

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 78
By: Shapiro
Criminal Justice
3/22/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.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 provides that an offense under Section 21.02 is punishable by imprisonment for life. The bill requires a person convicted of an offense 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. 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 two or more acts of sexual abuse, regardless of whether the offenses are committed against one or more victims, and at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.

(c) Defines "act of sexual abuse."

(d) Provides that if a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. Requires the jury to agree unanimously that the defendant, during a period that is 90 or more days in duration, committed two or more acts of sexual abuse.

(e) Prohibits a defendant from being convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

(f) Prohibits a defendant from being charged with more than one count under Subsection (b) if all of the specific acts of sexual abuse 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 one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than 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. Updates a reference to a second degree felony under Section 22.011, Penal Code, to refer to a felony under the same section. Adds an offense under Section 21.02 (continuous sexual abuse of young child or children), 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 listed 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 is required to 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 joint and several 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 based on conduct described as a felony in listed sections of the Penal Code, except for Sections 49.07 and 49.08, if the conduct was committed knowingly or intentionally.

SECTION 2.04. Amends Section 125.0015(a), Civil Practice and Remedies Code, to make conforming changes regarding maintaining a common 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, in addition to a victim of an offense under Section 22.011 or 22.021, Penal Code.

SECTION 2.06. Amends Article 12.01, Code of Criminal Procedure, to make conforming and nonsubstantive changes providing that there is no limitation for presenting felony indictments for continuous sexual abuse of a young child or children, if during the investigation of the applicable 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, or there is a limitation of ten years from the 18th birthday of the victim of the offense.

SECTION 2.07. Amends Article 15.051(a), Code of Criminal Procedure, to make conforming changes regarding a polygraph examination of a person who charges or seeks to charge in a complaint the commission of the listed offenses.

SECTION 2.08. Amends Article 17.03(b), Code of Criminal Procedure, to make conforming changes regarding release of a defendant on personal bond by the court before whom the case is pending.

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) (defining "reportable conviction or adjudication").

SECTION 2.11. Amends Article 18.021(a), Code of Criminal Procedure, to authorize a search warrant to be issued to search for and photograph a child who is alleged to be the victim of the offenses as prohibited, rather than defined, by Sections 22.04 (injury to a child), 22.011(a) (sexual assault of a child), 22.021 (aggravated sexual assault of a child), or 21.02 (continuous sexual abuse of young child or children), Penal Code.

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 for a person who is indicted for or waives indictment of certain listed offenses.

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) Sets forth the written charge to the jury required of the court, in the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or if the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, unless the defendant has been convicted of an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or a capital felony.

(b) Sets forth the written charge to the jury required of the court, in the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the first degree, if a prior conviction has been alleged for enhancement of punishment as provided by Section 12.42(b), (c), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is longer than 60 years, unless the offense of which the jury has found the defendant guilty is an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or is listed in Section 3g(a)(1), Article 42.12, of this code or the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code.

(e) Sets forth the written charge to the jury required of the court, in the penalty phase of the trial of an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), 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 regarding a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by certain listed offenses.

SECTION 2.15. Amends Article 42.017, Code of Criminal Procedure, to make conforming changes requiring the judge to make an affirmative finding of fact and to enter the affirmative finding in the judgment in the case if the judge determines that at the time of the offense, the defendant was younger than 19 years of age and the victim was at least 13 years of age, and the

conviction is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 2.16. Amends Section 5(d), Article 42.12, Code of Criminal Procedure, to make conforming changes and nonsubstantive changes regarding certain listed offenses in which the judge is prohibited from granting deferred adjudication. 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 (continuous sexual abuse of young child or children).

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

SECTION 2.19. (a) 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.

(b) Repealer: Section 2, Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005 (relating to the creation of the offense of online sexual solicitation of a minor).

SECTION 2.20. Amends Articles 62.001(6), Code of Criminal Procedure, to make conforming changes redefining "sexually violent offense."

SECTION 2.21. Amends Article 102.0186(a), Code of Criminal Procedure, to make conforming changes requiring a person to pay \$100 on conviction of certain offenses.

SECTION 2.22. Amends Section 25.0341(a), Education Code, as added by Chapter 997, Acts of the 79th Legislature, Regular Session, 2005, as follows:

(a) Provides that this section applies only to:

(1) a student:

(A) who has been convicted of or placed on deferred adjudication for offenses under Sections 21.02 (continuous sexual abuse of young child or children), 22.011 (sexual assault), 22.021 (aggravated sexual assault), Penal Code, committed against another student who, at the time the offense occurred, was assigned to the same campus as the student convicted or placed on deferred adjudication;

(B) who has been adjudicated under Section 54.03, Family Code, as having engaged in conduct described by paragraph (A);

(C) whose prosecution under Section 53.03, Family Code, for engaging in conduct described by paragraph (A) has been deferred; or

(D) who has been placed on probation under Section 54.04(d)(1), Family Code, for engaging in conduct described by paragraph (A); and

(2) a student who is the victim of conduct described by Subdivision (1)(A).

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 updates 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 and penalty.

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 of the parent-child relationship 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 application of this section to a defendant indicted or waives indictment 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 circumstances in which an 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" to include an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children).

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 when an inmate has never been convicted of certain offenses.

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 circumstances in which an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect at a convalescent or nursing home or related institution 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 from being employed at a facility serving the elderly or

persons with disabilities, entitled to obtain criminal history record information, 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 or refusal to issue a license to an applicant on proof that the nurse or applicant has been initially 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 TDCJ and to make conforming changes providing offenses punishable by imprisonment for life in the TDCJ.

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

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

SECTION 2.49. Amends Section 38.17(a), Penal Code, to make conforming changes regarding certain circumstances constituting an offense of failure to stop or report aggravated sexual assault of a child.

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.