more than the Internet. Individuals who commit child sex crimes use Internet services, social networks, and mobile apps to meet minors and each other in ways they cannot in person and to groom victims by normalizing abusive sexual acts. Tor-based sites on the "black web" focus on child sexual exploitation and support hundreds of thousands of explicit images with hundreds of thousands of active users.

S.B. 129 updates the State's outdated child pornography laws to reflect current technologies and criminal trends so that law enforcement and prosecutors can efficiently protect the most vulnerable in our society—our children. Specifically, S.B. 129 increases charges based on increasing amounts of explicit material rather than charging the defendant for each explicit picture or video. The bill adds enchantment penalties if the person was in an official position of caring for the child at the time of the exploitation.

(Original Author's/Sponsor's Statement of Intent)

S.B. 129 amends current law relating to the prosecution and punishment for possession or promotion of child pornography and increases criminal penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments to be presented within these limits, and not afterward, except as provided in Article 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, Organized Criminal Activity):

(1)-(2) makes no changes to these subdivisions;

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

(A)-(H) makes no changes to these paragraphs;

(I)-(J) makes nonsubstantive changes to these paragraphs; or

(K) possession or promotion of child pornography under Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(4)-(8) makes no changes to these subdivisions.

SECTION 2. Amends Section 43.26, Penal Code, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Provides that an offense under Subsection (a) (relating to the offense of a person possessing or accessing visual material that depicts a child younger than 18 years of age engaging in sexual conduct) is:

(1) a felony of the third degree if the person possesses visual material that contains fewer than 100 visual depictions of a child as described by Subsection (a)(1) (relating to a person committing an offense by possessing or accessing visual material of a child who is engaging in sexual conduct);

(2) a felony of the second degree if the person possesses visual material that contains 100 or more visual depictions of a child as described by Subsection (a)(1) but fewer than 500 such depictions, rather than a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under that subsection;

(3) a felony of the first degree if the person possesses visual material that contains 500 or more visual depictions of a child as described by Subsection (a)(1), rather than a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under that subsection; or

(4) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that, at the time of the offense, the person was:

(A) an employee at a child-care facility or a residential child-care facility, as those terms are defined by Section 42.002 (Definitions), Human Resources Code;

(B) an employee at a residential treatment facility established under Section 221.056 (Residential Treatment Facility), Human Resources Code;

(C) an employee at a shelter or facility that serves youth and that receives state funds; or

(D) receiving state funds for the care of a child depicted by the visual material.

Makes nonsubstantive changes.

(d-1) Provides that if it is shown on the trial of an offense under Subsection (a) that the visual material depicted a child younger than 10 years of age at the time the image of the child was made or that the defendant has been previously convicted of an offense under that subsection:

(1) an offense described for purposes of punishment by Subsection (d)(1) or (2) is increased to the next higher category of offense; or

(2) the minimum term of confinement for an offense described for purposes of punishment by Subsection (d)(3) is increased to 15 years.

SECTION 3. Provides that Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. Provides that the prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 4. Makes application of Section 43.26, Penal Code, as amended by this Act, prospective.

SECTION 5. Provides that this Act, to the extent of any conflict, prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. Effective date: September 1, 2023.