

BILL ANALYSIS

Senate Research Center
80R867 KCR-D

S.B. 78
By: Shapiro
Criminal Justice
3/19/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 78 creates the offense of "Continuous Sexual Abuse of Young Child or Children" under Section 21.02, Penal Code, which allows for the prosecution of persons who commit repetitive acts of sexual abuse against a child over time. The bill requires a person convicted under Section 21.02 to serve a minimum sentence of 25 calendar years before becoming eligible for parole and prohibits such offenders from being released to mandatory supervision. Upon a second conviction, the bill requires that the offender be imprisoned for life. The bill also amends provisions relating to the procedural and sentencing requirements in such cases, as well as various reporting requirements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CREATION OF OFFENSE AND PROSECUTION
AND PUNISHMENT OF OFFENSE

SECTION 1.01. Amends Chapter 21, Penal Code, by adding Section 21.02, as follows:

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN.

(a) Defines "child."

(b) Provides that a person commits an offense if during a period that is 90 or more days in duration, the person commits an offense listed in Subsection (c) more than once or commits more than one offense listed in Subsection (c), regardless of whether the offenses are committed against one or more victims, and at the time of the commission of each of the offenses, the actor is 17 years of age or older and the victim of the offense is a child younger than 14 years of age.

(c) Lists specific offenses that constitute an element of the offense described by Subsection (b).

(d) Provides that if a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific offenses listed in Subsection (c) were committed by the defendant, against whom those offenses were committed, or when those offenses were committed. Requires the jury to agree unanimously that the defendant, during a period that is 90 or more days in duration, committed an offense listed in Subsection (c) more than one time or committed more than one offense listed in Subsection (c).

(e) Prohibits an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) from being prosecuted in the same criminal action unless the offense listed in Subsection (c) is charge in the alternative or occurred outside the period in which the offense alleged under Subsection (b) was committed.

(f) Prohibits a defendant from being charged with more than one count under Subsection (b) if all of the specific offenses listed in Subsection (c) that are alleged to have been committed are alleged to have been committed against a single victim.

(g) Provides that an offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life, or for any term of not more than 99 years or less than 25 years.

SECTION 1.02. Amends Section 508.145, Government Code, by adding Subsection (c-1), as follows:

(c-1) Provides that an inmate serving a sentence for an offense under Section 21.02, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals 25 calendar years.

SECTION 1.03. Amends Section 508.149(a), Government Code, to update a reference to a second degree felony or a third degree felony under Section 21.11, Penal Code, to refer to an offense under the same section. Makes conforming changes. Adds an offense under Section 21.02, Penal Code, to the list of offenses that prohibit an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of one of such offenses.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Section 16.0045(a), Civil Practice and Remedies Code, to add Section 21.02, Penal Code (continuous sexual abuse of young child or children), to the list of sections for which a person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates such listed sections.

SECTION 2.02. Amends Section 33.013(b), Civil Practice and Remedies Code, to make conforming changes regarding liability for damages.

SECTION 2.03. Amends Section 41.008(c), Civil Practice and Remedies Code, to make conforming changes regarding recovery of exemplary damages.

SECTION 2.04. Amends Section 125.0015(a), Civil Practice and Remedies Code, to make conforming changes regarding maintaining a public nuisance.

SECTION 2.05. Amends Article 7A.01(a), Code of Criminal Procedure, to make conforming changes providing that a person who is the victim of continuous sexual abuse of a young child or children is authorized to file an application for a protective order.

SECTION 2.06. Amends Article 12.01, Code of Criminal Procedure, to make conforming and nonsubstantive changes providing that there is no statute of limitations for continuous sexual abuse of a young child or children.

SECTION 2.07. Amends Article 15.051(a), Code of Criminal Procedure, to make conforming changes regarding a polygraph examination for certain complaints.

SECTION 2.08. Amends Article 17.03(b), Code of Criminal Procedure, to make conforming changes regarding release of a defendant on personal bond.

SECTION 2.09. Amends Article 17.032(a), Code of Criminal Procedure, to make a conforming change redefining "violent offense."

SECTION 2.10. Amends Article 17.091, Code of Criminal Procedure, to update a reference to Article 62.01(5) to refer to Article 62.001(5).

SECTION 2.11. Amends Article 18.021(a), Code of Criminal Procedure, to update references to offenses of injury to a child as prohibited, rather than defined, by Section 22.04, Penal Code. Makes nonsubstantive and conforming changes.

SECTION 2.12. Amends Article 21.31(a), Code of Criminal Procedure, to make a conforming change regarding a test for sexually transmitted diseases and HIV/AIDS.

SECTION 2.13. Amends Section 4, Article 37.07, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Makes conforming and nonsubstantive changes.

(b) Makes conforming changes.

(e) Sets forth the written charge to the jury required by the court, in the penalty phase of the trial of an offense under Section 21.02, Penal Code, in which the punishment is to be assessed by the jury rather than the court, if the jury finds the defendant guilty.

SECTION 2.14. Amends Section 1, Article 38.071, Code of Criminal Procedure, to make conforming changes.

SECTION 2.15. Amends Article 42.017, Code of Criminal Procedure, to make conforming changes.

SECTION 2.16. Amends Section 5(d), Article 42.12, Code of Criminal Procedure, to make conforming changes and nonsubstantive changes. Redesignates existing Paragraph (B) to Paragraph (C).

SECTION 2.17. Amends Article 56.01, Code of Criminal Procedure, by adding Subdivision (2-a), to provide that "sexual assault" includes an offense under Section 21.02, Penal Code.

SECTION 2.18. Amends Article 56.02(a), Code of Criminal Procedure, to make conforming changes regarding victim's rights.

SECTION 2.19. Reenacts and amends Article 62.001(5), Code of Criminal Procedure, as renumbered from former Article 62.01(5), Code of Criminal Procedure, and amended by Chapter 1008, Acts of the 79th Legislature, Regular Session, 2005, to conform to an amendment to former Article 62.01(5) by Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005, and further amends it to make conforming changes and to add a violation of Section 33.021 (Online solicitation of a minor), Penal Code, to the list of reportable convictions or adjudications.

SECTION 2.20. Amends Articles 62.001(6), Code of Criminal Procedure, to make conforming changes.

SECTION 2.21. Amends Article 102.0186(a), Code of Criminal Procedure, to make conforming changes.

SECTION 2.22. Amends Section 25.0341(a), Education Code, as added by Chapter 997, Acts of the 79th Legislature, Regular Session, 2005, to make conforming changes providing that this section applies only to certain students.

SECTION 2.23. Amends Section 37.007(a), Education Code, to make a conforming change regarding conduct for which a student is to be expelled.

SECTION 2.24. Amends Section 33.009, Family Code, to make conforming changes regarding reports of sexual abuse of a minor and to update references to the Department of Protective and Regulatory Services to refer to the Department of Family and Protective Services (DFPS).

SECTION 2.25. Amends Section 33.010, Family Code, to make conforming changes regarding confidential information obtained by the Department of Family and Protective Services (DFPS).

SECTION 2.26. Amends Section 156.104, Family Code, to make conforming changes regarding modification of order on conviction for child abuse.

SECTION 2.27. Amends Section 161.001, Family Code, to make conforming changes regarding involuntary termination of parent-child relationship.

SECTION 2.28. Amends Section 161.007, Family Code, to make conforming changes regarding termination when pregnancy results from criminal act.

SECTION 2.29. Amends Section 261.001(1), Family Code, to make conforming changes redefining "abuse."

SECTION 2.30. Amends Section 262.2015(b), Family Code, to make conforming changes regarding certain circumstances constituting subjecting a child to aggravated circumstances.

SECTION 2.31. Amends Section 411.1471(a), Government Code, to make conforming changes regarding defendants indicted for a felony.

SECTION 2.32. Amends Section 420.003(4), Government Code, to make conforming changes redefining "sexual assault."

SECTION 2.33. Amends Section 499.027(b), Government Code, to make conforming changes regarding situations in which an inmate is not eligible for release to intensive supervision parole.

SECTION 2.34. Amends Section 501.061(a), Government Code, to make conforming changes regarding situations in which a physician is authorized to perform an orchiectomy.

SECTION 2.35. Amends Section 508.046, Government Code, to make conforming changes regarding when extraordinary vote on the release on parole of an inmate is required.

SECTION 2.36. Amends Section 508.117(g), Government Code, to make conforming changes redefining "sexual assault."

SECTION 2.37. Amends Section 508.151(a), Government Code, to make conforming changes regarding designation of a presumptive parole date for the purpose of diverting an inmate to a halfway house.

SECTION 2.38. Amends Section 508.187(a), Government Code, to make conforming changes providing this section applies only to a releasee serving a sentence for certain offenses.

SECTION 2.39. Amends Section 508.189(a), Government Code, to make conforming changes regarding a parole panel requiring a releasee convicted of certain offenses to pay a parole supervision fee.

SECTION 2.40. Amends Section 242.126(c), Health and Safety Code, to make conforming changes regarding when an agency is required to begin an investigation.

SECTION 2.41. Amends Section 250.006(a), Health and Safety Code, to make conforming changes regarding prohibiting a person for who the facility is entitled to obtain criminal history record information from being employed if the person has been convicted of certain offenses.

SECTION 2.42. Amends Section 841.002(8), Health and Safety Code, to make conforming changes redefining "sexually violent offense."

SECTION 2.43. Amends Section 301.4535(a), Health and Safety Code, to make conforming changes regarding suspension of a nurse's license for person convicted of certain offenses.

SECTION 2.44. Amends Section 3.03(b), Penal Code, to make conforming changes providing situations in which the sentences of an accused found guilty of more than one offense are authorized to run concurrently.

SECTION 2.45. Amends Section 12.35(c), Penal Code, to make conforming changes providing offenses punishable for a third degree felony.

SECTION 2.46. Amends Section 12.42(c)(2), Penal Code, to update a reference to the institutional division to refer to the TDCJ and to make conforming changes providing offenses punishable by imprisonment for life in the Texas Department of Criminal Justice.

SECTION 2.47. Amends Section 15.031(b), Penal Code, to make conforming changes regarding criminal solicitation of a minor.

SECTION 2.48. Amends Section 19.03(a), Penal Code, to make conforming changes regarding situations constituting capital murder.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. (a) Makes application of this Act prospective.

(b) Provides that the change in law made by this Act to Section 841.002, Health and Safety Code, applies only to an individual who on or after September 1, 2007, is serving a sentence in the TDCJ or is committed to the Department of State Health Services (DSHS) for an offense committed before, on, or after the effective date of this Act.

SECTION 3.02. Effective date: September 1, 2007.