

By: Springer

S.B. No. 129

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 3.03(b), Penal Code, is amended to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is

1 convicted of violations of the same section more than once or is  
2 convicted of violations of more than one section; or

3 (B) for which a plea agreement was reached in a  
4 case in which the accused was charged with more than one offense  
5 listed in Paragraph (A) committed against a victim younger than 17  
6 years of age at the time of the commission of the offense regardless  
7 of whether the accused is charged with violations of the same  
8 section more than once or is charged with violations of more than  
9 one section;

10 (3) an offense:

11 (A) under Section [21.15](#) [~~or [43.26](#), regardless of~~  
12 ~~whether the accused is convicted of violations of the same section~~  
13 ~~more than once or is convicted of violations of both sections~~]; or

14 (B) for which a plea agreement was reached in a  
15 case in which the accused was charged with more than one offense  
16 under Section [21.15](#) [~~listed in Paragraph (A), regardless of whether~~  
17 ~~the accused is charged with violations of the same section more than~~  
18 ~~once or is charged with violations of both sections~~];

19 (4) an offense for which the judgment in the case  
20 contains an affirmative finding under Article [42.0197](#), Code of  
21 Criminal Procedure;

22 (5) an offense:

23 (A) under Section [20A.02](#), [20A.03](#), or [43.05](#),  
24 regardless of whether the accused is convicted of violations of the  
25 same section more than once or is convicted of violations of more  
26 than one section; or

27 (B) for which a plea agreement was reached in a

1 case in which the accused was charged with more than one offense  
2 listed in Paragraph (A), regardless of whether the accused is  
3 charged with violations of the same section more than once or is  
4 charged with violations of more than one section;

5 (6) an offense:

6 (A) under Section 22.04(a)(1) or (2) or Section  
7 22.04(a-1)(1) or (2) that is punishable as a felony of the first  
8 degree, regardless of whether the accused is convicted of  
9 violations of the same section more than once or is convicted of  
10 violations of more than one section; or

11 (B) for which a plea agreement was reached in a  
12 case in which the accused was charged with more than one offense  
13 listed in Paragraph (A) and punishable as described by that  
14 paragraph, regardless of whether the accused is charged with  
15 violations of the same section more than once or is charged with  
16 violations of more than one section; or

17 (7) any combination of offenses listed in Subdivisions  
18 (1)-(6).

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

17 SECTION 4. This Act takes effect September 1, 2023.