S.B. No. 129

AN ACT

relating to the prosecution and punishment for possession or promotion of child pornography; increasing criminal penalties.

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

SECTION 1.  Article 12.01, Code of Criminal Procedure, is amended to read as follows:

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

(1)  no limitation:

(A)  murder and manslaughter;

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

(C)  sexual assault, if:

(i)  during the investigation of the offense biological matter is collected and the matter:

(a)  has not yet been subjected to forensic DNA testing; or

(b)  has been subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

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

(D)  continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code;

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

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

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

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

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

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

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

(B)  theft by a public servant of government property over which the public servant exercises control in the public servant's official capacity;

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

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

(E)  sexual assault, except as provided by Subdivision (1) or (7);

(F)  arson;

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

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

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

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

(B)  fraudulent securing of document execution;

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

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

(E)  money laundering;

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

(G)  fraudulent use or possession of identifying information under Section 32.51, Penal Code;

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

(I)  health care fraud under Section 35A.02, Penal Code; [~~or~~]

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

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

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

(A)  theft or robbery;

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

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

(D)  abandoning or endangering a child; or

(E)  insurance fraud;

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

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

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

(C)  burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

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

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

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

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

(7)  two years from the date the offense was discovered: sexual assault punishable as a state jail felony under Section 22.011(f)(2), Penal Code; or

(8)  three years from the date of the commission of the offense: all other felonies.

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

(d)  An offense under Subsection (a) 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);

(2)  [~~, except that the offense is:~~

[~~(1)~~] a felony of the second degree if [~~it is shown on the trial of the offense that~~] 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 [~~has been previously convicted one time of an offense under that subsection~~];

(3)  [~~and~~

[~~(2)~~] a felony of the first degree if [~~it is shown on the trial of the offense that~~] the person possesses visual material that contains 500 or more visual depictions of a child as described by Subsection (a)(1); 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, Human Resources Code;

(B)  an employee at a residential treatment facility established under Section 221.056, 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 [~~has been previously convicted two or more times of an offense under that subsection~~].

(d-1)  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.  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. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 4.  Section 43.26, Penal Code, as amended 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 5.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6.  This Act takes effect September 1, 2023.

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I hereby certify that S.B. No. 129 passed the Senate on April 20, 2023, by the following vote:  Yeas 31, Nays 0.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 129 passed the House on May 22, 2023, by the following vote:  Yeas 144, Nays 0, one present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_             Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor