

BILL ANALYSIS

C.S.H.B. 3751
By: Herrero
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties believe that current law does not adequately punish the kidnapping of a minor. C.S.H.B. 3751 seeks to discourage potential kidnappers from abusing the most vulnerable members of our society by imposing stricter penalties for the kidnapping of a minor.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3751 amends the Penal Code to make it a first degree felony aggravated kidnapping offense to intentionally or knowingly abduct a child younger than 18 years of age.

C.S.H.B. 3751 amends the Code of Criminal Procedure to include such an offense among the felony offenses for which the statute of limitations is ten years from the 18th birthday of the victim of the offense.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3751 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

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 during the investigation of the offense biological matter is collected and 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;

(D) continuous sexual abuse of young child or children 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; or

(H) continuous trafficking of persons under Section 20A.03, 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 he exercises control in his 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);

(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) securing execution of document by deception;

- (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) Medicaid fraud under Section 35A.02, Penal Code; or
 - (I) bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6);
- (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, except as provided by Subdivision (5);
 - (B-1) kidnapping, except as provided by Subdivision (5) or (6);
 - (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;
 - (C) compelling prostitution under Section 43.05(a)(2), Penal Code; ~~[or]~~
 - (D) 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; or (E) aggravated kidnapping under Section 20.04(b-1), Penal Code; or
(7) three years from the date of the commission of the offense: all other felonies.

SECTION 1. Section 20.04, Penal Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) A person commits an offense if the person intentionally or knowingly abducts a child younger than 18 years of age.

(b-2) It is an affirmative defense to prosecution under Subsection (b-1) that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the victim; and

(3) the actor's sole intent was to assume lawful control of the victim.

SECTION 2. 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 3. This Act takes effect September 1, 2015.

SECTION 2. Section 20.04, Penal Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) A person commits an offense if the person intentionally or knowingly abducts a child younger than 18 years of age.

SECTION 3. (a) The change in law made by this Act to Section 20.04, Penal Code, 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 subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) The change in law made by this Act to Article 12.01, Code of Criminal Procedure, 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. Same as introduced version.