88R7849 EAS-F

By:  Paxton S.B. No. 2019

A BILL TO BE ENTITLED

AN ACT

relating to increasing the minimum term of imprisonment and changing the eligibility for community supervision and parole of certain persons convicted of sexual assault and aggravated sexual assault.

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

SECTION 1.  Section 22.011(f), Penal Code, is amended to read as follows:

(f)  An offense under this section is a felony of the second degree with a minimum term of imprisonment of 10 years, except that an offense under this section is:

(1)  a felony of the first degree with a minimum term of imprisonment of 10 years if the victim was:

(A)  a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01; or

(B)  a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02; or

(2)  a state jail felony if the offense is committed under Subsection (a)(1) and the actor has not received express consent as described by Subsection (b)(12).

SECTION 2.  Sections 22.021(e) and (f), Penal Code, are amended to read as follows:

(e)  Except as provided by Subsection (f), an [~~An~~] offense under this section is a felony of the first degree with a minimum term of imprisonment of 25 years.

(f)  The minimum term of imprisonment for an offense under this section is increased to 50 [~~25~~] years if:

(1)  the victim of the offense is younger than six years of age at the time the offense is committed; or

(2)  the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

SECTION 3.  Article 42A.056, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.056.  LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION. A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

(1)  is sentenced to a term of imprisonment that exceeds 10 years;

(2)  is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3)  is adjudged guilty of an offense under Section 19.02, Penal Code;

(4)  is convicted of an offense under:

(A)  Section 21.11, [~~22.011, or 22.021,~~] Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(B)  Section 22.011, Penal Code, that is punishable as a first or second degree felony; or

(C)  Section 22.021, Penal Code;

(5)  is convicted of an offense under Section 20.04, Penal Code, if:

(A)  the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B)  the actor committed the offense with the intent to violate or abuse the victim sexually;

(6)  is convicted of an offense under Section 20A.02, 20A.03, 43.04, 43.05, or 43.25, Penal Code;

(7)  is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections; or

(8)  is convicted of an offense under Section 481.1123, Health and Safety Code, if the offense is punishable under Subsection (d), (e), or (f) of that section.

SECTION 4.  Article 42A.102, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.102.  ELIGIBILITY FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION. (a) Subject to Subsection (b), a judge may place on deferred adjudication community supervision a defendant charged with an offense under Section 21.11 or [~~,~~] 22.011, [~~or 22.021,~~] Penal Code, regardless of the age of the victim, or a defendant charged with a felony described by Article 42A.453(b) only if the judge makes a finding in open court that placing the defendant on deferred adjudication community supervision is in the best interest of the victim. The failure of the judge to make a finding under this subsection is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.

(b)  In all other cases, the judge may grant deferred adjudication community supervision unless:

(1)  the defendant is charged with an offense:

(A)  under Section 20A.02, 20A.03, 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

(B)  under Section 49.04 or 49.06, Penal Code, and, at the time of the offense:

(i)  the defendant held a commercial driver's license or a commercial learner's permit; or

(ii)  the defendant's alcohol concentration, as defined by Section 49.01, Penal Code, was 0.15 or more;

(C)  for which punishment may be increased under Section 49.09, Penal Code;

(D)  for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; or

(E)  under Section 481.1123, Health and Safety Code, that is punishable under Subsection (d), (e), or (f) of that section;

(2)  the defendant:

(A)  is charged with an offense under Section 21.11, 22.011, [~~22.021,~~] 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(C) [~~(3)(B)~~] of this subsection; and

(B)  has previously been placed on community supervision for an offense under Paragraph (A);

(3)  the defendant is charged with an offense under:

(A)  Section 21.02, Penal Code; [~~or~~]

(B)  Section 22.011, Penal Code, that is punishable as a first or second degree felony; or

(C)  Section 22.021, Penal Code [~~, that is punishable under Subsection (f) of that section or under Section 12.42(c)(3) or (4), Penal Code~~]; or

(4)  the defendant is charged with an offense under Section 19.02, Penal Code, except that the judge may grant deferred adjudication community supervision on determining that the defendant did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

SECTION 5.  Article 42A.103(a), Code of Criminal Procedure, is amended to read as follows:

(a)  In a felony case, the period of deferred adjudication community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11 or [~~,~~] 22.011, [~~or 22.021,~~] Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Article 42A.453(b), the period of deferred adjudication community supervision may not be less than five years.

SECTION 6.  Article 42A.105(c), Code of Criminal Procedure, is amended to read as follows:

(c)  If a judge places on deferred adjudication community supervision a defendant charged with an offense under Section 21.11 [~~or 22.011~~], Penal Code, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that:

(1)  at the time of the offense, the defendant was not more than four years older than the victim or intended victim and the victim or intended victim was at least 15 years of age; and

(2)  the charge to which the plea is entered under this subchapter is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 7.  Article 42A.258(a), Code of Criminal Procedure, is amended to read as follows:

(a)  If the defendant is a sex offender, other than a defendant who has been convicted of, or has entered a plea of guilty or nolo contendere for, a first or second degree felony under Section 22.011, Penal Code, or an offense under Section 22.021, Penal Code, the judge shall direct a supervision officer approved by the community supervision and corrections department or the judge, or a person, program, or other agency approved by the council, to:

(1)  evaluate the appropriateness of, and a course of conduct necessary for, treatment, specialized supervision, or rehabilitation of the defendant; and

(2)  report the results of the evaluation to the judge.

SECTION 8.  Article 42A.303(c), Code of Criminal Procedure, is amended to read as follows:

(c)  The judge may impose the condition of community supervision described by this article if:

(1)  the defendant is charged with or convicted of a felony other than:

(A)  a felony under Section 21.11 or [~~,~~] 22.011, [~~or 22.021,~~] Penal Code; or

(B)  criminal attempt of a felony under Section 21.11, 22.011, or 22.021, Penal Code; and

(2)  the judge makes an affirmative finding that:

(A)  drug or alcohol abuse significantly contributed to the commission of the offense or violation of a condition of community supervision, as applicable; and

(B)  the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

SECTION 9.  Article 42A.453(b), Code of Criminal Procedure, is amended to read as follows:

(b)  This article applies to a defendant placed on community supervision for an offense under:

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

(2)  Section 20A.02, Penal Code, if the defendant:

(A)  trafficked the victim with the intent or knowledge that the victim would engage in sexual conduct, as defined by Section 43.25, Penal Code; or

(B)  benefited from participating in a venture that involved a trafficked victim engaging in sexual conduct, as defined by Section 43.25, Penal Code;

(3)  Section 21.08, 21.11, [~~22.011, 22.021,~~] or 25.02, Penal Code;

(4)  Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony listed in Subdivision (1) or (3); or

(5)  Section 43.05(a)(2), 43.25, or 43.26, Penal Code.

SECTION 10.  Article 42A.454(a), Code of Criminal Procedure, is amended to read as follows:

(a)  This article applies only to a defendant who is required to register as a sex offender under Chapter 62, by court order or otherwise, and:

(1)  is convicted of or receives a grant of deferred adjudication community supervision for a violation of Section 21.11, [~~22.011(a)(2), 22.021(a)(1)(B),~~] 33.021, or 43.25, Penal Code;

(2)  used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62; or

(3)  is assigned a numeric risk level of two or three based on an assessment conducted under Article 62.007.

SECTION 11.  Article 42A.455, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.455.  PAYMENT TO CHILDREN'S ADVOCACY CENTER. A judge who grants community supervision to a defendant charged with or convicted of an offense under Section 21.11 [~~or 22.011(a)(2)~~], Penal Code, may require the defendant to pay a fine in an amount not to exceed $50 to a children's advocacy center established under Subchapter E, Chapter 264, Family Code.

SECTION 12.  Article 42A.653(a), Code of Criminal Procedure, is amended to read as follows:

(a)  A judge who grants community supervision to a defendant convicted of an offense under Section 21.08, 21.11, 22.011, [~~22.021,~~] 25.02, 43.25, or 43.26, Penal Code, shall require as a condition of community supervision that the defendant pay to the defendant's supervision officer a community supervision fine of $5 each month during the period of community supervision.

SECTION 13.  Article 42A.752(a), Code of Criminal Procedure, is amended to read as follows:

(a)  If after a hearing under Article 42A.751(d) a judge continues or modifies community supervision after determining that the defendant violated a condition of community supervision, the judge may impose any other conditions the judge determines are appropriate, including:

(1)  a requirement that the defendant perform community service for a number of hours specified by the court under Article 42A.304, or an increase in the number of hours that the defendant has previously been required to perform under that article in an amount not to exceed double the number of hours permitted by that article;

(2)  an extension of the period of community supervision, in the manner described by Article 42A.753;

(3)  an increase in the defendant's fine, in the manner described by Subsection (b); or

(4)  the placement of the defendant in a substance abuse felony punishment program operated under Section 493.009, Government Code, if:

(A)  the defendant is convicted of a felony other than:

(i)  a felony under Section 21.11 or [~~,~~] 22.011, [~~or 22.021,~~] Penal Code; or

(ii)  criminal attempt of a felony under Section 21.11, 22.011, or 22.021, Penal Code; and

(B)  the judge makes an affirmative finding that:

(i)  drug or alcohol abuse significantly contributed to the commission of the offense or violation of a condition of community supervision, as applicable; and

(ii)  the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

SECTION 14.  Article 42A.757(a), Code of Criminal Procedure, is amended to read as follows:

(a)  If a defendant is placed on community supervision after receiving a grant of deferred adjudication community supervision for or being convicted of an offense under Section 21.11 or [~~,~~] 22.011, [~~or 22.021,~~] Penal Code, at any time during the period of community supervision, the judge may extend the period of community supervision as provided by this article.

SECTION 15.  Section 508.145(d)(2), Government Code, is amended to read as follows:

(2)  An inmate described by Subdivision (1) is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than:

(A)  10 calendar years, for an inmate serving a sentence for an offense under Section 22.011, Penal Code;

(B)  25 calendar years, for an inmate serving a sentence for an offense under Section 22.021, Penal Code, except as provided by Subsection (a)(3); or

(C)  two calendar years, for an inmate serving a sentence for any other offense to which this subsection applies.

SECTION 16.  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 17.  This Act takes effect September 1, 2023.