

By: Springer, et al.

S.B. No. 129

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the prosecution and punishment for possession or  
3 promotion of child pornography; increasing criminal penalties.

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

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

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

10 (1) no limitation:

11 (A) murder and manslaughter;

12 (B) sexual assault under Section 22.011(a)(2),  
13 Penal Code, or aggravated sexual assault under Section  
14 22.021(a)(1)(B), Penal Code;

15 (C) sexual assault, if:

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

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

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

24 (ii) probable cause exists to believe that

1 the defendant has committed the same or a similar sex offense  
2 against five or more victims;

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

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

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

10 (G) trafficking of persons under Section  
11 20A.02(a)(7) or (8), Penal Code;

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

14 (I) compelling prostitution under Section  
15 43.05(a)(2), Penal Code;

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

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

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

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

27 (D) injury to an elderly or disabled individual

1 punishable as a felony of the first degree under Section 22.04,  
2 Penal Code;

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

5 (F) arson;

6 (G) trafficking of persons under Section  
7 20A.02(a)(1), (2), (3), or (4), Penal Code; or

8 (H) compelling prostitution under Section  
9 43.05(a)(1), Penal Code;

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

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

14 (B) fraudulent securing of document execution;

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

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

19 (E) money laundering;

20 (F) credit card or debit card abuse under Section  
21 32.31, Penal Code;

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

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

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

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

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

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

7 (A) theft or robbery;

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

10 (C) injury to an elderly or disabled individual  
11 that is not punishable as a felony of the first degree under Section  
12 22.04, Penal Code;

13 (D) abandoning or endangering a child; or

14 (E) insurance fraud;

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

19 (A) sexual performance by a child under Section  
20 43.25, Penal Code;

21 (B) aggravated kidnapping under Section  
22 20.04(a)(4), Penal Code, if the defendant committed the offense  
23 with the intent to violate or abuse the victim sexually; or

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

1 Paragraph (B) of this subdivision;

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

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

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

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

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

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

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

22 (d) An offense under Subsection (a) is:

23 (1) a felony of the third degree if the person  
24 possesses visual material that contains fewer than 100 visual  
25 depictions of a child as described by Subsection (a)(1);

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

27 [~~(1)~~] a felony of the second degree if [~~it is shown on~~

1 ~~the trial of the offense that~~] the person possesses visual material  
2 that contains 100 or more visual depictions of a child as described  
3 by Subsection (a)(1) but fewer than 500 such depictions [~~has been~~  
4 ~~previously convicted one time of an offense under that subsection~~];

5 (3) [~~and~~

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

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

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

18 (B) an employee at a residential treatment  
19 facility established under Section 221.056, Human Resources Code;

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

22 (D) receiving state funds for the care of a child  
23 depicted by the visual material [~~has been previously convicted two~~  
24 ~~or more times of an offense under that subsection~~].

25 (d-1) If it is shown on the trial of an offense under  
26 Subsection (a) that the visual material depicted a child younger  
27 than 10 years of age at the time the image of the child was made or

1 that the defendant has been previously convicted of an offense  
2 under that subsection:

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

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

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

14 SECTION 4. Section 43.26, Penal Code, as amended by this  
15 Act, applies only to an offense committed on or after the effective  
16 date of this Act. An offense committed before the effective date of  
17 this Act is governed by the law in effect on the date the offense was  
18 committed, and the former law is continued in effect for that  
19 purpose. For purposes of this section, an offense was committed  
20 before the effective date of this Act if any element of the offense  
21 occurred before that date.

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

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