

## **BILL ANALYSIS**

Senate Research Center  
85R11511 MAW-D

S.B. 1322  
By: Kolkhorst  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, a person charged with possession of child pornography receives the same sentence regardless of the age of the minor. Interested parties contend that child pornography penalties should be aligned with those of aggravated sexual assault of a minor. The penalty for sexual assault of a minor depends on the age of the minor. Sexually assaulting a minor under the age of fourteen elevates the charge from a second degree felony to a first degree felony. A defendant convicted of sexually assaulting a child under six must be sentenced to a minimum term of twenty-five years. S.B. 1322 aligns child pornography with the punishment framework with that of sexual assault of a minor.

As proposed, S.B. 1322 amends current law relating to increasing the punishment for the offense of possession or promotion of child pornography and changes parole eligibility.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 42.01, Code of Criminal Procedure, by adding Section 12, to provide that in addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0151.

SECTION 2. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0151, as follows:

Art. 42.0151. FINDING REGARDING CHILD PORNOGRAPHY. Requires the judge, in the trial of an offense under Section 43.26 (Possession or Promotion of Child Pornography), Penal Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines the child depicted in the visual material was younger than six years of age at the time the image was made.

SECTION 3. Amends Section 508.145(a), Government Code, as follows:

(a) Provides that an inmate is not eligible for release on parole if the inmate is:

(1) and (2) creates these subdivisions from existing text and makes nonsubstantive changes;

(3) serving a sentence for an offense for which the judgment contains an affirmative finding under Article 42.0151, Code of Criminal Procedure;

(4) creates this subdivision from existing text and makes nonsubstantive changes;

(5) creates this subdivision from existing text; deletes existing text providing that the inmate to which this subdivision applies is not eligible for parole, and makes nonsubstantive changes to this subdivision.

SECTION 4. Amends Section 43.25(g), Penal Code, to authorize the court or jury, when it becomes necessary for the purposes of this section or Section 43.26 to make a determination regarding the age of a child who participated in sexual conduct, rather than to determine whether a child who participated in sexual conduct was younger than 18 years of age, to make that determination by any of certain provided methods. Makes a nonsubstantive change.

SECTION 5. Amends Sections 43.26(d) and (g), Penal Code, as follows:

(d) Provides that an offense under Subsection (a) is a felony of the third degree, except that the offense is:

(1) a felony of the second degree if:

(A) creates this paragraph from existing text and includes an offense under Subsection (a), rather than that subsection; or

(B) the child depicted in the visual material was younger than 14 years of age at the time the image was made; and

(2) makes a conforming change.

(g) Provides that an offense under Subsection (e) is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) creates this subdivision from existing text and includes an offense under Subsection (e), rather than that subsection; or

(2) the child depicted in the visual material was younger than 14 years of age at the time the image was made.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2017.