

1-1 By: Springer, et al. S.B. No. 129  
1-2 (In the Senate - Filed November 14, 2022; February 15, 2023,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 March 30, 2023, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 30, 2023,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Flores	X		
1-11	Bettencourt	X		
1-12	Hinojosa	X		
1-13	Huffman	X		
1-14	King	X		
1-15	Miles	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 129 By: Whitmire

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the prosecution and punishment for possession or  
1-20 promotion of child pornography; increasing criminal penalties.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Article 12.01, Code of Criminal Procedure, is  
1-23 amended to read as follows:

1-24 Art. 12.01. FELONIES. Except as provided in Article 12.03,  
1-25 felony indictments may be presented within these limits, and not  
1-26 afterward:

1-27 (1) no limitation:

1-28 (A) murder and manslaughter;

1-29 (B) sexual assault under Section 22.011(a)(2),  
1-30 Penal Code, or aggravated sexual assault under Section  
1-31 22.021(a)(1)(B), Penal Code;

1-32 (C) sexual assault, if:

1-33 (i) during the investigation of the offense  
1-34 biological matter is collected and the matter:

1-35 (a) has not yet been subjected to  
1-36 forensic DNA testing; or

1-37 (b) has been subjected to forensic DNA  
1-38 testing and the testing results show that the matter does not match  
1-39 the victim or any other person whose identity is readily  
1-40 ascertained; or

1-41 (ii) probable cause exists to believe that  
1-42 the defendant has committed the same or a similar sex offense  
1-43 against five or more victims;

1-44 (D) continuous sexual abuse of young child or  
1-45 disabled individual under Section 21.02, Penal Code;

1-46 (E) indecency with a child under Section 21.11,  
1-47 Penal Code;

1-48 (F) an offense involving leaving the scene of an  
1-49 accident under Section 550.021, Transportation Code, if the  
1-50 accident resulted in the death of a person;

1-51 (G) trafficking of persons under Section  
1-52 20A.02(a)(7) or (8), Penal Code;

1-53 (H) continuous trafficking of persons under  
1-54 Section 20A.03, Penal Code; or

1-55 (I) compelling prostitution under Section  
1-56 43.05(a)(2), Penal Code;

1-57 (2) ten years from the date of the commission of the  
1-58 offense:

1-59 (A) theft of any estate, real, personal or mixed,  
1-60 by an executor, administrator, guardian or trustee, with intent to

2-1 defraud any creditor, heir, legatee, ward, distributee,  
 2-2 beneficiary or settlor of a trust interested in such estate;  
 2-3 (B) theft by a public servant of government  
 2-4 property over which the public servant exercises control in the  
 2-5 public servant's official capacity;  
 2-6 (C) forgery or the uttering, using, or passing of  
 2-7 forged instruments;  
 2-8 (D) injury to an elderly or disabled individual  
 2-9 punishable as a felony of the first degree under Section 22.04,  
 2-10 Penal Code;  
 2-11 (E) sexual assault, except as provided by  
 2-12 Subdivision (1) or (7);  
 2-13 (F) arson;  
 2-14 (G) trafficking of persons under Section  
 2-15 20A.02(a)(1), (2), (3), or (4), Penal Code; or  
 2-16 (H) compelling prostitution under Section  
 2-17 43.05(a)(1), Penal Code;  
 2-18 (3) seven years from the date of the commission of the  
 2-19 offense:  
 2-20 (A) misapplication of fiduciary property or  
 2-21 property of a financial institution;  
 2-22 (B) fraudulent securing of document execution;  
 2-23 (C) a felony violation under Chapter 162, Tax  
 2-24 Code;  
 2-25 (D) false statement to obtain property or credit  
 2-26 under Section 32.32, Penal Code;  
 2-27 (E) money laundering;  
 2-28 (F) credit card or debit card abuse under Section  
 2-29 32.31, Penal Code;  
 2-30 (G) fraudulent use or possession of identifying  
 2-31 information under Section 32.51, Penal Code;  
 2-32 (H) exploitation of a child, elderly individual,  
 2-33 or disabled individual under Section 32.53, Penal Code;  
 2-34 (I) health care fraud under Section 35A.02, Penal  
 2-35 Code; [~~or~~]  
 2-36 (J) bigamy under Section 25.01, Penal Code,  
 2-37 except as provided by Subdivision (6); or  
 2-38 (K) possession or promotion of child pornography  
 2-39 under Section 43.26, Penal Code;  
 2-40 (4) five years from the date of the commission of the  
 2-41 offense:  
 2-42 (A) theft or robbery;  
 2-43 (B) except as provided by Subdivision (5),  
 2-44 kidnapping or burglary;  
 2-45 (C) injury to an elderly or disabled individual  
 2-46 that is not punishable as a felony of the first degree under Section  
 2-47 22.04, Penal Code;  
 2-48 (D) abandoning or endangering a child; or  
 2-49 (E) insurance fraud;  
 2-50 (5) if the investigation of the offense shows that the  
 2-51 victim is younger than 17 years of age at the time the offense is  
 2-52 committed, 20 years from the 18th birthday of the victim of one of  
 2-53 the following offenses:  
 2-54 (A) sexual performance by a child under Section  
 2-55 43.25, Penal Code;  
 2-56 (B) aggravated kidnapping under Section  
 2-57 20.04(a)(4), Penal Code, if the defendant committed the offense  
 2-58 with the intent to violate or abuse the victim sexually; or  
 2-59 (C) burglary under Section 30.02, Penal Code, if  
 2-60 the offense is punishable under Subsection (d) of that section and  
 2-61 the defendant committed the offense with the intent to commit an  
 2-62 offense described by Subdivision (1)(B) or (D) of this article or  
 2-63 Paragraph (B) of this subdivision;  
 2-64 (6) ten years from the 18th birthday of the victim of  
 2-65 the offense:  
 2-66 (A) trafficking of persons under Section  
 2-67 20A.02(a)(5) or (6), Penal Code;  
 2-68 (B) injury to a child under Section 22.04, Penal  
 2-69 Code; or

3-1 (C) bigamy under Section 25.01, Penal Code, if  
 3-2 the investigation of the offense shows that the person, other than  
 3-3 the legal spouse of the defendant, whom the defendant marries or  
 3-4 purports to marry or with whom the defendant lives under the  
 3-5 appearance of being married is younger than 18 years of age at the  
 3-6 time the offense is committed;

3-7 (7) two years from the date the offense was  
 3-8 discovered: sexual assault punishable as a state jail felony under  
 3-9 Section 22.011(f)(2), Penal Code; or

3-10 (8) three years from the date of the commission of the  
 3-11 offense: all other felonies.

3-12 SECTION 2. Section 43.26, Penal Code, is amended by  
 3-13 amending Subsection (d) and adding Subsection (d-1) to read as  
 3-14 follows:

3-15 (d) An offense under Subsection (a) is:

3-16 (1) a felony of the third degree if the person  
 3-17 possesses visual material that contains fewer than 100 visual  
 3-18 depictions of a child as described by Subsection (a)(1);

3-19 (2) ~~[, except that the offense is:~~

3-20 ~~[(1)] a felony of the second degree if [it is shown on~~  
 3-21 ~~the trial of the offense that] the person possesses visual material~~  
 3-22 ~~that contains 100 or more visual depictions of a child as described~~  
 3-23 ~~by Subsection (a)(1) but fewer than 500 such depictions [has been~~  
 3-24 ~~previously convicted one time of an offense under that subsection];~~

3-25 (3) ~~and~~

3-26 ~~[(2)] a felony of the first degree if [it is shown on the~~  
 3-27 ~~trial of the offense that] the person possesses visual material~~  
 3-28 ~~that contains 500 or more visual depictions of a child as described~~  
 3-29 ~~by Subsection (a)(1); or~~

3-30 (4) a felony of the first degree punishable by  
 3-31 imprisonment in the Texas Department of Criminal Justice for life  
 3-32 or for any term of not more than 99 years or less than 25 years if it  
 3-33 is shown on the trial of the offense that, at the time of the  
 3-34 offense, the person was:

3-35 (A) an employee at a child-care facility or a  
 3-36 residential child-care facility, as those terms are defined by  
 3-37 Section 42.002, Human Resources Code;

3-38 (B) an employee at a residential treatment  
 3-39 facility established under Section 221.056, Human Resources Code;

3-40 (C) an employee at a shelter or facility that  
 3-41 serves youth and that receives state funds; or

3-42 (D) receiving state funds for the care of a child  
 3-43 depicted by the visual material ~~[has been previously convicted two~~  
 3-44 ~~or more times of an offense under that subsection].~~

3-45 (d-1) If it is shown on the trial of an offense under  
 3-46 Subsection (a) that the visual material depicted a child younger  
 3-47 than 10 years of age at the time the image of the child was made or  
 3-48 that the defendant has been previously convicted of an offense  
 3-49 under that subsection:

3-50 (1) an offense described for purposes of punishment by  
 3-51 Subsection (d)(1) or (2) is increased to the next higher category of  
 3-52 offense; or

3-53 (2) the minimum term of confinement for an offense  
 3-54 described for purposes of punishment by Subsection (d)(3) is  
 3-55 increased to 15 years.

3-56 SECTION 3. Article 12.01, Code of Criminal Procedure, as  
 3-57 amended by this Act, does not apply to an offense if the prosecution  
 3-58 of that offense becomes barred by limitation before the effective  
 3-59 date of this Act. The prosecution of that offense remains barred as  
 3-60 if this Act had not taken effect.

3-61 SECTION 4. Section 43.26, Penal Code, as amended by this  
 3-62 Act, applies only to an offense committed on or after the effective  
 3-63 date of this Act. An offense committed before the effective date of  
 3-64 this Act is governed by the law in effect on the date the offense was  
 3-65 committed, and the former law is continued in effect for that  
 3-66 purpose. For purposes of this section, an offense was committed  
 3-67 before the effective date of this Act if any element of the offense  
 3-68 occurred before that date.

3-69 SECTION 5. To the extent of any conflict, this Act prevails

4-1 over another Act of the 88th Legislature, Regular Session, 2023,  
4-2 relating to nonsubstantive additions to and corrections in enacted  
4-3 codes.

4-4 SECTION 6. This Act takes effect September 1, 2023.

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